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February 2019

Hon. Kathy M. Sheehan, Mayor  
Members of the Common Council  
City of Albany  
24 Eagle Street  
Albany, NY 12207

Report Number: S9-18-23

Dear Mayor Sheehan and Members of the Common Council:

We conducted an audit of five local governments (three counties, one city and one town) and two school districts throughout New York State (NYS). The objective of our audit was to assess whether local governments and school districts that utilize aggregators<sup>1</sup> for energy purchases are ensuring they are procuring electricity and natural gas at the lowest prices. We included the City of Albany (City) in this audit. Within the scope of this audit, we examined the City's utility purchases for the period January 1, 2016 through May 31, 2017. We extended our audit scope back to September 2015 to review contract correspondences relating to the procurement of electricity and natural gas and October 2015 to review contract terms. This audit was conducted pursuant to Article V, Section 1 of the State Constitution, and the State Comptroller's authority as set forth in Article 3 of the NYS General Municipal Law (GML).

This draft report of examination letter contains our findings and recommendations specific to the City. We discussed the findings and recommendations with City officials and considered their comments, which appear in Appendix B, in preparing this report. City officials generally agreed with our findings and indicated they plan to initiate corrective action. At the completion of our audit of the five local governments and two school districts, we prepared a global report that summarizes the significant issues we identified at all of the local governments and school districts audited.

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<sup>1</sup> For the purposes of this report, the term "aggregator" is considered any organization or individual that brings customers together as a group with the objective of obtaining better prices, services or other benefits, such as energy or related services. The legal propriety of a local government or school district utilizing an "aggregator" is outside the scope of this audit.

## **Summary of Findings**

City officials may have entered into utility contracts without adequately evaluating the contracts or comparing prices to other potential procurement options or potential benchmark rates. Between January 1, 2016 and May 31, 2017, the City spent \$1.5 million for electricity and natural gas, and paid electricity rates that were 63 percent higher and natural gas rates that were 8 percent higher than potential benchmark rates we identified for comparisons. As a result, the City may have spent approximately \$534,000 (54 percent) more for electricity and natural gas than necessary.

Finally, officials did not obtain sufficient documentation of the Energy Service Companies' awarded contract terms to ensure that the terms they ultimately agreed upon were consistent with the awarded terms. As a result, the City and we were unable to assess whether the utility rates paid by the City are accurate and appropriate. Therefore, there is an increased risk that the City may be paying more than necessary for its utilities.

## **Background and Methodology**

The City is located in Albany County, in the eastern portion of upstate New York commonly referred to as the Capital District, with a population of approximately 98,000 residents. The City is governed by an elected 16-member Common Council (Council). The Council is responsible for the general oversight of the City's financial affairs and for safeguarding its resources. The Mayor is the chief executive officer and is responsible, along with other administrative staff, for the day-to-day management of the City. The Board of Contract and Supply<sup>2</sup> is generally responsible for the approval and execution of contracts. The City's 2017 budgeted expenditures totaled approximately \$176.9 million. The City provides services to its residents including fire and police protection, street maintenance, water and sewer services and parks and recreation programs.

In the 1990s, electric and natural gas industries in NYS were opened to competition. An Energy Service Company (ESCO) is an entity eligible to sell electricity and/or natural gas using the transmission or distribution system of a local utility company (LUC). The LUC may also continue to provide electricity and natural gas. Utility rates are regulated by the NYS Public Service Commission and are generally based on service classifications, such as high usage and whether the customer is commercial or industrial.

An aggregator may be described as an organization or individual that brings customers together as a group with the objective of obtaining better prices, services or other benefits, such as energy or related services. The City uses an aggregator for the procurement of electricity, natural gas and renewable power. The aggregator serves as a procurement manager which, among other things, aggregates the anticipated energy purchases of participants to be used for the electricity and natural gas bid, which is let by Genesee County.<sup>3</sup> The aggregator's consultant reviews and

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<sup>2</sup> The Board of Contract and Supply consists of the Mayor, Treasurer, Commissioner of General Services, Corporation Counsel and City Engineer.

