

THOMAS P. DiNAPOLI
COMPTROLLER

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET
ALBANY, NEW YORK 12236

GABRIEL F DEYO
DEPUTY COMPTROLLER
DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY
Tel: (518) 474-4037 Fax: (518) 486-6479

February 2019

Hon. Anthony J Picente, Jr., County Executive
Members of the Board of Legislators
Oneida County
800 Park Avenue
Utica, NY 13501

Report Number: S9-18-20

Dear County Executive Picente and Members of the Board of Legislators:

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 aggregators¹ for energy purchases are ensuring they are procuring electricity and natural gas at the lowest prices. We included Oneida County (County) in this audit. Within the scope of this audit, we examined the County's utility purchases for the period January 1, 2016 through May 31, 2017. We extended our audit scope back to December 2013 to review contract terms and November 2015 to review Board resolutions. 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 County. We discussed the findings and recommendations with County officials and considered their comments, which appear in Appendix B, in preparing this report. County officials disagreed with certain findings but indicated they plan to initiate some corrective action. Appendix C includes our comments on the issues raised by the County's response. 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.

¹ For 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

County officials did not provide written documentation or verbal assertions during our fieldwork to demonstrate that the County entered into utility contracts without first evaluating the contracts or comparing prices to other potential procurement options or potential benchmark rates. Between January 1, 2016 and May 31, 2017, the County spent \$2.4 million for electricity and natural gas and paid electricity rates that were 71 percent higher than benchmark rates we identified for comparisons. Without an effective evaluation process, there is an increased risk that the County spent more than necessary for electricity and natural gas. Comparing the benchmark costs to the County's energy costs, the County paid approximately \$863,000 (71 percent) more for electricity than the potential benchmark we identified. Generally, the County utilized the Office of General Services variable natural gas contract and spent approximately \$97,000 (22 percent) less for natural gas than another benchmark rate we identified for comparison.

Officials did not obtain sufficient documentation of the Energy Service Companies' awarded complete contract terms to ensure that terms they ultimately agreed upon were consistent with all of the awarded terms. As a result, the County and we were unable to assess whether the utility rates paid by the County are accurate and appropriate. Therefore, there is an increased risk that the County may be paying more than necessary for its utilities. Finally, the County extended its electricity contracts with the ESCO beyond the available contract terms, which may not be in the County's best interests.

Background and Methodology

The County is located in the central portion of upstate New York commonly referred to as the Mohawk Valley region with a population of approximately 235,000 residents. The County is governed by an elected 23-member Board of Legislators (Board), one of whom serves as the Chair. The Board is responsible for the general oversight of the County's financial affairs and for safeguarding its resources. The County Executive is the County's chief executive officer and is responsible, along with other administrative staff, for the County's day-to-day management under the Board's direction. The Board is responsible for the approval of certain contracts and the County Executive is generally responsible for the execution of contracts. The County's 2017 budgeted expenditures totaled approximately \$393.5 million. The County provides various services to its residents, including public health and safety, employment assistance, medical assistance and temporary assistance to individuals and families.

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 the 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 County uses an aggregator for the procurement of electricity and uses the

NYS Office of General Services (OGS) contract for the procurement of natural gas. The aggregator procures 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 bid, which is let by Genesee County.² The aggregator's consultant reviews and evaluates the bid submissions and recommends the winning ESCOs. However, there is no requirement for a participant to purchase from the recommended ESCOs. OGS, at times, aggregates commodities, such as natural gas. The OGS natural gas contract is restricted to authorized users.³ Modification of contract terms, such as adding authorized users, generally requires the mutual written agreement of the Commissioner of the Office of General Services and the Contractor (ESCO).

We examined the County'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 OGS rates for natural gas to assess whether the costs were similar. We also reviewed and compared invoices to the terms (rates, fees, surcharges and timeframes) to the County'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 D of this report.

Audit Results

Evaluating Procurement Options – County 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 potential 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 County'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. Further, we included LUC rates in the report for potential benchmark purposes only. County officials can use LUC rates to help assess the reasonableness of the utility contracts the County is considering.

The Board authorized⁴ the County to enter into electricity contracts with the ESCO that the aggregator recommended. The County utilized the OGS contract for the purchase of natural gas.

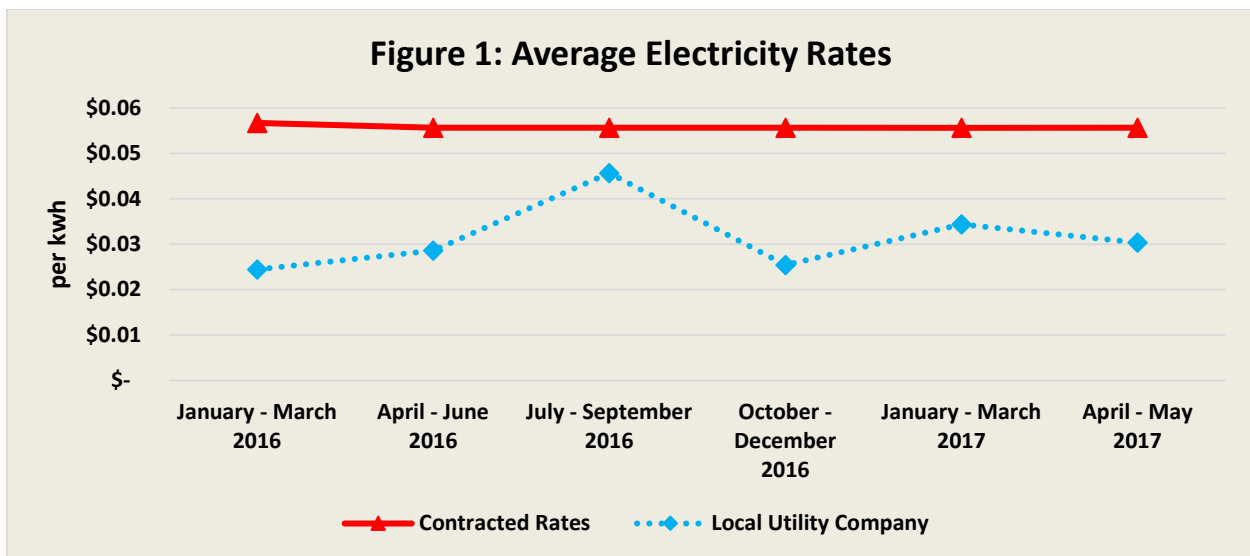
² The legal propriety of being a participant in the "aggregator" program, as well as the procurement process of the bid award, was not within the scope of this audit.

