



---

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

---

Division of State Government Accountability

# **Selected Management and Operations Practices**

---

## **New York Power Authority**

---



Report 2015-S-20

August 2016

## Executive Summary

The New York Power Authority (NYPA) is a public authority created in 1931 by Title 1 of Article 5 of the Public Authorities Law (PAL). Chapter 469 of the Laws of 1989 requires the State Comptroller to conduct an audit of NYPA's management practices at least once every five years. Our audit encompasses a review of three areas: ReCharge New York, Disposition of Personal Property, and the Energy Efficiency Program.

### ***A. ReCharge New York***

#### **Purpose**

To determine whether NYPA managed the ReCharge New York program according to statute, accurately reported job creation goals and other program metrics, and phased out customers of the former discounted energy programs as provided in the ReCharge New York law.

#### **Background**

On April 14, 2011, the Governor of New York signed into law the ReCharge New York (RNY) power program as part of Chapter 60 (part CC) of the Laws of 2011 (Law). RNY power is to be allocated to businesses and not-for-profits that commit to retain or increase New York State jobs and agree to make capital investments in their business in accordance with legislative guidelines. RNY makes available 910 megawatts (MW) of economic development power, 50 percent to be purchased by NYPA on the open market and 50 percent from its own hydropower.

Applications for the RNY power program are incorporated into an online Consolidated Funding Application (CFA) maintained by Empire State Development Corporation (ESDC). NYPA's Business Power Allocation and Compliance group (BPAC) extracts applications in batches from ESDC where it is reviewed by NYPA staff and competitively scored using two models (one for job retention and one for job expansion), which apply the 12 criteria detailed in the Economic Development Law, Section 188a.

NYPA's staff makes an allocation recommendation to the Economic Development Power Allocation Board (EDPAB). EDPAB presents the recommended allocations to NYPA's Board of Trustees (Board). RNY power is then officially allocated by the action of the Board.

#### **Key Findings**

- NYPA made errors in the method used to rank applicants for power allocations and treated applicants with the same score differently based upon when their applications were processed. These errors and inconsistent application of the RNY model resulted in applicants' scores being ranked incorrectly.
- NYPA reported certain information to the public that is incomplete and therefore may lead the public to draw incorrect conclusions about the program. For example, NYPA publicly reports power allocations that it offers to RNY applicants, but not the power they actually accept. NYPA also reports job commitments and includes businesses that were awarded a power allocation, but are in pending status because they have not signed a contract. In some cases, these

businesses later declined the contracts. In June 2015, this resulted in an overstatement of job commitments reported by 29,795 or 7.7 percent.

- NYPA's primary mechanism for monitoring compliance with job commitments is flawed. In 12 cases, NYPA allowed customers to refuse to provide required documentation to confirm reported job retention numbers, without consequences. In addition, NYPA has not met its own yearly target for compliance reviews.

## **Key Recommendations**

- Identify resources available within NYPA that can conduct an independent and objective review of the models for accuracy and completeness before the results are recommended to EDPAB for approval.
- Exclude businesses that have received an allocation but have not signed a contract from any reporting of RNY program results, or footnote/disclose the "results" owing to pending customers.
- Take action to reduce contract power allocations when customers do not meet power utilization or base employment levels or hinder verification of compliance requirements provided by contract terms. In such instances, when NYPA chooses not to reduce power allocations, document the reasons for the decisions.

## ***B. Disposal of Personal Property***

### **Purpose**

To determine if NYPA disposed of personal property valued over \$5,000 in accordance with its procedures.

### **Background**

Section 2896 of the PAL requires NYPA to publish a report, not less frequently than annually, of all personal property valued in excess of \$5,000 that was disposed of during the reporting period. For purposes of this audit, personal property is all property other than real property. From January 1, 2011 to May 31, 2015, NYPA reported revenues of \$3.96 million from personal property disposals.

### **Key Findings**

- NYPA sold scrap metal and plant equipment (valued at over \$900,000) from two locations without appropriate controls to ensure they were properly accounted for and that appropriate value was received.
- NYPA had poor controls over the disposition of fleet vehicles. For example, NYPA uses the National Automobile Dealers Association (NADA) to value its vehicles. However, out of ten vehicles we reviewed, NYPA's contracted auctioneer appraised nine below NADA average trade-in values by a total of \$58,487 and sold nine vehicles below the NADA values by a total of \$33,187. Also, NYPA did not document that these vehicles were properly advertised to enable an appropriate sales price.

## **Key Recommendations**

- Establish controls over the valuation and sale of scrap metal.

- Improve controls over fleet assets sales.

## ***C. Energy Efficiency Project***

### **Purpose**

To determine if Energy Efficiency project savings reported as of April 9, 2015 were properly supported.

### **Background**

NYPA began Energy Efficiency (EE) programs for its government customers in New York City and Westchester County in 1990. The programs were expanded to State-operated facilities in 1991, Long Island public schools in 1992, community colleges statewide in 1993, and county and municipal governments in 1994.

As of April 9, 2015, NYPA financed \$1.8 billion in EE projects, which it claims will produce savings of \$103.3 million. While some projects have reported savings, others do not have savings. The projects without savings include feasibility studies, energy audits, and projects that improve the energy system reliability. As of April 9, 2015, NYPA completed 334 out of 565 projects, at a cost of \$814.5 million and reported savings of \$44.8 million.

### **Key Finding**

- EE savings in NYPA's April 9, 2015 report were not always properly supported. We sampled 25 EE projects, of which 21 reported energy savings of \$16.5 million. However, available documentation fully supported energy savings for only 11 of the 21 projects. Savings for seven projects were only partially supported, and savings for the remaining three projects were not supported. Supported savings totaled \$13.6 million, and the remaining \$2.9 million (\$16.5 million - \$13.6 million) was unsupported.

### **Key Recommendation**

- Require project managers to prepare and maintain records to properly support the EE savings reported.

### **Authority Comments**

In their response to our draft report, NYPA officials disagreed with most of our findings and asserted that our recommendations reflected processes that NYPA already had in place. Unfortunately, however, NYPA's response included a range of inaccurate and misleading comments, and it also reflected a demonstrable misunderstanding of professional auditing standards. Based on NYPA's comments, we made certain technical corrections to the report. Nonetheless, we maintain that the report's findings, conclusions, and recommendations are correct. Consequently, we encourage NYPA officials to react positively to our report and implement its recommendations to improve the efficiency and effectiveness of the program functions it addresses.

**State of New York**  
**Office of the State Comptroller**

**Division of State Government Accountability**

August 1, 2016

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

Dear Mr. Koelmel:

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 of the New York Power Authority entitled *Selected Management and Operations Practices*. This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution; Section 2803 of the Public Authorities Law; and Chapter 469 of the Laws of 1989.

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*

## Table of Contents

Background	7
A: ReCharge New York	8
Audit Findings and Recommendations	8
Background	8
Recommendations	16
B: Disposition of Personal Property	16
Audit Findings and Recommendations	16
Background	17
Recommendations	20
C: Energy Efficiency Programs	21
Audit Findings and Recommendations	21
Background	21
Recommendation	22
Audit Scope and Methodology	22
Authority	24

**State Government Accountability Contact Information:**
**Audit Director:** Carmen Maldonado

**Phone:** (212) 417-5200

**Email:** [StateGovernmentAccountability@osc.state.ny.us](mailto: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](http://www.osc.state.ny.us)

Reporting Requirements	24
Contributors to This Report	25
Exhibit	26
Authority Comments & State Comptroller's Comments	27

---

## Background

---

The New York Power Authority (NYPA) is a public authority created in 1931 by Title 1 of Article 5 of the Public Authorities Law (PAL). NYPA's mission is to provide clean, low-cost, and reliable energy consistent with its commitment to the environment and safety, while promoting economic development and job development, energy efficiency, renewables, and innovation for the benefit of its customers and all New Yorkers. NYPA's financial performance goal is to have the resources necessary to achieve its mission, to maximize opportunities to serve its customers better, and to preserve its strong credit rating.

NYPA acts through a Board of Trustees (Board). NYPA's Trustees are appointed by the Governor with the advice and consent of the State Senate. NYPA is a fiscally independent public corporation that does not receive State funds or tax revenues or credits for its operations. It generally finances construction of new projects through a combination of internally generated funds and sales of bonds and notes to investors and pays related debt service with revenues from the generation and transmission of electricity. However, in the 2016-17 budget, we noted two appropriations for NYPA: one for the transfer of the Canal Corporation from the Thruway Authority to NYPA; and the second for the return of about \$300 million that the State previously borrowed from NYPA. Chapter 469 of the Laws of 1989 requires the State Comptroller to audit NYPA's management and operations at least once every five years.

This report covers three topics: A - ReCharge New York; B - Disposition of Personal Property; and C - Energy Efficiency Programs.



## A: ReCharge New York

---

### Audit Findings and Recommendations

NYPA follows certain key practices to manage the ReCharge New York (RNY) program. The RNY program does not have job creation or other specific metrics. Each RNY customer is required to make job and capital investment commitments that are included in its contract with NYPA. However, we found certain conditions that indicate that improvements are needed in program management. For example, we found that NYPA made errors in the method used to rank applicants for power allocations and treated applicants with the same score differently based upon when their application was processed. These errors and inconsistent application of the RNY model resulted in the incorrect ranking of applicants.

NYPA also reported certain information to the public that is incomplete and therefore may lead the public to draw incorrect conclusions about the program. For example, NYPA reports to the public the power allocations it offers to RNY customers, but not the power they actually accept. NYPA also reports job commitments and includes businesses that received a power allocation, but are in pending status because they have not signed a contract. In some cases, these businesses later decline to sign contracts. In June 2015, this resulted in an overstatement of job commitments reported by 29,795 or 7.7 percent.

Further, NYPA's primary mechanism for monitoring compliance to job commitment is flawed. NYPA has allowed customers to refuse to provide required documentation to its agent to confirm job retention numbers without consequences. In addition, NYPA has not met its own yearly target for reviews.

### Background

On April 14, 2011, the RNY power program was signed into law as part of the Laws of 2011 (Law). RNY power is to be allocated to businesses and not-for-profits that commit to retain or increase New York State jobs and agree to make capital investments in their business. RNY makes available 910 megawatts (MW) of economic development power, 50 percent from its own hydropower and 50 percent to be purchased by NYPA on the open market. The Law requires at least 350 MW of RNY power to be allocated to entities served by the New York State Electric and Gas, National Grid, and Rochester Gas and Electric utility companies. Further, the Law restricts the power to be allocated to small businesses and not-for-profits to 100 MW. RNY power allocations are made to provide an incentive for businesses to expand and spur the State's economy, and to create and/or retain jobs.

RNY power allocations are made through a competitive application process. Applications for RNY are made online through the Empire State Development Corporation's (ESDC's) Consolidated Funding Application (CFA). ESDC notifies NYPA of an application and instructs NYPA to retrieve it. These applications are reviewed by NYPA staff in its Business Power Allocation and Compliance (BPAC) group. Applicants are scored using two models, which apply the 12 criteria detailed in

the RNY legislation. One model is for job retention, and the other is for business expansion (to increase the number of jobs). A list of the criteria is included as an Exhibit to this report.

Criteria 3 and 8 are scored by the Regional Economic Development Council (REDC). NYPA inputs “as-is” the REDC score into its model. The models evaluate the applications competitively, in groups of applications received about the same time period (usually quarterly), referred to as a “round.” Once scoring is complete, each applicant is ranked among the other applicants in the same round.

BPAC’s recommendations are forwarded to the Economic Development Power Allocation Board (EDPAB). According to EDPAB minutes, in arriving at the recommended amount of each RNY allocation, NYPA staff attempt to maximize the economic benefits of low-cost power. Business applicants that scored high are recommended for RNY power allocations of 50 percent of the requested amount or average historic demand, whichever is lower, but no more than 10 MW. Not-for-profit applicants that scored high are recommended for allocation of RNY power of 33 percent of the requested amount or average historic demand, whichever is lower, but no more than 5 MW.

