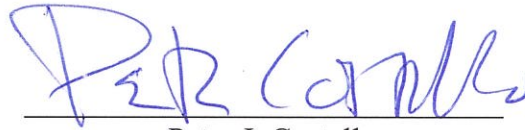


CERTIFICATE AS TO MINUTES

The undersigned, Secretary to the New York State Energy Research and Development Authority (“Authority”), hereby certifies that attached hereto is a complete and accurate copy of the minutes of the 264th Meeting of the Authority, duly held on November 29, 2023.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Authority this 30th day of November, 2023.



Peter J. Costello
Secretary



SEAL

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY
Minutes of the 264th Board Meeting
Held on November 29, 2023

Pursuant to a notice and agenda dated November 22, 2023 and a revised notice and agenda dated November 29, 2023, a special meeting of the New York State Energy Research and Development Authority (“Authority”) was convened on Wednesday, November 29, 2023, at 10:00 a.m. at the Authority’s Albany Office located at 17 Columbia Circle, Albany, New York; at the NY Green Bank (“NYGB”) Office located at 1333 Broadway, Suite 300, New York, New York; at the New York Power Authority (“NYPA”) located at 123 Main Street, Conference Room 1654, White Plains, New York; and at the New York State Department of Transportation (“DOT”) located at 50 Wolf Road, Albany, New York. The four locations were connected by videoconference.

The following Members of the Authority were present:

Richard Kauffman, *Chair of the Authority* attended from NYGB

Charles Bell, *Vice Chair of the Authority* attended from NYGB

Sherburne Abbott attended from NYGB

Rory Christian attended from NYGB

Marie Therese Dominguez attended from DOT

Justin Driscoll attended from NYPA

Arturo Garcia-Costas attended from NYGB

Jay Koh attended from NYGB

Members Sadie McKeown, Frances Resheske, and Basil Seggos were unable to attend.

Also present were Doreen Harris, President and CEO; John Williams, Executive Vice President for Policy and Regulatory Affairs; Pam Poisson, Chief Financial Officer; Anthony J. Fiore, Chief Program Officer; Peter J. Costello, General Counsel and Secretary to the Authority; Sara L. LeCain, Senior Counsel and Secretary to the Committees; and various other staff of the Authority.

The Chair called the meeting to order and confirmed that a quorum was present. Notice of this meeting was provided to the Members and to the press on November 22, 2023. A revised notice and agenda was issued on November 29, 2023.

The Chair indicated that there was one item on the agenda, the consideration of the Authority's proposed rulemaking establishing criteria for determining the cost effectiveness of proposed changes to the State Energy Conservation Construction Code ("Energy Code") for use by the New York State Fire Prevention and Building Code Council ("Code Council"), in accordance with regulatory authority and direction set forth in the Advanced Building Codes, Appliance and Equipment Efficiency Standards Act (the "Act"). Chief Program Office Anthony J. Fiore provided the Members with an introduction and Assistant Director of Codes Products and Standards Chris Corcoran discussed the rulemaking.

Assistant Director Corcoran stated that the Members were requested to approve: (1) a resolution authorizing the Authority to develop and issue a Notice of Proposed Rulemaking ("NOPR") as the first step for the Authority to establish a new rule for determining Energy Code cost effectiveness, and (2) the issuance of a Negative Declaration under the State Environmental Quality Review Act ("SEQRA") to fulfill the Authority's environmental review obligations. The publication of the rule would mark the beginning of the public notice and comment period under the State Administrative Procedures Act ("SAPA").

Next, Assistant Director Corcoran provided the Members with the background and context for the proposed regulatory actions, noting that the Energy Code primarily applies to new construction and renovations to existing buildings. The Authority has been working with the New York State Department of State ("DOS") to prepare and support the next Energy Code update that is targeted to take effect in 2025. Additionally, Assistant Director Corcoran reminded the Members that the Act directed the Authority to develop and adopt a rule that establishes a life cycle cost methodology for Energy Code updates and to define the societal effects associated with those Energy Code updates.

Assistant Director Corcoran laid out the expected timeline of important milestones in the rulemaking process: following the Board's approval, the NOPR is anticipated to be published in January 2024, opening a 60-day public comment period. The final rule is anticipated to be presented to the Members for consideration in June 2024 and if approved, will be adopted and take effect in July 2024.

