

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
Minutes of the 252nd Meeting
Held on April 27, 2021

Pursuant to a notice and agenda dated April 18, 2021 of the New York State Energy Research and Development Authority (“Authority”) a meeting was convened on April 27, 2021 at 1:30pm, by video conference.

The following Members of the Authority were present:

Richard Kauffman, *Chair*
Gil Quiniones, *Vice-Chair*
Sherburne Abbott
Charles Bell
Ken Daly
Marie Therese Dominguez
Kate Fish
John Howard
Jay Koh
Basil Seggos
Mark Willis

Also present were Doreen Harris, Acting President and CEO; Janet Joseph, Senior Vice President for Strategy and market Development; John Williams, Vice President for Policy and Regulatory Affairs; Jeffrey Pitkin, Treasurer; Peter Costello, Esq., General Counsel and Secretary; Sara LeCain, Esq., Senior Counsel; Andrew Kessler, Acting President NYGB; Michael Reed, Program Manager Advanced Energy Solutions; Car Mas, Energy Environmental Analysis; and various other staff of the Authority.

The Chair called the meeting to order and noted the presence of a quorum. The Notice and Agenda were forwarded to the Members and the press on April 19, 2021. The meeting was

held via videoconference and the Chair asked Peter Costello, to conduct a roll call. Each Member indicated their presence and Mr. Costello confirmed a quorum was present.

The Chair indicated the first item on the discussion agenda was a report from the Authority's President and CEO, Doreen Harris. Ms. Harris provided the Members with a report on the Authority's recent activities as well as notable events in the energy efficient and renewables arena.

Following Ms. Harris's presentation, Mr. Kauffman commended Ms. Harris on the transition as the Authority's President and CEO.

The Chair indicated that the next item on the discussion agenda concerned a private session for the purpose of discussing attorney client privilege matters.

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

Resolution No. 1614

RESOLVED, that that pursuant to Section 108 of the Public Officers Law, the Members shall convene in private session on April 27, 2021 for the purpose of discussing attorney-client privileged matters.

The Members then entered into a private session.

The Chair then reconvened the meeting; no formal action was taken during the private sessions.

The Chair indicated that the next item on the discussion agenda was a report on the Governance Committee ("GC") from its Chair, Sherburne Abbott. Ms. Abbott indicated that the GC met earlier, and a quorum was present throughout.

First, the GC received a presentation from the Authority's General Counsel Peter Costello on proposed amendments to the Authority's Conflict of Interest Policy for Board Members. Specifically, the Policy revisions would allow the Authority's Ethics Officer to be consulted on ethical matters in addition to the General Counsel. Other non-substantive ministerial or clarifying changes would also be made.

Ms. Abbott indicated that the GC unanimously recommends that the Board approve the revisions to the Conflict of Interest Policy for Board Members.

Next, Ms. Abbott explained the Public Authorities Law requires the Board to establish policies regarding compensation of Authority Officers and Article III, Section 3 of the Authority's by-laws requires Board approval of Officers' compensation.

Ms. Abbott indicated that historically, the Authority has provided its employees with the same salary increases that are provided to State M/C employees through State legislation, and as authorized by Budget Bulletins issued by the New York State Division of the Budget. The most recent New York State Budget as passed on April 7, 2021 authorized a general salary increase of 2% effective April 1, 2020 for State M/C and unrepresented Executive Branch employees, pursuant to approval and terms and conditions established by the Division of the Budget.

Ms. Abbott added that in June 2019, the Members approved this 2% increase for all Officers then in office as of April 1, 2020. The recently appointed President and CEO's compensation was set to align with the prior President and CEO's compensation, and had the Budget Bulletin been in place at the time of appointment the current President and CEO's salary would have reflected the increase. Accordingly, the proposed resolution would authorize a 2% increase retroactive to April 7, 2021 for the President and CEO.

