MINUTES
GOVERNANCE COMMITTEE
Thursday, June 28, 2018, 10:30 AM
Authority Conference Room, 4th Floor, Suite 414
Dulles State Office Building

Members Present
Gary Turck, Chairman
Alfred Calligaris
Fredrick Carter
Thomas Hefferon
John B. Johnson, Jr.
Margaret Murray

Staff Present
James W. Wright, Executive Director
Angela Marra, Executive Assistant

Guests Present

Committee Members Absent

Other Board Members Present

1. Chairman Turck called the meeting to order at 10:31 AM.

2. Strategic Plan –

Executive Director Wright revisited the Authority’s Strategic Plan. Copies of the “Strategic Plan Summary of Actions” and “Strategic Initiative 6; Establishing Criteria for the Authority’s Outreach/Service Area” were handed out to the committee members. Mr. Wright highlighted that we are not out there by ourselves. The “Strategic Plan Summary of Actions” is a listing of the Board’s process to develop the strategic plan. The Board has held two strategic planning sessions with our consultant, Greg Gardner. Mr. Gardner processed a survey of the Authority stakeholders and our customers. The results were drafted and copies were provided to the Board of Directors, even those who did not participate in the Strategic Planning Sessions. The Strategic Plan was finalized and on January 19, 2018 it was mailed to the county legislative chairs, county administrators, IDA’s, planning office directors of the five counties reflected within the Strategic Plan, as well as the mayor and planning director of the City of Watertown, soliciting their input and comments. At this time, copies were also made available for the public at all of our offices. Legal notices were published twice. We convened a public hearing on February 22nd. This Strategic Plan was then adopted by the Board at the March 28, 2018 meeting.

J. Johnson commented that to his recollection, no one appeared at the public hearing. J. Wright further added that the only comments we received were from Oswego County encouraging us to continue doing what we were doing. J. Wright stated that we were very public, transparent and inclusive with this process.
From within the Strategic Plan itself, J. Wright also handed out page 28 and 29, “Strategic Initiative 6; Establishing Criteria for the Authority’s Outreach/Service Area” which articulates exactly what we are currently doing, what we intend to continue doing, the criteria we would utilize, consistent with the criteria we have been utilizing. This information has been published and adopted by the Board. These are the guidance that we use as required by the statute and the ABO. The period of growth that we have seen coincides with the election of Governor Cuomo with his determination to use a regional approach with the North Country, including our three counties plus four other counties. Throughout that process, we have contracts with New York State to provide services in all seven counties, entered into and agreed to by the State of New York. We have been solicited by the New York Power Authority to handle money and loans on their behalf. Our Annual Report shows that we have contracts with 84 different municipal and governmental entities including State and Federal, all by mutual agreement, and except for a few of the State and Federal contracts, all of these contracts are approved by elected officials.

This is all predicated by a legal opinion from our counsel, indicating we have the ability to enter into contracts outside the three county region.

A Calligaris stated that in all instances where we have done work outside of our three counties, we have been requested to do so. J. Wright confirmed this statement to be correct, and cited a perfect example as the Tupper Lake Project. The current activity in Tupper Lake is a direct result of the Regional Council designating this long planned resort as a priority project. This project was advanced thru the APA Approval process by the governor. It was then tied to sewer and water system improvements needing to be made in order to be in compliance. They came to the Authority, asking if we could do this on their behalf.

J. Wright further stated that when he attends Regional Council meetings he is approached and thanked for the efforts of the Authority, and then receives further comments that they wish they had an organization like the Authority on the other side of the region to do the kind of work that we are doing over here. We are working in Franklin County, but we have had long standing loan responsibilities with the Franklin IDA. We also have GIS in some of the towns in Oswego County that join with Jefferson County for a joint project, all which have been adopted by the Authority Board.