NYPA’s customers currently receiving hydropower allocations under other NYPA power programs are recommended for allocations of RNY power of 25 percent of their requested amounts with the same aforementioned limits. A NYPA official indicated that this is done to increase the number of customers participating and the geographical area covered in RNY.

Retail businesses, sports venues, gaming or entertainment-related establishments, and places of overnight accommodation are ineligible for RNY under the Law. Also, applicants that do not meet the 10 kilowatts (KW) minimum allocation requirement for RNY power allocations are not recommended for an allocation. Approved applicants for RNY power can enter into a contract with NYPA for up to a seven-year term.

Once EDPAB approves BPAC’s recommendations, EDPAB presents the recommended allocations to NYPA’s Board. RNY power is then officially allocated by the action of NYPA’s Board. Applicants that receive a job retention power allocation have one year to sign a contract and begin drawing power. Expansion applicants that receive a power allocation have three years to sign a contract and begin drawing power. NYPA employs an independent accounting firm to act as its agent to visit RNY customers and review specific records regarding jobs retained or created. Cooperation with these reviews is required as part of the RNY contracts.

The RNY program was authorized to begin drawing power on July 1, 2012, and the first formal approval of RNY applicants occurred in April 2012. As of September 30, 2015, NYPA reviewed over 1,500 applications, approved 898 power allocations for businesses that promised to retain jobs, and approved 152 power allocations for businesses that promised to expand the number of jobs in New York State.

### *Use of Model to Rank Applicants*

Economic Development Law 188-a requires NYPA to consider each of the criteria in the aggregate, “no one of which shall be presumptively determinative.” Our review of the process found that NYPA assigned a weighting factor to each of the criteria. However, NYPA officials chose not to explain or provide documentation as to how the weights were established and applied, and their effect on the model. The use of a weighting factor ranging from 5 percent to 20 percent gives certain criteria prominence over others.

As of January 27, 2012, the initial deadline to submit an RNY application, 1,009 RNY retention applications were submitted. NYPA staff evaluated the applications twice, once in April and again in June 2012, and made recommendations to EDPAB. Together, these two models accounted for 75.5 percent of the retention allocations made under the program through September 2015. The following table summarizes the results of the April and June 2012 rounds.

		<b>April 2012 Round</b>	<b>June 2012 Round</b>	<b>Resulting Disposition</b>
<b>A</b>	<b>Total Applicants</b>	1,009	1,009	1,009
<b>B</b>	<b>Ineligible</b>	3	1	4
<b>C</b>	<b>Eligible Applicants</b>	1,006	1,005	1,005
<b>D</b>	<b>Reviewed</b>	877	NI	931 (M)
<b>E</b>	<b>Not Considered for Allocation</b>	0	47	47 (B)
<b>F</b>	<b>Not Recommended for Allocation</b>	0	255	255 (B)*
<b>G</b>	<b>Recommended for Allocation</b>	517	161	678 (B)
<b>H</b>	<b>Reviewed, No Determination (D minus G)</b>	360	0	0
<b>I</b>	<b>Not Ready (A minus D)</b>	132 (M)	NI	78 (M)

\*93 of the 255 became Transitional Electricity Discounts.

**Legend:** M = source is model; B = source is EDPAB minutes; and NI = not indicated.

To determine whether the scores that led to the ranking of the applicants were accurate, complete, and applied consistently, for seven models (two expansion and five retention) we tested 276 of the 460 calculations. To arrive at the score, for each of the 12 criteria, NYPA calculates the averages, medians, and standard deviations for each model. However, we identified 84 errors, 40 of which impacted the results for criteria 1 and 2. These differences occurred in three of the seven models reviewed and resulted from a flaw in the model used. NYPA indicated that it had a manual check in place to verify the accuracy of the model, but based on our testing, it was not effective.

When we shared our results with NYPA officials they agreed, stating “The ... formula ranges in these models were inadvertently shortened, resulting in a data range that did not include the entire population from the round thus causing the statistical reference calculations to be off. The calculation is only used for determining the ranking of the applicants in the round.”

While NYPA officials acknowledged that the errors in scores impacted the overall ranking of applicants, they claimed that “In all these instances, because there was more power available than requested, the competitive scoring did not affect the allocation recommendations. Within

these rounds, all applicants that had complete applications and met our requirements were awarded an allocation in the same manner (zero applicants were not recommended based on scoring in these models)."

However, the RNY program, at the three and one-half year mark, has allocated 768 MW of the 910 MW approved by the Law. In addition, the Law contains geographic restrictions, business size rules, and limits on expansion power versus retention power. As the program has a limited amount of power to allocate, scoring errors may result in more qualified applicants in later rounds not being recommended for a power allocation.

In addition to recalculating model scores, we also selected a judgmental sample of 41 RNY applicants to determine if source data was correctly inputted into the model. From ESDC we obtained the REDC scores for our 41 sampled applicants. We determined that 18 applicants' REDC scores did not match the REDC scores provided by ESDC. The differences between the REDC score from ESDC and the score used in the model ranged from -0.2 to 5.6. For three applicants, the differences were significant. Moreover, for one of these applicants (in the June 2012 round), if the correct REDC score was used, its rank would have changed from 878 to 706. This would have made it eligible for an allocation of power.

Additionally, we determined that applicants were treated differently depending on when their application was processed. For example, in the June 2012 round there were 42 applicants (one business and 41 not-for-profits) that were above the cutoff score but did not receive an allocation. We determined that of the 41 not-for-profits, six had multiple applications and were approved for power allocations in the April 2012 round, and the remaining 35 did not. For all 41 not-for-profits, a formula in the model was replaced with the word "NO." At the closing conference, NYPA officials stated that they had set a "reserve" that required they stop issuing allocations to small businesses and not-for-profits somewhere below the threshold of the 100 MW limit in the Law. They also indicated that once an allocation was made in April 2012, they would not withdraw it based on the June 2012 model, regardless of the fact that some of the June 2012 applicants (in the same business classifications) had higher scores, but nonetheless would not be offered power.

NYPA officials claim that June 2012 was the only time that the rankings were used to actually "Not Recommend" applicants for power. However, the minutes of the June 2012 EDPAB meeting did not disclose the use of a reserve or that applicants with higher scores than the "cutoff scores" were "Not Recommended" for power as a result of the reserve. Overall, errors and inconsistent application of the RNY model resulted in applicants' scores being ranked incorrectly.

### *Market Power*

The Law provides that all RNY power allocations are awarded as 50 percent hydropower and 50 percent RNY market power. However, NYPA must offer each applicant approved for an RNY power allocation the right to decline to purchase the market power component. This is a one-time decision made prior to entering into a contract for the sale of RNY power. Customers can and do decline to accept the market power, usually citing cheaper long-term contracts with other power suppliers. NYPA includes the "market power" in its public reporting on RNY whether the

customer takes it from NYPA or gets it from another Energy Supply Company (ESCO). A NYPA official stated this is because customers are awarded a discount on the delivery charge by their local utility, and NYPA will not require an RNY customer to cancel a long-term ESCO agreement because it will be subject to a penalty.

As of February 8, 2016, NYPA had 294 customers with signed contracts that accepted only hydropower. The allocations to these customers totaled 493.8 MW: 246.9 MW of hydropower, and the 246.9 MW of market power that was declined. However, NYPA reports the full amount allocated rather than the amount accepted. Thus, there is a lack of complete transparency in the information made available to the public, who should be advised of the actual power that customers receive for their commitments.

### *Pending Allocations*

NYPA's RNY Contract Administration Policy, Section 5.4, states that RNY retention allocation customers "have one year from the Trustee approval date to execute the contract and begin to use the power allocation" awarded. Customers can request a deferral (extension) of their awarded allocation. Each deferral request is evaluated individually and approved or disapproved on a case-by-case basis. Decisions on whether or not to rescind an allocation begin with BPAC staff, and may require management approval and discussion and action by the Trustees. NYPA stated that the "jobs retained" statistics in its 2013 and 2014 annual reports were based on the numbers from its Dynamic Report, which is a snapshot of the RNY program at a point in time. We reviewed NYPA's June 2015 Dynamic Report. It indicated that there were 42,095 (10.9 percent) pending jobs. According to NYPA, 29,795 (7.7 percent) of the 385,625 reported job commitments were job retention commitments related to pending customers that were not yet ready to receive power. We question the inclusion of the 29,795 as jobs retained in NYPA's annual report, because none of the businesses had signed a contract committing to retaining the jobs. We found that several of the pending customers we reviewed had left the program, since July 2015, by declining the allocation or because NYPA rescinded the allocation.

In its response to our preliminary findings, NYPA advised that the Dynamic Report statistic includes job retention commitments of both retention and expansion applicants. Statistics publicly reported on the number of jobs attributed to RNY should exclude pending allocations because until the contract is signed, there are no commitments. Moreover, as the length of time a business can be in pending status is different for retention and expansion businesses, NYPA needs to separate the two categories so that businesses on the retention track do not remain in pending status longer than allowed. At the closing conference, NYPA officials stated that it could not readily separate retention and expansion.

If allocations remain in pending status longer than one year, the power allocated by NYPA's Board to businesses and not-for-profits is not returned timely to the pool and, therefore, is not available to distribute to other businesses and not-for-profit organizations. This is of particular concern because in June 2012 NYPA saw it necessary to set aside a "reserve," which required it to stop issuing allocations to small businesses and not-for-profits somewhere below the threshold of the 100 MW limit in the Law.

## *Monitoring*

### **Review of Compliance Reports**

The Law requires effective periodic audits of job commitments as well as capital investments. In August 2013, NYPA signed an agreement with an independent public accounting firm (firm) to act as NYPA's agent, to verify job commitments reported by the customers in the RNY Program. The agreement runs from August 1, 2013 through July 31, 2016, for a maximum amount of \$330,000. Although NYPA told our auditors that the capital investment commitment portion would not need to be reviewed until the fifth year, NYPA subsequently amended the contract with the firm on October 16, 2015 to include a review of the capital investment commitment for customers that report achieving 90 percent of their capital commitment. These periodic audits are NYPA's primary mechanism to verify that the commitments that are the basis of RNY's power allocations are being met. Contract terms state that to verify job commitments, the firm randomly selects approximately 100 customer contracts each year from a database population of approximately 700 customer contracts, subject to NYPA's approval.

We requested all of the compliance reports the firm submitted to NYPA. NYPA provided 55 reports for 2013 and 60 reports for 2014. Thus, in both years the firm submitted considerably less than the approximately 100 reports otherwise prescribed by the contract. At the firm's current performance level, it would take between seven and 14 years to audit all of the customer contracts. Since NYPA's contracts with RNY customers are for seven years, there is considerable risk that many of the contracts will have expired before the firm audits them. Further, the firm's contract does not state when its reports are due to NYPA. As of January 8, 2016, NYPA had not received any 2015 reports from the firm. Subsequently, on February 26, 2016, NYPA provided us with 52 firm reports and stated that another nine reports were due from the firm by April 30, 2016. Thus, 61 (52 + 9) reports were either submitted or expected for 2015. Nonetheless, it was unclear whether additional reports, about 39 (100 - 61) for 2015, would be submitted.

The firm selects the customers (subject to NYPA's approval) and schedules appointments to conduct the review. For the first two years of the RNY program, the firm audited 115 customers. It was unable to verify 12 customers' compliance with their jobs commitments because the customers refused to provide payroll data. NYPA allocated a total of 44,004 KW to the 12 customers.

Under the statute and contract terms, each customer is required to cooperate with the periodic audits conducted by NYPA's agent and provide documentation to support their commitments. However, although some customers refused to provide documentation to support their job commitments, NYPA took no action against them. Instead, they allowed the customers to self-certify or provide alternative documentation that they had met their job commitments.

