

MINUTES OF THE SIXTIETH MEETING OF THE
WASTE AND FACILITIES MANAGEMENT COMMITTEE
HELD ON SEPTEMBER 18, 2018

Pursuant to a notice and agenda dated September 4, 2018, the sixtieth (60th) meeting of the Waste and Facilities Management Committee of the NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY (“Authority”) was convened at 10:30 a.m. on Tuesday, September 18, 2018, in the New York State Dormitory Authority’s (“DASNY”) office at One Penn Plaza, New York, New York, and the Authority’s Albany Office at 17 Columbia Circle, Albany, New York.

The following members of the Committee were present:

Charles Bell, Committee Chair
Richard Kauffman, Chair of the Authority
Sherburne B. Abbott, Committee Member
Kate Fish, Committee Member

Also present were Alicia Barton, President and Chief Executive Officer; Janet Joseph, Senior Vice President; Jeff Pitkin, Treasurer; Noah Shaw, General Counsel; Paul Bembia, West Valley Program Director; Alyse Peterson, Senior Project Manager and Nuclear Regulatory Commission liaison designee, and Janice Dean, Secretary to the Committee.

Mr. Bell called the meeting to order, noted the presence of a quorum, and stated that a notice of the meeting was mailed to Committee members and the press on September 4, 2018. A copy of the notice is attached hereto as Exhibit A.

The first item on the agenda concerned approval of the Minutes of the fifty-ninth (59th) meeting, held on January 23, 2018. A copy of the Minutes was included with the January 23, 2018, mailing. Whereafter, upon motion duly made and seconded, and by unanimous voice vote, the minutes of the fifty-ninth meeting were approved.

The first item on the agenda was discussion of a resolution recommending that the Board approve lease to the Town of Ashford of 53 unimpacted, non-contaminated acres of the West Valley site for a 10 megawatt community solar installation in partnership between the Town and BQ Energy. Noah Shaw presented this item, providing a profile of the project, the construction

jobs expected to be created, and a discussion of each legal requirement under the Public Authorities Accountability Act. Mr. Shaw indicated that the acres are proposed to be leased for \$1 per year, a below-fair-market value transfer recognizing the site's impact to the Town of Ashford's tax base, and thanked the NYSERDA staff who had worked on this issue. Ms. Fish called the initiative an exciting project, and inquired what the benefit to BQ Energy would be. Mr. Shaw stated that he has spoken with BQ Energy, and confirmed that the project will pencil out, noting that it would not be moving forward if it did not. Ms. Barton stated that the Authority has done business with BQ Energy on multiple projects via the New York Green Bank, that BQ specializes in solar development on contaminated sites, and that these prior projects have performed well.

Ms. Abbott inquired if the construction jobs would be local jobs; Mr. Shaw indicated that he did not know, but noted that BQ had worked on other Western New York projects as well.

Mr. Kauffman stated that he was concerned about access to a sensitive site, and exposing the Authority to liabilities, and whether there is a similar lease to look to as an example. Mr. Shaw stated that it appears this project is the first of its kind, and that the area at issue, like the vast majority of acreage under NRC license at West Valley, is not contaminated, but deferred to Mr. Bembia for further information. Mr. Bembia stated that the creek bounds this area of the site, isolating this area from impacted areas of the site, and that the aerial radiation survey performed in 2014 indicated no contamination in this area, which is consistent with the limited historic use of this portion of the site. Mr. Bembia noted that he submitted information about the project to the NRC and is awaiting feedback, and noted that the area would be fenced in, and that nearby groundwater monitoring wells would be closed. Mr. Bembia noted that the lease will contain nuclear stakeholder conditions to address site access obligations. Mr. Kauffman inquired whose responsibility the fence would be, and Mr. Bembia noted that the Authority would maintain its existing Western New York Service Center fencing, but that the project's fence would be maintained by the Town under its agreement with BQ. Mr. Shaw stated that he would look again at access to the site provisions in the lease to ensure that proper signage is present at the site noting limited access to other parts of the site.

Ms. Fish inquired if there is a fence in place right now, and Mr. Bembia said no, the site itself is fenced in but not this acreage.

