



**ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM**

August 28, 2019

To: Jerome D. Schad, Chair
Mark S. Carney, Vice Chair
E. Thomas Jones, Treasurer

Cc: Terrence D. McCracken, Secretary of the Authority
Karen A. Prendergast, Chief Financial Officer
Russell J. Stoll, Executive Engineer
Steven D'Amico, Business Office Manager
Jeffrey Schlierf, Acting Manager of Information Technology

From: Margaret A. Murphy, Attorney

Subject: ECWA Compliance with ABO Recommendations

On July 11, 2018, the Erie County Water Authority (the "Authority") sent the Erie County Legislature a progress report on the efforts being taken to implement the recommendations of the Authorities Budget Office ("ABO"). Shari Zajdel and I have now revised that initial report.

Below you will find the recommendations and the action taken by the Board and the Authority to comply with these recommendations. The Board of Commissioners should be commended for its efforts to use these ABO recommendations as its "blue print" for change. We are proud to have been part of the turn-around within the Authority.

- 1. Board members must acknowledge their fiduciary duty at the time of appointment and re-appointment in accordance with Section 2824 of Public Authorities Law.

APPLICABLE LAW: Public Authorities Law § 2824(1)(h)

ACTION TAKEN: The Authority requires all Commissioners upon appointment or reappointment to sign Fiduciary Duty Acknowledgement and

then posts the acknowledgements under each Commissioner's picture and biography on its website.

<https://www.ecwa.org/about/management/profile:jerome-d-schad/>

<https://www.ecwa.org/about/management/profile:mark-s-carney/>

<https://www.ecwa.org/about/management/profile:e-thomas-jones/>

- 2. The board should establish appropriate procedures to verify that all information reported in the Public Authorities Reporting Information System (PARIS) is complete and accurate.

ACTION TAKEN: All PARIS filings are prepared and reviewed for accuracy by various members of the Authority's Administration & Finance Department, the Office of the Secretary, and the Legal Department.

The Annual Budget report is reviewed and approved at a regular meeting that takes place at least 60-days prior to the start of the Authority's fiscal year. Other proposed PARIS filings are submitted to the Governance Committee for its review and recommendation to the Board. After the Governance Committee reviews and makes a recommendation, the proposed filings are then placed on the Board's agenda in advance of the filing deadline. The proposed PARIS filings, subject to the Board's review and approval, are posted on the Authority's website one week prior to the Board meeting. The Annual Report, the Audit Report, the Investment Report, and the Procurement Report, are approved at the last regular meeting in the month of March.

The Chief Financial Officer and Cash Manager are responsible for verifying the accuracy of any information relating to the Authority's debt and outstanding bonds.

- 3. Board members must perform their duties and responsibilities in good faith and with proper diligence and care. Board members are to act in the best interest of the Authority and the people it serves, and exercise independent judgment on all matters.

ACTION TAKEN: Commissioners demonstrate they are exercising their duties and responsibilities in good faith and with proper diligence and area by allowing the general public, the media and elected officials to observe the board and committee meetings by live stream on the Authority's website, by posting their agenda, board and committee packets, and minutes online. Members of the public are also given the opportunity to ask questions or to direct comments to the Board at each regular meeting. All correspondence from outside agencies are also posted on the Board's agenda under the

Communications. Commissioners are willing to meet with the County Legislature and other county officers to discuss matters of mutual interest and to report on such matters on a periodic basis.

E.g. <https://www.ecwa.org/community/board-meetings/event:06-27-2019-board-meeting/>

- 4. Board members should receive board meeting packets a minimum of one week prior to the corresponding board meeting.

ACTION TAKEN: Since the newly constituted Board conducted its first meeting on May 3, 2018, the Commissioners receive board meeting packets one week in advance. Additionally, these packets are posted on the Authority's website one week prior to the meeting.

<https://www.ecwa.org/community/board-meetings/>

- 5. Board members should independently review the necessary information to make informed decisions.

