



- *Accountability*
- *Transparency*
- *Integrity*

## **Review of Public Complaint**

### **New York City Energy Efficiency Corporation**

**December 6, 2023**

**PC-2023-02**

## **The Complaint**

The Authorities Budget Office (ABO) is authorized by Section 6 (2) (d) of Title 2 of Public Authorities Law to investigate and act on complaints concerning the failure of a public authority to comply with State law.

On March 30, 2023, the ABO received a complaint from the public regarding the transparency of the New York City Energy Efficiency Corporation's (Authority) website. The complaint alleges that the Authority is not posting board meeting dates, meeting agendas, current board and committee meeting minutes, or current audited financial statements and budgets.

## **Scope of the Review**

This report is a limited-scope review of the transparency of the Authority's website between April 5, 2023 and April 10, 2023. Based on the complaint, we reviewed the website to identify if the Authority is posting meeting dates, agendas, meeting minutes, and current audited financial statements and budgets. We also reviewed the website to determine if the Authority is posting other reports and information required by Public Authorities Law and other provisions of law. Our review focused on current information and required data for the fiscal year ending June 30, 2022. The focus of our review was limited to verifying that the required information is posted on the Authority's website and did not address the substance of these documents. This report is limited to the information and documents available on the Authority's website during the period reviewed, and the reporting status of some of those documents that are also required to be certified in the Public Authorities Reporting Information System (PARIS).

## **Background**

New York City Energy Efficiency Corporation (Authority) is a local authority defined by Section 2 (2) (b) of Public Authorities Law. The Authority was created as a not-for-profit corporation in 2010 by the City of New York (City) to implement the greenhouse gas reduction plans of the City, including funding and financing the installation of renewable energy systems and energy efficiency improvements.<sup>1</sup> According to the Authority's website, its mission is to deliver financing solutions and advance markets for energy efficiency and clean energy in buildings.

According to its By-laws, the Authority is governed by a Board of Directors of up to 20 members, which includes two ex-officio directors from the City. The Authority's fiscal year begins on July 1.

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<sup>1</sup> New York City Energy Efficiency Corporation's Certificate of Incorporation (COI) – October 21, 2010. The COI was modified in November 2016 to indicate its purpose is also to include "outside of the City."

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## *Results of Investigation of Complaint*

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**Complaint:** Is the New York City Energy Efficiency Corporation (Authority) posting board meeting dates, meeting agendas, current board and committee meeting minutes and current audited financial statements and budgets to its website?

The complaint was measured against Public Authorities Law (PAL) and Public Officers Law requirements. Pursuant to Section 2800 of PAL, state and local authorities are required to make documents pertaining to their mission, current activities, annual financial reports, budgets, and independent audit reports accessible to the public on the authority's official or shared website. To assist state and local authorities meet their disclosure and reporting obligations, the Authorities Budget Office (ABO) has issued Policy Guidance No. 22-01: "Posting and Maintaining Reports on Public Authority Websites". This guidance provides a checklist of policies, reports, and other information that the Authority should maintain online in accordance with the Public Authorities Reform Act of 2009 and other provisions of law.

We found the Authority is not making required annual financial reports, budgets, and independent audit reports available on its website. For example, the last annual report posted that includes information required pursuant to Section 2800 of PAL is for the fiscal year ending (FYE) 2019. The last audited financial statement posted is for the FYE 2021. The most recent annual budget report and four-year financial plan is for the FYE 2019.