At the closing conference on May 6, 2016, NYPA officials stated that although the firm had audited less than a quarter of customers, they did not intend to request the firm to review additional RNY customers as it would increase the cost to the program. However, not only does the RNY legislation require audits of RNY customers, but NYPA set the terms of the contract that the firm is to review about 100 firms annually, and NYPA has not ensured that the firm met that requirement.



### **Reported Jobs Data**

To confirm the accuracy of information reported in customers' Compliance Reports, in addition to the review of files, we conducted our own field testing. We contacted 10 RNY customers with 11 allocations (one customer had two allocations) to arrange a visit to review supporting documentation for jobs retained, power utilization, and capital investment spending. Based on our testing, we could not verify the accuracy of almost half of the customers' Compliance Reports. For two customers we visited, the payroll records provided did not match the Compliance Reports, while a third customer refused to provide payroll records, citing confidentiality restrictions. For another two customers that were not visited but provided payroll data, the records were incomplete and could not be used to verify the information on the Compliance Report. In some cases, the differences (between the number of jobs in the Compliance Report and the payroll data) were significant.

For example, reviews of payroll records for one customer we visited showed errors in both the 2012-13 and 2013-14 Compliance Reports. This customer's baseline job commitment was 1,000. However, the number of jobs was overstated by 996 in 2012-13 and by 50 jobs in 2013-14. The customer indicated that the errors were due to a problem with a "summary query," and that in the future, this customer will refer directly to its payroll registers to obtain the necessary information.

### **Capital Investment**

For the capital investment reported by the 10 customers, we selected several capital investment programs/projects from the Compliance Report and asked the customers for documents to support the expenditures reported. Five customers provided information and were all generally compliant. One customer allowed us to visit to see the new construction, but did not provide any documents. Two customers would not agree to a visit or provide any documentation.

Moreover on March 3, 2016, a NYPA official stated NYPA Internal Audit selected six customers. The official stated these six customers were selected because they reported achieving at least 90 percent of their capital investment commitment. We requested a copy of the internal audit reports for these six customers. We were advised that individual reports were not issued; but instead, NYPA's Internal Audit issued a summary memorandum. This memorandum, dated June 17, 2015, was sent to BPAC and stated the six customers were in compliance with their capital investment commitments to the RNY program.

### ***Transitional Electricity Discount***

The "Power for Jobs" program (PFJ) was created by State law in 1997 to provide economical electricity for businesses and not-for-profit corporations that committed to create or retain jobs in New York. Participants received program benefits either in the form of PFJ electricity, which NYPA secures from the electricity marketplace, or an electricity savings reimbursement (rebate). Both options required job commitments contained in contracts enforceable by NYPA.

Under the "Energy Cost Savings Benefit" program (ECSB), created in 2005, NYPA makes discounted

market power available to businesses in the Economic Development Power, High Load Factor Power, and Municipal Distribution Agency Power programs that were facing price increases before the end of 2006.

The PFJ and ECSB programs expired on June 30, 2012. Businesses participating in these programs were required, by legislation, to apply for RNY to be considered for an RNY power allocation. Those PFJ and ECSB customers who submitted applications and did not receive a high enough score and were not recommended to receive an RNY allocation were considered for the Transitional Electricity Discount (TED). Pursuant to Economic Development Law, Section 188-a, NYPA is authorized, as deemed feasible and advisable by the Trustees, to provide TED benefits as recommended by EDPAB.

Section 6 of Chapter 60 of the Law requires that TED businesses submit electric utility bills to NYPA stating the kilowatt-hour usage for those utility accounts that received benefits under the PFJ or ECSB programs. The businesses' utility bills are required to calculate payments under TED. RNY legislation provides that the amount of the TED payment a customer is eligible to receive is calculated as follows:

- For the period from July 1, 2012 through June 30, 2014, the TED will be equivalent to 66 percent of the unit (per kilowatt-hour) value of the savings the customer received under the PFJ or ECSB program during the 12 months ending December 31, 2010.
- For the period from July 1, 2014 through June 30, 2016, the TED will be equivalent to 33 percent of the unit (per kilowatt-hour) value of the savings the customer received under the PFJ or ECSB program during the 12 months ending December 31, 2010.

Failure of a business to provide the required utility bills can result in delays of TED payments or no payments whatsoever.

We selected a judgmental sample of six recipients from a list of 100 TED customers provided by NYPA. NYPA's controls over TED payments were generally adequate. NYPA provided cancelled checks to support payments to five TED recipients totaling \$222,813 for years 2012-13 and 2013-14, as well as required utility bills. One recipient did not receive payment in either year as they did not submit the required documentation. Also, we verified TED payments for five recipients, and found one recipient was overpaid \$9,844 due to a data entry error.

One issue we did identify was that NYPA has not been timely with TED payments. As of May 3, 2016, NYPA has not made any TED payments for the 2014-15 year. We estimated this amount to be \$55,703. In prior years, payments were made within eight to 15 months after the close of the fiscal year.



## Recommendations

1. Identify resources available within NYPA that can conduct an independent and objective review of the models used to score applications for accuracy and completeness before the results are recommended to EDPAB for approval.
2. Exclude job commitments for businesses that have received an allocation but have not signed a contract from any reporting of RNY program results, or footnote/disclose that the “results” include pending allocations.
3. Improve transparency of the RNY program by disclosing information about: the reserve established by NYPA; the decisions to not award power to customers above the cutoff score; and when businesses are carried over from one model to the next.
4. Establish a schedule for contacting pending businesses on a regular basis during the year (e.g., quarterly) to determine their readiness to draw down power. For those not ready, establish a formal process whereby the business submits a deferral request with an estimated date when it will draw down the power.
5. Take action to reduce contract demand when customers do not meet power utilization or minimum employment levels or hinder verification of compliance commitments provided in the contract terms. In such instances, when NYPA chooses not to reduce power allocations, document the reasons for the decisions.
6. Assess the level of resources assigned to verify the employment, power utilization, and capital investment numbers being reported in customer Compliance Reports.
7. Revise the terms of the firm’s contract to specify the number of audits to be performed each year and to specify when the reports are due. In the interim, require the firm to perform according to the agreed-upon contract terms of verifying job commitments for approximately 100 customer contracts each year.

## B: Disposition of Personal Property

### Audit Findings and Recommendations

We found NYPA’s procedures for the disposal of personal property valued over \$5,000 were routinely adopted each year and placed on NYPA’s website as required. However, we examined the practices NYPA’s staff used to dispose of the assets and found internal control weaknesses over these sales. As a result, there is material risk that NYPA received less than the appropriate value for the assets it disposed of. For example, out of 10 vehicles, NYPA’s contracted auctioneer appraised nine below the National Automobile Dealers Association (NADA) average trade-in values by a total of \$58,487 and sold nine vehicles below the NADA values by a total of \$33,187. Moreover, NYPA sold scrap metal and plant equipment, which was valued at over \$900,000,

from two of its locations without appropriate controls to ensure that the assets were properly accounted for and that appropriate value was received.

## Background

Under Section 2896 of PAL, NYPA's Board is required to approve and post annually on its website procedures for the disposition of personal property assets valued at \$5,000 or more. For purposes of this audit, personal property is all property other than real property. NYPA must also publish a report of all such sales to ensure public awareness of the disposition of such assets. For the period January 1, 2011 to May 31, 2015, NYPA reported \$3.96 million in revenue from disposals of personal property.

### *Scrap Metal*

We found NYPA's practices for disposing of scrap metal did not ensure NYPA received the full value of the asset. The New York State Comptroller's *Standards for Internal Control in New York State Government* states that verification of transactions is the determination of the completeness, accuracy, authenticity, and/or validity of transactions, events, or information. Sound business practices for scrap metal disposal would normally entail the weighing, sale, and removal by the buyer be overseen by agency personnel, with weight, price, and content confirmed by both parties, culminating in receipt of payment for the agreed-upon weight and price. However, NYPA's practices do not require complete verification of scrap metal transactions and instead use a practice that is ostensibly based on the "honor system."

NYPA required buyers to submit their advance payment based on its estimate of the weight prior to removing the items from NYPA's property. However, after removal, the buyer can claim the weight was less than reported by NYPA, and request a refund for the difference. We reviewed the scrap metal sales at the former Charles Poletti Power Project in Queens, New York. From February 4, 2011 to October 25, 2013, there were eight sales, six were over \$5,000, with net revenue of \$298,464.

In two of the six sales, NYPA refunded the buyer for shortages claimed without verification. For example, the plant had a container of scrap metal weighed at an adjacent Con Edison facility in October 2010, and advertised the sale. On February 11, 2011, the successful metal buyer submitted a check for \$174,270 and removed 94,200 pounds of scrap metal. The buyer moved the metal to Pennsylvania, where it weighed the material. On February 21, 2011, the buyer requested a refund of \$67,803, claiming the true weight of the scrap metal was 57,550 pounds (36,650 pounds or 38.6 percent less than NYPA's advertised weight). NYPA issued a refund check on February 26, 2011 for the amount (\$67,803) requested by the buyer.

It is problematic that two sales in the same facility reported significant shortages in scrap metal from NYPA's estimate, and NYPA did not investigate them. Instead, it simply paid the buyer for the reported discrepancies. In the case of the February 2011 sale, if the buyer's measurement is correct, NYPA lost 36,650 pounds of scrap metal worth over \$67,000 within a four-month period.

NYPA should consider that these are public resources and review the controls over the scrap metal disposal process to ensure that these resources are being adequately protected.

NYPA also did not follow its requirement that scrap metal sale prices be based on the American Metal Market Index (AMMI) on the day of removal from NYPA property. In two of the six sales, there was no evidence of a reconciliation of the AMMI rate on the day of removal to the date used by the vendor. This, in part, was likely a result of the fact that NYPA did not have an account required to access the official AMMI rates. Regarding the use of AMMI rates, NYPA replied that its staff relied on the rates that were supplied publicly, rather than the date-specific rate provided to AMMI subscribers for which the typical difference is minimal. If NYPA believes that the differences are in fact minimal, it should document the analysis that it took to reach this conclusion.

Similar problems regarding the sale of scrap metal were found at NYPA's Niagara Power Project. NYPA sought a contract to remove transformers from its Niagara Power Project and estimated the net salvage value to be \$108,000 to \$207,000. Nevertheless, NYPA accepted a bid for \$88,500 without support for why it accepted a bid that was \$19,500 less than the low end of the estimated range. Furthermore, NYPA received only \$74,928 for the transformers. The difference was due to increased cost to remove the transformers, which was not part of the original contract. However, NYPA acquiesced to the contractor and prepared a change order to accept part of the contractor's increased costs.

NYPA stated that it believes business decisions related to scrap metal were reasonable during the audit period. However, NYPA is currently in the process of reviewing and identifying improvements for the conduct of scrap metal disposal. We are pleased that NYPA is revising its processes.

### *Fleet Assets*

According to NYPA's corporate policy 2-8, "Throughout the year, the Director of Fleet Operations (DFO) and/or his or her designee will undertake site visits to evaluate the condition of all fleet assets and meet with the site management to develop recommendations for replacement or assignment of vehicles." It also states, "The estimated residual value, present condition, service and repair history and anticipated vehicle utilization will also be considered in the application of this standard." NYPA, however, has not provided documentation to demonstrate its compliance with the corporate policy.

In response to our preliminary findings, NYPA officials have stated that the DFO has conducted required annual visits and had provided email correspondence in lieu of a formal site visit schedule. However, an email regarding a scheduled visit is not evidence that an evaluation was actually done. Under New York State Comptroller's Standards for Internal Control, management must, at a minimum, document its evaluations of its operations and risks and document its assessment of vulnerabilities.