ACTION TAKEN: Since the newly constituted Board conducted its first meeting on May 3, 2018, meetings have been longer with Commissioners asking more questions, and tabling more items before taking action. This has been a direct result of the packets being made available one-week in advance of the meeting and Commissioners having access to these records on-line at any time.

Staff prepares a PDF version of the entire meeting and emails it to the Board one week in advance. The Board has the ability to make electronic comments and asks for verification on any items in advance of the meeting. More staff reports are put in writing and are posted on the Authority's website prior to the meeting. <https://www.ecwa.org/community/board-meetings/>

In 2018-2019, the Board adopted and revised an Employment Policy and Procedures ensuring a fair and open process for the hiring, promoting and discharging of Authority personnel and providing for Board oversight for all employment-related decisions.

- 6. The board should ensure that a justification is provided for all emergency contracts prior to authorization.

ACTION TAKEN: The Board has directed all emergency declarations must be prepared contemporaneously and then a copy must be submitted to the Board at the time when Board approval is required.

7. The board should ensure that all procurements and contract payments comply with the requirements contained in the adopted Purchasing Guidelines and Procedures. This includes ensuring that all master purchase orders are approved by the board and limits established by master purchase orders are not exceeded.

ACTION TAKEN: Commissioners have been given copies of the current Procurement Guidelines. The Board has made it a practice to question all change orders to ensure the work has not already proceeded without its approval, and that these change orders are consistent and within the scope of the original contract. The Board has also directed the Legal and Finance Departments to review and recommend amendments to the current Procurement Guidelines. The Board's Governance Committee will be assigned the task to review proposed amendments and to recommend such amendments to the full Board.

8. The board should ensure that it reviews all payments approved by the Executive Director and Chief Financial Officer in accordance with its Purchasing Guidelines and Procedures.

ACTION TAKEN: The Board has always reviewed and/or approved all payments made by the Authority. The minutes show the payments made, reviewed and/or approved by the Board.

E.g. https://www.ecwa.org/files/pdf/6-27-19_resolutions.pdf

9. The Authority should ensure that all records and proposed resolutions to be considered by the board are available to the public prior to the board meetings.

ACTION TAKEN: Board meeting packets are posted on the Authority's website one week prior to the meeting.

<https://www.ecwa.org/community/board-meetings/>

10. The Authority should provide notice of public meetings to the media at least 72 hours prior to the scheduled meeting in accordance with Section 104 of Public Officers Law.

ACTION TAKEN: Notice of public meetings are emailed to the following media outlets one-week prior to the meeting with a link directing them to the Authority's website.

STan@buffnews.com
news@wkbw.com
wgrz-newsroom@wgrz.com
citydesk@buffnews.com
newsroom@wivb.com
Buffalo-news@charter.com

Additionally, notification of all board and committee postings are being sent by email to anyone who signs-up for such notifications on the Authority's website.

- 11. The board should affirmatively seek training from the Committee on Open Government.

ACTION TAKEN: The Authority has reached out to Robert J. Freeman, former Executive Director of the Committee on Open Government. He indicated that he would inform the Authority's Legal Counsel the next time he would be in Buffalo to do such training.

- 12. The board must ensure that all meetings and discussions are open to the public in accordance with Section 100 of Public Officers Law.

ACTION TAKEN: As of May 6, 2019, the Authority's website lives streams all board and committee meetings. Prior to May 6, 2019, the Authority posted audio recordings of board and committee meetings.

- 13. The board should use executive session only for those purposes set forth in Section 105 of Public Officers Law.