Article 7 of Public Officers Law, commonly known as Open Meetings Law (OML), requires state and local authorities, defined as public bodies, to conduct business in an open and public manner. Committees, subcommittees, or similar bodies consisting of two or more members are also considered a public body and are subject to OML. Section 104 of OML requires that notice of the time and place of all meetings be given prior to every meeting. If a meeting is scheduled at least one week in advance, notice must be given to the public and news media not less than 72 hours prior to the meeting. When a meeting is scheduled less than a week in advance, notice must be given to the public and news media "to the extent practicable" at a reasonable time prior to the meeting. ABO Guidance also requires authorities to post a schedule of all board meetings at the beginning of the fiscal year. In addition, although not required under OML, it is strongly recommended that authorities post on their website an agenda at least one week in advance of a board meeting. Further, effective November 2021, Section 103 (e) of OML requires meeting materials scheduled to be discussed at the meeting to be made available on the authority's website 24 hours prior to the meeting. Based on our review of the Authority's website, we found the Authority is not posting its board meeting schedule, current meeting notices, agendas or board meeting materials on its website.

Section 106 (3) of OML requires meeting minutes to be posted to an authority's website within two weeks from the date of the meeting. Our review found the Authority is not posting current board meeting minutes on its website. The most recent board meeting

minutes posted are for June 17, 2020. Authority By-laws indicate the Authority meets annually and as the board determines.

The Authority's By-laws also include an Executive Committee, Audit and Finance Committee and Governance and Human Resource Committee. Based on our review, it does not appear that current committee meeting minutes are being posted. The last Audit and Finance Committee meeting minutes posted are for June 11, 2020. The last Governance and Human Resource Committee meeting minutes posted are for November 26, 2019. We found no meeting minutes for the Executive Committee.

**Conclusion:** The Authority is not ensuring current annual reports, audited financial statements and budgets are posted to its website as required by PAL. In addition, the Authority is not posting board meeting dates and meeting agendas to make the public aware of its meetings. The Authority is also not posting meeting materials or current board and committee meeting minutes, as required by OML.

**Other Website Observations:** We found the Authority is posting certain required organizational documents and policies required by PAL. For example, the Authority posts its Mission Statement, Certificate of Incorporation, By-laws, Code of Ethics Policy, Conflict of Interest Policy, and Whistleblower Policy. The Authority also has information posted on its Board of Directors and executive management. However, the Authority is not making other information available on its website as required by Section 2800 of PAL. For example, we found the Authority is not posting its current reports on operations and accomplishments, authority performance measures, annual performance evaluation indicating the status of performance measures or reports on procurements and investments. The full results of the website review are attached.

**PARIS Reporting:** Pursuant to Section 2800 of Public Authorities Law, local authorities are required to file an annual report and audit report within 90 days of the fiscal year end (FYE). In accordance with Section 2801 of this Law, local authorities must file a budget report 60 days prior to the start of the fiscal year. The Public Authorities Reporting Information System (PARIS) is a web-based application to enable public authorities to report the required information in an electronic format.

The Authority has been included on the ABO's Report: Public Authorities That Have Failed to File Required Reports in the Public Authorities Reporting Information System as of March 17, 2023.<sup>2</sup> The ABO Report indicates the Authority was delinquent in filing its Annual Budget for the FYE 2023 and its Annual Report and Audited Financial Statements for the FYE 2022. The ABO Report constitutes an official warning to the authorities that appear on the list. As of this review, the Authority has failed to file these reports in PARIS.

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<sup>2</sup> Public Authorities That Have Failed to File Required Reports in the Public Authorities Reporting Information System as of March 17, 2023 - <https://www.abo.ny.gov/reports/delinquentreports/March2023DelinquentList.pdf>.

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## *Recommended Action of the Board*

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**Recommendation Based on Complaint:** The New York City Energy Efficiency Corporation's (Authority) Board of Directors should ensure its current annual financial reports, budgets, and independent audit reports are accessible to the public on the Authority's website. In addition, the Board of Directors should ensure its current board meeting schedule, meeting notices, meeting agendas, meeting materials, and meeting minutes for the Board of Directors and its committees are posted to the Authority's website in accordance with Open Meetings Law and guidance issued by the Authorities Budget Office.

