



ANDREW M. CUOMO  
Governor

JOHN R. KOELMEL  
Chairman

GIL C. QUINIONES  
President and Chief Executive  
Officer

January 10, 2019

Carmen Maldonado  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236

Re: Follow-up Selected Management and Operations Practices Report 2017-F-17

Dear Ms. Maldonado:

In accordance with the provisions of Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law, the New York Power Authority ("NYPA") is hereby submitting to your Office its 30-day response to the New York State Comptroller's ("OSC") audit report *Selected Management and Operations Practices Report 2017-F-17* ("Follow-up Report"), which is OSC's follow-up audit on NYPA's implementation of recommendations in OSC's prior report, *Selected Management and Operations Practices (Report 2015-S-20)*.

NYPA was not provided the opportunity to review the final report prior to publication.

Background

In August 2017, OSC notified NYPA that it would conduct a follow-up audit of its initial audit report *2015-S-20\_Selected Management and Operations Practices*. OSC told NYPA staff that the purpose of the follow-up audit was to assess NYPA's implementation of the twelve audit recommendations in the initial report. NYPA fully cooperated with the OSC staff examiners, providing all available documents requested and staff interviews. OSC subsequently issued their Follow-up Report to which NYPA responds as follows.

OSC Recommendations, OSC Recommendation Status and NYPA Response

***OSC Recommendation 1:*** *Identify resources available within NYPA that can conduct an independent and objective review of the models used to score applications for accuracy and completeness before the results are recommended to EDPAB for approval.*

***OSC Recommendation Status*** — Partially Implemented

***NYPA Response to Recommendation Status*** — NYPA fully implemented this recommendation. Within NYPA's economic development program, it has a group that is responsible for ensuring program governance and compliance. This group, the Business Power Allocations & Compliance

("BPAC"), has staff who update the model for each round of awards and other staff who review the updated model for accuracy. The reviewer is not the employee who constructs the model or enters allocation formulas and calculations. OSC merely assumes an independent review cannot be by a BPAC employee and does not support its assumption. The review should be commensurate with risk. Since the risk here is simple human error in data entry and coding of formulas, having a second person proofread the models is sufficient independence to discover errors.

There is a clear separation of duties. Staff selected to review the models for errors is independent of staff whose function is to construct and work with those models. OSC was provided the completed models that provide a table showing the names and responsibility of involved staff. NYPA also provided HR information showing roles and responsibilities of staff involved to demonstrate their independent functions. The separation of the tasks to employees with two distinct functions meets the audit recommendation set forth in OSC's initial report.

NYPA implemented the control to improve the quality, reliability and to identify errors consistent with the practice as well as to create an effective internal control consistent with good business practices. OSC did not identify a single error in the ReCharge New York ("RNY") models since the control was adopted, let alone one that could be attributed to a lack of an independent and objective review. Although no explanation was provided by OSC as to its statement about only having documentation of 3 of 12 reviews done, NYPA believes OSC is referring to a new checklist implemented by NYPA for the last 3 reviews, which further documents the review of every model element. Since the last audit, NYPA has been documenting its review in a log that shows the secondary review was conducted for all 12 models. NYPA provided OSC complete information.

***OSC Recommendation 2:*** *Exclude job commitments for businesses that have received an allocation but have not signed a contract from any reporting of RNY program results, or footnote/disclose that the "results" include pending allocations.*

#### **OSC Recommendation Status — Partially Implemented**

**NYPA Response to Recommendation Status —** NYPA fully implemented this recommendation. OSC's "partially implemented" finding ignores the plain evidence provided by NYPA. The report, "2017 Report to the Governor and Legislative Leaders on Power Programs for Economic Development", clearly identifies that job figures include in-service and pending allocations. The exhibits provide the support to the footnote and can be distinguished between in-service and pending allocations. The footnote states: "Examples of pending allocations include awarded allocations that (i) have not yet been addressed in a contract between NYPA and the awardee, and (ii) have been addressed in such a contract, but not yet placed into service by the awardee." OSC incorrectly draws the conclusion that the total number of jobs created and retained are overstated based solely on the lack of such detailed information specifically in the footnote. However, by simply turning to the report's exhibits, pending allocations are well identified and their job retention and creation figures are clearly stated. It is unclear why OSC is

providing an example of job commitments from another report, which it incorrectly states the job commitments are “pending” (it is the allocation of power that is pending, not the jobs).

