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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**ROCHESTER-GENESEEE
REGIONAL
TRANSPORTATION
AUTHORITY**

**COMPLIANCE WITH
EXECUTIVE ORDER 111
REQUIREMENTS TO
PURCHASE POWER FROM
RENEWABLE SOURCES**

Report 2008-S-84

AUDIT OBJECTIVE

The objective of the audit was to determine whether the Rochester-Genesee Regional Transportation Authority (Authority) is meeting the current 10 percent target for purchasing power from renewable sources increasing to 20 percent target level by 2010 as specified within Executive Order 111.

AUDIT RESULTS - SUMMARY

Executive Order 111 (Order) was issued in June 2001 and requires that by 2005 all State agencies and certain public authorities, including the Authority seek to purchase sufficient quantities of electricity produced by certain specified renewable technologies so that 10 percent of the overall annual electric energy consumption of the buildings they own, operate or lease comes from renewable sources. The target percentage increases to 20 percent by 2010. The agencies can acquire qualifying electric energy by generating it themselves, or by purchasing it either through their electrical supplier or through a third party provider in the form of a Renewable Energy Certificate.

The Authority is not in compliance with the Order. It has not met the 10 percent requirement for 2005, has not submitted annual energy reports, and at the time of audit had not addressed how to meet the 20 percent requirement by 2010. The Authority obtains its energy from the Monroe County Consortium and from the Office of General Services, and has not sought to purchase renewable energy.

Authority officials stated that they had no knowledge of Executive Order 111 until the audit commenced in April 2008, and had not received any guidance from the New York State Energy Research and Development Authority (NYSERDA). Nevertheless,

NYSERDA officials indicate they had sent communications to Authority officials regarding the Order as long ago as December 2001. In addition, there were communications between audit staff in the Office of the State Comptroller and Authority officials going back to 2005 regarding applicability of the Order.

Our report contains four recommendations directed toward implementation of Executive Order 111. Authority officials agreed with the recommendations and indicated they will be looking into the possibility of implementing the Order in 2008. However, Authority officials did not respond to our draft audit report, and, as such this report is being issued without a response.

This report, dated February 27, 2009, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or Office of the State Comptroller
Division of State Government Accountability
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BACKGROUND

Executive Order 111 (Order), issued by the Governor on June 10, 2001, sets out a broad initiative that directs State agencies and certain public authorities, to be more energy efficient and environmentally aware. The Order is divided into individual sections, each addressing a specific energy-related or environmental initiative ranging from establishing broad energy efficiency goals to instituting energy efficient and environmentally sensitive practices. We have previously audited various agencies' efforts to implement certain sections of the Order, including the procurement of clean fuel vehicles and the purchase of energy efficient

products. This audit addresses implementation of the section of the Order that requires agencies to purchase power from renewable sources.

Specifically, Section IV of the Order requires that by 2005 each covered agency should have sought to purchase sufficient quantities of energy from certain specified renewable technologies so that 10 percent of its overall annual electric energy consumption of the buildings it owns, operates or leases would come from renewable sources. The target percentage increases to 20 percent by 2010. Guidelines issued by NYSERDA in December 2004, generally require covered agencies to apply these percentages against all facilities where their power is separately metered and billed, regardless of whether they own or lease the property. Eligible renewable technologies specified in the Order include power generated from wind, solar, thermal, photovoltaic, sustainably managed biomass, tidal, geothermal, methane waste and fuel cells.

The Order designates the New York State Energy Research and Development Authority (NYSERDA) as the lead agency responsible for coordinating implementation and assisting other agencies to fulfill their responsibilities. To assist NYSERDA in this role, the Order also created the State Energy Efficiency Advisory Council (Advisory Council), headed by the President of NYSERDA and composed of the heads of 13 other agencies and authorities. NYSERDA and the Advisory Council have developed guidelines that, among other things, interpret the requirements of the Order and specify criteria for periodic reporting and possible exemption of certain facilities or operations. In general, the guidelines allow agencies to acquire qualifying energy by generating it themselves or by purchasing it, either through their electrical supplier or through a third party

provider in the form of certificates referred to as Renewable Energy Credits.

