

MINUTES OF THE SIXTY-FIRST MEETING OF THE
WASTE AND FACILITIES MANAGEMENT COMMITTEE
HELD ON JANUARY 29, 2019

Pursuant to a notice and agenda dated January 22, 2019, the sixty-first (61st) 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, January 22, 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 by telephone; and Janice Dean, Secretary to the Committee, via videoconference.

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 January 15, 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 sixtieth (60th) meeting, held on September 18, 2018. A copy of the Minutes was included with the January 22, 2019, mailing. Whereafter, upon motion duly made and seconded, and by unanimous voice vote, the minutes of the 60th meeting were approved.

The first item on the agenda was review and approval of the Authority's fiscal year 2019-20 budget. Treasurer Jeff Pitkin requested that the members recommend the adoption of a resolution recommending approval of its portions of the Authority's Budget for the fiscal year ending March 31, 2020 (FY 2019-20). He noted that the budget for the West Valley program is approximately \$19.4 million, an increase of \$400,000 from the prior year budget, including an increase for the State's share of projected federal spending at the site under the Cooperative Agreement and Consent Decree, and costs for maintenance and monitoring activities at the State Licensed Disposal Area. He stated that funding for the program is expected to be provided through an appropriation in the State Budget of \$17.7 million, an increase of \$700,000 from the current year, and from about \$1.7 million provided from the U.S. Department of Energy in reimbursement for its proportionate share of certain NYSERDA direct-funded expenses, a decrease of about \$300,000 from the prior year.

Mr. Pitkin went on to note that included in the Energy and Environmental Analysis program budget is funding to meet requirements under the State Low-Level Radioactive Waste (LLRW) Management Act of 1986 for collecting information and providing regular reports to the Governor and Legislature on LLRW generation in the State, and that these activities are funded with a State appropriation of \$150,000 sub-allocated from an appropriation provided to the NYS Department of Health, which is funded through an assessment collected on operating nuclear power plant licensees. He noted that this amount is unchanged from the amount included in the current year's budget. Mr. Pitkin concluded his report, and Mr. Bell asked if anyone had questions.

Mr. Kauffman inquired who determines the budget between the state and federal government, how it is known that this is the right amount, and what it will be used for. Mr. Shaw stated that the Authority's budget share is driven by the federal appropriation process, as the costs are apportioned between the Authority and the Department of Energy (DOE) after DOE makes decision about the phased cleanup plan in the environmental impact statement finalized about nine years ago. He inquired of Mr. Bembia what the plan is for this year. Mr. Bembia responded that DOE sets the scope and schedule through its contract period, which ends in March of 2020, and that work activities in the next year focus on completion of decommissioning and demolition in

the current scope of work. He stated that Authority staff discuss the scope of work with DOE when the contract is placed as well as annually to discuss the work activities that will be the focus of that year's work activities, and that at the State Licensed Disposal Area, base-level responsibilities as well as as-needed maintenance activities will be performed and can increase or decrease the budget at certain times.

Mr. Pitkin noted that there is overlap between the state and federal fiscal years, and that the Authority pays a proportionate share of DOE expenses, but that the agencies true-up at the end of each federal fiscal year, providing some flexibility in the state budget year to address shifts in the level of spend.

Mr. Bell called for a motion on the item; Ms. Abbott so moved and Ms. Fish seconded. The motion was unanimously carried.

The second item on the agenda was a request to approve a ground lease at the Saratoga Energy and Technology Park (STEP). Mr. Bell noted that in the past decisions related to STEP were handled by the Program Planning Committee, but that management has recommended, and he concurs, that the Waste and Facilities Management Committee handle such matters, as STEP is a "facility of NYSERDA." Mr. Shaw inquired if members had questions about that recommendation; no members did.

Mr. Shaw requested that the members recommend that the full Board adopt a resolution approving the extension of an existing ground lease with GE Fuel Cells for land and improvements located adjacent to 107 Hermes Road at Saratoga Technology and Energy Park, also known as STEP, for the purpose of constructing and demonstrating a fuel cell system.

Mr. Shaw noted that the original STEP Resolution approved by the Board, Resolution #1045, provides that any "long-term" ground lease at STEP needs to be approved by the Board, and that the Authority considers an 18-month lease with an 18-month option to renew and an 11-month extension to be "long term."

Mr. Shaw provided a brief overview of the STEP property, and stated that the Authority currently has an executed ground lease with The United Group of Companies, Inc., for the site located at 107 Hermes Road, which includes a building developed by The United Group where GE Fuel Cells, LLC leases 37,405 square feet of this building from The United Group with 55 employees who focus on making industrial-size solid oxide fuel cells that will run on natural gas and be paired with traditional gas engines made by GE's Power & Water division, based in Schenectady. He noted that the fuel cell system will be demonstrated on property adjacent to the building located at 107 Hermes Road.