³ Authorized users submitted their intent to participate in the contract, estimated dekatherm quantities and service type (variable, fixed or interruptible) as part of the bid solicitation packet.

⁴ According to the County resolution, on November 12, 2015, the County legislature authorized and approved the acceptance of a contract between the County and the ESCO from January 2, 2016 through January 29, 2019. In addition, on February 10, 2016 the County legislature authorized and approved the acceptance of a contract between the County's Correctional Facility and the ESCO from March 18, 2016 through January 17, 2019.

However, County officials told us during fieldwork they did not evaluate the electricity and natural gas contracts prior to entering into them and did not consider any other procurement options. Rather, officials told us they have been purchasing electricity through the aggregator and natural gas through OGS for quite some time and have relied on the aggregators to get the best rates for the County. As a result, officials have less assurance that they expended 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 County’s average electricity rates were consistently higher than the average benchmark rates, by approximately 71 percent (Figure 1).⁵ For example, the County’s kwh⁶ electricity rates averaged \$0.0551 while the LUC rates averaged \$0.0322. Overall, we found the County’s variable natural gas rates to be generally lower than other average benchmark rates, by 15 to 22 percent (Figure 2). For example, the County’s OGS therm⁷ natural gas rates averaged \$0.2506 while the OGS fixed rate was \$0.3220. For the service classifications⁸ that had a comparable LUC rate, the County’s natural gas rates averaged \$0.2687 while the LUC rate was \$0.3174 (Appendix A).

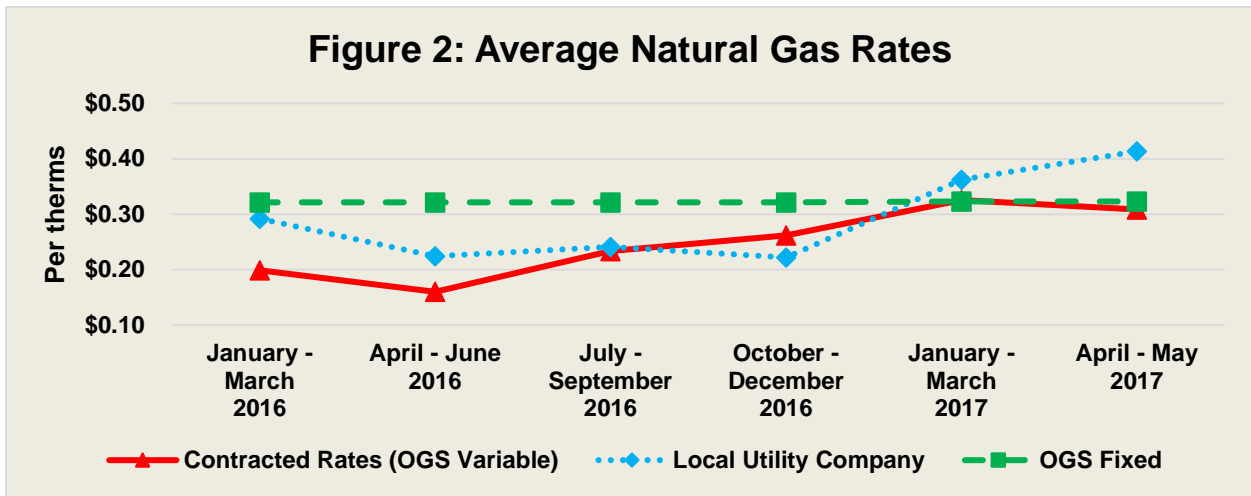


⁵ As previously noted, the inclusion of LUC rates in this report was for potential benchmark purposes only.

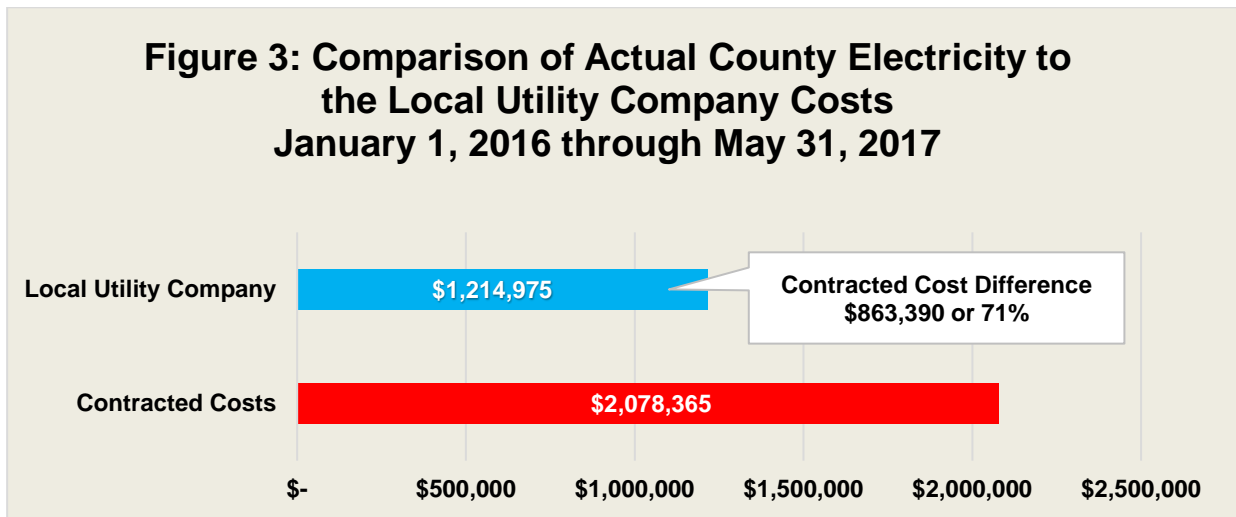
⁶ Kwh (Kilowatt-Hour) is a unit of measurement used to measure electricity consumption.