Next, Assistant Director Corcoran provided the Members with details on the proposed rulemaking, explaining that the rule is about how to determine the cost effectiveness of a new energy code. The Code Council is required to consider whether the Energy Code update remains cost effective by applying the cost effectiveness criteria contained in this proposed rule and considering the secondary or societal effects. The proposed rule uses net present value to consider the future value of costs and savings, and an Energy Code update can be presumed to be cost effective when the sum of the life-cycle costs and the value of the societal effect is greater than or equal to zero.

Next, Assistant Director Corcoran discussed three key parts of the proposed rule: life-cycle cost methodology, societal effects, and the cost-effectiveness presumption, and stated that the proposed rule is based on the U.S. Department of Energy's ("DOE") methodology to estimate the costs and benefits of a proposed update to model Energy Codes and that the calculation of the societal effects is based on the New York State Department of Environmental Conservation ("DEC") Guidelines for Establishing a Value of Carbon.

Assistant Director Corcoran reported that as required by the Act, the Authority held four public meetings in October 2023. The meetings were the preliminary step in developing the proposed rule to be used by the Code Council in evaluating future revisions to the Energy Code. Assistant Director Corcoran explained that overall, the comments received at the meetings and during the comment period expressed support for the move to a more refined cost effectiveness approach over the 10-year simple payback analysis while also suggesting adjustments. The four main themes of the comments were: 1) to increase the value of societal benefits and reduce costs included in the life-cycle cost methodology; 2) to increase life-cycle costs related to electrification; 3) to provide transparency on costs, discount factors, weather models and carbon values; and 4)

objections to perceived impact on existing buildings.

Next, Assistant Director Corcoran explained that as this proposed rulemaking is an action subject to SEQRA, and that as the lead agency, the Authority must follow SEQRA and assess environmental impacts. The Code Council is considered an interested agency in this rulemaking given the impact of this rule. Assistant Director Corcoran stated that this action is considered an “Unlisted Action” under SEQRA because it is not fall under either a Type I or Type II action.

Assistant Director Corcoran stated that as the lead agency, the Authority must determine the environmental significance of this action. Based on the proposed rulemaking, management recommends that the Authority issue a Negative Declaration as there will be no adverse environmental impact from the action.

Throughout Assistant Director Corcoran’s presentation, the Members asked a number of questions about the cost effectiveness criteria, including the use of specific discount rates, the consideration of additional societal effects, the use of the DOE methodology in other jurisdictions, how changes in the DOE methodology will be captured in this approach, consistency of the DEC Guidelines with the Value of Distributed Energy (“VDER”) and the incorporation of climate change projections into the calculations. It was agreed that the Members will receive additional information to address these inquiries in a subsequent meeting, which will include a comparison between the approach outlined in the proposed rule and the 10-year simple payback analysis.

Members also had questions regarding the environmental review process and the rationale for a Negative Declaration. In response, Assistant Director Corcoran confirmed that this rule would not have a negative impact on the environment that the Energy Code updates performed by the Code Council subsequent to this rulemaking would be subject to a full Environmental Impact Statement (EIS). In addition, General Counsel Costello stated that when this rule is finalized it is merely guidance to the Code Council under the statute.

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

Resolution No. 1714

WHEREAS, Energy Law section 11-103 vests the New York State Fire Prevention and Building Code Council (the “Code Council”) with the statutory authority of reviewing and amending, or adopting anew, the State Energy Conservation Construction Code (the “Energy Code”);

WHEREAS, the Advanced Building Codes, Appliances and Equipment Efficiency Standards Act of 2022 (the “2022 Efficiency Standards Act”), gives authority to the New York State Energy Research and Development Authority (“NYSERDA”) to promulgate certain criteria for conducting a life-cycle cost analysis;

WHEREAS, pursuant to the 2022 Efficiency Standards Act, NYSERDA proposes to adopt Part 510 of Title 21 of the New York Codes, Rules, and Regulations (NYCRR) for the purpose of enacting regulations to: (1) establish a methodology for determining whether the life-cycle costs for a building will be recovered through savings in energy costs over the design life of the building under a life-cycle cost analysis; (2) define secondary or societal effects to be considered in the cost effectiveness determination; and (3) provide a method for quantifying the societal effects so that they can be added to the life-cycle costs (“Action”);

WHEREAS, the rule making process for NYSERDA is governed by the State Administrative Procedure Act (“SAPA”);

WHEREAS, NYSERDA is the Lead Agency pursuant to SEQRA, as it is the only agency that has discretionary approval authority over the Action;

WHEREAS, NYSERDA has determined the Action is an unlisted action as defined under the New York State Environmental Quality Review regulations (“SEQR”);

WHEREAS, NYSERDA, in its capacity as Lead Agency, has completed Parts 1, 2, and 3 of the Environmental Assessment Form, and conducted an evaluation of the potential environmental impacts of the Action; and

WHEREAS, NYSERDA has determined that the Action will not result in any significant adverse environmental impacts.