The corporate policy also states, "The standard for passenger vehicle review for replacement will be 75,000 miles or five years, whichever comes first. The estimated residual value, present condition, service and repair history, and anticipated vehicle utilization will also be considered in

the application of this standard.” The disposal of assets should include formal valuation/appraisal of the asset, removal from active fleet or inventory, and sale through an auctioneer or other approved methods. NYPA’s current policy, however, does not include criteria for trucks or other utility vehicles. After subsequent discussion with NYPA officials, they have agreed to modify their policy to reflect additional classes of vehicles with differing mileage and age standards.

### *Fleet Assets – Auctions*

NYPA had contracts with two auctioneers to dispose of fleet assets from January 2011 to October 2015. We reviewed a sample of 30 fleet assets sold for a total of \$269,500, which were disposed of at 11 auctions over our scope period. The contracts stated that the auctioneer must provide appraisals of each vehicle at least one week prior to sale. Twenty vehicles, which sold for \$210,150, were sold at a price greater than the auctioneer’s appraisals; five vehicles (sold for \$50,100) were sold at prices equal to the auctioneer’s appraisals; four vehicles (sold for \$950) were sold for less than the auctioneer’s appraisals; and no appraisal was provided for one disposed fleet asset that was sold for \$8,300.

When questioned, the DFO stated that he does not have an independent appraisal for the assets that are auctioned to help him evaluate bids. He also explained that he does not rely on the auctioneer’s appraisals because they are traditionally low due to the contractual requirement that the auctioneer pay 75 percent of the estimated appraisal value of all items to be auctioned prior to the sale. Instead, the DFO uses NADA information to help determine the market value of the surplus vehicles.

We attended an auction of NYPA’s vehicles and other related items in Utica, New York on June 20, 2015. At this auction, 61 fleet assets were sold for a total of \$361,955. We selected a judgmental sample of 10 vehicles from a population of 23 vehicles that were disposed of on June 20, 2015. To ensure our sample included a variety of vehicles, we selected our sample based on the vehicle’s year, make, and model. We checked the NADA values on October 29, 2015. The NADA values have four categories (Rough Trade-In, Average Trade-In, Clean Trade-In, and Clean Retail). To be conservative, we used the NADA values for Average Trade-In. We compared the estimates NYPA accepted from the auctioneer and the actual sale prices against the NADA values.

We found that nine out of 10 vehicles were appraised for less than the NADA average trade-in values by a total of \$58,487. The auctioneer appraisals were less than the vehicles’ respective NADA trade-in values by 47 percent or more. In certain instances, the differences between the auctioneer’s appraisal amount and the NADA values were material. For example, the NADA value of one particular vehicle was \$14,750; however, the auctioneer appraised the vehicle at \$5,000 (or \$9,750 less than the NADA value). Ultimately, of the 10 vehicles sold, nine were sold for a total of \$33,187 less than the respective NADA values.

Further, both contracts stated that the auctioneer must provide advertisements online and in selected local newspapers, regional newspapers, and trade publications. Nevertheless, NYPA could only provide evidence that 11 of the 30 disposed fleet assets were advertised, and this was limited to online advertisements. NYPA officials claimed that the sales were advertised as

required, but they did not retain supporting documentation. They stated they will work to ensure future advertisements are retained.

### *Plant Equipment*

Officials at the Niagara Power Project use Disposal of Personal Property Forms (DPP Forms) to identify assets, with tags, for disposal and to dispose of other miscellaneous items. We reviewed 20 DPP Forms for assets with a total estimated original value of \$579,200. Each form has a space for the original value of the asset and the current estimated value. However, for 19 of the 20 forms, there was no supporting documentation for the original value. In addition, NYPA did not have any documentation to support the fair market value of the disposed items. Also, NYPA's decision whether to put the item in the trash, scrap it through a contractor, or put it up for bid is not supported. There is no space on the DPP Form for the Property Disposal Coordinator to indicate the method of disposal selected for the item.

In response to the preliminary findings, NYPA indicated formal appraisal is, with some exceptions, not required, and NYPA disposed of the referenced property through competitive bidding, including auctions. They also advised us that the decision regarding disposal method is arrived at through verbal communication between the department staff and the Property Disposal Coordinator.

NYPA, however, did not provide any documentation to show that these particular sales were accomplished through competitive bidding or auctions. In addition, we question the reasonableness of NYPA's practice that verbal communication is sufficient to determine the method of disposal for equipment costing as much as \$125,000 (for a chiller) or \$44,000 (for a Medtronic Lifepak defibrillator).

## **Recommendations**

8. Establish controls over the valuation and sales of scrap metal, including but not limited to:
  - Developing formal procedures for the sale of scrap metal, which should include NYPA officials weighing metals locally;
  - Observing the disposal activity;
  - Developing agreed-upon weight difference limits; and
  - Minimizing the time between weighing and issuing Requests for Quotes and maintaining control over the transaction, from initial removal from NYPA's property to final pricing.
9. Require the DFO to conduct site visits and maintain records that document the activity of evaluating the condition of all fleet assets and meetings with site management to develop recommendations for replacement or reassignment of vehicles. Require the DFO to annually assess and document the value of fleet vehicles.

10. Improve controls over fleet asset sales by:

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

11. Require DPP Forms to be:

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

## C: Energy Efficiency Programs

### Audit Findings and Recommendations

NYPA could not fully support about \$2.9 million (17 percent) of the \$16.5 million in energy savings reported for 21 of the 25 Energy Efficiency (EE) projects we sampled that had energy savings.

### Background

NYPA began EE programs for its government customers in New York City and Westchester County in 1990. The programs were expanded to State-operated facilities in 1991, Long Island Public schools in 1992, community colleges statewide in 1993, and county and municipal governments in 1994.

#### *Energy Savings Reported*

NYPA financed \$1.8 billion in EE projects as of April 9, 2015, with projected savings of \$103.3 million. NYPA recovers its costs by sharing in the resulting electric bill savings. Once a loan is repaid, the participants may then retain all additional savings. The EE programs can cut energy bills by up to 25 percent, although certain projects do not have savings. The projects without savings include feasibility studies, energy audits, and projects that improve energy system reliability. As of April 9, 2015, NYPA completed 334 out of 565 projects, at a cost of \$814.5 million, and reported savings of \$44.8 million.

However, NYPA could not always support the energy savings reported. We sampled 25 EE projects, of which 21 projects had reported energy savings totaling \$16.5 million. Of the 21 projects with savings, NYPA had supporting documentation for the total amount of reported energy savings for 11 projects. Reported savings were only partially supported for seven projects, and there was no support for savings for the remaining three projects. Thus, in total, about \$2.9 million (or 17.3



percent) of reported energy savings was unsupported, as summarized in the following table.

Category	Number of EE Projects	Reported Savings	Supported Savings	Difference
<b>Fully Supported</b>	11	\$9,116,727	\$9,116,727	\$0
<b>Partially Supported</b>	7	5,466,164	4,522,183	943,981
<b>Not Supported</b>	3	1,918,941	0	1,918,941
<b>No Savings</b>	4	0	0	0
<b>Total</b>	<b>25</b>	<b>\$16,501,832</b>	<b>\$13,638,910</b>	<b>\$2,862,922</b>

Given the magnitude of NYPA's investment in EE projects, it is important that accurate and supported energy cost savings information be developed and maintained for each project to help assess individual project and overall EE program effectiveness. Without accurate and supported data, NYPA's ability to assess program effectiveness is limited.

## Recommendation

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

## Audit Scope and Methodology

We conducted this audit to determine whether NYPA managed the ReCharge New York program according to statute, job creation goals, or other results-oriented goals; phased out customers of the former discounted energy programs as provided in the Law; disposed of personal property valued over \$5,000 in accordance with its procedures; and supported EE project savings reported as of April 9, 2015.

The audit covered the following periods: for ReCharge New York and TED, April 2011 to January 31, 2016; for Disposal of Personal Property, from January 1, 2011 to October 31, 2015; and for Energy Efficiency, all completed projects in the NYPA Energy Efficiency Projects Report dated April 9, 2015, plus one project noted in a local newspaper (AM New York) on April 6, 2015.

To accomplish our objectives, we reviewed policies, procedures, and guidelines related to NYPA's ReCharge New York program, TED, Disposal of Personal Property, and EE program. We interviewed NYPA officials and employees to obtain an understanding of the internal controls related to these areas. We observed a public auction of fleet vehicles and fleet-related items on June 20, 2015 in Utica, New York and interviewed key officers of the auctioneer, and visited the Niagara Power Project. We also visited six customers participating in the RNY program throughout the State and 22 customers participating in the EE program and reviewed the records they provided. We also reviewed the documentation provided by NYPA for the disposal of personal property, RNY application processing, customer correspondence, and project managers' files regarding EE calculations. We reviewed the contracts between NYPA and its RNY customers, its independent public accounting firm, and its auctioneers and scrap dealers.

We interviewed management and staff at three locations: Frederick R. Clark Energy Center in Utica, New York; the former Charles Poletti Power Project in Queens, New York; and NYPA's White Plains office. We also reviewed documents relating to the disposal of assets from January 1, 2011 to June 21, 2015.

We sampled 41 RNY customers as follows:

- 25 of the 599 contracted RNY customers, ensuring that different types of customers were selected and different geographic areas of the State were represented;
- 6 TED businesses;
- 5 expansion allocations; and
- 5 pending customers.

We also judgmentally selected another 31 of 76 pending retention allocations from the July 15, 2015 Pending Allocation list. These 31 were pending for more than one year.

For the disposal of personal property, we selected the following judgmental sample:

- 5 non-fleet asset sales over \$5,000 that occurred between January 1, 2011 and April 24, 2015 to review for compliance with agency, legal, and contractual requirements. We selected one non-fleet asset sale from each year of our scope period (2011 through 2015);
- 20 DPP Forms for the disposal of items at the Niagara Power Project to determine how the disposals were managed;
- 1 page of NYPA's security logs from the date of the vendor's most recent pick-up to review for proper completion;
- 10 fleet asset disposals for compliance with agency, legal, and contractual requirements; and
- 30 disposed fleet assets valued at more than \$5,000 each.

We selected 24 of 333 completed EE projects from the April 2015 report plus one newly completed project as of April 2015.

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 objectives.

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

---

The 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. Additionally, Chapter 469 of the Laws of 1989 requires the State Comptroller to conduct an audit of NYPA's management and operations at least once every five years.

## Reporting Requirements

---

We provided a draft copy of this report to NYPA officials for their review and formal comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of it. In their response, NYPA officials disagreed with most of our findings and asserted that our recommendations reflected processes that NYPA already had in place. Unfortunately, however, NYPA's response includes a range of inaccurate and misleading comments, and it also reflects a demonstrable misunderstanding of professional auditing standards. Based on NYPA's comments, we made certain technical corrections to this report. Nonetheless, we maintain that the report's findings, conclusions, and recommendations are correct. Our rejoinders to specific comments in NYPA's response are embedded in NYPA's response.

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 C. Mehrhoff**, Audit Manager  
**Joseph F. Smith**, Audit Supervisor  
**Daniel Bortas**, Examiner-in-Charge  
**Robert Tabi**, Examiner-in-Charge  
**Jonathan Bernstein**, Senior Examiner  
**Emil Cherian**, Senior Examiner  
**Celedonia Deaver**, Senior Examiner  
**Altagracia Rodriguez**, Senior Examiner  
**Peter Teelucksingh**, Program Research Specialist

## Division of State Government Accountability

---

Andrew A. SanFilippo, Executive Deputy Comptroller  
518-474-4593, [asanfilippo@osc.state.ny.us](mailto:asanfilippo@osc.state.ny.us)

Tina Kim, Deputy Comptroller  
518-473-3596, [tkim@osc.state.ny.us](mailto:tkim@osc.state.ny.us)

Brian Mason, Assistant Comptroller  
518-473-0334, [bmason@osc.state.ny.us](mailto: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.