⁷ Therm (Thermal Unit) is a unit of measurement used to measure gas consumption.

⁸ The LUC does not offer a comparable service classification for \$193,701 of natural gas purchases. We compared rates for purchases of \$146,802.



We also analyzed the County’s electricity and natural gas purchases and compared the actual costs paid to the costs charged by their LUC¹⁰ and the OGS fixed rate contract from January 1, 2016 through May 31, 2017 (17 months). We found that the County paid significantly more for electricity but less for natural gas when compared to other potential benchmark costs, utility costs from other providers. For example, the County paid approximately \$863,000 (71 percent) more for electricity (Figure 3) and \$97,000 (22 percent) less for natural gas purchases (Figure 4).



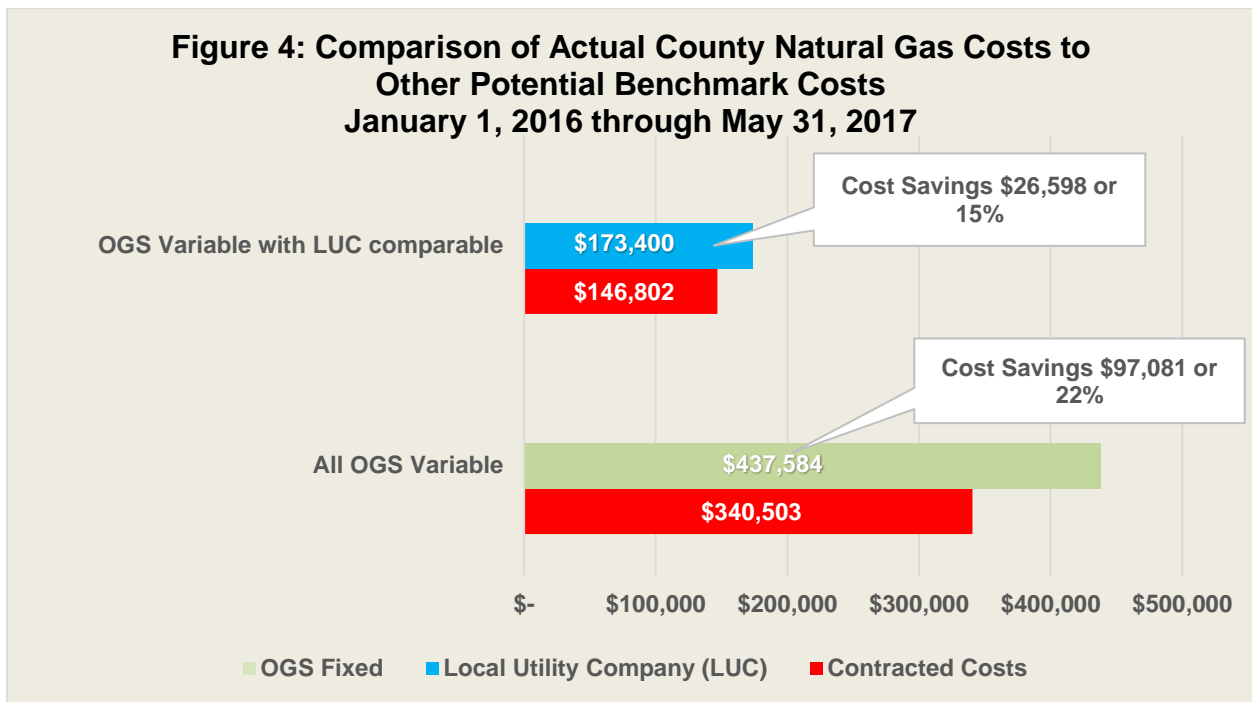
We compared the natural gas supply costs purchased through the OGS variable¹¹ contract to other benchmark costs (LUC and OGS fixed). The County purchased natural gas totaling \$340,503 from the OGS variable contract. Of this, only \$146,802 could be compared to LUC rates. The LUC does not offer a comparable service classification for the remaining \$193,701.

⁹ Figure 2 represents a rate comparison of the County’s OGS variable rate contract to other available benchmark rates. The County’s OGS variable rate contracts represent approximately 96 percent of all natural gas supply purchases.

¹⁰ Variable rates will fluctuate based on the wholesale market prices.

¹¹ The County purchased approximately 96 percent of its supply of natural gas from OGS variable rate contracts totaling \$340,503.

**Figure 4: Comparison of Actual County Natural Gas Costs to Other Potential Benchmark Costs
January 1, 2016 through May 31, 2017**



Without an effective evaluation process, there is an increased risk that the County may have spent significantly more money for electricity and natural gas than necessary.

Contract Terms – When obtaining goods and services from an awarded contract, it is imperative that officials obtain pertinent details, such as the 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 County received Genesee County’s Board award resolution, which identified the electricity awarded ESCO based upon the bid from the aggregator. In addition, the County received the program agreements between Genesee County, the aggregator and the awarded electricity ESCO. Among other things, the program agreements identified the utility territories and timeframe of the contracts.¹² However, County officials told us that they did not obtain the awarded ESCO’s rates and terms. As a result, there is an increased risk that the contracts they engaged in with the ESCO could be inconsistent with the awarded bid rates.

We compared the award resolution and program agreement to the County’s ESCO electricity contracts to assess whether they contained the same terms. Although the program agreement indicates that fixed prices will be determined based on market conditions at the time of contract executions, neither the award resolution nor the program agreement contained a fixed rate price. Therefore, we were unable to assess whether the fixed price paid by the County was accurate or appropriate. Further, officials inappropriately engaged in contracts on November 16, 2015 that

¹² 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.

extended through January 29, 2019. The initial award term¹³ was valid through October 2018, and could only be extended by approval of the ESCO, Genesee County and the aggregator. Oneida County officials themselves were not authorized to extend them.

