New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Real Estate Portfolio

New York Power Authority

Report 2013-S-23

June 2014

Executive Summary

Purpose

To determine whether the New York Power Authority has accounted for all of its real estate holdings, determined the need to either hold or dispose of those properties, and disposed of property on terms beneficial to the State. The audit covers from January 2010 through July 2013.

Background

The New York Power Authority (NYPA) is the nation's largest state public power entity and a leader in supplying the State with electrical power. Public Authorities Law Section 2896 requires each authority to maintain adequate inventory controls for its property and report annually on all property held. It also requires authorities to determine which property shall be disposed of and transfer or dispose of such property as promptly as possible for fair market value. NYPA reports that, as of December 31, 2012, it owned 48,941 acres of property associated with 12 power generating projects, along with an administrative building in White Plains and several permanent easements.

Key Findings

- NYPA did not include all of its property in the reports it submits to the State and posts on its website. For example, NYPA did not update the information systems used to account for its real estate inventory timely. In addition, NYPA has not been consistent in how it reports disposals of real property. NYPA does not regularly review its real estate portfolio to identify properties it no longer needs, as required.
- NYPA property with a fair market value of more than $15,000 was leased for less than fair market value without notifying the Governor and Legislature, as the Law requires.

Key Recommendations

- Ensure that information systems used to track real estate holdings are updated timely to reflect changes when property is acquired or disposed.
- Evaluate the continued need for property owned and property leased from other entities.
- Notify the Governor and the Legislature when property is leased for less than the fair market value and provide the justification for such action.

Other Related Audits/Reports of Interest

Rochester-Genesee Regional Transportation Authority: Real Estate Portfolio (2012-S-90)
Capital District Transportation Authority: Real Estate Portfolio (2012-S-91)

State of New York
Office of the State Comptroller

Division of State Government Accountability

June 20, 2014

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

Mr. Gil Quinones
President and Chief Executive Officer
New York Power Authority
123 Main Street
White Plains, NY 10601-3170

Dear Mr. Koelmel and Mr. Quinones:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Real Estate Portfolio.* This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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State Government Accountability Contact Information:
Audit Director: Carmen Maldonado
Phone: (212) 417-5200
Email: StateGovernmentAccountability@osc.state.ny.us
Address:
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

This report is also available on our website at: www.osc.state.ny.us

Background

The New York Power Authority (NYPA) is the nation's largest state public power entity and a leader in supplying the State with electrical power. NYPA's mission is to "provide clean, low-cost and reliable energy consistent with our commitment to the environment and safety, while promoting economic development and job development, energy efficiency, renewables and innovation, for the benefit of our customers and all New Yorkers." To accomplish its mission NYPA operates hydroelectric and gas-powered energy plants throughout the State, including seven hydroelectric plants licensed by the Federal Energy Regulatory Commission (FERC). A FERC license is for 50 years, and includes a land management plan for property affected by the hydroelectric plant. During the term of each license, NYPA meets with the local communities in the area to discuss current conditions. These discussions are generally held every ten years. FERC usually is not a party to these discussions. Any decisions that could impact the land management plan require FERC approval before they can be implemented.

Public Authority Law Section 2896 (Section 2896) requires each public authority to maintain adequate inventory controls for all of its property and to periodically review this inventory to determine which property shall be disposed of. Section 2896 also requires public authorities to publish, at least annually, a report listing all property held and all property acquired and disposed of during the year. NYPA reports on its properties by project rather than by individual lots and reports on the total acreage for each project. As of December 31, 2012, NYPA reported total acreage of 48,941 for 12 different power-generating projects, plus the administrative building in White Plains and permanent easements.

Public Authority Law Section 2897 (Section 2897) allows each public authority to dispose of property when it is not needed to accomplish its mission. Furthermore, a public authority may rent, lease or grant easements or other rights in any land or property it owns. Such arrangements and property disposals should be on terms beneficial to the State. Section 2896 requires public authorities to determine which property shall be disposed of and transfer or dispose of such property as promptly as possible. Where the terms are for less than fair market value, Section 2897 requires a public authority to notify the Governor and the Legislature of its intentions and to provide details about the transaction, including a justification for accepting less than fair market value.