J. Johnson commented that our telecommunications projects outside of this region have been brought up as well. If we are to have telecommunications services here, we need to be connected to the outside world. In order for the Authority to provide the services that are required by the military and the universities in St Lawrence County, we have to go thru places like Utica, Albany and Syracuse. None of the private carriers were interested in upgrading the area much beyond dial up. J. Wright commented that at the time this was processed he was an elected official and he stood before the Building Trades Council and pointed out then that the Development Authority was doing it because Verizon would not. J. Wright further stated that he gave the Development Authority a hard time at that time to make sure they solicited Verizon for proposals. The Authority did go through the process, however at that time Verizon would not even bid. At that point in time the discussion at the Building Trades Council (now the Labor Council) was about the school districts who had been trying to secure high speed internet for educational programs because other schools throughout the state had it, but none of the schools in the North Country did.
A Calligaris stated that as long as he has been on the board he recalls whenever we did something like this we have questioned it. There has always been a reason, we just did not do it without purpose. We always ask the questions about whether or not it makes sense for the Authority to do it, or for someone else to do it.

J. Wright commented that understanding what we do is the big issue. In the case of telecommunications, the Authority does not provide internet, it provides the pipeline. By providing that pipeline there are multiple private sector providers, whether here in the region such as Westelcom and SLIC or the bigger accounts as in Verizon and AT&T, when they approach the Authority about bidding a job they each get the same price. The Authority creates competition which private businesses in the community benefit from. It is not because the Authority provides internet services, it is because of the pipeline that is provided that they each connect to.

J. Wright also cited examples within the Authority Engineering Division. What the Authority engineers do is no different than what the City Engineer does for the city. The city engineer goes out and hires design and construction engineers and they themselves oversee the project. This is called Technical Assistance Project Management. This is exactly what the Authority is doing for the municipalities. The Authority does not design or build, that is what the private sector does. The Authority serves in the same role as the city engineer provides for the city, except our municipalities are so small they cannot afford to have a full time engineer so they are sharing the cost of the Authority's engineer resulting in a shared service. This directly benefits the municipality because they now have a capability, without taking business away from the private sector. Most of those engineering firms who are playing it straight with their municipal clients are glad to have us because the Authority helps them secure the funding, move through the process and put the money together so they can then go out and hire contractors. This is all very consistent with what the State direction is, resulting in the Authority receiving an award for being the best partner in the State of New York.

A Calligaris stated that the important thing is that all of this has gone before the board, and the board has agreed. None of this has been one person, it has been the Board.

J. Johnson commented that almost all of the relationships are with elected officials. These people have been elected to try to solve a problem in a small town that does not have many assets, and they have found a cost effective solution and used it. The net result is that most people in the North Country that has any publicly supplied water has benefited from this because the level of expertise managing the water plants has risen well above what they could have afforded on their own.

M. Murray asked about the negativity being out there now, and what do we do? J. Wright replied that he is not convinced it is wide spread. We did not get negative feedback at all from the survey that Mr. Gardner did. This concern did not produce itself during the public comment period. Individuals with specific agendas continue to proudly comment as “anonymous”.

J. Johnson stated this should be reviewed with the board publicly upon the six month anniversary of the plan being adopted.

3. Water-Sewer Contract Discussion --
J. Wright stated that the Authority has been sent two significant contract modifications by the Army. They are without any detail or explanation. The Authority has rejected both of them based on the following reasons:

a. It has not been explained as to what they are doing.

b. These are contractual agreements and need to be reviewed with someone, however J. Wright is unfamiliar with anyone who is familiar with FAR, which is "Federal Guidance on the Procurement of Utilities".

c. They seem to include numerous references going back to 1995, however our contract predates this. It seems that they are taking all of the provisions which have been reflected in various FAR’s and are now incorporating them into the contract with the Authority.

