Thomas P. DiNapoli
COMPTROLLER

OFFICE OF THE
NEW YORK STATE COMPTROLLER

DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY

METROPOLITAN TRANSPORTATION AUTHORITY

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

Report 2008-S-85

AUDIT OBJECTIVE

The objective of this audit was to determine whether the Metropolitan Transportation Authority (MTA) is meeting the current 10 percent target for purchasing power from renewable sources, increasing to a 20 percent target level by 2010 as specified in 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 seek to purchase sufficient quantities of electricity produced by certain specified renewable technologies so that 10 percent of the overall annual electric energy requirements of the buildings they own, operate or lease would come from renewable sources. The target percentage increases to 20 percent by 2010. Affected 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.

We found that the MTA incorrectly reported it was in compliance with the 10 percent goal for 2005 because it only reports on the power used by 10 of the 1,316 buildings it owns or leases. MTA officials advised that the other buildings are exempt from reporting based on New York State Energy Research and Development Authority (NYSERDA) guidelines. We determined that there were at least seven additional buildings that should have been included in the MTA's calculation of the amount of power required to be purchased from renewable sources.

We also found that the MTA may not be positioned to meet the 20 percent goal for 2010 because it continued to understate the number of buildings required to be in the calculation. In addition, MTA did not report its exemptions in the manner required by the NYSERDA's guidelines.

Our report contains six recommendations directed toward improving compliance with the EO 111 requirements to purchase power from renewable sources. The MTA generally agreed with the recommendations and indicated it continues to embrace both the requirements of Executive Order 111 and its spirit, and will take the necessary steps to assure its continued compliance with the requirements for the purchase and/or generation of renewable power.

This report, dated August 13, 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
110 State Street, 11th Floor
Albany, NY 12236

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 proactive. 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 those provisions 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 requirements 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 having separately metered and billed power, regardless of whether they own or lease the property. Eligible renewable technologies specified in the Order include power generated from wind, solar, thermal, photovoltaics, 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 (RECs).

MTA officials advised us they are committed to deriving 7 percent of MTA energy needs from solar, wind, and other renewable sources by 2015. They estimate that in 2009, the MTA will be purchasing about 34,000 MWH of RECs. The estimate for 2015 is 284,000 MWH of RECs.

A public-benefit corporation chartered by the New York State Legislature in 1965, the MTA is comprises of seven constituent agencies. They are: New York City Transit, Long Island Rail Road Company, Metro-North Railroad, Tri-borough Bridge and Tunnel Authority, MTA Bus, Long Island Bus, and MTA-Capital Construction.

MTA subways, buses, and railroads provide 2.4 billion trips each year to New Yorkers - the equivalent of about one in every three users of mass transit in the United States and two-thirds of the nation's rail riders. MTA bridges and tunnels carry more than 300 million vehicles a year - more than any bridge and tunnel authority in the nation.

This vast transportation network serves a population of 14.6 million people in the 5,000-square-mile area from New York City through Long Island, southeastern New York State, and Connecticut.

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, increasing to 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.

In 2006, the MTA began reporting the procurement and production of power from renewable sources. In its Annual Energy Report (AER) for the fiscal year ended March 31, 2006, MTA officials advised they determined that only 10 of the more than 1,300 MTA buildings are subject to EO 111 and that the others are exempt from the Order based on their use e.g., bus depot, substations, buildings with ticket offices.

The MTA reported in this (AER) that it purchased 4,781,000 Kilowatt hours (KWh) of renewable power and generated an additional 197,688 KWh of renewable power through on-site generators. While the total amount represents 10.5 percent of renewable power, based upon their reported annual electrical usage of 47,234,000 KWh, we concluded that the MTA did not meet the 10 percent target because it only reports usage for 10 buildings, yet it has a total population of 1,316 buildings (1,277 owned and 39 leased). From a listing of the buildings, we selected those categorized as "offices", "warehouses" and "building." These categories resulted in a total of 113 buildings from which we judgmentally selected 13 at three MTA agencies (Metro North, Transit and LIRR). We visited the 13 buildings (4 owned and 9 leased) and reviewed the leases. We concluded that seven of the 13 buildings should have been included in the AER.

Including these and other such buildings raises the amount of energy consumed and required to be purchased from renewable sources to comply with EO111. MTA officials should revise the number of buildings it reports in the AER to include these eight buildings. They should also reevaluate their criteria for selecting buildings to be reported in the AERs, and revise the AER accordingly.

