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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 11, 2018

Mr. John R. Koelmel
Chairman
New York Power Authority
123 Main Street
White Plains, NY 10601-3170

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

Dear Mr. Koelmel:

Pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law, we have followed up on the actions taken by officials of the New York Power Authority to implement the recommendations in our prior report, *Selected Management and Operations Practices* (Report 2015-S-20).

Background, Scope, and Objective

The New York Power Authority (NYPA) is a corporate municipal instrumentality and political subdivision of the State of New York created in 1931 by Title 1 of Article 5 of the Public Authorities Law (PAL).

On April 14, 2011, the Governor of New York signed into law the Recharge New York (RNY) power program as part of Chapter 60 (part CC) of the Laws of 2011 (Law). RNY power is to be allocated to businesses and non-profits that commit to retain or increase New York State jobs and agree to make capital investments in their business in accordance with legislative guidelines. RNY makes available 910 megawatts of economic development power, 50 percent to be purchased by NYPA on the open market and 50 percent from its own hydropower.

Applications for the RNY power program are incorporated into an online Consolidated Funding Application maintained by the Empire State Development Corporation (ESDC). NYPA's Business Power Allocation and Compliance group (BPAC) extracts applications in batches from ESDC to be reviewed by NYPA staff and competitively scored using two models – one for job retention and one for expansion – using the 12 criteria detailed in the RNY legislation.

NYPA's staff makes an allocation recommendation to the Economic Development Power

Allocation Board (EDPAB). EDPAB presents the recommended allocations to NYPA's Board of Trustees (Board). RNY power is then officially allocated by NYPA's Board. The Law requires effective periodic audits of job commitments as well as capital investments. In August 2013, NYPA signed an agreement with an independent public accounting firm (firm) to act as NYPA's agent to verify job commitments reported by the customers in the RNY program.

As a public authority, NYPA is required by PAL Section 2896 to prepare a report, at least annually, listing all personal property valued in excess of $5,000 that was disposed of during the reporting period. For purposes of this report, personal property is all property other than real property. For the two calendar years ended December 31, 2017, NYPA reported $1.566 million in personal property sales.

In 1990, NYPA began Energy Efficiency programs for its government customers in New York City and Westchester County. The programs were expanded to State-operated facilities in 1991, Long Island public schools in 1992, community colleges statewide in 1993, and county and municipal governments in 1994. As of November 28, 2017, NYPA reportedly financed a total of $2.1 billion in Energy Efficiency projects that produced first-year savings of $97.3 million. While some projects had savings, others did not. The projects without savings included feasibility studies, energy audits, or projects that improved the energy system reliability. Our initial audit covered the projects completed as of April 9, 2015. Since then, NYPA reported that it completed 121 out of 397 projects at a cost of $382.4 million, with reported savings of $27.5 million.

We issued our initial audit report on August 1, 2016. The objective of our follow-up review was to assess the extent of implementation, as of July 25, 2018, of the 12 recommendations included in the initial report.

Summary Conclusions and Status of Audit Recommendations

We found that NYPA made some progress in addressing the problems identified in our prior report. However, additional actions are warranted. Of the 12 prior audit recommendations, 2 were implemented, 7 were partially implemented, and 3 were not implemented.

Follow-Up Observations

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.

Status – Partially Implemented

Agency Action – NYPA reported correcting the coding error found by auditors in the prior RNY audit. Although NYPA added a second person to review the allocation formulas and calculations following each application round before making the allocation recommendation, the review is not independent because the reviewer's work is checked by a BPAC employee who was part of the team that developed the original model, which is still in use. Furthermore, we were provided documents for only 3 of the 12 reviews done.

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.

Status – Partially Implemented

Agency Action – In its 90-day response to the initial report, NYPA agreed with the recommendation, indicating it would take action to disclose information about pending allocations and the job commitments related to them. We found that NYPA added a footnote in its annual report; however, the actual number of businesses that were awarded an allocation but had not signed a contract and the number of pending job retentions and expansions were not provided in the footnote. As a result, the total number of jobs created and retained remains overstated. For example, NYPA's Dynamic Report for December 2017 showsed pending job commitments of 23,907; while in May 2018, there were 18,976 pending job commitments.

Recommendation 3

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

Status – Not Implemented

Agency Action – NYPA did not take any action to implement this recommendation. Although NYPA's 90-day response to the initial audit stated that it "continues to be transparent" in accordance with the law, we found that NYPA needed to improve its transparency. During the follow-up review, NYPA officials stated that RNY did not – and does not – have a reserve (not needed for immediate use but available if required). Officials added that, in 2012, the amount of power requested by the initial round of applicants exceeded the megawattage authorized for the RNY program, and they decided to not award the full program amount in the first round; however, that has not happened since then. When asked whether applicants are awarded the full amount requested, NYPA officials replied they still do not approve the amount of power businesses request. In effect, this is a reserve.

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 when it will draw down the power.*

Status – Implemented

Agency Action – NYPA account executives have processes and a schedule to follow up with pending customers. NYPA's BPAC group monitors and rescinds pending allocations that have exceeded the allotted time frame, as dictated in its procedures.

To verify whether NYPA's account executives follow up with pending customers, we tested a sample of 15 businesses. We were provided documentation to support that NYPA contacted the businesses for information to update the status of the businesses' intent regarding the pending allocations. The information is recorded in the Customer Relations Management system. The system generates automated messages reminding account executives to contact the customer regarding the pending allocations.