Ms. Fish asked if the Town was on board, and Mr. Shaw indicated that they are very much involved, noting that NYSERDA support for this Town request is good to relations.

Mr. Bell inquired when the NRC might respond. Mr. Shaw stated that the NRC does not have a formal decision to make, that the regulations do not provide a decision point on this question, and lack of objection is an indication of permission to proceed. Mr. Bembia clarified that the NRC submission relays the Authority's view that no license amendment is needed, noting that this paperwork did not need to be submitted to the NRC for review, but that he asked them to review it anyway so that he could understand any concerns sooner than later, and that he expected a response by the end of September.

Mr. Bell stated that during a recent visit to the site, he discussed this issue with the Mayor of Ashford who was very excited about the project in light of the site's large impact on the tax rolls, and that he viewed the project as a very positive development.

Ms. Abbott inquired if the project has any relationship to the pending environmental impact review, perhaps a positive impact, and Mr. Bembia indicated that it would not be related, noting that the EIS focuses on decommissioning of impacted areas, and that this area is unimpacted.

Mr. Bell called for a motion on the resolution to send the matter to the Board. Ms. Abbott so moved, and Ms. Fish seconded. The motion was carried.

The next item on the agenda was an update from Paul Bembia on the West Valley Site Management Program activities.

Mr. Bembia stated that Phase 1 Decommissioning work is continuing at the West Valley Demonstration Project, including demolition work on the high level waste Vitrification Facility, which is slated to be completed later this month, with final shipments of waste expected to be completed by the end of the year.

Mr. Bembia stated that DOE has decided to reevaluate the demolition approach to the Main Plant Process Building based on an event at the Hanford site in Washington State, when late last year, during demolition of a plutonium processing facility at Hanford, there were releases of contamination that spread outside of the radiological control areas. Mr. Bembia stated that as part of that reevaluation, DOE is removing the MPPB from the scope from the current demolition contract and moving it into the next phase of decommissioning activities that will begin in early 2020, issuing a competitive solicitation by the end of the year.

Mr. Kauffman inquired if the Authority has any role in DOE's decision-making with regard to the demolition approach reconsideration, and Mr. Bembia responded that the Authority has a consultation role in competitive solicitations, and that DOE is generally very responsive to

concerns from the Authority as the site owner. Mr. Shaw stated that the Authority strongly agrees with DOE about the demolition redesign.

Mr. Bembia noted that Mr. Kauffman had previously requested that he keep the Committee closely informed about waste shipping activities at the site, and reported that DOE's contractor recently completed a major milestone under their contract by shipping for disposal a large volume of waste that had been in storage from previous site decommissioning activities, including shipping over 180,000 cubic feet of stored low-level waste, hazardous waste, industrial waste, and mixed low-level waste for offsite disposal, which was completed safely and several months ahead of schedule. Mr. Bembia also stated that DOE's contractor has also been shipping the newly generated waste from their ongoing decommissioning activities, to date shipping over 630,000 cubic feet of newly-generated waste, bringing the total waste volume shipped to date 810,000 cubic feet, which is equivalent to over 110,000 55-gallon drums of waste, or about 900 individual waste shipments.

Mr. Bembia reported that there have been no further issues with the intermodal containers used to ship the Vitrification Facility demolition debris for disposal, but noted that in July, a waste container shipped from West Valley to a disposal facility in Utah was not accepted for disposal because it exceeded the disposal site's waste acceptance criteria, and that in response, the container was shipped to the federal disposal site at Nevada for disposal, which can accept the waste. Mr. Bembia noted that corrective actions were implemented at the site to ensure the material packaged for disposal is properly documented and characterized and If there is any question, the drum is flagged for further evaluation and characterization.

Mr. Bell inquired which agencies have a role in overseeing transport of waste, and Mr. Bembia indicated that DOT and DOE are involved, and that disposal is regulated by the NRC or the host state, if it is an Agreement State.