At the closing conference, MTA officials agreed to review the list of 113 buildings to determine whether they should be added when reporting usage for the AER.

The AER requires the MTA to indicate how much electricity it produces on-site. The MTA has four locations where energy is produced on-site (Gun Hill Bus Depot, in the Bronx, Stillwell Ave in Brooklyn, Roosevelt in Queens and the Corona Maintenance Shop in Queens.) We found green power produced through photovoltaic is reported on an aggregate basis on the AER. As a result, it was not possible to check the amounts reported for a particular site.

We also found that the information reported by the individual sites was not reliable. For example, the New York Power Authority (NYPA) owns and monitors the solar panels at Gun Hill Bus Depot, the only on-site generator reported in the AER for both

2005/2006 and 2006/2007. Based on the information provided by NYPA it appears that the MTA underreported Kilowatt hours by 3,142 KWh for the 2005/2006 reporting period and over reported Kilowatt hours by 85,807 KWh for the 2006/2007 reporting period.

In addition, Corona's on-site solar panels came on-line in the fall of 2006, and were reported in the 2006/2007 AER. An MTA representative informed us that he reported that Corona's solar panels generated 113,880 KWh of renewable power (which assumes the panels operated at full capacity for the entire state fiscal year with no down time or system outage). In addition, the amount was based on an industry-wide standard calculation that applies to solar energy. During a site visit to Corona, Transit officials could not provide documentation showing the amount of renewable power generated by the solar panels, nor was the meter working at the time of the meeting. We concluded that the calculation for the solar energy at Corona is unsubstantiated and could be overstated.

Reaching 20 Percent by 2010

Based upon the MTA's 2006/2007 AER, the MTA has 10 buildings, which consume 72,759,000 KWh on an annual basis. These numbers suggest that the agency needs at least 14,551,800 KWh (72,759,000 x .20) to be in compliance with the Order's 2010 goal of 20 percent.

In October of 2006, MTA and New York Power Authority (NYPA) officials entered into a nine year Memorandum of Understanding agreement (MOU) for Renewable Energy Credits. The MOU requires the MTA to purchase Renewable Energy Credits (RECs) for wind power from two wind farms located in upstate New York. According to the agreement, the MTA commits to purchase 18,400 MWH (represents 14,550 MWH required plus a cushion of about 3,500 MWH) of wind RECs annually, at a monthly variable price. The cost is divided among three of MTA's constituent agencies (Long Island Rail Road, New York City Transit Authority and Metro North Railroad). MTA officials explained that they entered into a long term agreement for wind RECs to promote the production of wind farms and renewable energy over an extended period of time at a fixed cost.

While the procurement of 18,400,000 KWh appears to be sufficient and a reasonable plan for the MTA to achieve the 2010 renewable energy goal set forth under the Order, we found that it may not be viable for two reasons. First, we found that MTA officials are purchasing RECs from a wind farm whose capacity factor has been overstated according to industry norms. The agreement between NYPA and the MTA uses a wind farm capacity factor ranging from 39 to 50 percent. However, according to National Wind Watch, a non-profit industry advocacy organization, the average capacity for wind turbines in the United States ranges from 15 percent to 30 percent. This difference of almost 24 percent raises the possibility that the MTA will not meet its goal. Second, as explained previously, we found that the MTA did not include several buildings on the AER which are subject to the Order. It also did not include all lease properties whether they were directly-metered or sub-metered.

Report Requirements

NYSERDA's guidelines require every State agency and other affected entities to submit an Annual Energy Report (AER) to NYSERDA by December 1st following the close of each fiscal year. The first Annual Energy Report was due December 1, 2002,

for the period April 1, 2001 through March 31, 2002.

The purpose of the AER is to demonstrate progress toward achieving the goals of the Order. State agencies and other affected entities are to report their total energy usage, electrical demand, and the amount of renewable power they purchase and generate on site. They are also required to report how much renewable energy they will need to purchase to meet the renewable energy goal of 20 percent in 2010, as well as the previous goal of 10 percent in 2005.

We found the MTA timely filed the required Annual Energy Report with NYSERDA for fiscal years 2006 and 2007. However, the Order also specifies that no buildings will be exempt from the goals of the order except pursuant to the criteria to be developed by NYSERDA. In 2001, NYSERDA established guidelines and revised them in December of 2004. These guidelines require that all agency buildings, except those meeting the exemption criteria, be included in the annual energy consumption numbers reported to NYSERDA. As previously noted the MTA reports usage for only ten buildings and does not include several buildings which are not exempt under NYSERDA guidelines. Consequently, MTA is not reporting the percentage of power purchased from renewable sources as intended in Section IV of EO111.