Finally, we compared the OGS natural gas contract rates and terms to the amounts the County paid and found that the County paid according to contract rates and terms.

Recommendations

The Board should:

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

County officials should:

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

The Board 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 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 Board to make this plan available for public review in the Clerk's office.

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

Sincerely,

Gabriel F. Deyo
Deputy Comptroller

¹³ The extension clause allows for two additional one-year extension terms. On March 25, 2016, the ESCO, Genesee County and the aggregator extended the contract through October 2020.

APPENDIX A

Figure 5: Electricity Usage and Cost Comparison January 1, 2016 through May 31, 2017			
Department	Supply Usage (Kwh)	ESCO Supplier (Actual Cost)	Potential Benchmark Costs Local Utility Company
Emergency Communications	9,914,995	\$540,851	\$364,788
Buildings and Grounds	374,677	\$21,022	\$18,502
Public Works - Traffic Control	14,622	\$824	\$421
Road Machinery	408,148	\$15,675	\$14,252
Correctional Facility	3,962,182	\$201,211	\$139,415
Water/Sewage Treatment	23,035,113	\$1,298,782	\$677,597
Total	37,709,737	\$2,078,365	\$1,214,975
Supplier Difference to Other Sources			\$863,390
% Difference			71%
Cost per Kwh		\$0.0551	\$0.0322

**Figure 6: Natural Gas Usage and Cost Comparison
January 1, 2016 through May 31, 2017**

	Contracted Supplier			Potential Benchmark Costs	
Department	Contract Type	Supply Usage (Therms)	ESCO Supplier (Actual Cost)	Local Utility Company	OGS Fixed
Aviation	OGS Fixed	29,078	\$9,565	\$10,701	
Buildings and Grounds		3,695	\$1,215	\$1,398	
Water/Sewage Treatment		6,001	\$1,929	\$1,685	
Subtotal		38,774	\$12,709	\$13,784	
Cost per Therm			\$0.3278	\$0.3555	
Aviation	OGS Variable	145,135	\$48,158	\$53,460	\$46,842
Buildings and Grounds		332,610	\$81,928	\$98,439	\$107,083
Road Machinery		67,921	\$16,514	\$21,273	\$21,878
Water/Sewage Treatment		595	\$202	\$227	\$192
Subtotal		546,261	\$146,802	\$173,399	\$175,995
Cost per Therm			\$0.2687	\$0.3174	\$0.3222
Buildings and Grounds	OGS Variable with No LUC Comparable	449,626	\$99,763		\$144,787
Sheriff Correctional Facility		281,664	\$76,227		\$90,594
Water Pollution Control		81,413	\$17,711		\$26,208
Subtotal		812,703	\$193,701		\$261,589
Cost per Therm			\$0.2383		\$0.3219
Total		1,397,738	\$353,212	\$187,183	\$437,584
Total Supplier Difference to Other Sources					
OGS Fixed	Costs		\$12,709	\$13,784	
	% Difference			(8%)	
	Cost per Therm	38,774	\$0.3278	\$0.3555	
All OGS Variable	Costs		\$340,503		\$437,584
	% Difference				(22%)
	Cost per Therm	1,358,964	\$0.2506		\$0.3220
OGS Variable with LUC comparable	Costs		\$146,802	\$173,399	
	% Difference			(15%)	
	Cost per Therm	546,261	\$0.2687	\$0.3174	

APPENDIX B

RESPONSE FROM COUNTY OFFICIALS

County officials' response can be found on the following pages. County officials provided us with, and referred to, Exhibits A and B in their response letter. However, we did not include these Exhibits in the final report, as our report provides sufficient details of our audit findings within our audit scope period. Further, Exhibit B was a draft version of this letter report. This final report includes all relevant information.



ONEIDA COUNTY OFFICE OF THE COUNTY EXECUTIVE

ANTHONY J. PICENTE, JR.
County Executive
ce@ocgov.net

October 25, 2018

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

Re: Report Number S9-18-20

Dear Ms. Singer:

Please accept this letter as the County of Oneida's response to the findings of the Office of the State Comptroller (OSC) as set forth in Report Number S9-18-20 (the Report).

The County of Oneida (the County) disagrees with the findings set forth in the Report. OSC's methods of review were flawed; utilizing selective and incomplete information, ignoring accepted financial principles and practices, and omitting relevant information which would have affected the outcome of the audit.

See
Note 1
Page 19

The County is committed to financial responsibility and has achieved fiscal stability through prudent planning, conservative spending and minimization of financial risk posed by volatile markets.

Competitive Bidding

At the beginning of this audit, the auditors demonstrated a lack of knowledge concerning how utilities are competitively bid by municipalities. Attempts by County personnel to educate the auditors were not productive. [REDACTED] also reached out to the auditors, but was similarly unsuccessful. Auditors remained convinced throughout the audit that the County was derelict in its duties for failing to find benchmarks and to perform an analysis with said benchmarks. The County's procurement of utilities is governed by State and local law. Even if prices are higher due to legal compliance, the County cannot procure in contravention of the procurement statute. Benchmarks are not relevant for goods that must be competitively bid.

See
Note 2
Page 20

See
Note 1
Page 19

Due to the amount spent every year on utilities, the County must comply with General Municipal Law §103 requirements for public competitive bidding. The County does not privately solicit quotes from suppliers that are potential bidders as doing so would make them vulnerable to disqualification and other legal ramifications. The County also does not seek out the rates paid by private organizations, as they are not available to the County. The auditors remained convinced that the County should waste resources seeking useless information of this nature. The County occasionally has to pay higher rates

See
Note 1
Page 19

than in the private sector to comply with State laws, and costs associated with abiding by the law are unfortunate but unavoidable. The State has exempted many of its own entities, such as SUNY campuses, from having to purchase competitively bid utilities, but not counties.