Audit Findings and Recommendations

Property Inventory

NYPA uses two computer systems to monitor its properties. One system, Geographic Information Systems (GIS), is used to store and generate maps for each property with topographical and other information, such as ground features or animal habitats. The other system, Real Estate and Land Management (REALM), was developed in-house and is used to track acquisition and disposal information, including the name of the other party and the purchase or sale price of the property. NYPA used the information in GIS to generate its initial Real Property Report under Section 2896. That report is updated each year, by adding acquisitions and subtracting disposals as noted in REALM. The information in REALM is also used to prepare the annual reports of acquisitions and disposals under Section 2896. According to NYPA officials, REALM is supplemented with other information available in-house, such as hard-copy records and discussions with NYPA employees knowledgeable about the transactions.

In June 2013, we selected ten properties from REALM that were acquired between March 2010 and July 2012. We determined that nine of them were not recorded in GIS. According to NYPA officials, eight of the nine properties were in the process of being updated and would not appear in GIS until that process was completed. The ninth property was updated but would not be viewable until the various modules of GIS had been synced with each other. In light of these differences, NYPA cannot ensure that its initial report of all real property owned (which was generated from information in GIS) was accurate. NYPA officials told us they hired a consultant to assist with synced GIS modules and to ensure that information about acquisitions and disposals recorded in REALM is fully captured in GIS. In October 2013, NYPA officials informed us that the consultant started working, and should be finished in early 2014. Once that is done, NYPA should verify that none of its properties have been excluded from its annual Section 2896 report.

In August 2013, we also found over 500 temporary easements dating back to the 1950s and 1960s still listed in REALM as owned by NYPA, even though a temporary easement only lasts one to three years. According to NYPA officials, they need to maintain the information on these easements for historical purposes. They expressed confidence that all of the employees responsible for preparing the annual reports know that these easements have expired and so would not include them in the annual reports. NYPA should revise REALM to mark these temporary easements as expired, to ensure that none of them are accidentally included in any of the Section 2896 reports. This will also ensure that future 2896 reports are accurate, should different employees become responsible for preparing them.

We also found inconsistencies in how information was reported on the real property disposal reports. As part of the 2007 FERC relicensing agreement for the Niagara hydroelectric plant, NYPA was directed to sell certain parcels of land, including 24 acres sold to Niagara University in 2011 and 14 acres sold to the Erie Canal Harbor Development Corporation in 2012. Each of these properties was transferred to the new owner at a cost of $1 (which was waived). NYPA did not report on the Niagara University sale in its 2011 Disposal of Real Property report, but did report the sale to the Erie Canal Harbor Development Corporation in 2012. There was no documentation to explain why the sale to Niagara University was excluded from the 2011 report. The employee who prepared the 2011 report was no longer employed at NYPA and the employee who prepared the 2012 report did not know why the two transactions were treated differently.

When we questioned NYPA officials, they stated it was due to different interpretations of Section 2896. However, Section 2896 states “such report shall include a list and full description of all real property disposed of during such period.” NYPA needs to provide written instructions to all employees regarding how to prepare the reports.

Recommendations

1. Ensure that both GIS and REALM are correct and updated timely when property is acquired or disposed of.

   (Responding to our draft audit report, NYPA officials indicated that it is strengthening its real estate management systems and continues to improve its system capabilities. They added that they take issue with the OSC audit finding that NYPA cannot ensure the accuracy of its initial report of all real property owned. NYPA’s knowledgeable real estate personnel prepared and reviewed the initial PAL Section 2896 report, which used data from GIS, REALM and other records to ensure the report was accurate.)