Additionally, Ms. Abbott indicated that it would also authorize similar general salary increases as may be authorized for State M/C employees by the New York State Division of the Budget.

Ms. Abbott stated that the GC unanimously recommends that the Board approve these general salary increases for the Officers.

Lastly, Ms. Abbott indicated that the GC met in private session to discuss the results of the Members' evaluation of the Board's performance. This will be presented the Members at the June 2021 Board Meeting.

The Chair indicated that the next item on the discussion agenda was a report on the items considered by the Audit and Finance Committee ("AF&C") from its Chair Jay Koh. Mr. Koh indicated that the A&FC met earlier, and a quorum was present throughout.

First, the A&FC received a report from the Authority's Director of Internal Audit, Mary Peck, on her proposed Internal Audit Plan for Fiscal Year 2021-2022. Following a discussion, the Committee voted to approve the 2021-2022 Audit Plan.

Next, the A&FC received a report from the Authority's Internal Control Officer, Jeffrey Pitkin on proposed changes to the Internal Control Manual. Mr. Pitkin described the changes which include amendments to conform with the By-laws, changes to better describe tasks conducted by certain departments of the Authority, renaming Section 17 as the Internal Audit Charter, and clarifying Internal Audit's ability to communicate with the Members, and other ministerial and clarifying changes.

Mr. Koh indicated that the A&FC unanimously recommends approval of the amendments to the Authority's Internal Control Manual.

Next, the A&FC considered a proposed financing of the Green Jobs – Green New York ("GJGNY") Program that would sell a participation interest in the GJGNY Program Loans to community banks or credit unions. The details of this transaction were included in your meeting package.

Mr. Koh indicated that the A&FC unanimously recommends approval of the GJGNY financing.

The A&FC also considered a proposed portfolio monetization facility on behalf of NY Green Bank (“NYGB”). Specifically, NYGB would sell an interest in financing receivables from 20 loans with an outstanding principal balance of approximately \$396.5 million to ESG Green Acquisition Trust, a statutory trust beneficially owned by Bank of America. The details were included in the materials provided to the Members.

Mr. Koh stated that the A&FC unanimously recommends approval of the authorization for the monetization facility on behalf of NYGB.

Lastly, the A&FC heard a detailed presentation from KPMG, LLP (“KPMG”) on its proposed process for conducting the fiscal year 2020-2021 independent audit of the Authority’s financial statements and NYGB’s financial statements. The A&FC was able to ask questions and thought the approach was reasonable and that the final financial statements would meet the requirements of the Public Authority Accountability Act and the New York State Comptroller’s regulations, including the delivery of all required opinions.

The Chair stated that the next item on the discussion agenda was a report on items discussed by the Program Planning Committee (“PPC”) from its Chair, Mark Willis. The PPC met just before the Board meeting and a quorum was present throughout.

First, the PPC received a report from the Authority’s President and CEO Doreen Harris and Project Manager in Energy Affordability and Equity Michelle Andry on the Authority’s Diversity, Equity, and Inclusion (“DE&I”) initiative. Ms. Andry described the work that is being conducted across the Authority by many staff members to incorporate DE&I principles both internally and externally.

Next, the PPC received a report on the Authority’s work on behalf of disadvantaged communities. Senior Vice President for Strategy and Market Development Janet Joseph

introduced the discussion and the PPC received presentations from Christopher Coll, Director of Energy Affordability and Equity; Jaime Marcotte, Program Manager Efficiency Planning and Engineering; Robyn Marquis, Program Lead Clean Transportation Prizes; and Emily Dean, Director of Market Development.

The Chair indicated that the next item on the agenda was a report on the recent activities of NYGB from its Acting President, Andrew Kessler. Mr. Kessler reviewed NYGB's response to the COVID-19 pandemic and provided the Members with a snapshot of NYGB's cumulative investment performance as well as its future investment plans.

In a response to an inquiry from Mr. Kauffman, Mr. Kessler indicated that NYGB's work is a combination of existing customer as well as prioritization of closing funding gaps in certain areas.