The County's utility procurement options are to produce its own electricity, to "piggyback" (a statutory term referring to a municipality's right to avail itself of another municipality's procured rates) off of Genesee County's contract, or to seek competitive bids through OGS, New York School and Municipal Energy Consortium (NYSMEC), another aggregator, or individually. Organizations that go out to bid, including OGS and NYSMEC, are locked into a contract with the winning bidder, and therefore going out to bid with either is not a means of comparison shopping. Contracting with the Local Utility Company (LUC) as suggested in the Report, would be illegal, as it would constitute a violation of the competitive bidding statutes.

See
Note 1
Page 19

The Legal Counsel for the OSC acknowledged that the County is required to purchase competitively bid utilities. Through the utilization of a non-publicly bid rate, the Report implies that the County should procure utilities without complying with General Municipal Law. In light of the contradictory nature of OSC's Counsel's position on competitive bidding and OSC's auditor's position on purchasing from the LUC, the County requests that OSC's Counsel supply binding legal authority supporting OSC's position that the LUC should have been selected as the provider of electricity.

See
Note 1
Page 19

History of Electricity Procurement

From 2009 until 2012 the County procured electricity through a contract obtained through a public competitive bid issued as part of a group called [REDACTED]. It consisted of the County, the Oneida-Herkimer Solid Waste Management Authority, the City of Rome, the City of Utica and Mohawk Valley Community College, and the bid was organized by the Oneida County Purchasing Department and the Oneida County Department of Audit and Control. A consultant, [REDACTED] was hired to prepare the bidding documents and conduct a reverse auction online. The County was very disappointed in the ESCO obtained and was overwhelmed by the amount of work necessary to organize [REDACTED] and conduct the auction. The contract with the consultant, which was anticipated to expire in 2015, was terminated two years early due to chronic billing errors and terrible customer service from the ESCO. These errors included being charged taxes, which the County had to request to be removed from the bills.

In light of the problems encountered by the County with [REDACTED] the County evaluated its procurement procedures for utilities and decided to transfer the procurement function to the Department of Public Works, Division of Engineering. The Division of Engineering was selected based upon its experience in bidding out multimillion dollar projects, and hiring experts that understand highly technical matters.

At the same time, OGS was investigating entering the electricity market, and the County was approached as a potential pilot participant. After numerous meetings and discussions, the pilot fell through as OGS was unable to enter the electricity market. It is believed that OSC decided that the electricity market was too volatile and posed too much risk for OGS to enter.

The Commissioner of the Department of Public Works and the Deputy Commissioner of Engineering learned about ██████ through the New York State County Highway Superintendents Association and the New York State Association of Counties, and performed a thorough investigation of ██████ ██████ was much smaller than it is today, but was highly recommended by officials from other municipalities. The ability to receive the services of an expert energy consultant was particularly appealing. Also, the cooperative nature of ██████ is consistent with the philosophy of the County.

The results of the 2009 bid, 6.445 cents per kilowatt-hour, were valid until 2012, so the County had a basis for comparison for a publically bid, fixed rate utility. In late 2013, the price of electric was anticipated to rise, and therefore the County locked in a fixed rate for electric to protect taxpayers, with a contract that started in February of 2014. ██████ rate was lower than the ██████ bid, at 5.997 cents per kilowatt-hour, for the 2014 to 2015 term. The contract was signed during the Polar Vortex, and saved the County a considerable amount of money, as demonstrated in Figure 2.

The County was very pleased with the prices and service provided by ██████ and was offered a rate of 5.567 cents per kilowatt-hour for the 2016 to 2019 period. It therefore decided to remain with ██████ at the end of 2015, ensuring that a contract was signed in advance to prevent any gaps in the procurement of publicly bid electricity. As the County had just signed a contract, it was not formally evaluating other electricity providers around January 1, 2016, when the audit period began. However, the Division of Engineering is constantly monitoring utility rates and trends and is provided with market information through its active participation in the New York State County Highway Superintendents Association, the New York State Association of Counties, and also through ██████ For the OSC to imply that the County failed to perform an evaluation is incredibly misleading.

See
Note 1
Page 19

Electric Audit Period

The original audit letter stated “Our audit will cover the period January 1, 2016 through the end of our fieldwork.” Despite this, they requested all bills back to January 1, 2015. The entrance conference occurred on Tuesday, August 15, 2017, and auditors were in the County Office Building for weeks. The preliminary audit findings were provided at a meeting February 6, 2018. At that meeting, the auditors gave County officials a table with a comparison of the County’s rate to their benchmark from April 16, 2015 until June 15, 2017, finding that the County overpaid by 39.3%. It is attached as Exhibit A.

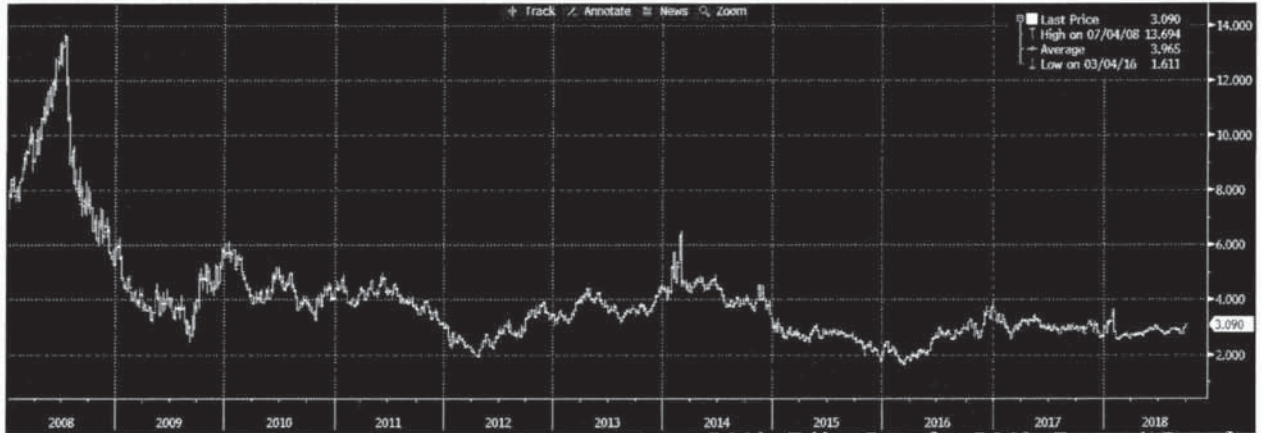
The Report compares prices from January 1, 2016 to May 31 2017, finding that the County overpaid by 71%. It does not address the decision to cut off the analysis in May 2017, before field work even began. This change inflated the difference between the benchmark and the County’s expenditures, as the variable rate for electric increases in the summer months, see Figure 2 below. When asked at the final meeting about this change, the auditors stated that it is within their authority to change the scope of an audit midway through.