J. Johnson asked if they are re-writing the contract under today’s standards. J. Wright responded that this is his interpretation.

d. The amendment begins with “scope and duration of contract for the period April 1, 2013, which is the beginning of this audit through March 31, 2022”, which essentially means they are giving us a five (5) year contract after the audit is resolved, which is not what the Authority has right now.

e. “Neither the contractor nor the government is under any obligation to continue any service under the terms and conditions of this contract beyond the expiration date.” They are very intentionally incorporating a fixed expiration date.

f. Concerning contractor’s facilities, “The contractor edits expense, unless otherwise provided for, shall furnish, install, operate and maintain all facilities required to furnish hereunder.” The Authority’s current contract includes capital costs, the interpretation is this will exclude capital costs.

g. “The contractor shall obtain approval from the contracting officer prior to any equipment, construction or removal.” This is outside what the Authority does by working with the director in charge of it. This would put another person into the process. This further goes on, specifically affecting our pump station, “Unless otherwise specified in this contract the contractor shall, at its expense, remove such facilities and restore government premises to their original condition as near as practical within a reasonable time after the government terminates the contract.” The Authority has towers and pump stations located on Fort Drum that if the contract were to expire it would then be our obligation to remove.

A Calligaris asked if they are back-dating this contract and changing the scope of the contract. Mr. Calligaris further stated that in his business, when the scope changes costs change. With changing the scope, the whole contract would need to be negotiated from the beginning. J. Wright responded that he believes this is the objective because the dynamic has changed with the inclusion of an additional individual in the process. Anthony Sligar, who is involved in procurement at Fort Drum, started calling Carl requesting a number of things that would justify the modifications to the existing contract. At this time, the Authority is not comfortable doing this so these requests have been declined.
J. Johnson commented that based on all that was just reviewed from the contract modifications, the rates are going to have to go up substantially.

T. Hefferon asked if they are under this contract for five (5) years at least. J. Wright replied that it is an open-ended contract. This has been an ongoing issue that the Authority has brought up to the City, and that what they are jeopardizing with this current issue is their contract.

J. Johnson commented that the funds the City borrowed in order to upgrade the water plant back in 1985 should be paid off. The water plant is also 30 years old and will need substantial investment to be updated. It seems this is going to be paid for by the rate payers in the future. Rate payers in St. Lawrence and Lewis County shouldn't have to subsidize this kind of cash drain. We cannot raise tip fees to put a new pump station in to satisfy the Army's needs. If we don't supply the water, where will Fort Drum get it, and get rid of it. If they get out of the current contract, they will have to build water production facilities and pollution facilities under today's standards from the State of New York. No existing facility has this capacity. It is a huge undertaking and investment on somebody's part.

J. Wright stated that this is short sighted and driven by a single auditor, and that Fort Drum command obviously has concerns.

J. Johnson asked if within these requests, are there any explicit threats. J. Wright responded no, there are just modifications with a request that we sign and return them.

A Calligaris asked if it was worth it to us to sit down and figure this out. J. Wright responded that would be the right path. These were the people who agreed with the market rate that was worked out by C. Farone and the City comptroller. When this was put before the auditor one last time, he said no. The auditor further stated that if this is what was decided, he would not give them a favorable audit which worried the current administrations by leaving $750,000 on the table.

J. Johnson asked that if this is settled at $750,000 right now, would everything continue on forward. Would the thing to do, be to suggest that the City pay the $750,000? J. Wright responded that this is an option. J. Johnson further stated that we should get this behind us all and just let the contract continue on, because if not this puts the Watertown City rate payers at risk.

F. Carter asked why we wouldn't pay and go forward to continue on. Whoever's money this is that is owed, why don't we give them this money continue on with our business. A. Calligaris stated that if we really want to negotiate, we shouldn't give them anything at this point.

J. Wright stated that the Authority is involved because in the beginning there was a decision that the Army did not want to deal with multi contracts so they would have a single contract for transportation and supply. Watertown had the supply, and the Authority had the bonding capability to construct the transportation, resulting then that the contract would rest with the Authority. With Fort Drum rejecting what Watertown is charging the Authority, whatever the Authority doesn't get back from the City the Authority will have to absorb. J.
Wright does not feel this is correct or right. The City now has to decide what they want to with the indication having been that they are willing to do something along the $300,000 or $400,000 range, with this initially being acceptable to Fort Drum. That has since changed, and the Authority has said they are not going to sign the contract modifications without a sit-down, including the City, to find the number everyone can agree to.