   Auditor’s Comments: We are pleased that NYPA officials are taking steps to improve the real estate management systems. However, NYPA’s real estate personnel cannot rely on the accuracy of reports from these systems. Instead, they must manually adjust those reports using information from other sources and fully documenting the changes made to the system. They should also take steps to improve the timeliness of the updates to the acquisitions. As indicated in the report, in June 2013 we selected 10 properties from the REALM report and nine of those properties were not in GIS even though they were acquired from 11 months to 39 months earlier.

2. Ensure that REALM correctly reflects the status of temporary easements that have expired.

   (In response to our draft audit report, NYPA officials indicated there were no reporting inaccuracies that resulted from the incorrect status of the temporary easements on REALM. They claimed the information is maintained on REALM for historical purposes.)

   Auditor’s Comments: NYPA’s response does not address the recommendation which calls for them to ensure that REALM correctly shows that 500 temporary easements dating back to the 1950s and 1960s are not owned by NYPA. In addition, NYPA should not rely on the knowledge of the employees responsible for preparing the reports because there is no assurance that all of the knowledge will be passed on to future employees.

3. Comply with Section 2896 regarding the reporting of all property disposed of during each year.

(NYPA officials replied to our draft audit report that they are in compliance with PAL Section 2896 and that the omission was due to a misinterpretation of the requirement.)

Auditor's Comments: NYPA was not in compliance with PAL Section 2896 when it omitted the parcel sold to Niagara University in its 2011 report. As a result, NYPA officials need to take corrective action to provide employees written instructions regarding how to prepare the reports.

Assessment of Needs

NYPA does not regularly review each property it owns to determine whether to hold or dispose of each parcel because a lot of the property NYPA owns is associated with one of its seven FERC licensed power plants, and so is affected by FERC's restrictions on the use and disposal of that property. As a result, NYPA retains its property until there is an operational change (such as shutting down a facility) or a change in its FERC license land management plan. Also, almost 20 percent of its property (8,531 of the 48,941 acres) consists of easements rather than property owned outright. NYPA should develop a formal schedule for reviewing its property, including parcels covered by a FERC license and those that are not.

For example, we visited three properties in the St. Lawrence region owned by NYPA but leased to other entities. One of the properties is leased to a golf course that is open to the public. The other two properties are leased to a private college and to a private yacht club, neither of which is open to the public. NYPA does not need these properties for its own operations needs, but instead leases them as part of the recreational use requirements of the land management plan portion of its 2003 FERC license. However, in the past, NYPA has been permitted to dispose of property it no longer needs, even though it was covered by a FERC license. As part of its compliance with Section 2896 requirements, NYPA should review these parcels, and other leased property covered by FERC licenses, to determine whether it must keep and continue to lease them or if it could sell or otherwise transfer them to other entities.

In September 2013, NYPA officials expected to begin discussions with the local communities on the FERC license for the St. Lawrence region. NYPA officials have told us that they do not believe it would be appropriate to discuss land issues during those discussions because FERC is not a party to them. However, these discussions offer an opportunity to meet the Section 2896 requirements and review the property holdings covered by this particular FERC license. For other properties, NYPA should determine the appropriate timeframe for review.

NYPA also leases 15 properties from others at an annual cost of about $660,000 including five warehouses, five offices, three radio antennae sites, one water gauging station and a hangar for an airplane. We visited six of these properties, and question the need for two of them: a warehouse and office space at an airport. NYPA has paid $2,883 per month for the warehouse space since July 2002. The warehouse is used to store office furniture and other building materials from a NYPA office that was closed in August 2012. According to NYPA officials, they intend to dispose of all the contents of the warehouse and stop using the facility. They renewed the lease in August 2013 for an additional six months, which they told us should be sufficient time to arrange for the final disposition of the contents. To help move this process along, we provided NYPA officials with information on how they could go through the New York State Office of General Services to sell or scrap items from the warehouse. NYPA also pays $1,240 per month for the office space at the Westchester County Airport, even though it is within a half-hour drive of its office building in White Plains, which has vacant space. This arrangement has been in place since the hangar facility was first leased over 30 years ago. According to NYPA officials, it is more efficient for the pilots to have an office at the airport than at the main headquarters. However, NYPA has not provided us with any cost-benefit analysis or other evidence to support this contention.