In response to an inquiry from Mr. Kauffman, Mr. Kessler explained that NYGB has set a goal of \$471.1 million in investments within its affordable housing and disadvantaged communities work.

In response to an inquiry from Mr. Willis, Mr. Kessler indicated that NYGB retains complete control over servicing and the ability to make modifications. The principle of the NYGB is to complete deals that the market would not otherwise be willing to conduct. Mr. Pitkin noted that NYGB remains the lender of record and is actually the servicer and purchasers may not make changes without first obtaining NYGB approval.

In response to an inquiry from Mr. Willis, Mr. Kessler assured the Members that the proposed transaction with Bank of America will create liquidity for NYGB without restrictions on the use of the proceeds. Mr. Kauffman noted the fact that the transaction demonstrates that the market is willing to buy these loans.

In response to an inquiry from Ms. Fish, Mr. Kessler indicated that NYGB has been working with Bank of America to familiarize them with NYGB's portfolio. Mr. Kessler stated

that the hope is that this will lead to future transactions with Bank of America and other similar entities.

In response to an inquiry from Mr. Koh, Mr. Kessler confirmed that this is intended to be the first of several transactions.

In response to an inquiry from Mr. Daly, Mr. Kessler explained that NYGB closed 23 new transactions in 2020 and almost of them had an upfront fee.

In response to an inquiry from Mr. Willis, Mr. Kessler confirmed that the transactions included operating expenses, but that there was no cost of capital built into them.

The Chair stated that the next item on the discussion agenda was a report from Carl Mas, Director of Energy Environment and Analysis, and Elizabeth Grisaru, from the New York State Department of Public Service (“DPS”), on the initial report on the New York Power Grid Study. Mr. Mas and Ms. Moss provided the Members with a detailed report on the New York Power Grid Study, which was developed in collaboration with NYSERDA and issued in early 2021 to address the States climate goals in this area.

In response to an inquiry from Mr. Koh, Mr. Mas indicated that the Authority is in the process of updating its 10-year old climate report, including revising the forecasts for weather volatility and how it will impact all of the State’s energy systems.

In response to an inquiry from Mr. Daly, Mr. Mas stated that the New York Independent System Operators was on the advisory group, but was not a co-author of the study.

Mr. Quiniones noted that the last transmission that broke ground in upstate New York was in 1985, but that NYPA will be building 5 major electric transmissions upstate over the next couple of years.

In response to an inquiry from Mr. Kauffman, Ms. Grisaru indicated that the parties are still at the beginning of the process of defining a renewable energy zone.

Chair Kauffman indicated that the next items to be considered, were the items on the consent agenda. There were six items on the consent agenda. Resolutions No. 1615 through 1619 were recommended for approval by the Committees; and Resolution No. 1620 would approve the periodic contracts report. Counsel's office has compared the list provided by members, of entities with which each member is associated, which he or she believes may enter into contracts with NYSERDA to the list of contracts in the periodic contracts report. Counsel's office reported that there were no potential conflicts.

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

Resolution No. 1615

RESOLVED, that the Conflict of Interest Policy for Board Members as presented at this April 27th, 2021 meeting, is hereby approved by the Board.

Resolution No. 1616

RESOLVED, that the proposed 2% salary increase retroactive to April 7, 2021 payable to the President and CEO consistent with terms and conditions as may be authorized for State Management/Confidential employees by the New York State Division of the Budget, are hereby approved; and

BE IT FURTHER RESOLVED, the Members approve that any Authority Officer shall be entitled to receive periodic future salary increases consistent with terms and conditions as may be authorized from time to time for State Management/Confidential employees by the New York State Division of the Budget.

Resolution No. 1617

RESOLVED, that the amendments to the Authority's Internal Control Manual as presented at this April 27, 2021 meeting with such non-substantive, editorial changes as the President and CEO, in her discretion, may deem necessary or appropriate, are hereby approved and adopted.