## Exhibit

Section 188a of the Economic Development Law states, in the case of an eligible applicant, the following criteria shall be considered in the aggregate and not one of which shall be presumptively determinative:

- (i) the significance of the cost of electricity to the applicant's overall cost of doing business, and the impact that a recharge New York power allocation will have on the applicant's operating costs;
- (ii) the extent to which a recharge New York power allocation will result in new capital investment in the state by the applicant;
- (iii) the extent to which a recharge New York power allocation is consistent with any regional economic development council strategies and priorities;
- (iv) the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed if the applicant were to receive an allocation;
- (v) the applicant's payroll, salaries, benefits and number of jobs at the facility for which a recharge New York power allocation is requested;
- (vi) the number of jobs that will be created or retained within the state in relation to the requested recharge New York power allocation, and the extent to which the applicant will agree to commit to creating or retaining such jobs as a condition to receiving a recharge New York power allocation;
- (vii) whether the applicant, due to the cost of electricity, is at risk of closing or curtailing facilities or operations in the state, relocating facilities or operations out of the state, or losing a significant number of jobs in the state, in the absence of a recharge New York power allocation;
- (viii) the significance of the applicant's facility that would receive the recharge New York power allocation to the economy of the area in which such facility is located;
- (ix) the extent to which the applicant has invested in energy efficiency measures, will agree to participate in or perform energy audits of its facilities, will agree to participate in energy efficiency programs of the authority, or will commit to implement or otherwise make tangible investments in energy efficiency measures as a condition to receiving a recharge New York power allocation;
- (x) whether the applicant receives a hydroelectric power allocation or benefits supported by the sale of hydroelectric power under another program administered in whole or in part by the authority;
- (xi) the extent to which a recharge New York power allocation will result in an advantage for an applicant in relation to the applicant's competitors within the state; and
- (xii) in addition to the foregoing criteria, in the case of a not-for-profit corporation, whether the applicant provides critical services or substantial benefits to the local community in which the facility for which the allocation is requested is located.

# Authority Comments & State Comptroller's Comments



ANDREW M. CUOMO  
Governor

**NY Power  
Authority**

JOHN R. KOELMEL  
Chairman

GIL C. QUINIONES  
President and Chief Executive  
Officer

July 21, 2016

Ms. Carmen Maldonado  
Office of the State Comptroller  
Division of State Government Accountability  
59 Maiden Lane - 21st Floor  
New York, NY 10038

Dear Ms. Maldonado:

Below is NYPA's management response to the draft report (2015-S-20) entitled: *Selected Management and Operations Practices - New York Power Authority*. OSC's draft audit report provided conclusions and recommendations for NYPA's management and operational practices of the three audited areas: ReCharge New York Program, Disposition of Personal Property and Energy Efficiency Programs.

The OSC's draft audit makes significant errors in analysis, and recommends actions that NYPA is already undertaking. Regarding NYPA's ReCharge New York Program ("RNY"), the OSC recommends independent and objective review of applicant scoring, omitting that NYPA already provides effective controls. The OSC further reaches conclusions about the RNY program based on outdated statistics in improper interpretations of data NYPA provided to the OSC. OSC reaches these conclusions without having given NYPA management the opportunity to comment during the audit on a number of its conclusions. This resulted in flawed recommendations on the RNY program. Similarly flawed reasoning led to equally erroneous conclusions and recommendations for NYPA's personal property disposal, and energy efficiency programs. Below, NYPA's management responds to each recommendation.

**State Comptroller's Comments:** We maintain that the report's findings, conclusions, and recommendations are correct. As detailed in the report, NYPA did not have adequate controls to ensure the accuracy of application scoring. In fact, auditors identified errors in 3 of the 7 scoring models reviewed. Further, in responding to our preliminary finding on April 22, 2016, NYPA officials stated that "After OSC identified the miscoded formula range in the evaluation spreadsheet, NYPA corrected the error." Officials further indicated that "NYPA plans to implement additional controls to ensure the correct formula is used in future evaluation periods to ensure fairness in the ranking of applicants for allocation awards." We question why NYPA officials made these statements if they believed there were no deficiencies in scoring and allocation processes.

Also, our audit clearly showed that NYPA overrode spreadsheet formulas in their June 2012 model, which resulted in 36 applicants receiving no power when they otherwise could have received allocations. The NYPA overrides resulted in these applicants being "Not Recommended" for an allocation, and their applications were closed. Moreover, we found multiple errors which, when corrected, resulted in changes in the ranking of the applicants. Thus, NYPA's assertion that the errors in question represented a "single, minor error" is incorrect.

We did not use “outdated statistics and improper interpretation of data NYPA provided.” In fact, we used the data from reports provided by NYPA at the time of our audit fieldwork and included such data in a preliminary finding to NYPA on February 11, 2016. On April 11, 2016, NYPA replied and provided additional information, which we then included in our draft audit report. According to NYPA officials, the data was current as of NYPA’s May 19, 2015 board meeting and was made publicly available as of June 2015. Although NYPA may have prepared data subsequent to the time of our audit fieldwork, the data we used was current at the time we examined it. Further, we did not misinterpret the NYPA information provided to us.

NYPA’s assertion is incorrect. In fact, we provided NYPA officials with 10 preliminary findings, each with a request for a formal response. We did not issue a formal preliminary finding for a certain aspect of NYPA’s override of the June 2012 formula and the overpayment of about \$9,800 to a TED recipient. However, we discussed both of these items with NYPA officials in multiple meetings, including the audit’s closing conference, and through exchanges of emails during the course of the audit. Further, in transmitting our draft report to NYPA, we advised officials that they could contact our office “If there are matters in the report which you or your staff would like to discuss.” Nonetheless, NYPA officials declined the opportunity to do so.

#### ReCharge New York Program

RNY has successfully accomplished its intended goal of introducing a statewide, power-based program that effectively supports the retention and creation of jobs and long term capital investment throughout New York. As of July 1, 2016, the RNY Power Program is supporting commitments to (1) retain approximately 359,500 jobs, (2) create approximately 15,000 jobs, (3) make over \$30 billion in capital investments throughout New York, and (4) help RNY participants collectively achieve a cost benefit from the purchase of power. About 70% of the cumulative awards to date have been awarded to manufacturing companies, with RNY allocations also helping businesses in health care and social assistance, wholesale trade, and professional, scientific and technical services.

NYPA will continue to foster New York's economic growth through the RNY program as an effective economic tool to keep businesses in New York, encourage existing businesses to expand their operations, and attract new business to the state. NYPA expects increasing gains in employment and capital investments in New York through the program's continued utilization by participants.

#### Disposition of Personal Property

On January 13, 2006, the Public Authorities Accountability Act of 2005 ('PAAA') was enacted to codify model governance principles for New York State's public authorities to further accountability and transparency. Among its provisions, the PAAA, and as later amended by the Public Authorities Reform Act of 2009, established requirements for the disposal of public authority personal property. The law also required each authority to draft guidelines consistent with the legislation dealing with these issues, to review and approve such guidelines annually and to prepare an annual report of the disposal of personal property (including the full description, name of the purchaser and price received for all such property disposed of by the authority during such period). NYPA's personal property guidelines were initially approved by the Trustees in 2006 and have been reviewed and approved annually since that date. NYPA's guidelines set forth the methodology detailing NYPA's policy regarding the use, award, monitoring and reporting of the disposal of personal property and designate a Contracting Officer responsible for NYPA's compliance with, and enforcement of, such guidelines.

NYPA has a Personal Property Disposal Coordinator identified at each major site to ensure compliance with the personal property guidelines and to ensure proper management of the sites' disposals. NYPA utilizes

competitive bidding practices, industry publications and auctions to ensure adequate compensation is received for the disposed of property. Similarly, for disposition of fleet assets, NYPA's Director of Fleet Operations manages the transactions to ensure compliance with the guidelines and makes reasonable business decisions in accordance with procedures to conduct disposals in a competitive and transparent manner.

### Energy Efficiency Programs

NYPA's energy efficiency projects have earned national recognition from the U.S. Department of Energy, the American Public Power Association and the National Environmental Awards Council. NYPA brings industry leading expertise and strong, local knowledge to designing, managing, commissioning, and financing energy-based capital projects.

NYPA has positioned itself as a solution provider to customers. By drawing on NYPA's experience and expertise, public agencies throughout New York rely on NYPA to manage and implement turnkey energy solutions. These energy efficiency projects provide considerable financial benefits to NYPA's customers by providing a mechanism to fund infrastructure improvements through low cost financing, which the customer recovers through the project's energy savings. In addition, NYPA's Energy Efficiency Program helps public agencies meet their strategic energy and environmental goals, such as NYC "One City, Built to Last" Plan 2030 and New York State's Build Smart goal of improving efficiency by 20% by 2020.

NYPA has a proven track record of providing professional program management, design and construction services for energy programs in New York State. Since the inception of the Energy Efficiency Program in late 1980s, NYPA has performed energy efficiency improvements at over 5,600 facilities throughout New York State facilities. These improvements have resulted in approximately \$195 million in cumulative energy savings and reduction of over one million tons of greenhouse gases.

**State Comptroller's Comment:** As detailed in our report, NYPA could only fully support savings for 11 of the 21 Energy Efficiency Program projects with savings that we selected for examination. Thus, we question the reliability of the \$195 million in savings cited by NYPA.

### NYPA's Response to OSC's Selected Management and Operations Practices Draft Report

NYPA already has processes in place that sufficiently address certain of the Office of the State Comptroller's ("OSC") recommendations as to the enhancement of NYPA's practices/procedures for its RNY program, disposition of personal property, and Energy Efficiency programs. NYPA does not agree with certain OSC statements and interpretations of fact presented as audit findings, which are addressed below.

#### **RNY Recommendations:**

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

NYPA has already implemented additional controls that the OSC suggested. OSC's audit identified a single, minor error. Even before the audit, NYPA's BPAC group was already using effective controls to provide assurances that the models are accurate and complete. NYPA's BPAC group performs continuous reviews of RNY program implementation and its controls for improvements. BPAC added another reviewer as a quality

control to provide further assurance the information in the model, including its formulas, are correctly entered. Also, BPAC corrected the miscoded formula range when OSC identified it during the audit field work.

The miscoded formula range in the spreadsheet did not impact awards. OSC noted that "as the program has a limited amount of power to allocate, allocation errors may result in more qualified applicants in later rounds not being recommended for a power allocation." But, there were never "allocation" errors in any model. The miscoded formula range (in three models) was for the statistical averages in the score table, not the table where the allocation amounts are calculated.

**State Comptroller's Comment:** We maintain that the report's findings, conclusions, and recommendations are correct. As detailed in the report, NYPA did not have adequate controls to ensure the accuracy of application scoring. In fact, auditors identified errors in 3 of the 7 scoring models reviewed. Further, in responding to our preliminary finding on April 22, 2016, NYPA officials stated that "After OSC identified the miscoded formula range in the evaluation spreadsheet, NYPA corrected the error." Officials further indicated that "NYPA plans to implement additional controls to ensure the correct formula is used in future evaluation periods to ensure fairness in the ranking of applicants for allocation awards." We question why NYPA officials made these statements if they believed there were no deficiencies in scoring and allocation processes.

Also, our audit clearly showed that NYPA overrode spreadsheet formulas in their June 2012 model, which resulted in 36 applicants receiving no power when they otherwise could have received allocations. The NYPA overrides resulted in these applicants being "Not Recommended" for an allocation, and their applications were closed. Moreover, we found multiple errors which, when corrected, resulted in changes in the ranking of the applicants. Thus, NYPA's assertion that the errors in question represented a "single, minor error" is incorrect.