Recommendations

4. Develop a formal schedule for reviewing properties and determining whether NYPA continues to need to retain them, as required.

5. Conduct a formal needs assessment and determine the extent to which these needs can be addressed by NYPA-owned property.

6. Periodically evaluate the need to continue leasing space and document the results including, but not limited to, office space at the Westchester County Airport.

   (Responding to our draft audit report, NYPA officials indicated they regularly review real property portfolio to determine which properties, if any, are no longer required for NYPA purposes. They also indicated that the FERC has project boundaries that are narrowly drawn to meet NYPA's operational needs and FERC's recreational and other uses under the land management plan. In addition, they will continue this process and periodically review, evaluate ongoing property needs, and improve its documentation.)

   Auditor's Comments: During our audit, NYPA officials told us on several occasions that they review property related to FERC licenses only during the relicensing process, which occurs once every 50 years, and that they review other property only when significant changes occur. However, there was no documentation to demonstrate such assessments of need were done. Therefore, NYPA needs a formal review process for their property holdings that occurs more frequently, though NYPA officials may choose to review FERC properties on a different schedule from their other property.

Disposal of Property

NYPA owns a building in White Plains that is used as its main administrative building. However, it does not need all of the space in the building, and leases out space to other entities. NYPA has a contract with a real estate broker to advertise and market the space. Minutes from a September 2011 Board of Trustees Governance Committee meeting indicate that the average rental for this space was $26 per square foot, and that NYPA endeavors to keep the costs consistent for all tenants in the building. We reviewed seven of 12 leases in this building, and found two tenants are paying significantly less than fair market value. One lease (for 3,227 square feet) expired in

December 2012, and NYPA is allowing the tenant to use the space while the terms of a new lease agreement are negotiated. As of August 2013, those negotiations were still underway and the tenant was only paying $1,000 per month, or less than $4 per square foot per year. The other lease (for 870 square feet) was still in effect, and NYPA had agreed to a rent of only $12.50 per square foot per year. NYPA did not notify the Governor or the Legislature about these leases or provide justification for below-market rates, as required under Section 2897.

NYPA officials acknowledge that Section 2897 requires them to report on any disposal at less than fair market value, including leases. However, they believe that the circumstances surrounding these two leases result in the lower lease amount being the fair market value, not the $26 per square foot amount. Section 2897 does not give public authorities the discretion to set fair market value. NYPA officials should have reported these two leases to the Governor and the Legislature, along with the rationale for charging below-market rates.

For property covered by a FERC license, the land management plan may sometimes require NYPA to retain ownership of land it does not need for operational purposes. These properties are then leased by NYPA to other entities. The land management plan may specify who NYPA must lease the property to or it may simply state the lease must be for recreational purposes.

According to NYPA officials, it is difficult to determine the fair market value for leased land, though 10 percent of the total assessed value is a good rule of thumb. For some properties, this amount may be further reduced if it is only usable part of the year. We identified the following four leases in the St. Lawrence region that were for significantly less than 10 percent of the assessed fair market value.

- A golf course is leasing property that was assessed in 1990 at $1.8 million for an annual rent of only $2,000, rather than $180,000.
- A private yacht club is leasing property that was assessed in 2012 at $180,000 for an annual rent of only $2,700, rather than $18,000. Since 2010, the tenant was allowed to make improvements in lieu of paying rent. NYPA records show that the yacht club replaced a dock and a shed and purchased a woodstove.
- A private university is leasing property that was assessed in 2012 at $100,000 for an annual rent of only $1 (which NYPA waives), rather than $10,000.
- A golf course is leasing property that was assessed in 2012 at $123,000 for an annual rent of only $200, rather than $6,150 (reduced from $12,300 because the property is only usable for six months of the year). NYPA has waived the rent on this property since the 1990s.