The Authority oversees public transportation in Monroe, Genesee, Livingston, Orleans, Wayne, Wyoming and Seneca counties. It is governed by a 13 member Board of Commissioners representing the various municipalities to which the Authority provides bus services. The Authority uses natural gas and electricity to power its facilities; it receives its electrical supplies from the Monroe County Consortium through the New York Independent System Operator and its natural gas from the Office of General Services. For the fiscal year ended March 31, 2008, the Authority used over 4 million kilowatt-hours (KWh) of electricity and 33,844.55 decatherms of natural gas at costs of approximately \$367,000 and \$408,000, respectively. The Authority has 10 sites with 16 buildings occupying a total of 246,096 square feet. Ten of these buildings are less than 5,000 square feet.

AUDIT FINDINGS AND RECOMMENDATIONS

Compliance With Order

Procurement of Renewable Energy

The Order requires State agencies and other affected entities to seek to procure 10 percent of their total electrical energy requirements by 2005 from renewable sources and 20 percent from those renewable sources by 2010.

The Order specifies wind, solar thermal, photovoltaics, sustainably managed biomass, tidal, geothermal, methane waste, and fuel cells to be qualifying renewable sources. State agencies and other affected entities can purchase any combination of the qualifying renewable sources to meet the goals of the Order.

According to NYSERDA's guidelines, State entities can fulfill their renewable-power procurement obligations in the following ways:

- On-site generation of all renewable power requirements;
- A mix of on-site generation and open-market electricity; or
- Purchasing all renewable-power requirements from the open market.

Authority officials informed us that they have not sought to purchase renewable energy, in compliance with the Order, because they were not aware of the Order and had not received any communication or guidance from NYSERDA on its implementation. Nevertheless, NYSERDA officials indicate that they had ongoing communications with Authority officials regarding the Order as long ago as December 2001. In addition, there were communications between audit staff in the Office of the State Comptroller and Authority officials going back to 2005 regarding applicability of the Order.

To meet the Order's renewable energy goal of 20 percent by 2010, NYSERDA's Guidelines encourage entities to increase renewable energy use each year. State agencies are required to note their efficient energy strategies on the annual energy report. Because the Authority did not submit an annual report for 2005 and has not instituted any of the requirements, it has not developed a way to meet the 20 percent renewable energy target by 2010. However, officials informed us that they have begun an analysis of the quantities of energy consumed for those facilities that are covered by the Order and are undertaking a financial analysis associated with complying with the Order.

Reporting Requirements

NYSERDA's Guidelines for compliance with the Order require covered entities to submit annual energy reports, which are due each December 1 following the State fiscal year. Because officials stated they were unaware of this requirement, the Authority has not submitted any annual reports to NYSERDA. Therefore, NYSERDA cannot monitor the Authority's progress in complying with the Order.

Recommendations

1. Take steps necessary to come into compliance with the Renewable Energy section of Executive Order 111.
2. Contact NYSERDA to obtain assistance that will result in prompt implementation of the Order.
3. Submit annual energy reports to NYSERDA.
4. Consult with NYSERDA to determine how they can achieve the 20 percent target by 2010.

AUDIT SCOPE AND METHODOLOGY

We audited the Authority's compliance with Section IV of Executive Order 111. Our audit covered the period April 1, 2005 through April 25, 2008. To accomplish our objective, we met with Authority officials and obtained the energy procurement information for fiscal years ended March 31, 2006, 2007 and 2008. We also obtained the Authority's business location report detailing the number of office locations and square footage. Further, we obtained from NYSERDA the 2005 and 2007 mailing lists of agencies and public authorities which must comply with the Order.

We conducted our 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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

AUTHORITY

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.

REPORTING REQUIREMENTS

A draft copy of this report was provided to Authority officials on September 5, 2008, with a request for their formal comments within 30 days. Although we extended the date, Authority officials did not respond as of January 23, 2009. As a result we are issuing this final report without any comments from the Authority.

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

CONTRIBUTORS TO THE REPORT

Major contributors to this report were Carmen Maldonado, Gerald Tysiak, Joel Biederman, Alexander Marshall, and Bruce Brimmer.