Recommendations

1. Revise the calculation of the amount of renewable power purchased to accurately reflect the additional buildings that should be included in determining compliance with Section IV of EO111.

2. Review the methods used for calculating the amount of on-site generated electrical power at each of the four locations to ensure that the results are accurate and documented to support the amount of power generated and reported in the AER.

3. Monitor on-site generated output and determine its benefits to the MTA.

4. Take appropriate steps to purchase additional power from renewable sources to meet the 2010 target as set forth in NYSERDA's guidelines.

5. Reassess the MTA's capacity to procure enough REC based upon an adjusted capacity factor.

6. Periodically meet with NYPA officials to determine whether they are purchasing the renewable power at the best price.

7. This recommendation has been deleted.

AUDIT SCOPE AND METHODOLOGY

We audited the MTA's compliance with Section IV of Executive Order 111. Our audit covered the period April 1, 2005 through May 23, 2008. To accomplish our objectives, we met with MTA officials and obtained the relevant energy procurement reports for fiscal years ended March 31, 2006 and 2007. We also obtained a listing of their buildings including square footage and electrical consumption data. Further, we obtained relevant reporting and procurement information and documentation from NYSERDA and NYPA.

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

We performed this audit 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 MTA officials for their review and comment. Their comments were considered in preparing this final report, and are included as Appendix A. Appendix B contains State Comptroller's comments that address selected matters contained in the MTA's response.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Metropolitan Transportation 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 include, Carmen Maldonado, Robert Mehrhoff, Anthony Carbonelli, Altagracia Rodriguez, Cheryl Miles, Slamon Sarwari, and Anna Iglanova.

APPENDIX A - AUDITEE RESPONSE

347 Madison Avenue
New York, NY 10017-3739
212 878-7200 Tel
212 878-7030 Fax

H. Dale Hemmerdinger
Chairman

Metropolitan Transportation Authority
State of New York

April 20, 2009

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

Re: Report #2008-S-85 (MTA Compliance with Executive Order 111 Requirements To Purchase Power From Renewable Sources)

Dear Ms. Maldonado:

This is in reply to your letter requesting a response to the above-referenced draft audit report.

I have attached for your information the comments of Mr. Elliot G. Sander, Executive Director and Chief Executive Officer, Metropolitan Transportation Authority, which address this report.

Sincerely,

Attachment

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road
MTA Long Island Bus
MTA Metro-North Railroad
MTA Bridges and Tunnels
MTA Capital Construction
MTA Bus Company

Memorandum

Metropolitan Transportation Authority
State of New York

Date April 10, 2009

To H. Dale Hemmerdinger, Chairman

From Elliot G. Sander, Executive Director and Chief Executive Officer

Re MTA Response to Draft Audit Report: Compliance with Executive Order 111 Requirements to Purchase Power from Renewable Sources

Attached please find the MTA's response to the final draft report prepared by the Office of the State Comptroller regarding the MTA's compliance with the renewable power requirements of Executive Order 111 – Green and Clean State Buildings and Vehicles.

EO 111 requires State Entities to purchase and/or generate sufficient quantities of renewable power such that by 2010 20% of its electricity use in buildings subject to the Order comes from renewable sources. The audit report contains 7 recommendations, which are summarized below along with the MTA's response:

1. The MTA may have underreported the number of buildings subject to the renewable power requirements of the Order and should reassess its stock of buildings with the designation "office," "building,", and "warehouse."

Response – The MTA will undertake this reassessment.

2. Review the method for calculating on-site renewable power generation at 4 locations.

Response – The MTA has requested the assistance of the New York Power Authority (NYPA) in providing a maintenance contract to service and document on-site renewable power generation.

3. Monitor on-site renewable power generation and output.

Response - As above for #2.

4. Take appropriate action to purchase additional renewable power to meet the Order's 2010 target.

Response – The MTA contract for the purchase of wind-generated renewable energy credits currently has a cushion of approximately 3,500 megawatt hours which we feel will be adequate to meet the 2010 goal. However, after reassessing applicable building stock (as per recommendation #1) the MTA will reevaluate its renewable power requirements.

5. Reassess the MTA's purchase of renewable energy credits based on an adjusted capacity factor for wind-generated power.

Response – As above for #4.

6. Periodically meet with NYPA (the MTA's largest power provider and the purchaser of renewable energy credits on the MTA's behalf) to assure renewable power is being purchased at the best price.