NOW THEREFORE, BE IT RESOLVED, that NYSERDA, in its capacity as Lead Agency, does hereby issue and adopt the attached **Negative Declaration and Determination of Non-Significance** for the Action;

BE IT FURTHER RESOLVED that NYSERDA adopts the text of the Proposed Rule, substantially in the form attached hereto;

BE IT FURTHER RESOLVED, that NYSERDA, authorizes, approves, and directs the publication of Notice of Proposed Rulemaking to establish a new Part 510 of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, titled **Evaluation Criteria for Determining the Cost Effectiveness of Proposed Updates to the Energy Conservation Construction Code of New York**, in substantially in the form attached hereto, including the (1) Summary of the Proposed Rule; (2) the Regulatory Impact Statement (RIS); (3) the Regulatory Flexibility Analysis for Small Businesses and Local Governments (RFA); (4) Rural Area Flexibility Analysis (RAFA); and (5) Jobs Impact Statement (JIS), and;

BE IT FURTHER RESOLVED, that the Members authorize the President and CEO, or their authorized designee, to certify, execute, acknowledge, and deliver any regulatory documents necessary to effectuate this resolution.

The Chair indicated that the last item on the agenda was other business. There being no other business, the Chair called for a motion to adjourn.

Whereafter, upon motion duly made and seconded, and by unanimous voice vote of the Members present, the meeting was adjourned.



NYSERDA

KATHY HOCHUL
Governor

RICHARD L. KAUFFMAN
Chair

DOREEN M. HARRIS
President and CEO

NOTICE OF MEETING AND AGENDA

November 22, 2023

TO THE MEMBERS OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY:

PLEASE TAKE NOTICE that a Special Meeting (the 264th) of the New York State Energy Research and Development Authority (“Authority”) will be held at 17 Columbia Circle, Albany, New York, at the NY Green Bank Office located at 1333 Broadway, New York, New York, and at the New York Power Authority located at 123 Main Street, Conference Room 1654, White Plains, New York on Wednesday, November 29, 2023, commencing at 10:00 a.m., for the following purposes:

1. To consider and act upon a resolution authorizing the Authority to develop and issue a Notice of Proposed Rulemaking to establish a new Part 510 of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York and to approve the issuance of a Negative Declaration under the State Environmental Quality Review Act for new Part 510 of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York.
2. 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 or via the video conference which can be accessed at <https://www.nyserdera.ny.gov/About/Board-Governance/Board-and-Committee-Meetings>.

The Authority will be posting a video and a transcript of the meeting to the web as soon as practicable after the meeting. The video and transcript will be posted at <http://www.nyserdera.ny.gov/About/Board-Governance/Board-and-Committee-Meetings>.

Peter J. Costello
Secretary

New York State Energy Research and Development Authority

Albany
17 Columbia Circle, Albany, NY 12203-6399
(P) 1-866-NYSERDA | (F) 518-862-1091
nyserdera.ny.gov | info@nyserdera.ny.gov

Buffalo
726 Exchange Street
Suite 821
Buffalo, NY
14210-1484
(P) 716-842-1522
(F) 716-842-0156

New York City
1359 Broadway
19th Floor
New York, NY
10018-7842
(P) 212-971-5342
(F) 518-862-1091

**West Valley Site
Management Program**
9030-B Route 219
West Valley, NY
14171-9500
(P) 716-942-9960
(F) 716-942-9961



NYSERDA

KATHY HOCHUL
Governor

RICHARD L. KAUFFMAN
Chair

DOREEN M. HARRIS
President and CEO

REVISED NOTICE OF MEETING AND AGENDA

November 22, 2023

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Peter J. Costello
Secretary

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Albany
17 Columbia Circle, Albany, NY 12203-6399
(P) 1-866-NYSERDA | (F) 518-862-1091
nyserdera.ny.gov | info@nyserdera.ny.gov

Buffalo
726 Exchange Street
Suite 821
Buffalo, NY
14210-1484
(P) 716-842-1522
(F) 716-842-0156

New York City
1359 Broadway
19th Floor
New York, NY
10018-7842
(P) 212-971-5342
(F) 518-862-1091

**West Valley Site
Management Program**
9030-B Route 219
West Valley, NY
14171-9500
(P) 716-942-9960
(F) 716-942-9961