Our review showed three of the four tenants had not actually paid rent, although one of them has made some site improvements. NYPA officials told us they consider all four tenants to be essential to meeting the land management plan, as required by its FERC licensing agreements. As a result, they are reluctant to raise the rents to fair market value, which might put these tenants out of business. Further, for tenants in financial difficulties, NYPA prefers to waive the rents rather than add to their economic hardship.

However, the unusual nature of these arrangements makes it critical that NYPA fully document and disclose the nature and justification for these leases. NYPA has not demonstrated that these particular tenants are the only ones that could provide required recreational use of these properties. NYPA needs to take timely action when a lease is about to expire to determine whether the space could be leased to another entity. Such actions could include advertising in newspapers and real estate listings, and placing information on its website. These activities should be documented and used to determine how NYPA will lease the space.

In addition, if the property has a fair market value of more than $15,000 and NYPA decides to accept a reduced rent, or waive the rent entirely, it should comply with Section 2897. We found NYPA has not reported three of the four leases to the Governor and Legislature, nor has it provided an explanation for accepting less than fair market value, as required by Section 2897. The remaining lease runs through 2015 and predates Section 2897.

Recommendations

7. Inform the public of NYPA property available for lease and document the results.

   (NYPA officials replied to our draft report that they provide information to the public through its website and listing brokers.)

8. Notify the Governor and the Legislature when leasing property for less than the fair market value, as required by law.

   (NYPA officials replied to our draft audit report that it will notify the Governor and the Legislature when leasing property for less than the fair market value, as required by law. They add that the leases identified in our report predate the law and did not require notification to the Governor and the Legislature. They claim that when these leases were negotiated they took into consideration factors such as FERC licensing obligations and its economic role in the St. Lawrence region. They also indicated that the rent it receives from two tenants in its White Plains building is at fair market value.)

   Auditor's Comments: Three of the four leases in our report have expired and NYPA should have notified the Governor and the Legislature. In addition, the information in the minutes from a September 2011 Board of Trustees Governance Committee meeting does not support NYPA's response. Therefore, the leasing of space to the two tenants at less than fair market value should have been reported to the Governor and the Legislature for review and approval.

9. Collect rental revenue from all leases.

   (NYPA officials replied to our draft audit report that White Plains rentals are current and that NYPA considers three of the four St. Lawrence leases to be compliant with their lease obligations.)

   Auditor's Comments: We determined that three of the four tenants have not paid rent since at least January 2010. One tenant made certain site improvements in lieu of rent and for the other two, NYPA waived the rent. Furthermore, one of the tenants is a private yacht club and not open to the public.

Audit Scope and Methodology

Our audit determined whether NYPA has accounted for all of its real estate holdings, determined the need to either hold or dispose of properties, and disposed of property on terms beneficial to the State. The audit covers the period January 2010 through July 2013.

To accomplish our objective, we reviewed relevant guidelines related to NYPA's acquisitions and disposals of real property, interviewed NYPA officials, tested NYPA's two information systems used to track real estate holdings, reviewed leases, and reviewed licensing agreements issued by the Federal Energy Regulatory Commission for NYPA's hydroelectric plants in St. Lawrence and Niagara. We also reviewed records at the county clerk's offices for New York City, Westchester, St. Lawrence and Niagara. We also visited three NYPA properties leased to others, and eight properties leased by NYPA for its own purposes, to determine how the property was being used.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

Our audit was performed 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.