Response – The MTA will continue to work closely with NYPA, which purchases renewable energy credits via competitive procurement, to assure competitive prices for our renewable power purchases.

7. Report each exempt building individually in the MTA's Annual Energy Report to the New York State Energy Research and Development Authority (NYSERDA).

Response – Due to the large number of buildings involved the MTA reports exemptions by categories (e.g. depots, yards, substation, etc.). This reporting format has been approved in writing by NYSERDA (see e-mail attachments to full response document).

In conclusion, the MTA continues to embrace both the requirements of Executive Order 111 and its spirit, and will take the necessary steps, as described above, to assure our continued compliance with the requirements for the purchase and/or generation of renewable power.

METROPOLITAN TRANSPORTATION AUTHORITY
RESPONSE TO DRAFT AUDIT REPORT:
COMPLIANCE WITH EXECUTIVE ORDER 111 REQUIREMENTS TO PURCHASE POWER FROM RENEWABLE SOURCES
(REPORT 2008-S-85)

The Metropolitan Transportation Authority (MTA) fully supports the goals and requirements of Executive Order 111 – Green and Clean State Buildings and Vehicles - which requires that State Entities purchase sufficient quantities of renewable power such that by 2005 10 percent of its overall electricity use in non-exempt buildings comes from renewable sources and increasing to 20 percent by 2010. While the MTA accepts a number of the report's findings and intends to take appropriate actions, the report also contains a number of statements and findings that we feel are either inaccurate or misinterpret the Order and/or its Guidelines, issued by the New York State Energy Research and Development Authority (NYSERDA).

The following presents the MTA response to the recommendations presented in the draft report:

Recommendations

1. *Revise the calculation of the amount of renewable power purchased to accurately reflect the additional buildings that should be included in determining compliance with Section IV of EO111.*

The report contends that the MTA has underreported the number of buildings subject to the renewable power requirements of the Order.

In identifying buildings subject to the renewable power requirements of EO 111, the MTA applied the building definition and exemption criteria found in Section 3 (Existing Buildings) of the Order's Guidelines, which states the following:

"For the purposes of these Guidelines, a building is defined as a permanently conditioned space of more than 5,000 square feet that is non-process oriented. If a State Entity chooses to exempt process buildings or process loads within a building, they must identify each exemption and explain the reasoning for its exemption in a footnote to the Annual Energy Report. Each State Entity shall determine its own process-oriented exemptions."

Furthermore, Section 9 (Reporting and Baseline) of the Guidelines includes an Exemptions subsection, which states "Traction loads, non-building related energy consumption and energy consumption in buildings associated with process loads are not to be included in the Annual Energy Report."

MTA facilities are overwhelmingly process load related (as opposed to conventional office buildings), providing transportation services (stations, terminals, command/communications centers), maintenance (depots, overhaul barns, shops), infrastructure (tunnels, elevated track structures, electrical substations, pump rooms) and, most significantly, traction power used to run trains. As such, the MTA has relatively few buildings that are strictly non-process, even given the large universe of MTA building stock. In addition, while the MTA also occupies leased space in a large number of buildings, most of these do not have direct or sub-meters and are therefore not subject to the reporting requirements of the Order, as per Section 7 of the NYSERDA Guidelines.

The auditors selected for testing a sample of 14 buildings designated as "office", "building" or "warehouse" currently not reported as subject to EO 111, and determined that eight were subject to the renewable power requirements of the Order. In fact, only five met the reporting criteria, and the other three did not or were already being reported: 420 Lexington Ave. is leased space that is not sub-metered; 610 Hicksville Rd. is primarily shop space; and the Tiffany Warehouse is already being reported in the Annual Energy Report.

*
Comment
1

However, the MTA acknowledges the report's finding that the number of non-process buildings may have been undercounted, and will undertake to reassess those buildings with a property designation of offices, warehouses and buildings to determine if they meet the definition of a building under the Order. Based on this determination, the MTA will re-evaluate its renewable power purchase plans to assure that it will meet the 20 percent 2010 goal.

2. Review the methods used for calculating the amount of on-site generated electrical power at each of the four locations to ensure that the results are accurate and documented to support the amount of power generated and reported in the AER.

The report identified problems and inaccuracies in the reporting of solar renewable energy generated on-site at four MTA locations (Gun Hill Depot, Stillwell Avenue Terminal, 74th St/Roosevelt Ave. Station and the Corona Maintenance Yard and Shop). The MTA acknowledges both the mechanical and human errors in this reporting and has requested the assistance of the New York Power Authority (NYPA) in providing a solar power maintenance service contract, which will include documenting each installation's annual power generation.