See
Note 3
Page 20

The officials responsible for procurement here at the County of Oneida each have decades of experience and are familiar with the market cycles. While the current low variable rate for electricity may look enticing to someone with no procurement experience, markets fluctuate. Below is the 10 year history of average natural gas prices. This is relevant to electricity prices as natural gas is the underlying

commodity that dictates the price of electricity. In Figure 1, note the spikes in 2008 from Hurricane Katrina and in 2013.

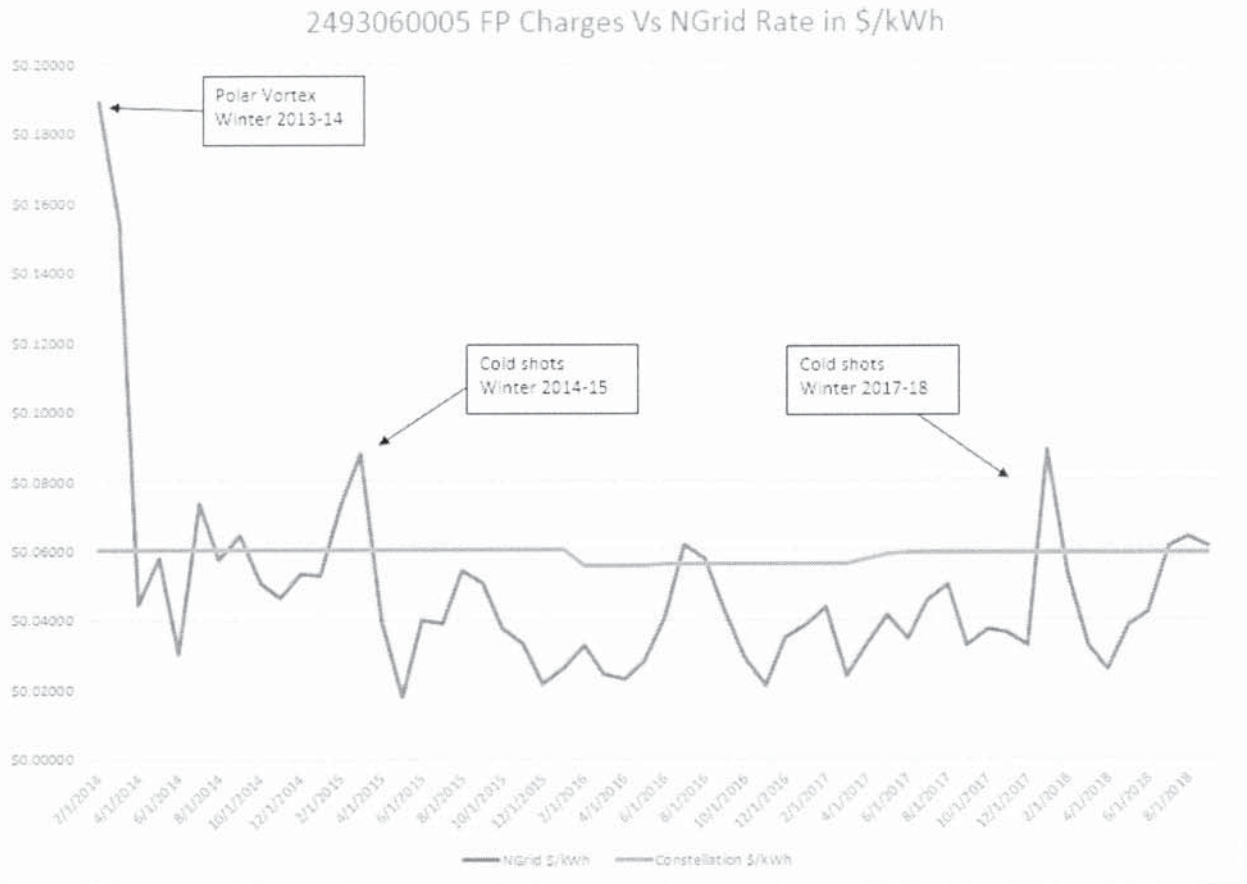
Figure 1



See
Note 4
Page 20

The spikes in nature gas rates are reflected in the rate for electricity in National Grid territory, in Figure 2, below.

Figure 2



See Note 4 Page 20

Figure 2 represents electric rates for the duration of the County's relationship with █████ so far. It is easy to manipulate the audit result by changing the audit period alone. OSC itself alleges 39.3% overpayment if the audit period is from April 16, 2015 until June 15, 2017, and 71% overpayment if the audit period is from January 1, 2016 to May 31 2017. The dramatic difference between 39.3% and 71% is due to the omission of the summer of 2015 and two weeks of the summer of 2017; which are not even particularly high spikes in prices.

See Note 3 Page 20

It is highly significant that the OSC has the County's bills for the period from January 1, 2015 until April 16, 2015, and chose not to include them in either analysis it provided to us. This period would have included the price spike labeled "Cold shots of winter 2014-15" on Figure 2. If the OSC had not thrown out these bills, the analysis would have demonstrated significantly smaller alleged overpayment. If the analysis had included the polar vortex in 2014, it likely would have found no overpayment at all. Further, the value of any contractual relationship cannot be accurately measured over only a portion of the performance. The entire term determines the value. An analysis of only a portion of the term, particularly with respect to a variable rate versus a fixed rate, is necessarily inaccurate.