Recommendation 5

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

Status – Implemented

Agency Action – NYPA has a firm under contract that reviews RNY customers (selected by BPAC) to determine whether the businesses are in compliance with their commitments for the number of jobs to be created or retained, capital investment, and power utilization. BPAC can recommend a reduction in the power allocated to the business. However, depending on the circumstances, BPAC may decide not to recommend any changes and instead allow the business to improve its performance. We reviewed the reports for five businesses where NYPA reduced the power allocations. In addition, in its 2018 report to the Board of Trustees, there were 18 customers that were not in compliance with their job commitments and recommended for no action at the time. Among the reasons provided were less business than projected and difficulty hiring new employees. BPAC notifies EDPAB of its recommendations, which are then made to NYPA's Board.

Recommendation 6

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

Status – Not Implemented

Agency Action – NYPA officials have not taken any action to implement the recommendation.

The resources assigned to verify customer compliance with the commitments remain the same as in 2013. The contract with the independent accounting firm was extended for one year (August 1, 2016 to July 31, 2017). A new contract (from August 1, 2017 to July 31, 2022) is in place for the same number of compliance reviews.

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.

Status – Not Implemented

Agency Actions – NYPA did not revise the terms of the firm's contract to specify the number of audits to be performed each year and the dates when the reports are due. Despite the agreed-upon contract terms, BPAC selected a sample of only 67 RNY customers for the 2017 compliance audits. We determined that 243 of the 479 businesses in service since 2012 were reviewed as of 2016. We did not receive reports for 2017, but using the number of reviews done in 2016 (67), we determined that 310 (243 + 67) reviews were performed, indicating that some businesses were not reviewed.

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; and*
- *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.*

Status – Partially Implemented

Agency Action – NYPA issued procedures for the sale of scrap metal (Personal Property Disposal, Section 5.3.9), effective on August 24, 2017. On a visit to the Poletti facility, we determined that the NYPA employee on site was aware of the new Personal Property Disposal guidelines. However, all the requirements of the new Personal Property Disposal guidelines have not been implemented. For example, during our visit, there was no information in the record stating the recorded weight was determined on a certified scale, as required. In addition, the amount paid to NYPA for three of the four scrap metal pickups did not have the required weight verification.

We were also provided a copy of the weight slips for a scrap metal pickup on March 6,

2018. The truck was escorted to an independent scale and weighed at 9:00 a.m. The recorded weight was 51,420 pounds; no tare or net weight was obtained. However, the buyer's recorded weight for the same truck was 51,000 pounds gross weight (40,200 pounds in tare weight of the truck plus 10,800 pounds in materials weight). We asked about the difference of 420 pounds between the two weights, and were advised the buyer pays NYPA based on the buyer's recorded weight. Furthermore, the individual was not aware of any NYPA policy or procedure or what actions to take when there is a difference between NYPA's recorded weight and the buyer's recorded weight.

Recommendation 9

Require the DFO (Director of Fleet Operations) 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.

Status – Partially Implemented

Agency Action – We received a copy of the DFO's log. It listed 36 activities at NYPA facilities statewide from July 6, 2016 to March 1, 2018. Our review of the log identified only one instance in August 2016 where a fleet discussion was included. We also noted that the DFO's log did not list a single fleet asset evaluation.

At the opening conference, a NYPA official stated that "an annual fleet vehicle review is not needed since a review happens daily through conversations with 16 end user supervisors across NYS who are constantly evaluating the fleet." He added that the work orders for the vehicles are also used to decide whether it is cost effective to repair the vehicles. However, NYPA did not provide documents to support that all vehicles were evaluated or the type of evaluation done. We sampled 7 of the 58 personal property items from the annual report of personal property valued at over $5,000 sold in 2016 (the latest final annual report as of January 2018). These items were sold for $166,150. We found that one of the seven disposals was not in compliance with the procedures for disposing of personal property at less than fair market value.

Recommendation 10

Improve controls over fleet asset 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.*

Status – Partially Implemented

Agency Action – NYPA officials stated that they include the value for each disposed asset in written advertisements, specifically trade journals, before the auction. However, NYPA did not provide the records related to these advertisements. In addition, there was no record that the DFO valued any of the five sample vehicles before they were disposed.

<u>Recommendation 11</u>

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.*

Status – Partially Implemented

Agency Action – NYPA developed a new form for the disposal of equipment that reflects the original asset value, its market value, and the method of disposal. The new procedure was effective August 2017 and was used for the one item disposed. NYPA's guidelines for the disposal of personal property require that an estimated fair market value (FMV) be included in the transaction. However, NYPA disposed of two pieces of equipment without using the competitive procurement process and without a statement of FMV. One transaction was a negotiated swap for consideration, and the other was traded in for different equipment.

<u>Recommendation 12</u>

Require project managers to prepare and maintain records to support the amounts of energy savings reported.

Status – Partially Implemented

Agency Action – A NYPA official stated NYPA bases its Energy Efficiency projects on engineering calculations. We reviewed 4 of the 121 completed projects that NYPA reported on a listing of projects as of November 28, 2017. We found that two of the four had a final Customer Installation Commitment (CIC) report. For the other two projects with completion dates of April 20, 2016 and September 28, 2016, respectively, we were provided the initial CIC. However, the second project was not completed (as of January 12, 2018) when we met with NYPA officials. The first project was customer implemented and the savings were calculated by the project owner. The listed project savings were the same for both the initial and final CICs. NYPA did not provide its own documents to show its calculation of the savings at the beginning or end of the project.

Contributors to this report were Robert C. Mehrhoff, Joseph Smith, Robert Tabi, and Hardat Singh.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank NYPA management and staff for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

Carmen Maldonado
Audit Director

cc: G. Quiniones, NYPA, President
A. Davis, NYPA, Controller
Division of the Budget