3. Monitor on-site generation output and determine its benefits to the MTA.

See response to recommendation number 2.

4. Take appropriate steps to purchase additional power from renewable sources to meet the 2010 target as set forth in NYSERDA's guidelines.

The report references the uncertain nature of wind as a source of renewable power, questions the estimated wind capacity factor provided by NYPA and suggests that the

* See State Comptroller's Comments, page 17.

*

MTA may have underestimated its requirements and therefore may not achieve the Order's 2010 goal. However, it should be noted that in its plans, the MTA did allow for this variability by contracting to purchase 3,500 megawatt hours per year more wind renewable energy credits than it was estimated would be required to meet the Order's 2010 20% goal, based on our original building stock assessment. Reassessment of applicable buildings may indeed increase this requirement, but given this 3,500 megawatt hour cushion, and our plans to increase renewable power purchases by 1% of overall electricity usage (process and non-process) per year through 2015, there is reasonable assurance that the MTA will comply with and exceed the 2010 target. If the reassessment of building stock results in an increase in the renewable power purchase requirement, or if current renewable power purchase plans are changed, the MTA will recalculate its renewable power needs and adjust its purchase plans accordingly.

*
Comment
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It should also be noted that while the report acknowledges the MTA's plans to increase our use of renewable power to 7% by 2015, it mistakenly references the renewable power purchase number for 2009 alone (approximately 34,000 megawatt hours per year) as the full 2015 total (approximately 284,000 megawatt hours per year).

*
Comment
3

5. Reassess the MTA's capacity to produce enough RECs based upon an adjusted capacity factor.

See response to recommendation number 4.

6. Periodically meet with NYPA officials to determine whether they are purchasing the renewable power at the best price.

NYPA purchases renewable power for the MTA through a competitive procurement process in order to assure competitive prices. It should be understood, however, that the purchase of renewable power generally requires a long-term commitment from the purchaser, with which renewable power providers are able to finance construction of their generating facilities. Consequently, prices are generally locked in for a fixed term (which can potentially be an advantage to the purchaser in the event fossil fuel prices rise). The MTA will continue to work closely with NYPA to assure competitive prices on all renewable power purchases.

7. Require management at each constituent agency to comply with Annual Energy Reporting requirements including the reporting of all exemptions taken.

The MTA takes exception to this recommendation and contends that based on guidance from NYSERDA, which was confirmed in writing, we are in compliance with the reporting requirements of the Order. (See paragraph 3 of attached e-mail correspondence between the MTA, OSC and NYSERDA dated 1/12/09 and item #2 in e-mail correspondence between the MTA and NYSERDA dated 11/10/08.)

*
Comment
4

Page 3 of 6

* See State Comptroller's Comments, page 17.

In conclusion, the MTA continues to embrace both the requirements of Executive Order 111 and its spirit, and will take the necessary steps, as described above, to assure our continued compliance with the requirements for the purchase and/or generation of renewable power.

ATTACHMENTS

E-mail correspondence between Matthew Brown of NYSERDA and Peter Bass of the MTA:

1/12/2009 2:22 PM
Pete,

Confirmed, this accurately represents our discussion and opinions.

Thanks.

Matt Brown
NYSERDA
17 Columbia Circle
Albany, NY 12203
(518) 862-1090 ext. 3336
Fax: (518) 862-1091

-----Original Message-----
From: Peter Bass [mailto:PBASS@mtahq.org]
Sent: Monday, January 12, 2009 11:05 AM
To: JSMITH@osc.state.ny.us
Cc: Karen Malloy; Matthew C. Brown; TCARBONELLI@osc.state.ny.us
Subject: Clarification from NYSERDA Regarding Reportable EO 111 Bldgs

Joe,

At our last meeting we had a discussion regarding the reporting status of leased space where we have a direct meter for the electricity but for which we have no control over any other energy or energy-related systems (e.g. HVAC, boilers, windows, building envelope, exterior lighting, hot water, etc). The MTA's position was that such spaces would not be subject to reporting based on the NYSERDA EO 111 Guidelines (Second Edition), which state that "Leased space that is individually metered and (emphasis added) where the State Entity has the ability to implement improvements shall be considered to have the same standing as space owned by the State.", since there would be no reasonable way to meet the Order's energy reduction goal through electricity savings alone. OSC maintained that such buildings should be included under EO 111 and therefore report their electricity in their renewable energy calculations. I said I'd follow up with NYSERDA and ask for their guidance.