F. Carter asked if these modification documents are from the Department of Defense. J. Wright responded that it is called “Standard Form 30, Revised 1083, prescribed by the GSA FAR”. F. Carter further asked how they got involved, to which J. Wright responded that they are the contracting agency.

F. Carter then asked if the City received these same forms, if the City needs to get involved, and if they are involved now. J. Wright responded that they do not, as the City does not have a contract with Fort Drum. The City’s contract is with the Development Authority. A Calligaris stated that we need to bring everyone together, at some number and try to do what is best for the City.

F. Carter asked whose money is the $750,000, is it the City’s money? J. Wright explained that the auditor identified the City as overcharging, not the Authority. Had the auditor identified the Authority, we would have paid it. The Authority is not the problem, it is the pass through charge from the City of Watertown. While auditing the Authority, the DCAA tracked it down and attributed it to the deal the city has with National Grid where they purchase hydro power at an artificially high rate to benefit the City. The auditor identified this and stated it has nothing to do with the City’s costs. The auditor further stated that the City is making so much money on the hydro that they have no cost. Under a strict constitutional interpretation of the contract, if they have no cost you do not get reimbursed $725,000. The Authority objected to that auditor’s finding stating it is not right. The City’s rate payers should not be subsidizing the United States Army. The Authority also does not think the City is correct in charging this artificially high rate. In between is this “market rate” the Authority is trying to negotiate.

J. Johnson commented that this issue may not be resolved until a higher up official from Washington becomes involved.

F. Carter commented that this situation is now very dangerous with three auditors involved. We need to get them around the table and figure this out. F. Carter expressed concern about withholding the City’s money.

J. Wright commented that we do not have this money yet. The Authority is close to $400,000 plus, moving toward $500,000. The Authority will begin releasing payments to the City when we are at the amount that the Authority deems a reasonable solution, but not the full $750,000. The Authority does not have the City’s money, but instead the Army’s money. The Army pays the Authority, and the Authority will purchase from the City. The City overcharged the Authority, at which point the Authority overpaid. The Army is not holding the Authority responsible, it is because the City overcharged the Authority. The Army indicated that when the Authority gets the money back from the City, the Authority can then pay the Army.

F. Carter asked if the money that has been coming in is being held onto by the Authority, and used a bargaining chip. J. Wright responded yes. F. Carter expressed that he is not
100% sure of the Authority doing that. F. Carter expressed that whatever we owe the City, should be paid to the City. Several committee members stated in unison that the Authority does not owe the City anything. A Calligaris stated that we do have a contract with the city which is separate from the contract with the Army, and we do owe them this money.

F. Carter asked if the Army has an identical contract with the City. J. Wright responded that the Army has a contract with the Authority. The Army has expressed to the Authority that the Authority has overpaid the City of Watertown, and the Army wants the money back. The City of Watertown has the same audit provisions in their contract. The City has received overpayment due to overcharging the Authority. Once the Authority is repaid by the City, they will in turn repay the Army.

F. Carter then asked if the City has not given the Authority the money. J. Wright responded they have not yet. F. Carter then asked if the Authority is withholding the payment the Authority is supposed to pay the City, to make up for the money that the Authority feels the City owes them. J. Wright responded that the money owed was what the auditor independently determined the City owes, not the Authority.

J. Johnson stated that the Federal Government has said that the City of Watertown overcharged for water. The Authority is the conduit biller in this agreement, and if the City of Watertown continues to overcharge and the military stops paying, this will leave the Authority on the hook for the money. The only reasonable way to deal with this is to hold back an adequate amount of money to protect the rate payers of the Development Authority of the North Country. J. Johnson feels this is fraudulent on the City’s part. The City knew of this all along, they have been warned of the inappropriateness for at least three years.

