

NYSERDA'S 41st GOVERNANCE COMMITTEE MEETING

June 24, 2024

Clean Copy of Transcript

Sara LeCain:

Okay. If you want to start.

Richard Kauffman:

Okay. Alright. I call this meeting to order a note. The presence of a quorum, a notice of the meeting was forwarded to Committee Members and to the press on June 13, 2024. This meeting is being conducted by video conference. The Authority will post a video and a transcript of this meeting on the web. To confirm that we have a quorum, I'd like to ask the Committee Members to introduce themselves. I'm Richard Kauffman, Chair of the Authority. I will be chairing the meeting. So in New York City,

Jay Koh:

Jay Koh, Member of the Committee and Member of the Board.

Charles Bell:

Chuck Bell, Member of the Committee, Member of the Board.

Richard Kauffman:

And Shere

Sherburne Abbott:

Shere Abbott, Member of the Committee. Member of the Board.

Richard Kauffman:

I'd like to note for the record that we have a quorum, but that Shere Abbott is participating by video conference as per the Extraordinary Circumstances Exception under the Open Meetings Law and our By-laws, Shere's participation count for votes but will not be included in the count for quorum. So I'd like to also, for the record, acknowledge both Shere and Chuck's efforts to join this meeting. Thank you. The first item on the agenda is the approval of the minutes of the 40th Committee meeting that was held on April 29, 2024. Are there any comments on the minutes there being none? May I have a motion approving the minutes?

Charles Bell:

Motion to approve.

Jay Koh:

Second.

Richard Kauffman:

Thank you. All in favor?

Members of the Committee:

Aye. Aye.

Richard Kauffman:

Opposed? The minutes have been approved. Thank you. The next item on the agenda is the review and approval of the Governance Committee Charter pursuant to the Public Authorities Accountability Act of 2005, each of the Authority's Committees adopted Charters setting forth each Committee's responsibilities. One of those responsibilities is to periodically review its Charter and determine what if any amendments need to be made. These recommendations are then presented to the full Board for consideration and approval. A copy of the current Committee Charter was included in your meeting package. Counsel's office continually monitors relevant guidance from the Authority's Budget Office, the Comptroller's Office, legislation, and other Authority practices to determine whether to recommend any modifications. Other Authority's reviewed include New York Power Authority, Long Island Power Authority, Dormitory Authority, and the Environmental Facilities Corporation. Management is not recommending any changes to the Governance Committee Charter at this time. Are there any questions about or suggested changes to the Charter? I guess I just have one maybe question and Jay, maybe this you could get your thoughts on this. So in terms the Charter allows for investigation or whatever, so how do we think about the connection between this Committee and internal audit?

Jay Koh:

So I'll speak off the cuff a little bit, but if the General Counsel wants to also provide his professional opinion, I think of it as two separate processes. The Governance Committee I think is a Committee of the Board Members. So it looks to the engagement of the Board overall and how it actually interacts with the management of the Authority itself. And then internal audit function reports into the Board directly. There's a special Governance line because it is evaluating the processes of the Authority as executed by the management of the Authority itself. So there is a sort of dual approach in terms of where internal audit goes. I don't know if the scope of internal audit actually rises to the level of evaluation of the Board's engagement or the Board's own processes. I would suspect actually it's not outside of the scope of internal audit, but I think it might have to be subjected to some different Governance approach. So I think they're complimentary and that the Governance Committee's focus is on the Governance of the Board itself and its engagement with management versus the internal audit function, which is independent reports up into the Board that has a management connection as well that's really focused on that execution of the processes of the Authority within the management's management team's purview. But Peter, correct me if I'm wrong.

Peter Costello:

No, I definitely agree with all that. And just Richard, for clarification, are you looking at language around conductor authorized investigations? Are you thinking about things like the Whistleblower Policy?

Richard Kauffman:

I'm thinking about, it's such a general statement. Yeah,

Peter Costello:

So I think it's generally giving you broad powers to request any documents, discuss with management anything within the purview of the Committee.

Richard Kauffman:

Alright, I just wanted to ask that question.

Sherburne Abbott:

Okay. I have a question about the Whistleblower Policy. Is the Governance Committee engaged at all as if, for example, Peter, this is just not specific you, but say for example the General Counsel, the Whistleblower is blowing the whistle on the General Counsel. How does that relate to the way that the Governance Committee, the Board interacts? Is there any interaction or what's its role?

Peter Costello:

A couple things there and we will get into the Whistleblower Policy in a little bit.

Sherburne Abbott:

I didn't want to bring it up, but it just occurred to me that maybe it is, it's relevant.

Peter Costello:

A couple things there. The Whistleblower Policy is managed by both myself and Director of Internal Audit, Mary Peck. So there are two avenues right there. In addition, there are avenues external to NYSERDA being Inspector General. For instance, the Authority's Budget Office. There are other places to go outside of the Authority in the event of any investigations. So there are checks.

Sherburne Abbott:

The Governance Committee isn't involved at all.

Peter Costello:

The Governance's Committee certainly could be involved and will be kept apprised. And the Whistleblower Policy does indicate that any results of investigations reported up to the Governance Committee. Obviously if the General Counsel were subject to the investigation, General Counsel would recused from any of those discussions.