***OSC Recommendation 3:*** *Improve transparency of the RNY program by disclosing information about the reserve established by NYPA, the decisions not to award power to customers above the cutoff score, and when businesses are carried over from one model to the next.*

**OSC Recommendation Status** — Not Implemented

**NYPA Response to Recommendation Status** — NYPA disagrees with OSC’s status of “not implemented.” This recommendation is “not applicable” to RNY allocations awarded after the initial rounds in 2012. The RNY Program does not have a reserve. The RNY Program does not have a cutoff score. NYPA does not carry businesses (applicants) over from one model to the next. NYPA is transparent – there is no information to disclose.

The available power for allocation is not restricted in any manner for pending applicants and is not being held as a reserve. NYPA may not award the full amount of power requested by the applicant, but this does not create or maintain a reserve, rather, this methodology promotes greater economic development. As stated to OSC at both the Follow-up Audit opening and closing conferences, one of the main tenets of the RNY program is to “provide a meaningful benefit to the maximum number of eligible businesses and not-for-profit entities throughout the state.” The only reserve NYPA used was in the initial rounds of awards in 2012 to ensure power would be available for applicants after those initial rounds. This was only in place in 2012 because NYPA was concerned about an immediate exhaustion of resources for its newest significant, long-term economic development program. As to the other points that OSC recommended improving transparency, those being cutoff score and carryovers, NYPA does not have either component in its RNY program, and OSC does not identify any such instance since the last audit.

***OSC Recommendation 4:*** *Establish a schedule for contacting pending businesses on a regular basis during the year (e.g., quarterly) to determine their readiness to draw down power. For those not ready, establish a formal process whereby the business submits a deferral request with an estimated date on when it will draw down the power.*

**OSC Recommendation Status** — Implemented

**NYPA Response to Recommendation Status** — NYPA agrees with the recommendation’s implemented status.

***OSC Recommendation 5:*** *Take action to reduce contract demand when customers do not meet power utilization or minimum employment level or hinder verification of compliance commitments provided in contract terms, in such instances, when NYPA chooses not to reduce power allocations, document the reasons for the decisions.*

**OSC Recommendation Status** — Implemented

**NYPA Response to Recommendation Status** — NYPA agrees with the recommendation’s implemented status.

**OSC Recommendation 6:** *Assess the level of resources assigned to verify the employment, power utilization, and capital investment numbers being reported in customer Compliance Reports.*

**OSC Recommendation Status** — Not Implemented

**NYPA Response to Recommendation Status** — NYPA previously stated that it does not accept this recommendation. As evidenced through the initial audit and again in this follow-up, NYPA demonstrated it has allocated sufficient resources and performs continuous compliance assessments for its RNY Program. The independent audit contract requires a selection of Economic Development Program customer contracts for review by NYPA's independent auditor. There is no requirement for a fixed number of audits for any specific economic development program. NYPA determines the number of RNY customers for review based on a sampling methodology that was explained during the initial audit and again in this follow-up by OSC.

**OSC Recommendation 7:** *Revise the terms of the firm's contract to specify the number of audits to be performed each year and to specify when the reports are due. In the interim, require the firm to perform according to the agreed-upon contract terms of verifying job commitments for approximately 100 customer contracts each year.*

**OSC Recommendation Status** — Not Implemented

**NYPA Response to Recommendation Status** — NYPA did not accept this recommendation and still disagrees with OSC. NYPA's independent auditor is meeting all its contractual obligations.

**OSC Recommendation 8:** *Establish controls over the valuation and sales of scrap metals, including but not limited to:*

- *Developing formal procedures for the sale of scrap metal, which should include NYPA officials weighing metals locally;*
- *Observing the disposal activity;*
- *Developing agreed-upon weight difference limits;*
- *Minimizing the time between weighing and issuing Requests For Quotes and maintaining control over the transaction from initial removal from NYPA's property to final pricing; and*
- *Ensuring that all vendors removing scrap metal from NYPA's property either have a valid contract or have the proper authorization, and that the correct price is used.*

**OSC Recommendation Status** — Partially Implemented

**NYPA Response to Recommendation Status** — NYPA has fully implemented this recommendation. NYPA adopted and implemented new procedures. NYPA has a control to sample scrap metal disposal transactions with its vendor. To implement this control on all transactions would be cost prohibitive given the limited value of the scrap metal disposal transactions. For example, the 420 lb. weight difference in the transaction noted by OSC amounts to \$12.19.