OSC's count of errors presents a single coding error in a manner that over-emphasizes the finding. OSC noted that it "identified 84 errors, 40 of which impacted the results for criteria 1 and 2" and that "these differences occurred in three of the seven models reviewed and resulted from a flaw in the model used." It gives the impression that a significant error occurred in the scoring tabulation. Factually, this is not the case as explained above. There were no errors in the allocation formula.

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

NYPA's reporting of job commitments is accurate. NYPA already provides disclosure of job commitments with allocation status in the RNY Effectiveness Report. The number of jobs tied to pending allocations is minimal.

**State Comptroller's Comment:** We continue to question the classification of certain jobs as "commitments," particularly when it is apparent that major program features (including the related job commitments) are unlikely to materialize. Although an applicant (prospective program customer) indicates a willingness to contractually commit, that customer is not legally bound to such commitment until a contract is in place. As detailed in our report, for 26 pending customers during the period December 2015 through April 2016, NYPA rescinded power allocations for 16 customers, 1 customer declined the allocation, and 1 other customer went out of business. Consequently, these 18 (16 + 1 + 1) "customers" did not receive and/or use the allocations cited by NYPA. Additionally, 28 businesses changed the number of jobs, capital investment, or amount of



power required after notifications of their allocations, and as such, NYPA revised the allocation calculations for these 28 customers accordingly.

Even before the contract is signed, the customer makes an acknowledged commitment to retain jobs that already exist. When the Board approves EDPAB's award recommendations, NYPA commits to the customer's power allocation, taking the power out of the available pool. It is reasonable for NYPA to report the baseline job commitment made by all applicants, both pending and in-service, from the time of the award.

In any case, OSC's audit report omits that NYPA already discloses information about allocation status and job commitments. The RNY Effectiveness Report, issued publically in December 2015, disclosed all RNY allocations by customer indicating the status as "pending" or "in-service" and the job commitment, which provides transparency to the public that a portion of the reported job commitments are tied to pending allocations.

OSC appears to have used outdated reporting statistics to suggest that NYPA does not accurately report job commitments. Contrary to this assertion, NYPA maintains accurate job commitment reporting. When an award is declined or rescinded, the reported job commitment total is adjusted. As of June 2016, the number of job commitments for awards over one year (the base time allowed to enroll an awardee) without an executed contract is about 2% of the job commitments reported by NYPA. This is significantly less than the figure used by OSC from June 2015.

**State Comptroller's Comment:** NYPA's assertion is incorrect. In a response, dated April 11, 2016, NYPA stated that: "Using the June 2015 report approximately 12,300 jobs of the 42,095 jobs were existing jobs associated with expansion allocations and expansion projects. Removing those jobs from the calculation, the jobs retained tied to pending allocations is '8 %' of the total job commitment ('29,795/385,625=8%')." Subsequently, at the audit's closing conference, we advised NYPA that we accepted this statistic and the draft report would reference the 29,795 jobs. Consequently, NYPA questions the very data they provided to us.

OSC further inaccurately reports on NYPA's responses related to the Dynamic Report statistics. OSC noted that "NYPA advised that the Dynamic Report statistic includes job retention commitments of both retention and expansion applicants, but that it could not separate them." This is not an accurate statement. NYPA maintains awardee information that can be sorted by job retention and expansion commitments. OSC relied upon a previously-generated, static report that was not sorted by retention and expansion. NYPA staff offered to manually sort the information in the previously-generated static report for OSC, but OSC refused to pursue it. Had OSC provided NYPA the opportunity to sort the information, this erroneous conclusion could have been avoided.

OSC goes on to state that "NYPA needs to separate the two categories so that businesses on the retention track do not remain in pending status longer than allowed." NYPA can and does sort awardee information and performs continuous monitoring of awardees' pending status (see response to Recommendation #4). To suggest otherwise, as OSC does, distorts the facts and misstates how NYPA maintains and manages its data.

**State Comptroller's Comment:** We question NYPA's assertion of effective continuous monitoring. For example, one of the pending applicants NYPA monitored was awarded an allocation on December 17, 2013, but then went out of business on June 13, 2014. However, NYPA did not rescind the allocation until July 2015 (13 months after the business closed). In addition, another company had two allocations awarded on December 17, 2013. According to available records, NYPA contacted the company in January 2014, but not again until mid-2015, when officials were told that the company had contracted for power with an ESCO. Further, not until April 2016 were the two allocations in question rescinded.



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

OSC's determination that NYPA does not properly disclose information about the RNY program lacks any factual support and is premised on a faulty analysis. NYPA is transparent in its management of and reporting on the RNY program. NYPA adheres to the reporting requirements established by the law and provides transparency in a reasonable manner for a competitively awarded program. EDPAB meeting minutes are provided to the public. Sensitive information, such as information about the reserve and its impact, is not discussed publicly, primarily to maintain the program's competitive integrity.

OSC does not provide a business or public benefit basis for disclosing this information other than to call it "transparency." That term is inapt in this instance, especially given the lack of supporting information from OSC. OSC bases its recommendation on unsupported conclusions that were not provided to NYPA during the preliminary audit findings process. OSC did mention some aspects of the April and June 2012 models during the closing conference, but the discussion was limited and nothing pertinent was provided in writing to NYPA. NYPA requested an opportunity to address these factual inaccuracies and conclusions, which OSC appears to have drawn based on a complete misunderstanding of information about these models. OSC further failed to afford NYPA the opportunity to correct its fundamental misapprehension. Accordingly, in this response, NYPA corrects OSC's misconceptions regarding the reserve, "cutoff score" and applicants "carried over from one model to the next."

**State Comptroller's Comment:** Our audit work clearly indicated that NYPA overrode the formulas in their June 2012 model, which resulted in 36 applicants receiving no power when they otherwise could have been awarded allocations. The overrides resulted in these applicants being "Not Recommended" for allocations, and their applications were closed. We informed the Authority about this matter at the closing conference. Also, as previously noted, we communicated this issue through exchanges of emails during the course of the audit.

First, OSC appears to base its erroneous conclusions about "transparency" on the June 2012 RNY awards. Those awards were the *only instance* that NYPA used an internal reserve level and, in that instance, it was justified by the need to ensure power would be available after June 2012 for future awards in the interest of economic development. At that time, the total requested power amount exceeded the program's allotment. Since June 2012, there has not been a business reason to have an internal reserve due to the availability of RNY power.

**State Comptroller's Comment:** NYPA's assertion is inaccurate. Our observations were based on more than simply the June RNY awards. In April 2012, NYPA adjusted the amount of power requested by applicants because the total amount of power requested exceeded the total available for allocation. Further, the EDPAB minutes for April 2012 indicated that 517 of the 877 applications were recommended for RNY power; however, no determinations were made for the remaining 360 (877 – 517) applications, for which disposition would be made in subsequent rounds of evaluation. As detailed in our report and Comment #10, there were inconsistencies in the processes to evaluate applications.

Second, OSC also incorrectly "determined that applicants were treated differently depending on when their application was processed." For each evaluation period, all applicants are evaluated and scored using the model.

The basic premise of the model is that each applicant is scored relative to the average data of the other applicants at the time of modeling. OSC's finding is premised on the auditors' misunderstanding of the use of "cutoff score" for the June 2012 award period. A set score did not determine the threshold; rather, NYPA established a reserve in June 2012 to preserve power for future allocations. An entry of "no" was used in the June 2012 model to indicate the reserve threshold was reached for the applicant's group (large, small or NFP).

**State Comptroller's Comment:** We maintain that the treatment of certain applicants was not fully consistent with the treatment of others. As noted previously, in April 2012, 517 of the 877 applications were recommended for RNY power, and no determinations were made for the remaining 360 applications. In the subsequent (June 2012) round, NYPA re-evaluated all 877 again, plus any applications received by January 27, 2012 that NYPA considered complete in June. Furthermore, according to NYPA officials, the "cutoff score" used in the June 2012 model represented the lowest scoring entity in each category (NFP, Small Business, Large Business) approved for allocations in April. Nevertheless, certain applicants whose scores exceeded the cutoff scores were not awarded power allocations.

In response to OSC's statements regarding the 35 applications that did not receive allocations in June 2012, NYPA was not provided a proper opportunity to discuss this matter with OSC. It was not included in a preliminary findings report from OSC. This is regrettable because OSC has misconstrued the information in the model. There was not an inconsistent application of the RNY model in June 2012. OSC presents this information in the report to give a false impression that applicants were treated unfairly, when, in fact, had OSC properly interpreted the data provided - or given NYPA management the opportunity to educate OSC on the data so it could do so - it would have plainly concluded that no applicants were treated unfairly, disparately, or in any way differently.

**State Comptroller's Comment:** As previously stated, we maintain that applicants were not treated consistently. By overriding the formula and subjecting certain applicants to two rounds of review, we concluded that certain applicants were treated differently. Further, although NYPA officials assert that auditors misinterpreted the data, they provide no specific detail as to how the data was misinterpreted. To what and how NYPA would have educated OSC's auditors is unclear.

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

OSC's recommendation fails to consider NYPA's account management practices for pending customers. NYPA account executives have processes and a schedule for following-up with pending customers. In addition, BPAC meets on a monthly basis to review pending allocation status and assess account executive correspondence with pending customers. When a pending customer requests an allocation deferral, BPAC reviews the request and contributing factors and makes a recommendation to the BPAC manager, who decides whether to grant the deferral.

**State Comptroller's Comment:** At the time of our audit fieldwork, NYPA did not provide any documentation of a formal process to periodically assess applicants' readiness to accept power under the program and to administer requests for deferrals when applicants were not ready.

NYPA did provide documentation of NYPA's follow-up efforts for the pending customers in their sample.

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

NYPA has already taken compliance action on customers who did not meet their commitments, which is documented in the items submitted to NYPA's Trustees. NYPA takes compliance actions based on well-evaluated business decisions. This was explained to OSC during the audit, including through interviews with involved NYPA staff.

Where a customer fails to meet the threshold power utilization or job commitments, the customer is subject to compliance action. As part of NYPA's customer management, Marketing staff conducts a documented review of the customer's non-compliance before recommending action, such as reducing an allocation. Where a customer "hinders verification of compliance," NYPA does act to suspend the customer's allocation until the matter is resolved. If not resolved, the customer would be terminated.

**State Comptroller's Comment:** In a preliminary finding issued on February 4, 2016, we noted that three businesses failed to achieve 90 percent of their power utilization requirements, and one (of the three) achieved only 27 percent. Further, we concluded that NYPA should have reduced the allocations of these businesses, pursuant to program rules. Nevertheless, according to NYPA officials, they had the discretion to take (or not take) action. Officials, however, provided no documentation of the circumstances wherein discretion could be used to determine when (or when not) to enforce the rules.

OSC took issue with NYPA's enforcement of the customer's obligation to cooperate with audits noting that "although some customers refused to provide documentation to support their job commitments, NYPA took no action against them." This is incorrect. NYPA did take action against customers who failed to cooperate with NYPA's compliance efforts, including failure to submit compliance reports or cooperate with periodic audits. Notably, NYPA has suspended customers' RNY allocations for non-cooperation. Consequently, OSC's conclusion is erroneous and misstates the facts.

NYPA's Internal Audit Department already oversees the independent auditor's activities. These activities include coordinating with BPAC to resolve any situations where customers are not cooperating. During OSC's audit period, neither NYPA nor the independent auditor was experiencing any dispute with any of its customers regarding this issue.

**State Comptroller's Comment:** Under statute and contract terms each customer is required to: cooperate with the periodic audits conducted by NYPA's agent; and provide documentation to support their commitments. However, as detailed in the report, a dozen customers refused to provide the required payroll information. No disputes occurred because NYPA agreed to allow certain customers to self-certify and other customers to provide other documentation to show they met their job commitments, instead of holding these customers to the statute and specific terms of their contracts. NYPA determined that self-certification and other documentation, such as summary reports, were sufficient to support compliance and provided its expectations of what defined compliance to the CPA.