F. Carter asked Mr. Johnson, being one of the Board’s City representatives, had he been contacted by the City about this. J. Johnson responded that he had not. He stated that he had talked to Mayor Butler, but had called him. T. Heffron, as the other City representative on the Board, also stated that he too had not been contacted.

A Calligaris asked if the Authority is not paying the City because the Authority feels that the City has not handled the contract correctly. J. Wright responded that they are not owed the money according to the DCAA audit finding their overcharge and not following the contract. J. Wright further stated that this leaves the Authority stuck in the middle, and out $725,000 if nothing changes.

J. Johnson stated that the issue here is a discussion with the Federal Government about whether a charge was appropriate. The Authority is defending the interest of the City and their rate payers despite the City's mistake. The Authority has an obligation to all of their rate payers, and all the other rate payers who purchase water thru the Authority. If that money goes out, the rates will increase and every rate payer the Authority has will have to pay for this.

G. Turck asked how difficult it will be to get the three parties involved around a table to discuss this. J. Wright responded that the City is ready to sit down with us and discuss the solution, however it is the Army that is not ready to sit down and negotiate. J. Wright further stated that he wasn't sure who would have originally negotiated these contracts, but he doesn't not feel it would have been negotiated by someone at Fort Drum. J.
Johnson stated that the original negotiations were done with the Army Core of Engineers, a gentleman named Schroder who at the time was a two star general.

F. Carter then asked if there has been a request made by the City to the Authority and to the Army to sit down and discuss this. J. Wright responded yes, the City and Authority are in agreement. No one is refusing to sit down, they have yet to get around to it. F. Carter feels that this an important issue, and they better get around to it. J. Wright responded that the Authority feels the same, however the modifications previously mentioned are the offered solutions. These modifications would change the contract so that it would fit their strategy. The solid rate offered within these modifications would only be for the next five (5) years, but as a utility charge which would give them greater flexibility.

F. Carter stated that the Authority has had a 31 year contract with them and never had any problems, times are changing. He further stated that maybe they have seen what can happen within a 30 year contract, and are offering the five (5) year contract so that they can have a window on it now. The Authority is currently in the middle and this need to get resolved. This is a dangerous place to be, between paper and the auditors. F. Carter's suggestion to the City Representatives on the Board is that they need to get a resolution to this started as it is getting worse.

T. Hefferon further stated that another issue is that the City does not currently have a city manager.

F. Carter asked if the Army wants a five (5) year contract and the City wants a five (5) year contract, why would the Authority be against that. J. Wright responded that to do that the Authority would lose current advantages within the current contract.

J. Johnson commented an advantage the Authority has is owning the transmission for the water. If the contract expires in five (5) years on the transmission of water, and there is a major investment needed on that water line, the Authority may not make it. If there is no long term agreement, you cannot get a bond for five (5) years based on the repair costs. A bond holder will not sell you a bond based on a contract that legally expires in five (5) years. There will be no money available. This is the same problem that the Ogdensburg Bridge and Port Authority had. The only way to obtain that money would be to charge for the transmission service. What further complicates this is if the Army stops taking water. The Authority still has an obligation to the many municipalities it holds contracts with along that line that we would still have to maintain water to. The rate payers would end up having to pay the capital costs of that. J. Johnson feels this would be irresponsible on the Authority's part.

J. Wright stated that the bureaucrats contend that the rate is higher at Fort Drum than for the municipalities. This is a fact, because from the beginning they chose not to amortize their capital costs. The municipalities cannot afford to pay their share in this way, so they choose to extend it over a 20 year period.

J. Johnson commented that in the very beginning of this water line, all of the costs that the Authority incurred were recovered by a surcharge on the military for three (3) years. This resulted in a fight at the time with a man in the village of Philadelphia named Dan Jenkins who claimed he could sell water for less by drilling wells in Philadelphia. The reason he
could sell for less was due to the surcharge. At that time, it required political intervention by a congressman to ensure the Army understood what the differences were.