Resolution No. 1618

WHEREAS, pursuant to special act of the Legislature of the State of New York (Title 9 of Article 8 of the Public Authorities Law of New York, as from time to time amended and supplemented, herein called the “Act”), the New York State Energy Research and Development Authority (the “Authority”) has been established as a body corporate and politic, constituting a public benefit corporation; and WHEREAS, pursuant to special act of the Legislature of the State of New York (Title 9-A of Article 8 of the Public Authorities Law of New York, as from time to time amended and supplemented, herein called the “Green Jobs – Green New York Program”), the Authority has been authorized to use innovative financing mechanisms to finance energy efficiency improvements and technologies eligible for net metering through energy cost savings; and

WHEREAS, the Authority may wish to sell participation interests, not to exceed 90%, in one or more pools of Green Jobs – Green New York Program residential consumer loans (the “Loans”) to community banks or credit unions; and

WHEREAS, the Authority will enter into an agreement with LoanStreet, Inc., an online platform that provides a streamlined process for sharing, managing, and originating loans for credit unions, Banks, and direct lenders, to serve as the seller for the Authority’s participating interests under the Green Jobs – Green New York Program; and

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY AS FOLLOWS:

Section 1. The offering, sale, and delivery of the Loans in one or more pools, not to exceed 90% of the principal balance of eligible loans as of April 30, 2021, upon the terms and conditions and for the purposes described in this resolution are hereby authorized. The Loans shall be sold for an amount of Net Proceeds as determined by the President and CEO, the Vice Presidents, the Treasurer, or the Secretary of the Authority (collectively, the “Authorized Representatives”) provided that such price shall not be less than fair market value as determined by an independent valuation consultant. The sale of the Loans shall be subject to such provisions as set forth in agreements between the Authority and Loan Street, Inc.

Section 2. The Authorized Representatives are each hereby authorized to execute, acknowledge, and deliver any agreements or other transaction documents as such Authorized Representatives shall approve. Execution of such documents by an Authorized Representative shall be conclusive evidence of any approval required by this section.

Section 3. The Authorized Representatives are hereby authorized to provide any appropriate disclosure in connection with the transactions

contemplated by this resolution, including but not limited to the use of the financial statements of the Authority or Green Jobs –Green New York Program information. The foregoing approval shall not be deemed to constitute an acknowledgment by the Authority of any responsibility for any information which has been furnished by any other party.

Resolution No. 1619

WHEREAS, pursuant to special act of the Legislature of the State of New York (Title 9 of Article 8 of the Public Authorities Law of New York, as from time to time amended and supplemented, herein called the “Act”), the New York State Energy Research and Development Authority (the “Authority”) has been established as a body corporate and politic, constituting a public benefit corporation; and

WHEREAS, pursuant to the New York State Public Service Commission’s “Order Establishing New York Green Bank and Providing Initial Capitalization,” issued and effective December 19, 2013 (Case 13-M 0412), NY Green Bank (“NYGB”) has been established as an unincorporated division of the Authority and capitalized with \$1 billion in ratepayer and other capital for the purpose of making investments in sustainable infrastructure projects in New York State; and

WHEREAS, pursuant to the Act, the Authority is authorized to sell, convey, mortgage, lease, pledge or otherwise dispose of personal property, including investments made by NYGB and any rights thereunder, upon such terms and conditions as the Authority deems advisable, together with such rights and privileges as may be incidental and appurtenant thereto; and

WHEREAS, NYGB intends to maintain and increase the level of its investment activity in New York State in support of the goals of New York State’s Climate Leadership and Community Protection Act of 2019 without requesting any additional ratepayer capital;