I've e-mailed and spoken with Matt Brown of NYSERDA and after consultation with his management he informed me that we were both correct. Leased space where the State Entity does not have control over all energy systems are not subject to the energy reduction goals of the Order and should not be reported in the overall energy totals. However, where there is direct metering of electricity in a leased space, this usage should be added to the agency's total electricity usage for the purposes of calculating the amount of renewable energy to be generated or purchased in compliance with the renewable energy goal only. This, of course presumes that the leased space in question is not otherwise exempt (e.g. the space is less than 5,000 square feet or is defined as part of the agency's process load).

I also asked for clarification regarding reporting of buildings/facilities that are exempt in the Annual Energy Report. As you know, in past Annual Energy Reports the MTA has listed facilities that are process load related, and therefore exempt, by type (e.g. bus depots, train stations, electrical substations, etc.) without listing each specific facility. NYSERDA confirmed that this was acceptable and consistent with the Exemptions paragraph of section 9. - Reporting and Baseline - of the EO 111 Guidelines (second edition).

I'm copying Matt Brown on this e-mail in case I've misstated or misunderstood NYSERDA's position. Feel free to call with any questions or to discuss.

Pete

Page 5 of 6

11/10/2008 10:45 AM

Matt,

The MTA had its closing conference with the Office of the State Comptroller's auditors to review the "discussion draft" of their EO 111 renewable energy audit report. Two questions came out of the meeting that require guidance from NYSERDA:

1. Leased Space: The OSC has taken the position that the MTA should report energy in all leased spaces that are individually metered and count the electricity *toward our total for the renewable energy requirement.* However, The Guidelines for "Leases that are Individually Metered" state that "Leased space that is individually metered and (emphasis added) where the State Entity has the ability to implement improvements shall be considered to have the same standing as space owned by the State."

The MTA has space that is master-leased or net-leased, in which we significantly control the building energy systems, and we report this space (2 Broadway) in the Annual Energy Report. We also have a number of spaces that are individually metered but in which we *do not control the building energy systems.* Typically, in such spaces we can, and do, make minor improvements, such as replace light bulbs or fixtures (with the approval of the landlord) but we have no control over heating, HVAC systems, elevators/escalators, outside lighting, windows, insulation, etc. Consequently, our energy-efficiency opportunities are severely limited and there's no realistic way to meaningfully work towards the Order's 35% energy use reduction goal. If we report these facilities, we're basically adding load that we *don't control and can't be* expected to reduce. Should the energy data for these type of facilities be reported?

2. *Reporting:* *OSC maintains* that the MTA has not complied with the requirements of the Order regarding reporting *buildings that are exempt.* They reference the ""Definition of a Building" section, in which it states that each exempt process building must be identified in a footnote. In addition, the OSC report maintains that we should include a footnote regarding the total number and square footage of exempt buildings.

As you know, Matt, the vast majority of our roughly 1,400 buildings/facilities are process load related and each year we attach a description of the facilities, by type, that are exempt (e.g. stations, depots, shops, etc.) in our narrative report. I *also should note,* that in the Exemptions portion of the Reporting section of the Order, there's no requirement to *individually list exempt buildings/facilities. Is it really necessary, or desirable, for us to submit a list of individual facilities?*

Please let me know what you think regarding these issues as soon as you can, since I have to respond to OSC. As always, thanks for your help.

Pete

Page 6 of 6

APPENDIX B - STATE COMPTROLLER COMMENTS ON AUDITEE RESPONSE

1. MTA officials indicated that three of the 8 buildings in the report were not properly handled by the auditors. We reviewed the information and determined that one of the three, Tiffany Warehouse, required correction. However, the other two are correct because we already excluded one (610 Hicksville Road) and we differ with their position for the other (420 Lexington Ave). Our records show that the leased space at 420 Lexington Avenue is separately metered, and as explained in MTA's reply to our draft report on page 15, "where there is direct metering of electricity in leased space the usage should be added…" to the AER. Our report was revised to state that seven buildings should have been added to the AER.

2. MTA indicates that its purchase of wind renewable energy credits which includes a cushion of about 3,500 MWH, should be sufficient to meet the 2010 requirements. However, the MTA has to monitor the amount of MWH actually produced by the farm plant to ensure that it can adjust its purchases in the event that the wind farm falls short of the capacity factor of 39 to 50 percent.

3. The report was revised to reflect information in MTA's response.

4. Report recommendation number 7 has been deleted.