Reporting Requirements

A draft copy of this report was provided to NYPA officials for their review and comment. Their comments were considered in the preparation of this final report and are included in their entirety at the end of this report. Our rejoinders to certain NYPA comments are included in the report's State Comptroller's Comments.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the New York Power Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

Carmen Maldonado, Audit Director
Robert Mehrhoff, Audit Manager
Jennifer Paperman, Audit Supervisor
Kathleen Hotaling, Examiner-in-Charge
Peter Carroll, Staff Examiner
Constance Walker, Staff Examiner

Division of State Government Accountability

Andrew A. SanFilippo, Executive Deputy Comptroller
518-474-4593, asanfilippo@osc.state.ny.us

Tina Kim, Deputy Comptroller
518-473-3596, tkim@osc.state.ny.us

Brian Mason, Assistant Comptroller
518-473-0334, bmason@osc.state.ny.us

Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments

123 Main Street
White Plains, NY 10601

NewYorkPower Authority

Gil C. Quinones
President and Chief Executive Officer

December 20, 2013

Ms. Carmen Maldonado
Office of the State Comptroller
Division of State Government Accountability
123 William Street – 21st Floor
New York, NY 10038

Dear Ms. Maldonado:

On behalf of John Koelmel, Chairman of the New York Power Authority ("NYPA"), please accept this letter as NYPA's response to the draft report (2013 S-23) entitled Real Estate Portfolio—New York Power Authority.

The vast majority of NYPA's real estate portfolio is restricted and narrowly tailored to meet operational, license and regulatory requirements. These real property holdings include power generating projects, transmission system right-of-ways, NYPA's administrative building in White Plains, and leased space in support of NYPA's operations. NYPA reviews its real property holdings on an ongoing basis to determine whether properties are no longer required for NYPA's business needs.

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Comment
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NYPA believes it already has procedures in place that sufficiently address many of these recommendations. NYPA will enhance its practices/procedures for its real estate portfolio management to ensure compliance with the Public Authorities Law (PAL). However, NYPA takes issue with certain OSC statements and interpretations of facts presented as audit findings, which are addressed below.

Audit Findings and Recommendations—Property Inventory:

OSC Recommendation 1: Ensure that both GIS and REALM are correct and updated timely when property is acquired or disposed of.

NYPA Response: NYPA is strengthening its real estate management systems and continues to improve its system capabilities. NYPA takes issue with the OSC audit finding that NYPA cannot ensure the accuracy of its initial report of all real property owned. NYPA's knowledgeable real estate personnel prepared and reviewed the initial PAL Section 2896 report, which used data from GIS, REALM and other records, to ensure that the report was accurate.

* See State Comptroller's Comments on page 18.

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OSC Recommendation 2: Ensure that REALM correctly reflects the status of temporary easements that are expired.

NYPA Response: It should be noted that OSC did not identify any reporting inaccuracies based on expired temporary easements in REALM, which NYPA retained as a historical record. NYPA will be updating REALM to reflect the expiration of temporary easements while continuing to maintain them as historical records.

OSC Recommendation 3: Comply with Section 2896 regarding the reporting of all property disposed of during each year.

NYPA Response: NYPA does comply with PAL Section 2896 and recognizes the need to ensure consistent compliance with PAL Section 2896. The single omitted transaction noted by OSC was pursuant to a relicensing agreement and was publicly considered and approved by NYPA's Board of Trustees. The omission was a matter of misinterpretation of the reporting requirement.

Audit Findings and Recommendations—Assessment of Needs:

OSC Recommendations: 4, 5, & 6:

4. Develop a formal schedule for reviewing properties and determining whether NYPA continues to need to retain them, as required.
5. Conduct a formal needs assessment and determine the extent to which these needs can be addressed by NYPA-owned property.
6. Periodically evaluate the need to continue leasing space and document the results including, but not limited to office space at the Westchester County Airport.

NYPA Response: NYPA regularly reviews its real property portfolio to determine which properties, if any, are no longer required for NYPA purposes. NYPA will continue this process and periodically review, evaluate its on-going property needs, and improve its documentation.

In the normal course of business, NYPA currently identifies real property owned that is no longer required to fulfill operational, regulatory and licensing requirements. NYPA's Federal Energy Regulatory Commission (FERC) project boundaries are narrowly drawn to meet operational needs and FERC's requirements for NYPA to provide recreational and other uses under the land management plan. NYPA continuously assesses its real property needs in meeting its licensing requirements.