See Note 3 Page 20

See Note 1 Page 19

Variable Rate Benchmark

The lead auditor stated at the final meeting that she believes that it is in the best interest of the County to use a variable rate. The careful selection of the data suggests that this belief directed the course of the audit. The County does not share the belief for the market volatility reasons stated above, but also for cash flow and budgetary reasons. Many public corporations, like schools, shut down in natural disasters that disrupt energy supplies and cause upward spikes in electricity prices. Due to the nature of a county government, closing is not an option. The County operates the Sheriff's office, emergency management systems, and department of highways and bridges, which all work overtime hours during natural disasters. Not only does the County continue to consume electricity during such events, but some departments will consume more electricity than normal. At the same time, the County must have sufficient cash flow to pay overtime to the employees, purchase goods such as salt, repair infrastructure, and provide goods and services to residents that are impacted.

See
Note 5
Page 20

The County budgetary process also informs the procurement process. A County is unable to appropriate additional funds in the event of unanticipated expenses. The County budget is fixed annually and taxes are collected in advance. Once the budget is set, the County has no ability to procure additional monies other than through borrowing. Stable rates of taxation with no midyear borrowing are beneficial to the County and to residents as they bolster the County's bond rating which, in turn, lowers what the County pays on its bonds.

By securing a fixed rate for electricity, the County is able to provide a measure of stability to its budget to allow for other expenses. This course of action is not necessary for all public corporations audited by the OSC, but the auditors did not include this pivotal issue in their analysis. For example, the State University of New York is able to receive additional funds through deficiency appropriations legislation. After Hurricane Katrina, the State of New York passed Bill Number A9562A which provided Twenty-Nine Million One Hundred Thousand dollars (\$29,100,000) to the State University of New York for energy costs alone. While a variable rate creates savings when markets are low, a fixed rate creates savings when markets are high, and could have saved SUNY and the taxpayers of New York millions.

Furthermore, variable rates are largely based on a customer's utility load profile, and no two load profiles are identical. A credible fixed vs. variable rate comparison would require OSC to obtain variable rates based on a public competitive bid utilizing the County's utility load profile. This issue was discussed with OSC auditors on two occasions. As the auditors demonstrated no understanding of utilities, realistically, they would have needed to hire an energy consultant to perform this level of work.

See
Note 1
Page 19

Omissions from the Report

The Report fails to disclose that the County has an energy consultant, [REDACTED] that is available to it through [REDACTED] and implies that the functions performed by [REDACTED] were not performed at all. The auditors were made aware of the existence of the consultant, were provided with the contact information for the organization, and inexplicably failed to contact it. [REDACTED] prepared the specifications and reviewed the bids submitted by utility companies to Genesee County. It also obtains copies of all energy contracts through [REDACTED] to ensure that the terms are the same as Genesee

See
Note 6
Page 21

County's. This is a very difficult task as the Genesee County contract is very complex, to allow entities in other Load Zones to participate. Oneida County frequently hires experts to evaluate bids and potential contracts regarding complex issues, and it is in its legal right to do so by law. The County is not derelict for delegating expert-level work to experts, and the reasoning for OSC's position on this issue is unclear.

See
Notes
1 & 7
Page
19 & 21

While the County uses ██████ for some of its utilities, it does not purchase solely from ██████ as the Report implies. For instance, the County also purchases electric through a Power Purchase Agreement with a solar developer that placed a solar power plant on County land. Since this was the result of a Request for Proposals, and not a public competitive bid, the County consulted with an attorney at ██████ ██████ to ensure that the County was receiving the best rate. It is estimated that \$200,000 to \$250,000 per year will be saved now that all arrays are producing. For each kilowatt-hour produced the County pays 9 cents and receives 12 cents, with the 3 cents per kilowatt-hour difference appearing as a credit on its electric bill. County officials attempted to give the contract to the auditors, and they declined to accept it. The County is also building anaerobic digesters at its Water Pollution Control facility that will produce electricity from waste water. These projects demonstrate that the County does not blindly purchase utilities without evaluation as the OSC is alleging. The County is always looking for legal, affordable options to utilize.

See
Note 8
Page 21

Exhibit B is the Report provided to the County by OSC on October 18, 2018. Note the references to the Ways and Means committee. These are not appropriate recommendations for a County with a County Executive form of government, as procurement is performed by the executive and not legislative branch. By September of 2018, the audit had been ongoing for over a year, and countless hours had been wasted by County personnel. The Report was only changed after the County informed the auditors at the final meeting that the recommendations violated local law and could not be legally implemented. Note how the Report has remained unaltered otherwise; OSC could not be bothered to tailor a report that was obviously originally drafted for another county.

See
Note 9
Page 21

Conclusion

The audit has many weaknesses that prevent it from being a reliable tool for determining whether the taxpayers of Oneida County are receiving the best value for utilities.

See
Note 1
Page 19

- Audit scope was too narrow to be informative.
- Auditors failed to interview essential personnel and consultants.
- Auditors failed to ask questions necessary to obtain essential information.
- Auditors failed to review and/or lost essential documents provided to them.
- Auditors failed to request and/or accept essential documents.
- Auditors failed to consider the legal constraints on the County.
- Auditors failed to consider the financial constraints on the County.
- Auditors failed to consider the legal structure of the County.
- Auditors failed to include in the Report favorable information known to them.

See
Note 1
Page 19

The County is committed to financial responsibility and minimizing the financial risk to taxpayers posed by volatile markets. Throughout the years, the County has prudently procured utilities at the best rates legally available to it, while protecting taxpayers from risk. In the last six years, the County has not raised the real property tax levy and has received multiple upgrades from the municipal rating agencies. This is reflective of the careful and considered approach of the County to taxes and budgeting, in which procurement plays a substantial role. The County accepts the recommendations in the version of the Report received October 18, 2018. The County, and its consultants, have performed the recommended actions and will continue to do so.