**OSC Recommendation 9:** *Require the DFO to conduct site visits and maintain records that document the activity of evaluating the condition of all fleet assets and meetings with site management to develop recommendations for replacement or reassignment of vehicles. Require the DFO to annually assess and document the value of fleet vehicles.*

**OSC Recommendation Status** — Partially Implemented

**NYPA Response to Recommendation Status** — NYPA has implemented this recommendation to the extent that it is still applicable. NYPA revised its fleet policy to no longer require performance of site visits. NYPA's Fleet Operations has implemented processes supporting well-informed decision-making for the replacement or reassignment of vehicles. There is no requirement for NYPA's Director of Fleet Operations to annually value fleet assets and OSC does not provide a rationale for the recommendation to do so when the vehicles are not being sold.

**OSC Recommendation 10:** *Improve controls over fleet assets sales by:*

- *Advertising and maintaining adequate documentation of newspaper and Contract Reporter ads: and*
- *Requiring the DFO to prepare in advance a written value for each asset to be auctioned.*

**OSC Recommendation Status** — Partially Implemented

**NYPA Response to Recommendation Status** — NYPA has fully implemented this recommendation. NYPA has maintained documentation of public advertising for fleet asset sales, which is not disputed by OSC. However, for just one of the many fleet auctions conducted since OSC's recommendation, NYPA was not able to locate during the audit its pre-auction written valuation of fleet assets. This document was subsequently found to have been misfiled.

**OSC Recommendation 11:** *Require Disposal of Personal Property forms to be:*

- *Used in a uniform manner throughout all NYPA facilities, and include policies regarding the forms in NYPA's Guidelines and Procedures for the Disposal of New York Power Authority Personal Property: and*
- *Supported by documentation of the original asset value stated, the fair market value of the asset, and how the asset was disposed of.*

**OSC Recommendation Status** — Partially Implemented

**NYPA Response to Recommendation Status** — NYPA implemented this recommendation. As noted by OSC, NYPA implemented a new form for disposal of equipment. The two transactions noted by OSC precede the use of this form. OSC incorrectly states that those disposals were without using a competitive "procurement" process. One of the disposals was part of a competitive procurement. The other was disposed of following a competitive disposal process that resulted in no bids and for which NYPA well-documented the fair market value to be nil. With this context, NYPA was successful in negotiating this disposal for beneficial consideration.

**OSC Recommendation 12** *Require project managers to prepare and maintain records to properly support the amounts of energy savings reported.*


**OSC Recommendation Status** — Partially Implemented

**NYPA Response to Recommendation Status** — NYPA has fully implemented this recommendation. NYPA's Energy Efficiency project managers prepare and maintain records to properly support the amounts of energy savings reported. OSC does not provide and support its conclusion regarding status of recommendation. OSC does not identify any instance in its sampling that the information recorded in NYPA's database does not reflect the project commitment. OSC's findings regarding realized savings are absurdly simplistic and deeply flawed, completing lacking aspects of industry accepted verification processes for energy savings.

OSC points to two sampled projects to support the "partially implemented" status of its recommendation. This is incorrect. NYPA demonstrated to OSC staff that indeed the Project Manager had maintained records supporting the reported savings for both projects. For one project, NYPA reported first year bill savings of \$1,066,000 and provided OSC with spreadsheet calculations supporting that value. OSC's fixation on "completed" is inconsequential and used to obfuscate the truth. NYPA designates projects as complete at final inspection as that is when the energy saving equipment is put in operation and the facility enjoys the savings it provides. The realization of the energy savings by the customer is the key. In the case of this project, the savings matches the initial Customer Installation Commitment, so the fact that we have not prepared the final paperwork at the time of the audit is without consequence.

For the other project cited by OSC, this was a customer implemented project and, as such, the savings calculations are performed by the customer. This was explained to OSC during the audit and at the closing conference. NYPA provided the customer's spreadsheet calculations to OSC that supported the savings reported. NYPA performs due diligence on customer implemented projects to verify that the reported savings are reasonable and, at the end of the project, NYPA verifies that the reported energy conservation measures were in fact installed, as was done here.

Yours truly,

  
Gil C. Quiniones  
President and Chief Executive Officer

cc: NYS Division of Budget