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Regarding the two leased properties identified by OSC in the draft report — a warehouse in Westchester County and an office space at the Westchester County Airport — NYPA provided the OSC with written business justifications for its decision to continue leasing the two properties. NYPA is using the warehouse space to store office furniture and other building materials until disposition of the warehouse contents. The office at the airport is highly beneficial and more efficient than placing the pilots in NYPA's administrative building in White Plains.

Audit Findings and Recommendations—Disposal of Property:

OSC Recommendation 7: Inform the public of NYPA property available for lease and document the results.

NYPA Response: NYPA already provides information on available property for lease to the public through its website and listing brokers.

OSC Recommendation 8: Notify the Governor and the Legislature when leasing property for less than the fair market value, as required by law.

NYPA Response: NYPA agrees to notify the Governor and the Legislature when leasing property for less than the fair market value, as required by law. The leases identified by OSC do not demonstrate lack of compliance with the PAL Section 2897 since they predate the law and did not require notification to the Governor and the Legislature. At the time these leases were negotiated, the rental amounts were in support and consideration of the local communities, the local real estate market conditions and NYPA's FERC obligations to provide recreational opportunities to the area impacted by the project license. As these leases expire and NYPA renegotiates lease terms, taking into consideration such factors as its FERC licensing obligations and its economic role in the St. Lawrence region, NYPA will continue to follow the PAL Section 2897 requirements.

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Comment
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NYPA also leases space to tenants in its White Plains building and believes that the rent it receives for these leases are at fair market value. The two leased spaces identified by OSC consisted of a windowless 870 square foot office and a cafeteria, both on the lobby floor. The negotiated rent reflected for the office space did not warrant a rent equivalent to standard office rental rates negotiated in other areas of the building, as was supported by the RFPs for that leasing. The building's cafeteria also does not warrant a rental rate on par with standard office space, as cafeterias are considered amenities. As the auditors were shown, the rent charged for the cafeteria was in line with that charged by competitor buildings in downtown White Plains.

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Comment
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OSC Recommendation 9: Collect rental revenue from all leases.

NYPA Response: It should be noted that substantially all White Plains office rentals are current and that NYPA considers three of the four St. Lawrence leases to be compliant with their lease obligations.

* Comment 4

NYPA acknowledges and appreciates the cooperation and courtesies extended by the OSC to NYPA during its audit.

If you have any questions please do not hesitate to contact us.

Yours truly,

Gil C. Quinones

Gil Quiniones

State Comptroller's Comments

1. During our audit, NYPA officials told us on several occasions that they review property related to FERC licenses only during the relicensing process, which occurs once every 50 years, and that they review other property only when significant changes occur. However, NYPA needs to adopt a formal review process for their property holdings that occurs more frequently, though NYPA officials may choose to review FERC properties on a different schedule from their other property.
2. Contrary to NYPA's response, three of the four leases in our report have expired (one in 1999, one in 2008 and one in 2012), and NYPA has allowed the tenants to continue using the property on a month-by-month basis. These three are not exempt from PAL Section 2897, and NYPA should have notified the Governor and the Legislature about these arrangements.
3. At the September 27, 2011 Governance Committee meeting, Board members were informed that NYPA's policy was to have all of its tenants at 123 Main Street pay about the same amount and that the fair market value at that time was $26 per square foot. NYPA officials either need to obtain documentation from the broker showing that the two spaces in question have a lower market value than other space in the building or notify the Governor and the Legislature of the rationale for entering into a lease for less than the fair market value.
4. Three of the four tenants have paid no rent since at least January 2010, the start of our audit period. One of these three has made site improvements in lieu of rent; NYPA officials have chosen to waive the rent for the other two. It is unclear to us how NYPA officials can state these tenants are "compliant with their lease obligations."