Richard Kauffman:

Okay. Well we're going to talk a little bit more about the Whistleblower Policy.

Sherburne Abbott:

Yeah.

Richard Kauffman:

Alright. So if there are aren't any questions or suggested changes may have a motion recommending approval of the Governance Committee Charter.

Charles Bell:

So moved.

Jay Koh:
Second.

Richard Kauffman:
Thank you. All in favor?

Members of the Committee:
Aye. Aye.

Richard Kauffman:
Opposed? Alright, good. The Governance Committee Charter has been recommended for approval. So the next agenda item concerns the compensation schedule to be submitted as part of the Authority's Annual Report. Pursuant to Section 2800 of the Public Authorities Law, Pam Poisson, the Authority's Chief Financial Officer, will discuss this item Pam.

Pam Poisson:
Thank you. Chair Kauffman. My apologies. I'm having some technical issues, but I'm pulling that up as we speak. I am so terribly sorry. I am having connectivity issues. Is it possible at all to shift an order of events.

Richard Kauffman:
Should we go on to the whistleblower and come back? How's that?

Peter Costello:
Sure.

Richard Kauffman:
Okay. So let's discuss the agenda item of the proposed amendments to the Authority's Whistleblower Policy. Peter Costello, the Authority's General Counsel will discuss this item.

Peter Costello:
Thank you. Chair Kauffman Public Authorities Law Section 2824(1)(e) stipulates that the Board established written policies and procedures on personnel, including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or Board Member of the Authority. The Governance's Committee is responsible for reporting to the Members on significant and material matters related to reviewing ethics standards and whistleblower protections. The Authority's Whistleblower Policy is based on the Authority's Budget Office recommended guidance and model policy, which requires the Authority's Budget Office in consultation with the Office of the Attorney General to develop a whistleblower access and assistance program and for Authority's to adopt and adhere to Whistleblower protection policies. The revisions being proposed to the Authority's Whistleblower Policy aligned with the intent of the Internal Controls Manual revisions the Board Members approved in October, 2023. As part of those revisions, the Whistleblower Policy was removed from the Internal Controls Manual to become a standalone policy with the intent on making the manual not just more current, but also more understandable and digestible.

Revisions to the Whistleblower Policy, clarified the complaint reporting process, streamline the investigation's procedure, remove an outdated statutory reference, and add statutory language in terms of highlights of the revisions. The opening paragraph makes the distinction between the personnel handbook versus the Whistleblower Policy to ensure that there are two different lines of both reporting and investigation. The definitional section, and I will just an overarching editorial comment, is the changes we've made throughout the policy really were an attempt to make it much more user-friendly and understandable. The prior policy was included all the same substance, but was much more dense. I'll call it the definitional section. We highlighted various definitions including the idea of good faith, making sure that there's a distinction between inspector general reporting versus internal reporting, and clarify the definition of wrongdoing in terms of the, sorry, the reporting procedures. We streamline that to make it very clear for anyone reading the policy exactly where various reporting can go.

I note that it does also say if employees are concerned about an internal reporting on whatever the matter might be, there are external, as I noted earlier, external places for reporting being the Authority's Budget Office, Inspector General, or an appropriate law enforcement agency. In terms of the investigation process, we took a very dense paragraph and turned that into a flow chart to make that much more understandable as well. And we have what I think are very clear provisions regarding our policy of no retaliation or interference with respect to good faith reporting and the required language around other legal rights not being impaired is also included in the policy. Colleen Dawson, the Authority's Ethics Officer, compared the Whistleblower Policy revisions against the New York Power Authority Environmental Facilities Board and the Long Island Power Authority Whistleblower and anti-retaliation policies and found no significant differences. And again, I note that the entire policy was based upon the ABO model policy. So I'm happy to answer any questions. Colleen Dawson, our Ethics Officer is here to answer any questions. I believe Director of Internal Audit, Mary Peck is also on the line. For any discussion there. Chuck,

Charles Bell:

How is the Whistleblower Policy communicated to NYSERDA employees?

Peter Costello:

It is in our, we have a section and SharePoint that is all our policies and procedures on it that is included there. In addition, there are references in the Internal Controls Manual. And are there references in the personnel handbook as well?

Colleen Dawson:

I believe there are, but in addition, we can also send out a communication through our weekly HR email, also informing them an updated Whistleblower Policy if that's amenable to everyone.

Peter Costello:

Right. So through all staff communication as well.

Charles Bell:

Thank you.

Richard Kauffman:

Does anybody call the hotline?

Peter Costello:

Not in quite some time. And usually I calls through our hotline are normally about contractor complaints as opposed to internal complaints, but we haven't had any in quite some time. Mary, are you there anything to add on that?

Mary Peck:

Yes, I am, but I don't have anything to add.

Richard Kauffman:

Okay, well I guess the question is from the Board standpoint, the way that it's structured is we would only find out about something relatively late in the process.