M. Murray asked how long our usual contract is with the Army, or is it ongoing never having been set. J. Wright responded stating part of what is making determining this very difficult is that none of these people report to the same people.

F. Carter asked again about the Department of Defense. J. Johnson responded that the auditors are not part of the Department of Defense, but rather report to the GSA and they seem determined to find something. F. Carter stated that when the new building was constructed for the Ogdensburg Bridge, GSA was involved.

A Calligaris asked if the Army is afraid of the auditor. J. Wright replied that he believes they are, especially the way they look to the FAR for guidance. The GSA seems to be similar to our OGS for the State of New York, facilities and procurement. The GSA puts out guidance called The FAR. A. Calligaris suggested that Richard LeClerc may be able to help with the government guidelines, having worked with the government contractor.

J. Johnson commented that he feels we should not lose sight of the number of people at Fort Drum that were players in this improper activity; Stigar's father was part of it, Howk was the City engineer and is now the chief of something out on Fort Drum. These people all have a conflict. They set this up and they don't want it to go south on them because then they will look bad.

F. Carter asked again how we feel about getting these people at the table. J. Wright responded that this is the Authority's goal and the Authority has been taking the lead from the beginning. The Authority has been advancing the City's issues, as well as raising the issue of advancing the Army's issue. They Authority is stuck in the middle, but doing what we were retained to do for the interests of both parties so that nobody took advantage.

F. Carter asked about an agreement that was reached six or eight weeks ago, between the City's accountant, the Army's contracting office and the Authority accountant, when the agreement fell through. J. Wright stated that the Army sent an informational copy to the auditor, who then responded that if they chose to enter into that agreement, the auditor could not give them a unqualified audit. F. Carter asked if the people who recently sent the letters he had received could be of any help resolve this. J. Wright responded that he wasn't sure, but that he feels these people are also of the mentality of Federal Bureaucrats which are already being encountered on Fort Drum. Part of what they are reacting to is that the Authority went to Garrison Command. Once Garrison Command was involved we are now dealing with new faces and new proposals suggesting we look at the contracts.

F. Carter presented the letters he has received hoping this might give us an additional contact. J. Wright confirmed this is who the Authority has been talking with already.

J. Johnson stated it would be great to get everyone at one table, but he would suspect that getting these auditors to that table will be impossible. They have the authority to give their opinion, and what it will come down to is, is the hiring agent for the contracting officer willing to go ahead with an unclean opinion? Additionally, each one of the people making this decision will not be here in twelve months.
F. Carter suggested that with a new player, the GSA might have the authority to settle this issue. J. Wright responded that this is just a form that all the agencies use. Mr. Carter further stated that this seems to be the City of Watertown’s problem and he would leave it up to Mr. Johnson and Mr. Hefferon. J. Johnson responded that it is a community problem and he feels that the Authority is handling it in the right way. The Authority needs to withhold the money and protect our water, sewer and landfill rate payers against a charge like this, which was initiated by one of the Authority’s suppliers. A. Calligaris further commented that the solution of the Army is unfair to our rate payers.

4. Upon a motion made by F. Carter, and seconded by M. Murray, the committee moved into Executive Session at 11:32 PM for the purpose of discussing a personnel matter.

Let the record show that J. Johnson opposed this move into Executive Session stating that he was under the impression this matter was already resolved.

Upon a motion made by J. Johnson, and seconded by A. Calligaris, the committee moved back into Regular Session at 12:16 PM.

Upon a motion made by J. Johnson, and seconded by A. Calligaris, the committee resolved on this date to engage Ms. Victoria H. Ramundo to review and investigate the personnel matter discussed.

5. Upon a motion made by F. Carter, and seconded by J. Johnson, the committee meeting was adjourned at 12:17

Respectfully submitted,

[Signature]

Gary Turk
Chairman, Governance Committee