<sup>3</sup> The legal propriety of being a participant in the "aggregator" program, as well as the procurement process of the bid award, was not within the scope of this audit.

evaluates the bid submissions and recommends the winning ESCOs. However, there is no requirement for a participant to purchase from the recommended ESCOs.

We examined the City's procurement of electricity and natural gas during the period January 1, 2016 through May 31, 2017. We reviewed the LUC's rates for electricity and natural gas and NYS Office of General Services (OGS) rates for natural gas to assess whether the costs were similar.<sup>4</sup> We also reviewed and compared invoices to the terms (rates, fees, surcharges and timeframes) in the City's contracts and the bid awarded contract.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). More information on the standards and the methodology used in performing this audit are included in Appendix C of this report.

## **Audit Results**

Evaluating Procurement Options – City officials have a responsibility to ensure that they use taxpayers' resources as prudently as possible. Officials should fulfill this responsibility, in part, by fully evaluating procurement options and comparing benchmark rates before committing resources. The more significant the resources that are to be expended, the more effort officials should put into the decision making process to help ensure the City's funds are used efficiently.

OGS and County contracts, along with LUC rates, can provide benchmarks to assist in assessing the reasonableness of the contract rates and terms being considered. However, while purchasing through extended OGS or County contracts have the potential to produce cost savings, municipalities are not required to use these contracts, and doing so does not guarantee a lower price.

The City entered into contracts with the ESCOs recommended by the aggregator. Officials provided us with savings analyses conducted by the ESCOs and correspondences between City officials and the awarded ESCOs that indicated potential savings. The electricity ESCO's savings analysis indicated the City could save \$114,934 if they contracted in October, and \$124,781 if they contracted in September, annually if the City engaged in a 36-month term rate contract. The natural gas ESCO's correspondence indicated the City's savings for variable pricing should be 15 percent under the LUC's pricing. In its correspondence, the ESCO indicated that fixed pricing could be more or less than the LUC's but did not provide a basis for its reasoning. The ESCO's analysis indicated the City could have potentially saved approximately \$70,800 between May 2014 and August 2015 on natural gas by using the ESCO.

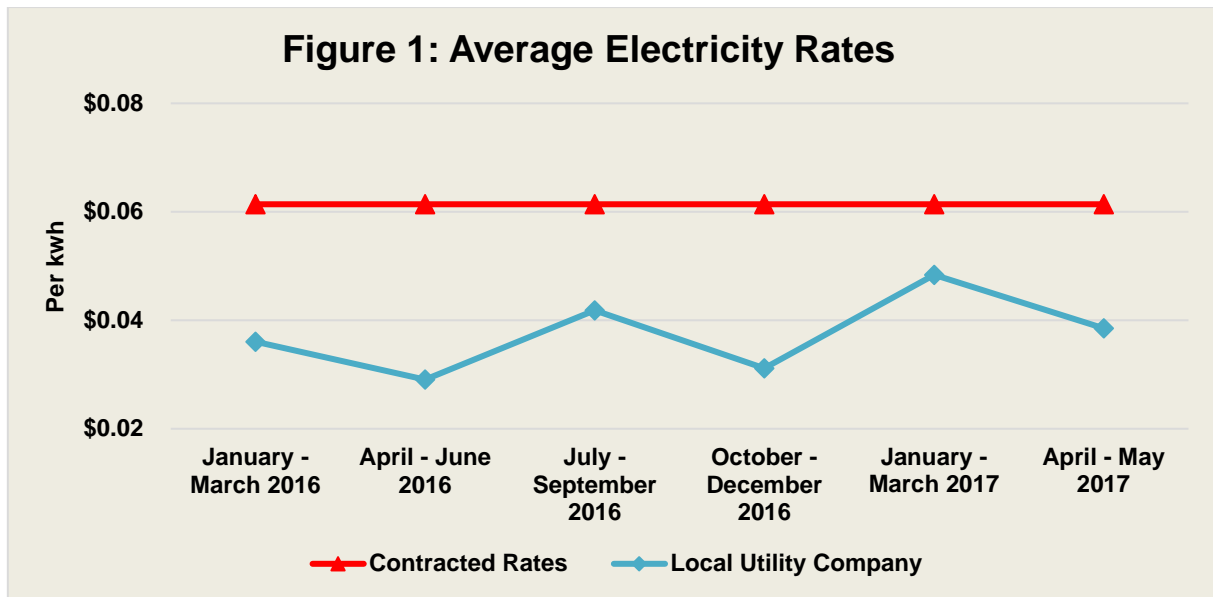
However, neither ESCO's analysis provided sufficient information to evaluate whether the cost savings analyses were accurate or reasonable. For example, the ESCO's electricity analysis indicated comparison pricings between the ESCO and LUC for 24 months. However, it does not indicate how the ESCO determined the LUC pricing, since the rates differ significantly between service classifications, or which 24 months were used. Further, although the LUC only offers variable pricing, fluctuating based on market conditions, the analysis provided to the City by the ESCO showed the LUC price comparison remained constant for three years. The ESCO's natural