Peter Costello:

Yeah. So we notify, so I'm notified Director of Internal Audits notified, Doreen's notified, and then we go through the investigation for the universe of wrongdoing. If it reaches this level, it would go to the Inspector General as well. And then we would give you an after report. We could also build on the process. I believe Doreen and I probably would also connect with you as we usually do.

Richard Kauffman:

Okay, good. Thank you.

Charles Bell:

Just to follow up, so who can be a whistleblower? Is it only employees or anyone who's in the ecosystem of contractors or vendors or other Members of the whistle?

Peter Costello:

Anyone can, yeah, it's a public fraud and abuse hotline.

Charles Bell:

Okay, thank you.

Peter Costello:

And then of course anyone can call the inspector General or the ABL.

Richard Kauffman:

Are there other questions, comments?

Peter Costello:

And I guess I should just one more clarification on the inspector general, if it's not clear. There is a statute, I think, I believe it's Executive Law 55 quoted in here. And that there is required reporting to the inspector general if foot falls within their definitional wrongdoing. And let me just see if I can find it here. Yeah, it's, it's in the definitional section or IG reporting, corruption,

fraud, criminal activity, conflicts of interest or abuse. That's actually statutorily required. So we don't have a reporting option there. We have to report

Sherburne Abbott:

If somebody blows the whistle on some research on data use and analysis. So for example, use a classic that we encountered on climate information was a dispute in innate and within NOAA about the analysis and filing of data and information. If somebody blew the whistle on data analytics, how would that get reported out through the Board and the public. Does that get reported out. That's not an IG issue, is it?

Peter Costello:

Well, I guess it depends on the fact set, right? What was the intent behind whatever the data manipulation was, right? Was it actual? It could have involved corruption, it could involve fraud. It could involve some sort of level of intent. So it could very well fall within the IGs.

Sherburne Abbott:

I noticed that the IG definition doesn't include scientific integrity.

Peter Costello:

It does not correct. But I would Shere in that circumstance. If it weren't IG, then we obviously could review it internally and we'd have a lot of questions around good faith versus mal intent.

Sherburne Abbott:

Thank you.

Richard Kauffman:

You okay Shere? Okay. Alright. If there are no other questions, may I have a motion recommending approval of the amendments to the Authority's Whistleblower Policy?

Charles Bell:

So moved.

Jay Koh:

Second.

Richard Kauffman:

Thank you. All in favor?

Members of the Committee:

Aye. Aye.

Richard Kauffman:

The opposed the amendments to the Authority's Whistleblower Policy have been recommended for approval. Thank you, Peter. You're welcome. The last item is other business. Are there any other matters the Members wish to discuss?

Sara LeCain:

Go back to compensation.

Richard Kauffman:

Oh, sorry, sorry, sorry. Compensation. Alright, sorry. Let's go back to compensation. Pam?

Pam Poisson:

Yes, thank you. And again, sincere apologies for the technical delay usually works fairly well for me. So in accordance with the Public Authorities Law, the Authority is required to submit a compensation schedule that lists all employees in decision making management positions whose salaries exceed \$100,000 annually and to report their annual salary and compensation received for the fiscal year. Consistent with past practice. The schedule reflects all cash compensation, including items such as retroactive adjustments for general or COLA salary increases awarded consistent with published guidance from New York State Division of Budget. The statute also requires the Authority to submit biographical information for each employee included on the list. The Members are asked to approve the submission of this information, which has been included in your advanced materials as part of the Authority's Annual Report. Let me pause there. I would be happy to answer any questions.

Jay Koh:

One hand, just for clarification, this is simply the proposal here is simply to act in accordance with the requirements to report these salaries. And then can you confirm maybe as well that the compensation here is in accordance with the agreed upon process and procedures of the Authority as approved by this Board?

Pam Poisson:

Yes, that is correct on both points.

Jay Koh:

Thank you.

Richard Kauffman:

Okay. Any other questions or comments?

Jay Koh:

Maybe if I may, Richard? Just one here. I think overall, there's obviously strong focus by everyone, all stakeholders rate payers, citizens of New York and other places to have transparency around compensation. It's a critical component of the success of the mission of this Authority and our overall strategy as a state to be able to recruit, retain, and continue to fairly compensate individuals that can help execute the mission of the Authority. So I strongly endorse the policies and procedures that enable us to attract the quality and professional caliber of the management team here as listed out here. And believe that in submitting this information, that it should also be noted that it's a critical aspect of the success of the mission, the agency to enable it to have the right management team in place to execute that process.

Richard Kauffman:

Thank you, Jay. All right. Any other comments or questions? There? Being none may have a motion recommending approval of the compensation schedule and recommending approval of the submission of the vitae.

Jay Koh:

I recommend a motion to approve.

Charles Bell:

Second.

Richard Kauffman:

Thank you. All in favor?

Members of the Committee:

Aye. Opposed? Alright. The compensation schedule and vitae have been recommended for approval. Thank you, Pam. So now apologies. The last item is other business. Are there any other matters the Members wish to discuss? And that case may have a motion to adjourn.

Charles Bell:

So moved.

Jay Koh:

Second.

Richard Kauffman:

All in favor?

Members of the Committee:

Aye.

Richard Kauffman:

The meeting's adjourned. Thank you.