ACTION TAKEN: The Secretary and General Counsel report on the agenda when the Board will be discussing matters in executive session. Under Staff Reports, each proposed executive session lists the purpose for the session and the specific subsection of Public Officers Law §105, allowing such discussions in executive session. The minutes of these meetings reflects when a motion is made to going into executive session, the time the executive session began and ended, and the individuals present during these executive sessions. An example of where to find this on a particular meeting is in the link below: https://www.ecwa.org/files/pdf/6-27-19_staff_agenda.pdf

14. The board should ensure that motions to enter executive session provide the necessary details to support the exclusion from the public meeting in accordance with Public Officers Law. This includes citing the specific exemption to the Open Meetings Law as well as identifying the specific issue to be discussed.

ACTION TAKEN: Staff report lists the purpose for the executive session and the specific subsection of Public Officers Law §105, allowing such discussions in executive session. The minutes of these meetings reflect when a motion is made to going into executive session, the time the executive session began and ended, and the individuals present during these executive sessions.

An example of where to find this on a particular meeting is in the link below:
https://www.ecwa.org/files/pdf/6-27-19_staff_agenda.pdf

15. The board must ensure that meeting minutes accurately reflect information and reports discussed during the board meeting, including any staff reports that are presented.

ACTION TAKEN: The audio and video recordings confirm board and committee minutes accurately reflect information and reports discussed during such meetings.

<https://www.ecwa.org/community/board-meetings/>

16. The Authority should provide adequate disclosure of its decisions and appropriately notify all customers of the impact of those decisions, including anticipated rate changes.

ACTION TAKEN: The Board approves the annual budget timetable. Executive and senior staff presents to the Board a proposed annual budget during an open meeting session. Like other open meetings, the agenda for the budget hearings are posted on the Authority's website and starting with the 2020 proposed budget, hearings will be live streamed.

When the final proposed budget is placed on the Board's regular meeting agenda, members of the public will have the opportunity to question budget items and comment on the budget.

If there are any proposed rate increases, those increases will require amendments to the Authority's Tariff. Again, the proposed changes to the Tariff will be posted on the Authority's website at least one week prior to the

meeting in which the Board would be required to take action. Members of the public may offer their comments relating to these increases in writing or in person on the day of the meeting. As required by Public Authorities Law § 1054(10), the amended Tariff must be filed in the Erie County Clerk's office and published in two newspapers of general circulation.

- 17. The Authority should comply with all requirements of Article 6 of Public Officers Law regarding Freedom of Information requests, including providing accurate information and providing all information requested. Appropriate explanations should be provided in those situations where the requested information is not provided.

ACTION TAKEN: The Board adopted a new FOIL policy on September 20, 2018. All FOIL requests received are posted on the Board's agenda as "Communications." The Board has directed the Legal Department to conduct an annual compliance audit of all FOIL files and to provide the Board with the findings of this audit.

https://www.ecwa.org/files/pdf/foil_2018.pdf

- 18. The board should review all appeals of decisions to deny access to requested information, and provide detailed explanations as to why information is not being provided.

ACTION TAKEN: The Board has included in its new FOIL policy a specific section dealing with appeals (see § 11). However, since the ABO filed its report, no party who has filed a FOIL request has filed an appeal with the Board.

https://www.ecwa.org/files/pdf/foil_2018.pdf

- 19. The Authority should respond to all FOIL requests within five days of receipt, as required by Public Officers Law.

ACTION TAKEN: It is the Authority's policy to send written confirmation of a FOIL request to the requester within five business days. The Authority has also created a FOIL log that the Legal Department oversees. Every year the Legal Department prepares a FOIL audit for the Board to review at a board meeting.

- 20. The Authority should improve accountability and transparency by posting all required information on its web site and making information easier to locate.

ACTION TAKEN: As previously stated, the Authority is currently posting all agendas, minutes, packets, staff reports for board and committee meetings. The Authority's website has live streaming of each board and committee meeting posted as of May 6, 2019 on its website. Previous to May 6, 2019, the audio of all meetings is available.

<https://www.ecwa.org/community/board-meetings/>

The Authority's website has recently been re-designed. The new website was launched on May 22, 2019. The new website is still in a testing period with new enhancements be added daily.