Mr. Shaw stated that Authority management is recommending approval of the proposed extension to the ground lease with GE Fuel Cells in order for GE Fuel Cells to construct and demonstrate a new, smaller scale hybrid solid oxide fuel cell system, a lease of approximately 9,986 square feet of land and improvements consisting of a concrete pad measuring approximately 5,460 square feet, and other improvements and access roads totaling approximately 4,526 square feet to GE Fuel Cells, for which GE Fuel Cells will pay the Authority base rent of \$5,783.74 per lease year, in equal monthly installments of \$481.98. He noted that GE Fuel Cells is required to make all repairs and replacements to the improvements that it constructs or installs and, upon termination, is required to deliver the Premises in its original condition. Mr. Shaw stated that the draft lease agreement, as well as the Public Authorities Law compliance, have been reviewed by the Authority's outside counsel for real estate matters, Harris Beach, PLLC, discussed in more detail in the Memorandum provided to the members, and that the Authority has classified the project as an "Unlisted Action" under the State Environmental Quality Review Act (SEQRA) and has found that the project will not have a significant adverse environmental impact.

Mr. Kauffman noted that this matter is not financially material, and inquired why the matter must be sent to the Board. Mr. Shaw indicated that the original resolution requiring Board approval of a long-term lease could be amended to clarify the period of time for which Board approval is needed, and Mr. Bell suggested that staff could do a workup of future options. Mr. Shaw agreed, and stated that no resolution would be necessary to do that. Mr. Shaw suggested that more precision around the "long term" language in the resolution would be helpful. Ms. Barton inquired if the

Committee would need to review real property disposition, and Mr. Pitkin responded that the Public Authorities Accountability Act applies to property disposition; Mr. Shaw noted that the Board would consider disposition of the property at the June meeting. Mr. Bell noted that the Committee could want to consider potential uses of the property in the future, such as research and development work versus other kinds of work. Mr. Shaw indicated his acknowledgement of Mr. Bell's comment.

Mr. Bell called for a motion on the item. Ms. Fish so moved; Mr. Kauffman seconded. The motion was carried unanimously.

The third item on the agenda was a review of the West Valley program. Mr. Bembia provided an update via the telephone, noting that demolition of the West Valley Vitrification Facility was safely completed in September and the waste has been shipped from the site for disposal; that work is continuing inside the Main Plant Process Building to prepare the building for demolition; and that several additional ancillary facilities will also be demolished between now and the end of the current contract in March 2020. He noted that DOE will issue a competitive solicitation in May for the next phase of the decommissioning work, which will include the demolition of the Main Plant Process Building, the removal of the source area of the groundwater contamination plume, and the removal of contaminated sediment and soils; Mr. Bembia stated that DOE intends to have this contract in place by late 2019.

In regard to waste shipping activities at the site, Mr. Bembia stated that 150,000 cubic feet of waste have been shipped from the site since his last report to the committee in September, and that there were no incidents or off-normal occurrences in waste shipping activities since his last report to the Committee.

With regard to the disposal of West Valley transuranic waste and high-level radioactive waste, Mr. Bembia stated that the Department of Energy's consideration of West Valley waste to be non-defense waste, despite the historical record that shows that defense activities were conducted at the site, has two main impacts at the site – it leaves the site's transuranic wastes stranded at the site without a disposal path because the nation's only transuranic waste disposal

facility accepts only defense transuranic waste, and it serves as the basis for DOE's assertion that NYSERDA is responsible for paying a disposal fee for the HLW, the estimate for which could total somewhere between \$1 billion and \$2 billion. He stated that there are three ongoing initiatives that could impact these West Valley waste issues: first, the West Valley Reauthorization Act, which would have established the West Valley waste as defense waste until it was amended in the House, replacing that provision with one that called for the Government Accountability Office to study of the origin of and options for disposal for the West Valley waste. As to this amended bill, he noted that it was passed by the House but was not taken up by the Senate during the 115th Congress, and that the bill will have to be reintroduced in the 116th Congress in order to be considered for passage.