WHEREAS, in order to achieve the aforementioned purpose, NYGB intends to generate proceeds for reinvestment in New York State by selling NYGB’s repayment interests in financing receivables (the “Revenues”) from twenty (20) loans in NYGB’s portfolio (the “Loans”) (estimated to have an aggregate outstanding principal balance of \$396.5 million as of February 28, 2021) to ESG Green Acquisition Trust (the “Purchaser”), a statutory trust organized under the laws of the State of Delaware and beneficially owned by Bank of America, N.A. (“BANA”), all pursuant to a Receivables Purchase Agreement (the “RPA”) between NYGB, a division of the Authority, and the Purchaser;

WHEREAS, pursuant to the RPA, as consideration for the sale of its interest in the Revenues to the Purchaser, NYGB will receive (i) a cash purchase price equal to 83% of the aggregate outstanding principal balance plus anticipated

committed but undrawn balances of the Loans as of a cutoff date prior to the closing date, not to exceed \$336.15 million in gross proceeds, less a \$4.5 million upfront funding fee to BANA (such amount, the “Net Proceeds”) and (ii) a residual certificate issued by the Purchaser, representing a residual interest in the Revenues once the Purchaser’s Notes issued to BANA and secured by Revenues have been repaid; and

WHEREAS, after the consummation of the sale of the Revenues to the Purchaser, NYGB will remain the lender of record of the Loans and service the Loans pursuant to a Servicing Agreement with the Purchaser for a servicing fee equal to 0.05% per annum on the aggregate outstanding principal balance of the Loans; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD MEMBERS OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY AS FOLLOWS:

Section 1. The sale of the Revenues upon the terms and conditions and for the purpose described in this resolution are hereby authorized. The Revenues shall be sold for an amount of Gross Proceeds equal to the 83% of the aggregate outstanding principal balance plus anticipated committed but undrawn balances of the Loans, not to exceed \$336.15 million in gross proceeds, less \$4.5 million (net proceeds not to exceed \$331.65 million). The sale of the Loans shall be subject to such provisions as set forth in the RPA.

Section 2. The President and CEO, the Vice Presidents, the Treasurer, the Secretary of the Authority, or the President of NY Green Bank (the “Authorized Representatives”) are each hereby authorized to execute, acknowledge, and deliver the RPA, the Servicing Agreement and any other transaction documents as such Authorized Representative shall approve. Execution of such documents by an Authorized Representative shall be conclusive evidence of any approval required by this Section.

Section 3. The Authorized Representatives are hereby authorized to provide any appropriate disclosure in connection with the transactions contemplated by this resolution, including but not limited to the use of the financial statements of the Authority or NYGB. The foregoing approval shall not be deemed to constitute an acknowledgment by the Authority or NYGB of any responsibility for any information which has been furnished by any other party.

Section 4. The Authorized Representatives are each hereby authorized to execute, acknowledge, and deliver any other agreements, documents, or certificates, including certificates confirming on behalf of the Authority the accuracy and completeness of information relating to the Revenues, the Loans, the Authority and NYGB, and to do and cause to be done any such other acts and things and to make such other changes, omissions, insertions, revisions, or

amendments to the documents referred to in Sections 1 through 5 of this resolution as they may determine necessary or proper for carrying out, giving effect to, and consummating the transactions contemplated by this resolution. Execution of such documents by an Authorized Representative shall be conclusive evidence of any approval required by this Section. Any Authorized Representative, the Assistant Treasurer, and the Acting Secretary of the Authority are each hereby authorized to affix the seal of the Authority on such documents and attest the same.

Section 5. The sale of the Revenues shall not give rise to any indebtedness of or a charge against the general credit of the Authority. The sale of the Revenues shall not constitute a debt of the State of New York.

Resolution No. 1620

RESOLVED, that the Periodic Contracts Report, covering the period December 16, 2020 through March 15, 2021, 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.

Mr. Kauffman indicated that the next item on the agenda was other business. There being no other business, Mr. Kauffman called for a motion to adjourn. Whereafter, upon motion duly made and seconded, and by voice vote of the Members present, the meeting was adjourned.