As to the Environmental Impact Statement (EIS) underway, Mr. Bembia noted that DOE and NYSERDA have completed "scoping" for the Supplemental EIS, the purpose of which is to get input from the public, other agencies and stakeholders on the scope of the Supplemental EIS - primarily regarding the range of alternatives and the environmental issues to be analyzed. He reported that the public scoping period for the SEIS ran from February 21, 2018, through May 25, 2018; that comments were submitted verbally at three scoping meetings, and in writing; and that the scoping meetings were held at West Valley, Buffalo, and the Cattaraugus Territory of the

Seneca Nation of Indians. He noted that about 60 people spoke at the three meetings, and that Mr. Bell was in attendance at all three scoping meetings.

Mr. Bembia stated that including both written and verbal comments, approximately 2,100 scoping comment submission were received, some of which had one comment, and some that had multiple comments, and that Authority staff and DOE are now working through the comments received to identify any changes that should be made to the scope of the SEIS. He also noted that work on the Probabilistic Performance Assessment model and the development of the baseline site information for the SEIS are also continuing.

Mr. Shaw added that a lot of the comments were a Sierra Club email blast, and that the breadth of interest in the future of the site is not always clear without convening meetings like this, and that the public meetings underscored the need for further outreach, which he has begun with small meetings of stakeholders, which has garnered positive feedback, indicating a new chapter in NYSERDA/community relations.

Mr. Kauffman inquired if Mr. Bell had any feedback, and Mr. Bell inquired if an extension of time had been granted (Mr. Bembia indicated it had) and whether the Seneca Nation would be included in decision-making. Mr. Bembia indicated that DOE will be working with the Seneca Nation under their own consultation agreement, and that the Authority will treat the Seneca Nation like an interested governmental entity. Mr. Shaw noted that the Authority did send a letter to DOE management in support of the Seneca Nation's involvement to the largest degree possible. Mr. Bell commended Authority staff on publicizing the public meetings widely, and for thorough presentations.

On the State Licensed Disposal Area, Mr. Bembia noted that as to the leachate increase evaluation, the geotechnical consultant is finalizing their recommendation report for the installation of additional water level monitoring wells at the north end of Trench 14, the area that has been identified as the source of the water entering Trench 14, but that more detailed information is needed to refine the mitigation recommendation. He noted that his team would be providing the consultant's report to NYSDEC and EPA this month to get their input on the well installation plan. He stated that the leachate elevation in Trench 14 is still showing some variability, but it hasn't increased in well over a year, and that the leachate level in this trench remains about 14 feet below the ground surface, and there is no threat of release from this disposal trench or any of the disposal trenches at the SDA.

Mr. Bembia also reported that his team is continuing to implement our routine SDA environmental monitoring and inspection and maintenance programs, which involve the collection of hundreds of environmental measurements and samples, and the regular inspections of the SDA, and that all work safely is conducted safely and in compliance with all regulations. As to compliance and inspections, Mr. Bembia noted that on August 1st, NYSDEC completed a formal inspection of our SDA management program and that the NYSDEC inspectors were highly complimentary of the SDA management program, determining that NYSERDA is in compliance with the NYS Radiation Control Regulations and the requirements of the SDA Radiation Control Permit.

Mr. Bembia stated that with regard to the defense origin of West Valley waste issue, staff are continuing to work toward getting recognition of the defense origin and uses of the radioactive materials from West Valley, and that in May, Mr. Shaw testified before the House Committee on Energy and Commerce Subcommittee on the Environment during a hearing on H.R. 2389 to express NYSERDA and the State of New York's support for the reauthorization of cleanup funding for the WVDP and to present the Committee with facts regarding the defense origin of the West Valley nuclear waste. He explained that as introduced, H.R. 2389 sought to establish West Valley waste as defense waste, but that the bill has now been amended to call for the Government Accountability Office (GAO) to perform a study of West Valley waste, including its origin, and to examine options for its disposal. H.R. 2389 remains with the House Energy and Commerce Committee.

Mr. Kauffman inquired if the GAO report would inform the bill. Mr. Shaw noted that if the bill passes, which he said appears likely, that the only things the bill would say are that the funds are reauthorized and that the GAO shall perform the study; he noted that future actions will be left to a different day. Mr. Shaw noted that the GAO study could provide DOE with a record to change their waste classification, or it may provide a more solid foundation for a legislative fix. He stated that while this is not what his testimony asked for, it represents incremental progress, and indicated that the Authority would work with the GAO.