As the engagements were performed under the AICPA Agreed-Upon Procedures Standards, NYPA (and not the CPA firm) was responsible for determining the sufficiency of the procedures chosen. However, although

dropping the requirement for the prescribed documents avoided customer disputes, it only provided rather limited assurance that customers actually met their job commitments.

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

NYPA already performs continuous compliance assessments for the RNY program to ensure adequacy of its allocation of resources. NYPA decision-making is based upon a qualitative and quantitative analysis. Sampling techniques used for jobs and capital investments are considered best practices. Indeed, even OSC used sampling techniques to test reported jobs and capital investments during this audit. NYPA contracts with an independent auditor to perform a yearly audits of a sample of customers to verify that reported job numbers and capital investments are accurate. NYPA believes its sampling process is an efficient and cost-effective way to verify compliance included reported jobs and capital investments.

**State Comptroller's Comment:** OSC based its conclusion on the totality of the available evidence. In addition to the review of the compliance reports by the contractor cited, OSC conducted multiple interviews including (but not limited to) the external auditors, internal auditors, and other staff responsible for monitoring compliance. In addition, OSC conducted its own review of reported jobs data. Each piece of evidence contributed to the conclusion that OSC reached. Thus, NYPA officials are mistaken in their belief that our conclusion was based on a single piece of evidence.

Moreover, contrary to what NYPA repeatedly asserts, OSC communicated all of its conclusions to NYPA before the draft report was issued and provided NYPA with ample opportunity to respond. The dates and meeting minutes when these issues were discussed, as well as written correspondence with NYPA staff on the issues they claim were not shared with them, are included in our work papers.

Additionally, throughout their response, NYPA misstates the requirements of generally accepted government auditing standards (GAGAS). The standard on reporting the views of responsible officials requires OSC to provide NYPA with a draft audit report, but not written preliminary findings. As noted previously, we communicated all preliminary audit observations to NYPA through preliminary findings, emails, and/or discussions (including the closing conference) with pertinent NYPA officials.

OSC further erroneously determined that NYPA's primary mechanism for monitoring compliance with job commitments to be flawed. OSC based this conclusion on a finding that "in 12 cases, NYPA allowed customers to refuse to provide required documentation to confirm reported job retention numbers, without consequences." OSC failed to provide this conclusion in a preliminary audit finding, as required. Contrary to OSC's incorrect determination, a review of NYPA's independent audit firm's reports for the customers referenced in OSC finding confirmed that 11 of the 12 noted by OSC had provided sufficient evidence in the form of payroll reports or other agreed upon documentation to support the customer's compliance. The one customer who did not provide payroll reports is a special case where the customer's allocation is on behalf of multiple businesses. This customer provided certified compliance reports as required.

NYPA does not agree with OSC's findings given the lack of information shared by OSC, and based on OSC's gross misinterpretation of the information NYPA provided to it. OSC conducted independent field testing of RNY customers' compliance reports. OSC's report points out its inability to "verify the accuracy of almost half of the customers' Compliance Reports" and claims "in some cases, the differences ...were significant." Such

general statements, lacking any factual support or data, carry little weight. OSC failed to share and review field test results with NYPA in order to verify testing differences, including job count.

**State Comptroller's Comment:** We had no aversion to providing the “factual support” and “data” that NYPA officials now seek to support our conclusions. However, we question why NYPA requests supporting documentation now, when officials were aware of our findings nearly six months ago and yet did not previously ask for such documentation. Further, we issued a preliminary finding to NYPA on February 4, 2016 which detailed the results of our site visits to NYPA’s RNY customers, and NYPA formally responded on March 4, 2016. Also, when transmitting our draft audit to NYPA, we informed officials to contact our office “If there are matters in the report which you or your staff would like to discuss.” Although OSC provided NYPA 30 days to respond, officials did not ask for the detailed support for our findings prior to responding to the draft report.

This resulted in improper conclusions. Furthermore, OSC's field testing was a judgmental sample of a significantly smaller group of customers (10) than NYPA's annual independent auditing sample (50+).

**State Comptroller's Comment:** Under IIA standards, the standards under which NYPA’s own internal audit staff operates, independence refers to the placement of the Internal Audit function within the organization (and not to audit testing and sampling). It is therefore unclear what NYPA means by an independent audit sample. Moreover, under the IIA standards NYPA’s audit plan is required to be risk based. Yet, in its response, NYPA objects to risk basis or judgmental selection. This is not only contrary to the professional standards, but it is also inconsistent with good management practices. As NYPA claims it has limited resources, it should focus its reviews on customers who are at a higher risk of non-compliance and not place unnecessary burdens on lower-risk customers.

NYPA independent auditing procedures and results support NYPA's continued reliance on the RNY customer's compliance reports to support customers' job counts.

**State Comptroller's Comment:** The contracted CPA’s work was done under the AICPA Agreed-Upon Procedures Standards (as opposed to Auditing Standards). Under the Procedures Standards, NYPA officials were responsible for the sufficiency of the procedures since it is assumed that they best understood NYPA’s needs. Further, each of the contracted CPA’s reports explicitly states, “We make no representation regarding the sufficiency of the procedures enumerated in the attached report for the purpose for which this report has been requested or for any other purpose. We were not engaged to, and did not, conduct an examination, the objective of which would be the expression of an opinion on the reported job levels as submitted to the New York Power Authority.” Under these standards, the CPA was not responsible for rendering an opinion (as to customers’ compliance with job commitments) or providing negative assurance (i.e., there was no evidence that the customer did not meet job commitments). Thus, NYPA (and not the CPA) was responsible for determining the sufficiency of the procedures performed. Although NYPA determined that a self-certified document was an appropriate “agreed upon document,” it does not mean that such document provided a sufficient level of evidence under auditing standards. Rather, it simply means that NYPA believed that a customer’s self-certification was sufficient.

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

NYPA disagrees.

OSC noted "NYPA set the terms of the contract that the firm is to review about 100 firms annually, and NYPA has not ensured that the firm met that requirement." NYPA's independent auditor is meeting all of its contractual obligations. NYPA's Internal Audit division holds its independent auditor accountable for timeliness, accuracy and completeness to both the contract terms and the agreed upon procedures to be performed for each customer selected to be audited. The number of customers to be selected in the contract is to establish a contract value for procurement purposes. The contract was awarded for multiple years for approximately 100 audits per year with the expectation that the sample selection methodology would be used to determine the annual sample size according to the auditable pool of RNY customers.

OSC found that "NYPA has not met its own yearly target for compliance reviews." OSC incorrectly assumes that the 100 audits per year is NYPA's target. Sampling provides the most cost effective solution and is considered the best practice to determine the number of audits performed given changes to the auditable pool of RNY customers and other variables. The following basic guidance from the Institute of Internal Auditors is followed:

"In forming an audit opinion or conclusion, auditors frequently do not examine all available information, as it may be impractical and valid conclusions can be reached using audit sampling. When using statistical or nonstatistical sampling methods, the auditor should design and select an audit sample, perform audit procedures, and evaluate sample results to obtain sufficient, reliable, relevant, and useful audit evidence."

**State Comptroller's Comment:** NYPA again misapplies professional auditing standards. The quote that NYPA cites is from IIA Practice Advisory 2320-3 Audit Sampling. The primary related standard per this Practice Advisory states that: "Internal auditors must base conclusions and **engagement results** (emphasis added) on appropriate analyses and evaluations." This practice advisory and the standard which it is based upon applies to an individual engagement, not the overall planning of yearly targets for all compliance reviews. The standard related to the planning of the overall audit plan (all engagements for a specified time period) is standard 2010. Standard 2010 requires NYPA to develop a risk-based audit plan, and it does not address sampling.

#### **Additional responses to the RNY portion of the audit report:**

##### Use of Model to Rank Applicants

OSC inaccurately reported that its "review of the process found that NYPA assigned a weighting factor to each of the criteria. However, NYPA officials chose not to explain or provide documentation as to how the weights were established and applied, and their effect on the model. The use of a weighting factor ranging from 5 percent to 20 percent gives certain criteria prominence over others." In fact, NYPA provided an explanation to OSC in interviews and in written responses. The weighting was established through an internal review and determination process which included consideration of scoring models for other economic development programs, consultation with other state agencies, staff expertise and review of RNY law.

**State Comptroller's Comment:** NYPA only provided a generic explanation of how the weights were developed, and did not provide detailed illustrations of how individual weights were determined and why. In an email response provided in January 2016 to a question OSC asked in May 2015, NYPA gave a broad overview of its rationale for using weighted scoring, the key parties involved, and how information was exchanged or discussed with EDPAB. However, the email lacked any detailed explanation of why certain factors received



higher weights and others less. Moreover, NYPA did not describe and detail the “internal review and determination process.”

Also, OSC contradicted scoring information NYPA used in the June 2012 model and incorrectly concluded that an applicant's score would have changed, making the applicant recommendable for an allocation. NYPA advised OSC of its error, but OSC obstinately ignored this information. Once again, OSC did not provide this matter to NYPA in a preliminary audit finding, but only raised it verbally at the closing conference. OSC did not pursue any clarification from NYPA. Despite this, NYPA provided OSC information clearly showing that the scores provided to NYPA in 2012 were used in the model. OSC ignored NYPA's contemporaneous documentation and did not give NYPA management the opportunity to review the data on which OSC relied for its fallacious conclusion.

**State Comptroller's Comment:** We confirmed the scores independently with ESDC, the custodian of REDC records. We advised NYPA of this and showed officials the results of correcting this data on March 23. Further, OSC asked NYPA to respond, but it failed to do so. If NYPA has any source documentation to support the score it used, it has not presented it to the auditors.

#### Market Power

OSC's description of the market power aspect of RNY is misleading and the suggestion to exclude the market portion, where independently procured by the customer, would not promote transparency. Market power is half of the power allotted by the RNY legislation. The law defines market portion as "Recharge New York market power." Customers may have NYPA procure the market portion or may elect to do so on their own. Regardless of which entity procures the market power, NYPA reports and tracks the power allocations (market and hydro power).

**State Comptroller's Comment:** The facts in the report are correct as stated. Customers are entitled to, and do, decline to accept market power from NYPA. In that case, the only benefit to the customer is the delivery discount provided.

#### TED

OSC did not provide the findings included in its report regarding the Transitional Electricity Discount (TED) program to NYPA during OSC's preliminary findings. NYPA did not have the opportunity to address the issues raised by OSC during the audit. OSC used inaccurate figures in the report. NYPA became aware of the one error (an overpayment) and corrected it. NYPA has been timely with TED payments once information is received and processed. There may have been delays in processing payments due to customers not submitting the utility bills necessary to start the calculations in a timely manner despite outreach from NYPA.

**State Comptroller's Comment:** There was an extensive exchange of information regarding TED between OSC and NYPA via email. For example, on April 1, OSC auditors sent a series of questions regarding the amount of payments to TED recipients for the 2014-15 year and questions about calculations for other TED payments made. NYPA provided a response on May 3, answering our questions, and in fact provided corrections to information they previously provided regarding TED.

## Personal Property Disposal Recommendations:

8. *Establish controls over the valuation and sales of scrap metal, including but not limited to:*
- *developing formal procedures for the sale of scrap metal, which should include NYPA officials weighing metals locally;*
  - *observing the disposal activity;*
  - *developing agreed-upon weight difference limits;*
  - *minimizing the time between weighing and issuing Requests For Quotes and maintaining control over the transaction from initial removal from NYPA's property to final pricing; and*
  - *ensuring that all vendors removing scrap metals from NYPA property either have a valid contract or have the proper authorization, and that the correct price is used.*

NYPA recognizes that scrap metal is an asset for which fair value needs to be achieved in its sale. NYPA also recognizes that its scrap metal disposal program could be enhanced with additional controls and began enhancing the program during the audit period and will continue to do so going forward. As transactions were conducted, NYPA reviewed and improved its processes.