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<sup>4</sup> We included the LUC rates in the report for potential benchmark purposes only. City officials can use the LUC rates to help assess the reasonableness of the utility contract the City is considering.

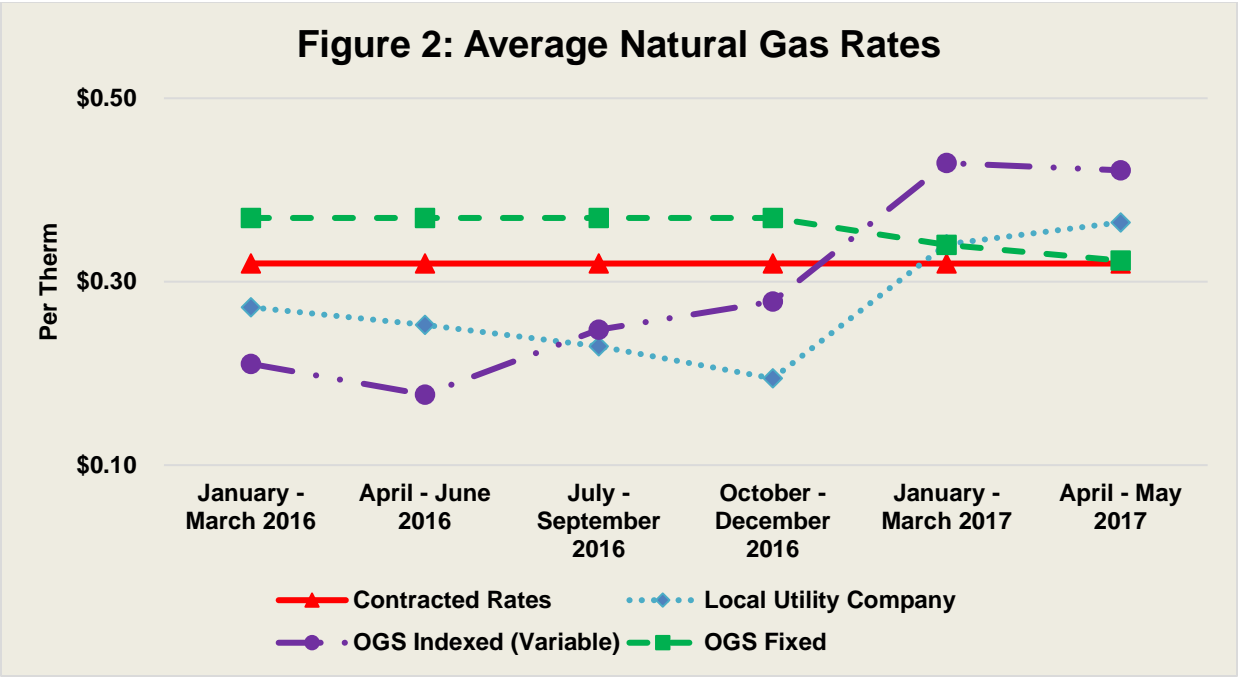
gas analysis also did not indicate how the LUC rate was calculated, since the rates vary significantly among the service classifications, or how the service classification rates were applied to the therms.<sup>5</sup> Therefore, officials could not use the cost savings reports to evaluate the City’s utility procurement options and did not provide evidence to support they used other methods to evaluate the City’s utility procurements. Without adequately evaluating procurement options, officials have little assurance that they are expending significant resources prudently and in the best interests of taxpayers.