**Other Observation Recommendation:** We have concluded the Authority needs to make additional required information available on its website. Please review the attached findings and take the appropriate action so that all information required under Section 2800 of Public Authorities Law is available online and easily accessible to the public. Further, please provide the Authorities Budget Office with a written confirmation that you have fully addressed these concerns within sixty days. You may view Policy Guidance No. 22-01: Posting and Maintaining Reports on Public Authority Websites at [www.abo.ny.gov](http://www.abo.ny.gov).

**Official Warning:** This report serves as an additional formal warning to the Authority and its Board of Directors to take immediate action to ensure all required reports under Public Authorities Law are submitted in the Public Authorities Reporting Information System within sixty days. Failure to perform these duties and obligations may result in the Authorities Budget Office (ABO) exercising its enforcement authority. The ABO has issued Policy Guidance No. 20-01: "Enforcement Powers of the Authorities Budget Office" outlining this authority.

## Website Review Results

Information to Be Posted on Public Authority's Website	Posted on Website (Yes/No)
Mission Statement	Yes
Certificate of Incorporation	Yes
By-laws	Yes
Code of Ethics	Yes
Conflict of Interest Policy	Yes
Whistleblower Policy	Yes
Organization Chart – including, at a minimum, the LDC's executive structure and major organizational units	Yes, but does not appear to be updated
Report on Operations and Accomplishments – including a description of the Authority's operations, completed and active projects, as well as any material changes in Authority operations and programs	No, most recent is 2019
List of LDC Board Members - including appointing entity, appointment dates, and term	Yes
Each LDC board member's current employment and professional background	Yes
List of Committees and Committee Members	Yes
Executive Management Team - including professional background and qualifications	Yes
Authority Performance Measures	No, most recent is 2019
Annual Performance Evaluation indicating status of Performance Measures	No, most recent is 2019
Authority Schedule of Debt (including conduit debt)	No, most recent is 2019
Management's Assessment of the Authority's Internal Control Structure and Procedures - including a description of operating and financial risks and any policies to mitigate risk	No, most recent is 2019
Board meeting schedule	No
Board meeting notice	No
Board agendas	No
Board packets	No
Board meeting minutes	No, most recent minutes are 6/17/20
Board meeting webcasting and video recordings	No
Board resolutions	No
Committee meeting schedule	No
Committee meeting notice	No
Committee meeting agendas	No
Committee meeting packets	No
Committee meeting minutes	No, most recent minutes are 6/11/20
Committee meeting webcasting and video recordings	No

Annual Budget Report and details of 4-year financial plan	No, most recent is 2019
Annual Independent Certified Financial Audit	Yes, but not for 2022
Independent Auditor's Report on Internal Controls over Financial Reporting	No
Independent audit management letter	No
List of grants provided - including grant recipient's name and address, the purpose of the grant, date awarded, and amount awarded	No, most recent is 2019
List of loans provided - including borrower's name and address, loan purpose, date awarded, amount issued, term of the loan, repayment status, principal repaid and amount outstanding as of the end of the fiscal year	No, most recent is 2019
List of bonds issued - including bond recipient's name, amount of bonds issued, purpose of bonds, and current amount outstanding as of the end of the fiscal year	No, most recent is 2019
Property Acquisition Policies	No
Property Disposition Policies	No
List of Real Property owned by the Authority	No, if none it should be stated
Personal Property Transactions	No, most recent is 2019
Real Property Transactions	No, most recent is 2019
Policies for the procurement of all goods and services	Yes
Annual Procurement Report	No, most recent is 2019
Authority's Procurement Officer	No
Investment Policies	Yes
Annual Investment Report - including the investment audit results and management letter, record of investment income, list of fees paid for investment services, and explanation of any amendments to the Investment Policy	No
Fee Schedules (if applicable) of any service or administrative fees charged	Yes
Current Year Official Statements or similar bond documents	No

\*Review conducted by the Authorities Budget Office between April 5, 2023 and April 10, 2023