NYPA already has implemented improved controls to ensure scrap metal sales are conducted in a manner that achieves the best value for the NYPA. Past scrap metal sales were conducted by competitive bid in a manner using reasonable business judgment and in accordance with NYPA's guidelines. NYPA's business decisions take into consideration the cost-benefit of disposal transactions. NYPA does not own, rent or possess facilities or equipment (i.e., truck scale) capable of weighing dumpsters or containers containing scrap materials, so NYPA uses reasonable alternatives.

At the Poletti facility, NYPA estimated the weight based on available information, such as drawings, asset specifications or descriptions, and observational estimates. NYPA-generated Requests for Quotations (RFQs) for the disposal of the material are based on approximate weights. NYPA allowed reconciliation based on certified weight tickets from the purchaser. OSC took issue with scrap metal sales at Poletti, but these were conducted several years ago. NYPA recognized the need to improve its controls well before OSC's audit. Starting in May 2012, to improve accuracy of estimated weight of individual scrap metal sales at the Poletti facility, a third party contractor weighs scrap metal for the RFQ, places materials in a container, and transports the container after the sale to a certified weigh station.

**State Comptroller's Comment:** We commend NYPA for changing its processes at Poletti, by having materials transported and weighed by a third party at a certified weigh station. However, we note that similar practices may be warranted at NYPA's other facilities to ensure it is properly compensated for the value of its scrap metal.

OSC stated that "for a sale of copper cable, the documentation NYPA provided included the 'Abstract of Bids' which indicated the bid opening was non-public" and that "NYPA advised that it defines 'publicly disclosed' to mean an interested party would have to file a Freedom of Information Law (FOIL) request in order to receive information on the bids submitted." This is incorrect. NYPA does publically disclose bid results for individual RFQs on its website ([www.nypa.gov](http://www.nypa.gov)) to satisfy the requirements of the Section 2897 of PAL.

**State Comptroller's Comment:** Based on NYPA's response, we revised our report as appropriate.

OSC noted that "NYPA sought a contract to remove transformers from its Niagara Power Project and estimated the net salvage value to be \$108,000 to \$207,000," but "accepted a bid for \$88,500 without support for why it accepted a bid that was \$19,500 less than the low end of the estimated range." NYPA provided supporting



documentation regarding this transaction, which was not a straightforward scrap metal sale. This transaction entailed a service to be performed by the contractor in addition to the value of the metal, that is to say: the draining, dismantling, loading and transporting of oil filled electrical equipment (transformers) with a credit for scrap metal (salvage) value. This transaction resulted in a net gain to NYPA through a competitive bidding process where the award resulted in the highest value to NYPA.

**State Comptroller's Comment:** While NYPA provided an explanation, it did not justify why it accepted a "credit" outside its expected range. Further, the explanation raised additional questions, such as why NYPA allowed a crane to leave the site (although it was apparently still needed at the site), and then funded the cost to rent a replacement crane by lowering the credit.

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

NYPA's Director of Fleet Operations (DFO) already performs site visits to evaluate fleet assets and meets with site staff to determine vehicle needs. OSC suggests limited acceptable evidence for compliance with NYPA's policy, such as a documented site visit schedule. NYPA has other documentation that those visits took place, including emails and travel reports, which OSC found unacceptable to prove the site visits to evaluate fleet assets were performed. NYPA's evidence of fleet asset condition also includes maintenance work orders which are maintained in NYPA's asset management system.

**State Comptroller's Comment:** While NYPA may have other documentation to support these visits, NYPA did not provide any of these travel reports or vouchers to OSC. Thus, OSC did not find these documents unacceptable, but instead was unable to evaluate this evidence as it was never provided previously, while the auditors were performing on-site field work. Moreover, the DFO told auditors that he did not keep records to support visits to the sites. The only supporting documentation of an evaluation were emails of the DFO's request of facility staff to identify vehicles for replacement in the next year's budget. This does not, however, show evidence of compliance with corporate policy requiring the DFO to conduct site visits to evaluate the condition of fleet assets.

An annual valuation is not needed for management and operational purposes. As was pointed out to OSC, NYPA's corporate policy does not require an annual valuation of fleet assets. In accordance with NYPA's policy, NYPA considers the value of the fleet asset at time it is reviewed for replacement or retirement.

OSC also notes that NYPA's corporate policy only addresses passenger vehicle retirement criteria and suggests criteria be included in the policy for trucks and other utility vehicles. In fact, NYPA has documented criteria for the retirement of trucks and other utility vehicles. As previously explained and provided to OSC, NYPA internally posts a complete list of replacement criteria for vehicles, trucks and other utility vehicles. NYPA is reviewing the level of detail in the corporate policy and address criteria for all vehicles.

**10. *Improve controls over fleet asset sales by:***

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

NYPA has copies of many of its auction advertisements, which were provided to OSC, and is working to ensure retention of future advertisements.

NYPA is reviewing its processes for valuation of fleet assets to be sold at auction. Presently, NYPA's DFO evaluates auction estimates using his expertise, past auction results and other resources, such as the NADA guide book. This does not mean that the NADA value is achieved for each sale, just that it is a resource used by the DFO. The NADA guide book states:

"The process by which users of the Guide determine valuation is inherently subjective. The individual vehicles may have an actual value that is higher or lower than the estimated values published in the NADA Official Used Car Guide."

NYPA understands the importance of receiving fair market value from the disposal of its fleet assets and is taking steps to better document the valuation process in the conduct of its fleet auctions.

In addition, OSC's findings regarding the June 2015 auction are inaccurate. OSC used information not related to that sale. The referenced fleet disposals are from a sampling of all auctions between 2011 and 2014 as requested by OSC audit team. NYPA reviewed these disposals. During that time, 26 of the 30 sampled fleet assets sold at or above the appraised value, totaling \$268,550. This includes the fleet asset OSC noted as not having an appraisal. In fact, it was totaled in an accident and NYPA received a salvage value estimate from State Farm of \$5,403.81 (a third-party appraisal), and sold for \$8,300 by NYPA, thereby exceeding the estimate. The other 4 assets which OSC found to have sold for less than the appraised value totaled only \$950.

**State Comptroller's Comment:** Based on NYPA's response, we revised our report as appropriate.

**11. Require Disposal of Personal Property forms to be:**

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

NYPA has already addressed this recommendation. NYPA recognized the opportunity to enhance its internal controls for the disposal of personal property. Initially, NYPA developed the form as a tool for staff to use at their discretion to document disposals, and provide reasonable assurance disposal laws and NYPA's internal processes are adhered to. Recently, NYPA implemented a new disposal procedure and developed an electronic tool to document disposal of personal property (except for Fleet assets, which are addressed separately), which includes original asset value (where known), fair market value, and method of disposition. This procedure and form are required to be followed at all NYPA facilities, which will provide a more complete view of the asset life cycle history and method of disposition.

**State Comptroller's Comment:** We are pleased that NYPA has taken corrective action.

**EE Recommendation:**

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

NYPA project managers are required to prepare and maintain records to support reported energy savings. NYPA provided information to clearly show how Energy Efficiency (EE) projects are supported through

extensive interviews, contemporaneous project documentation, and annotated worksheets developed to provide a non-technical understanding of EE project calculations to the auditors.

**State Comptroller's Comment:** If NYPA publishes an energy savings report, it is reasonable to expect that it can support the amounts of savings presented therein. OSC obtained a copy of the April 9, 2015 EE project report from NYPA's staff at the outset of audit work. According to NYPA officials, NYPA Project Managers should be able to support the report's stated energy savings because the report was derived from information provided by the Managers. OSC simply requested NYPA to support the energy savings, as presented in the report. However, the documentation NYPA provided generally was either original estimates or the most currently revised information, and therefore did not match the amounts cited in the April 9, 2015 report. Eventually, most Project Managers were able document amounts of savings equal to, or close to, the amounts reported on April 9, 2015, although certain Project Managers were not able to do so. We provided three preliminary findings on this matter to NYPA. In its first response, NYPA stated, "Its implementation contractors, who are industry professionals, prepare the savings calculations for every project in accordance with NYPA's standardized Energy Savings Handbook." Further, NYPA asserts that its employees verify the calculations made by their contractors. Therefore, proper documentation to support energy savings calculations should have been readily available and matched the EE project report.

NYPA disagrees that EE project savings were unsupported or partially supported. NYPA supported more than \$16.5 million in energy savings sampled by OSC, by demonstrating \$17.3 million in energy savings and \$4.2 million in O&M savings for the 25 EE projects that OSC sampled. Where OSC indicated that EE project savings were unsupported or partially supported, NYPA demonstrated that this was not the case and that all savings are supported to within a de minimis amount. This information was readily available and provided to OSC. NYPA provided spreadsheets, including calculations, and staff were interviewed. In many cases, NYPA staff provided annotations to facilitate OSC's understanding of the energy and cost savings to delineate how the calculations were performed.

OSC used a printout of a dynamic database to improperly find that savings were unsupported or partially supported. OSC based this conclusion on a printout from April 9, 2015. However, information in the database is dynamic, with costs and savings numbers updated throughout the EE project lifecycle. Importantly, information in the database is reconciled against the Customer Installation Commitments (CICs) prior to public reporting in accordance with NYPA's processes. However, as a result of the audit timing, this reconciliation did not occur before the date of the printout. As a result, a few of the unproofed figures in project list printout dated April 9, 2015, needed to be updated to agree with the project CIC. NYPA performs this reconciliation in the ordinary course of business ahead of publically issuing EE project reports.

While NYPA staff were diligently providing information to OSC in support of the EE projects' actual energy savings contained in the CIC, it was not until OSC issued its preliminary findings report that NYPA became aware the EE projects were being audited against the April project list printout, which was provided only to OSC. This was not explained or presented to NYPA's staff during the interviews. Therefore, OSC's conclusion about the EE projects' energy savings being unsupported or partially support is misleading.

NYPA has controls in place to ensure accuracy of energy savings reported. NYPA reviews internal controls on an on-going basis and implements program improvements where needed. NYPA continues to monitor and improve the reporting process to ensure accurate, current and reliable information is reported. These procedures ensure adequate process controls are implemented to provide senior management reasonable assurances that supporting savings documentation for each EE project is retained.

NYPA's implementation contractors (ICs), who are industry experts, prepare the savings calculations for every project in accordance with NYPA's standardized Energy Savings Handbook. EE Project Managers review the calculations provided by the ICs. Furthermore, since July 15, 2013, each project is also independently reviewed and approved by EE's Engineering and Design Division for accuracy and compliance with the Energy Savings Handbook prior to implementation. Their approval is saved as part of the internal CIC record. These savings are not only reviewed by NYPA, but are also reviewed and approved by NYPA's customers through the Initial CIC and Final CIC documentation.

The implementation of our process is documented in the Initial CIC, Final CIC (FCIC), and supporting materials (including calculation spreadsheets), as was explained to OSC auditors in staff interviews and NYPA responses to document requests and preliminary findings. At the completion of every project, EE prepares a Final CIC which updates both project financials and the savings based on the final installation. The CIC includes the spreadsheets by which the savings are calculated. These are prepared by NYPA staff or consultants and reviewed by the EE Project Managers.

OSC stated that "it is important that accurate and supported energy cost savings information be developed and maintained for each project to help assess individual project and overall EE program effectiveness." NYPA agrees and has done so. NYPA provided OSC accurate savings information above and beyond what was in the April project list printout. OSC would only designate as "supported" if the calculation matched the number exactly. NYPA provided energy and/or O&M savings information that was clearly reported in the CIC documentation. Importantly, these savings are reviewed and accepted by NYPA and its customers through the Initial and Final CIC process.

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

Yours truly,

A handwritten signature in blue ink, reading "Gil C. Quiniones".

Gil C. Quiniones  
President and Chief Executive Officer