Potential Benchmark Comparisons – We calculated average electricity and natural gas rates paid for three-month periods from January 1, 2016 through March 31, 2017, and for the period April 1, 2017 through May 31, 2017. We compared the rates paid to potential benchmark rates averaged for the same time periods. We found that the City’s average electricity rates were consistently higher than the average benchmark rates, by approximately 63 percent (Figure 1). For example, the City’s kwh<sup>6</sup> electricity rates averaged \$0.0616 while the LUC rates averaged \$0.0377. Overall, the City’s average natural gas rates were also slightly higher than other average benchmark rates, by 8 percent (Figure 2). For example, overall the City’s average therm natural gas rate was \$0.3198, while the LUC rate was \$0.2961 (Appendix A). The City’s natural gas rates, at the end of our audit scope, were less than the benchmark rates we identified.

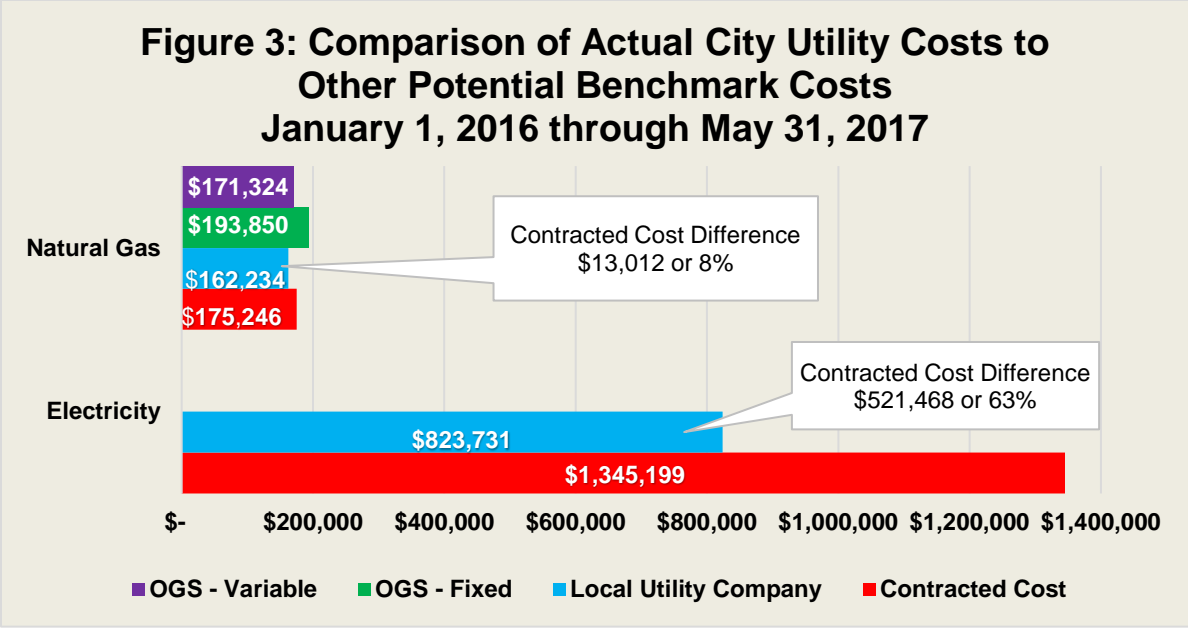


<sup>5</sup> Therm (Thermal Unit) is a unit of measurement used to measure gas consumption.

<sup>6</sup> Kwh (Kilowatt-Hour) is a unit of measurement used to measure electricity consumption.