Mr. Shaw stated that it is disappointing that this bill was not introduced in the Senate, and that it was watered down, but noted that incremental progress in this area is better than none; he noted that the Authority would continue to work with the Governor's DC office and Congressman Tonko's staff to ensure reintroduction of the bill. He stated that he was optimistic that the bill will ultimately be passed. Ms. Fish inquired if the GAO study died with the bill; Mr. Shaw indicated that it did, but that he expects that any new bill would still include the study if reintroduced, and that if the study led to the right conclusion, it would be a good thing for DOE administrative decisionmaking. Mr. Bell inquired if there were other facilities with stranded transuranic waste, and Mr. Shaw indicated that West Valley is the only site in the nation with stranded transuranic waste.

The second initiative Mr. Bembia noted was DOE's identification of a potential additional path for the disposal of West Valley's transuranic waste at a radioactive waste disposal facility in Texas, in the form of an Environmental Assessment for disposal of a category of waste called Greater than Class C (GTCC) waste. He explained that transuranic waste and Greater than Class C waste are similar in nature and similar in regard to disposal requirements, so DOE is proposing to dispose of the West Valley transuranic waste together with the nation's Greater than Class C waste at the Waste Control Specialists disposal facility in Andrews County in west Texas. He noted that DOE's environmental assessment found no significant impacts to human health or the environment from disposing of the wastes at the Texas disposal facility, but that there are several

administrative and regulatory issues that must be addressed before this disposal path could become a reality: (1) Congress must provide direction to DOE on GTCC disposal; (2) DOE must issue a decision on the Environmental Assessment; (3) the US Nuclear Regulatory Commission must issue a “technical basis document” that evaluates the disposal of GTCC in “other than a deep repository;” and (4) the Texas Commission on Environmental Quality will have to modify its radioactive waste disposal regulations to allow the disposal of GTCC and TRU wastes at the Texas facility. He noted that these are not insignificant actions and the timing for addressing these issues is unclear, but that he would be actively monitoring these activities and will coordinate where needed with the Governor’s office.

The third initiative Mr. Bembia discussed was DOE’s reinterpretation of the term High-Level Radioactive Waste (“HLW”). He stated that in October, DOE issued a Federal Register Notice requesting public comment on a nationwide DOE proposal to interpret the term “high-level radioactive waste,” which would allow certain HLW waste to be defined, not by the origin of the waste (as is done presently), but by the characteristics and hazards of the waste, the net effect of this being that some waste that today is HLW will be able to be managed and disposed as “non-HLW.” He explained that the proposal would potentially impact waste at all four DOE sites that have HLW (Idaho, Hanford, Savannah River, and West Valley), as well as states with facilities that could receive the waste. He noted that the Federal Register Notice did not provide information on how this interpretation would be applied at each site. Mr. Bembia stated that staff submitted a package of comments and questions to DOE on the proposal on January 9, and that DOE’s next steps were not identified in the Federal Register notice, but that he would be following this issue closely as it develops.

Mr. Shaw noted that this is a huge issue for other states, with whom the Authority will be working on this issue, but that he expects that this issue will not come to much because there are no affiliated statutory or regulatory changes contemplated.

As to the State Licensed Disposal Area, Mr. Bembia stated that eleven additional groundwater monitoring wells were installed in November that are now collecting monthly water level data from these wells and the other wells previously installed to identify the water inflow

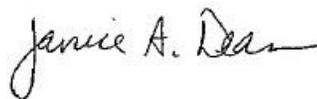
path, and that data collection would continue through the end of the year, allowing West Valley staff to make a recommendation for a remedy action by early 2020. He noted that the leachate elevation in Trench 14 is showing seasonal variability, as expected, but has not shown a consistent increase in over a year; that it remains about 14 feet below the ground surface; and there is no threat of release from this trench or any of the disposal trenches at the SDA.

Mr. Bembia stated that his team continues to implement routine SDA environmental monitoring program and conduct all regular inspections and maintenance at the SDA, and that all work is being conducted safely and in compliance with all regulations. Finally, Mr. Bembia noted that in November, the New York State Department of Environmental Conservation completed its second 2018 inspection of NYSERDA's SDA management program, and determined that NYSERDA is in compliance with the NYS Radiation Control Regulations and the requirements of the SDA Radiation Control Permit, and that the investigators complimented NYSERDA for the quality of the SDA management program.

Mr. Bell inquired if operations at the site were affected by the recent federal government shutdown. Mr. Shaw said no; the DOE minibus appropriation means that the site is fully funded through the fiscal year. Mr. Bell inquired about the next step in the Supplemental Environmental Impact Statement (SEIS). Mr. Shaw suggested follow-up after the meeting, including a written briefing for the committee on the 2019 plan for the SEIS, and follow-up telephone calls with members if needed.

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. Fish so moved, and Ms. Abbott seconded. The meeting was adjourned.

Respectfully submitted,



Janice A. Dean

Secretary to the Committee