Mr. Bell inquired if there were any further questions, and hearing none, turned to Alyse Peterson for an update on nuclear coordination activities.

Ms. Peterson noted that NYSERDA is the State's lead agency for radioactive waste policy and has a legislated responsibility under the State Low-Level Radioactive Waste

Management Act to collect annual reports from facilities in New York that generated, stored or disposed of low-level waste, including nuclear power plants, as well as medical, academic, governmental and industrial facilities, and that NYSERDA again successfully met its statutory requirement to prepare an annual summary report for submission to the Governor and legislative leaders by July 1 each year. She reported that this year's report covers calendar year 2017 for which 196 facilities, including all six nuclear power plants, filed reports, 48 of those facilities reporting disposal of low-level waste at out-of-state disposal facilities in Utah and Texas for a total volume of nearly 40,000 cubic feet; she indicated that she would provide the report to any member who had not received it.

Ms. Peterson reminded the Committee that she is currently Chair of the Low Level Waste Forum, a national organization of state, federal, interstate waste compact, and industry representatives (disposal site operators, waste brokers/processors) that was established to facilitate implementation of the federal Low-Level Radioactive Waste Policy Act, and which has become the primary venue for developing national and regional solutions to radioactive waste management issues. She stated that the NRC has recently agreed to provide funds for a Forum working group that will focus on NRC initiatives in waste-related areas such as power plant decommissioning, radioactive source security, and land disposal requirements, and that as Chair of the Forum, she will soon be creating the working group and appointing its members.

Ms. Peterson inquired if the Committee had any questions about the Forum; Mr. Bell inquired if the Forum is a national entity, and Ms. Peterson indicated that it is, noting that it has fifty members, mostly states, but also industry, waste brokers, and federal entities including the NRC, DOE, EPA, and DOT. Mr. Kauffman stated his appreciation for Ms. Peterson's role as chair of the Forum.

Ms. Peterson then updated the Committee on the NRC's decommissioning rulemaking, a regulatory initiative proposing a major overhaul of the rules for decommissioning of nuclear power plants. She noted that the Authority previously led a comprehensive State review and comment effort on the Advance Notice of Proposed Rulemaking that NRC used to launch the overhaul, that the rulemaking process is still ongoing and NYSERDA continues to coordinate the state's involvement, and that the next milestone will be NRC's release of draft regulations for public review and comment later this fall. In preparation for this and other anticipated decommissioning-related work, she stated that the Authority has convened a small, focused team

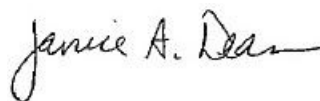
of nuclear staff from the core nuclear safety agencies to meet regularly and share information and ideas, as well as identified a need for consultant support in evaluating the proposed decommissioning rule, including its technical aspects, cost-benefit analyses, trust funds, emergency preparedness and security, and to identify opportunities for state advocacy throughout the rulemaking process. She stated that NYSERDA's Flexergy program will be a valuable contracting mechanism for obtaining nuclear support, reminding the Committee that NYSERDA's Flexible Energy Technical Analysis program, or 'Flexergy', is an open-enrollment solicitation that establishes a pool of pre-qualified consulting firms to provide services in a variety of technical and analytical support areas to which nuclear safety support has recently been added, garnering a pool of five qualified firms.

Mr. Bell inquired if the proposed rule governs land disposal; Ms. Peterson answered no, it addresses only decommissioning. Mr. Bell inquired if the Authority's review relates to nuclear power plants in New York, and Ms. Peterson said it did, noting that Indian Point may be the first facility decommissioned under the new rule. Mr. Shaw called the rule a "big deal", noting that a number of state eyes are watching it and that the Committee can expect to hear more about it, as it will be a high priority for the Authority for the next few years.

Mr. Bell inquired if this rule addresses how much of a site might be released from a license; Ms. Peterson indicated that while the rule does not address that specifically, it may offer guidance on other components such as site security that could impact a licensee's ability to achieve partial site release.

Mr. Bell inquired if there were any other questions, comments, or other business, and hearing none, called for a motion to adjourn the meeting; Ms. Abbott so moved, and Ms. Fish seconded. The meeting was adjourned.

Respectfully submitted,



Janice A. Dean
Secretary to the Committee