We also analyzed the City’s electricity and natural gas purchases and compared the actual costs paid to the costs charged by their LUC<sup>7</sup> and the OGS natural gas variable and fixed costs from January 1, 2016 through May 31, 2017 (17 months). We found that the City paid significantly more for electricity and slightly more for natural gas when compared to the benchmark costs, utility costs from other providers. For example, the City paid approximately \$521,000 more for electricity and \$13,000 more for natural gas purchases (Figure 3).



<sup>7</sup> Variable rates will fluctuate based on the wholesale market prices.  
<sup>8</sup> We evaluated \$1,345,199 of the City’s \$1,495,211 electricity purchases.

Without an effective evaluation process, there is an increased risk that the City may have spent significantly more money for electricity than necessary. Although the City's contract costs for natural gas were similar to the benchmark costs we identified, without evaluating the contract rates and terms, officials have less assurance that they are expending taxpayer resources prudently.

Contract Terms – When obtaining goods or services from an awarded contract, it is imperative that officials obtain pertinent details, such as awarded rates and contract terms, prior to entering into their own contracts with the vendor. Officials should then ensure that the terms of their contracts with the vendor(s) mirror what was awarded to help safeguard against paying more than required.

The City received Genesee County's Board award resolution, which identified the electricity and natural gas awarded ESCOs based upon the bid from the aggregator. In addition, the City received the program agreements between Genesee County, the aggregator and the awarded electricity and natural gas ESCOs. Among other things, the program agreements identified the utility territories and timeframe of the contracts.<sup>8</sup> However, we were told that City officials did not obtain the awarded ESCOs' rates and terms. As a result, there is an increased risk that the contracts they engaged in with the ESCOs could be inconsistent with the awarded bid rates.

We compared the award resolution and program agreements to the City's ESCO contracts to assess whether they contained the same terms. Although the program agreements indicate that fixed prices will be determined based on market conditions at the time of contract executions, neither the award resolution nor the program agreements contained a fixed rate price. Therefore, we were unable to assess whether the fixed price paid by the City was accurate or appropriate.

## **Recommendations**

The Council should:

1. Evaluate available electricity and natural gas purchasing options prior to authorizing the City's procurement method.

The Board of Contracts and Supply should:

2. Periodically analyze and review other procurement options to ensure the City is receiving the lowest possible prices for electricity and natural gas.
3. Obtain bid award details and contracts that the City purchases from and review to ensure they contain all relevant information (e.g., rates/surcharges/timeframes) and only engage in City contracts that comply with applicable award terms.

The Council has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and

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<sup>8</sup> Effective date of April 1, 2015 through October 31, 2018, which may be extended for up to two additional one-year periods through October 31, 2020.

forwarded to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Council to make this plan available for public review in the Clerk's office.

We thank the officials and staff of the City for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo  
Deputy Comptroller

## APPENDIX A

<b>Figure 4: Electricity Usage and Cost Comparison January 1, 2016 through May 31, 2017</b>			
Department	Supply Usage (Kwh)	ESCO Supplier (Actual Cost)	Potential Benchmark Costs Local Utility Company
Central Maintenance	3,671,298	\$225,915	\$163,870
Fire	897,918	\$55,254	\$39,964
Street Lighting	13,087,506	\$807,186	\$433,896
Swimming Pools	1,035,519	\$63,798	\$47,255
Water	3,150,412	\$193,046	\$138,746
<b>Total</b>	<b>21,842,653</b>	<b>\$1,345,199</b>	<b>\$823,731</b>
Supplier Difference to Other Sources			\$521,468
% Difference			63%
Cost per Kwh		\$0.0616	\$0.0377