Starting January of 2019, the County will be paying 4.408 cents per kilowatt-hour for electricity through an amended contract through [REDACTED]. This contract was signed in January of 2018; after [REDACTED] let its members know that lower rates were available. The County believes that cooperative services can create savings for taxpayers, and would consider issuing utility bids available to all [REDACTED] members should Genesee County ever decline to do so. The County is committed to the prudent use of taxpayer money, and remains firm in its support of intermunicipal cooperation.

Sincerely,


Anthony J. Picente, Jr.

* This will be further reduced by the credits from the solar power plant.

APPENDIX C

OSC COMMENTS ON THE COUNTY'S RESPONSE

Note 1

The County's response suggests officials misunderstood the audit objective, which was to assess whether local governments and school districts that use aggregators for energy purchases are ensuring they procured electricity and natural gas at the lowest prices and the results of the audit.

County officials did not provide written documentation or verbal assertions during our fieldwork to demonstrate that the County entered into utility contracts without first evaluating the contracts or comparing prices to other potential procurement options. Further, County officials told us during fieldwork they did not evaluate the electricity and natural gas contracts prior to entering into them and did not consider any other procurement options. Rather, they told us they have been purchasing electricity through the aggregator and natural gas through OGS for quite some time and have relied on the aggregators to get the best rates for the County.

Officials indicate that benchmarks are not relevant and are a waste of County resources. We disagree. Benchmarks can assist with assessing the reasonableness of contracts being considered. We do not believe that it is a waste of County resources to ensure it spends taxpayers' resources prudently. In addition, the benchmark rates are readily available and require minimal effort to obtain. Failing to evaluate a contract prior to executing it can result in added costs to County taxpayers.

When officials were unable to provide written documentation or verbal assertions during fieldwork to support they evaluated the County's utility procurement contract before entering it, auditors compared the County's utility procurements to readily available benchmarks to assess whether the lack of a contract evaluation may have cost taxpayers additional money. Office of General Services (OGS) and County contracts, along with local utility company (LUC) rates, can provide such benchmarks. 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.

Moreover, the audit does not suggest or recommend the County procure from the LUC and does not imply that the County should procure utilities without complying with General Municipal Law. We have clarified our report to note that our use of LUC rates are used for benchmark purposes only and should be used to help assess the reasonableness of the utility contracts the County is considering.

Although the County's response indicated officials were pleased with the aggregator's prices and services, officials had no written documentation and made no verbal assertions to support that they evaluated the contract terms prior to entering into them. While officials purported that the Division of Engineering constantly monitors utility rates and trends and provides market information from various sources, officials did not share this information or documentation support with the auditors during our fieldwork. In contrast, on August 28, 2017, the Deputy Commissioner of Public Works told us that he relied on the aggregators to get the best rates.

Also, on August 15, 2017, the Assistant Director of Purchasing explained that the County has always used the State contract (OGS) for natural gas as they believe that this is the best and lowest price available. However, contracts should be effectively analyzed and evaluated before taxpayer dollars are committed.

Exercising due diligence would require, at some level, an analysis of the County's utility procurement options and determining whether the contract pricing is competitive. Considering the cost for procuring utilities, the justification for the procurement decision should have been documented. However, officials did not provide us with any written documentation or verbal assertions to support they analyzed the utility bid, considered other procurement options or assessed contract pricing was competitive. This includes any consultant evaluation documentation officials purport was considered.

The audit recommends the Board evaluate available utility procurement options prior to engaging in a contract. The audit also recommends County officials provide written documentation to demonstrate that the County analyzed and reviewed other procurement options to help ensure the County is receiving the lowest possible prices. County officials also should obtain and review bid details and contracts to ensure they contain all relevant information (e.g., rates/surcharges/timeframes).

Note 2

The propriety of the bid award was not within the scope of this audit.

Note 3

Our report contains findings within the scope of our audit January 1, 2016 through May 31, 2017. We also included this scope period in our engagement letter sent to officials prior to starting the audit. As we stated at our meetings, this audit is part of a multiple-unit audit; the scope period to review and report utility purchases and comparisons was consistent among all of the units for a global comparison. Auditors initially reviewed utility payments for the entire contract. Auditors shared results that were outside the audit scope with County officials but did not include them in the audit report. Further, there was an error in the calculation; the County actually paid 60 percent more than the benchmark we identified, not 39 percent.

Note 4

The charts included in the County's response were not provided to the auditors during fieldwork and do not provide sufficient information (such as service classification and load) to assess whether they are relevant and accurate.

Note 5

The lead auditor's statement has been mischaracterized. She explained that County officials should consider all available procurement options, including variable rates.

Note 6

Officials did not provide any written documentation or verbal assertions during fieldwork that they evaluated the contract terms prior to committing significant County resources, nor did they provide us with documentation from any consultant that an evaluation was completed on the County's behalf. In contrast, the Deputy Commissioner of Public Works told us that he relied on the aggregators to get the best rates.

Note 7

We did not state or imply that delegating expert level work to experts is derelict. When delegating such work to experts, officials still have a responsibility to exercise due diligence to ensure they are minimizing operating expenses and using the taxpayers' dollars wisely. In addition to advertising the bid in the New York State Contract Reporter, the bid was distributed to over 70 New York State licensed energy service companies. However, only four companies bid on the variable electricity RFP and only two were considered. Three companies bid and were considered for the variable natural gas RFP. There was no fixed price bid summary for either electricity or natural gas. Officials were unable to provide written documentation or verbal assertions during fieldwork to demonstrate that there was a financial advantage to using the aggregator's program.

Note 8

The solar procurement does not utilize aggregation and is outside the scope of our audit.

Note 9

We modified our report to reflect this information.

APPENDIX D

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 County 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 County's contracts to assess whether the terms were the same.
- We reviewed contracts between the County and ESCOs to assess whether the County paid the contract rates, fees and surcharges. However, for natural gas, we judgmentally sampled 13 of 439 invoices, with no expectations of greater or lesser results. We chose the first and every fifth invoice, with a maximum of five, for each department.
- We reviewed all electricity and natural gas invoices to assess total supply usage, service classifications and rates paid.
- We obtained rates, based on service periods and classifications, from the LUC and OGS and compared the County'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.