<b>Figure 5: Natural Gas Usage and Cost Comparison January 1, 2016 through May 31, 2017</b>					
Department	Supply Usage (Therms)	ESCO Supplier (Actual Cost)	Potential Benchmark Costs		
			Local Utility Company	OGS Indexed Variable	OGS Fixed
Central Maintenance	202,976	\$64,912	\$60,799	\$63,797	\$71,640
Fire	118,657	\$37,946	\$34,782	\$36,963	\$42,032
Parks	51,106	\$16,344	\$15,069	\$15,778	\$18,124
Police	58,951	\$18,853	\$17,304	\$18,613	\$20,873
Recreation	52,022	\$16,637	\$15,183	\$15,892	\$18,490
Water	64,272	\$20,554	\$19,097	\$20,281	\$22,691
<b>Total</b>	<b>547,984</b>	<b>\$175,246</b>	<b>\$162,234</b>	<b>\$171,324</b>	<b>\$193,850</b>
Supplier Difference to Other Sources			\$13,012	\$3,922	(\$18,604)
% Difference			8%	2%	(10%)
Cost per therm		\$0.3198	\$0.2961	\$0.3126	\$0.3538



## **APPENDIX B**

### **RESPONSE FROM CITY OFFICIALS**

City officials' response can be found on the following page.



**CITY OF ALBANY**  
**OFFICE OF ADMINISTRATIVE SERVICES**  
24 EAGLE STREET  
ALBANY, NEW YORK 12207  
TELEPHONE (518) 434-5078

KATHY M. SHEEHAN  
MAYOR

RACHEL McENENY  
COMMISSIONER OF ADMINISTRATIVE SERVICES

October 18, 2018

Ann C. Singer, Chief Examiner  
Statewide Audit  
State Office Building, Suite 1702  
44 Hawley Street  
Binghamton, NY 13901-4417

Re.: OSC Response

Dear Ms. Singer,

The City of Albany would like to commend the staff at the Office of the State Comptroller (OSC) who conducted this audit. The team from OSC assigned to this audit were courteous, professional and accommodating throughout the process.

The City has no objections to the three recommendations offered in this audit. As has been made clear by the analysis and correspondence provided by the City to OSC, the City expected to realize considerable savings by joining Genesee County on this contract. At the time, very little guidance existed for cities entering into agreements with ESCOs. It is our belief that the consultant, who was retained by a previous team, relied on expert input and guidance; and that they provided the best possible advice given the market conditions at the time. Hindsight has shown that cities have more to consider before entering into these types of agreements for the procurement of energy.

Currently, there is an effort underway to promote Community Choice Aggregation within the City of Albany by several external stakeholders. The administration is taking lessons learned from this exercise and meeting the efforts and advocacy of the New York State Energy Research and Development Authority (NYSERDA) and others with an appropriate level of skepticism.

Sincerely,

Rachel McEneny  
Commissioner of Administrative Services

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to assess whether local governments and school districts that utilize aggregators are ensuring they are procuring electricity and natural gas at the lowest prices for the period January 1, 2016 through May 31, 2017. To accomplish the objective, our audit procedures included the following:

- We interviewed City officials and employees to gain an understanding of the electricity and natural gas procurement process.
- We reviewed policies, procedures and Board minutes related to the procurement of electricity and natural gas.
- We compared the Genesee County electricity and natural gas bid award resolutions and program agreements to the City's contracts to assess whether the terms were the same.
- We reviewed contracts between the City and ESCOs to assess whether the City paid the contract rates, fees and surcharges. We judgmentally sampled (the first invoice and every fifth invoice, with a maximum of five, for each department) 22 of 594 natural gas invoices and 22 of 1,295 electricity invoices, with no expectation of greater or lesser results.
- We judgmentally, based on size and number of sub-accounts, selected five electricity master accounts of the LUC, which consisted of 90 percent of total supply and delivery payments to the LUC. We reviewed all supply charges correlated to the five master electricity accounts to assess total supply usage, service classifications and rates paid. Finally, we applied the percentage of the supply portion of the invoices to the remaining supply and delivery payments to obtain an estimated electricity supply population total of approximately \$1.5 million. In addition, we reviewed all natural gas invoices to assess total supply usage, service classifications and rates paid.
- We obtained rates, based on service classifications, from the LUC and OGS and compared the City's electricity and natural gas costs (usage and service classifications) to the LUC and OGS costs to assess whether there was a cost variance.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.