



New York State Office of the State Comptroller
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Division of State Government Accountability

Executive Order 111: Requirements to Purchase Renewable Energy: Summary of Implementation of Recommendations at 15 Audited Entities (Follow-Up)

New York State Energy Research and Development Authority



Report 2012-F-1

August 2013

Executive Summary

Purpose

To assess the extent of implementation, as of January 10, 2013, of the 57 recommendations included in our series of 15 audits conducted in 2008. These audits assessed compliance with Executive Order 111 requirements for State agencies and public authorities to purchase increasing amounts of energy from renewable sources.

Background

Executive Order 111 (Order) was a broad initiative that directed State agencies and certain public authorities to be more energy efficient and environmentally proactive. The New York State Energy Research and Development Authority (NYSERDA) was designated as the lead agency responsible for coordinating implementation and assisting other State agencies to fulfill their responsibilities. Section IV of the Order required that, by 2005, each covered agency seek to purchase enough energy from renewable technologies to meet 10 percent of its electrical needs. This target percentage increased to 20 percent by 2010.

Key Findings

- Each of the 15 State entities made progress in correcting the problems we originally identified, but more improvement could have occurred. Of 57 recommendations included in our original reports, 34 were fully implemented, 11 were partially implemented, and 12 were not implemented at all. Only six entities implemented every recommendation.
- Ultimately, only about half of the entities met the Order's goal of increasing renewable energy purchases to 20 percent of usage by 2010. Previously, only about one quarter of them had met the 2005 interim goal of 10 percent.
- The eight entities that met the 2010 goal included two that our initial audits had labeled as being "at-risk" of not succeeding. Renewable energy purchases ranged from 20 percent at the Department of Corrections and Community Supervision to a high of 88 percent by the Dormitory Authority of the State of New York.
- Of the seven entities that did not meet the goal, four showed performance declines through 2010 rather than improvements. Final results ranged from lows of zero at the Rochester-Genesee Regional Transportation Authority and only 1/10th of one percent at the Department of Transportation, to highs of over 19 percent at the Metropolitan Transportation Authority and 18 percent at the Office of Parks, Recreation and Historic Preservation.
- Although the Order has now been replaced with Executive Order 88 and NYSERDA is no longer directly responsible for implementation, our follow up observation that better facilitation, communication and reporting could have improved compliance with Executive Order 111 should be applied going forward with the implementation of Executive Order 88.

Other Related Audits/Reports of Interest

[New York State Energy Research and Development Authority: Compliance with Executive Order 111: Requirements to Purchase Power from Renewable Sources \(2008-S-74\)](#)

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

Division of State Government Accountability

August 13, 2013

Francis J. Murray, Jr.
President & Chief Executive Officer
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Dear Mr. Murray:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing 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.

During 2008, our Office conducted a series of 15 audits of individual State agency and public authority compliance with Executive Order 111 requirements to purchase energy from renewable sources. Following is our report entitled *Executive Order 111: Requirements to Purchase Renewable Energy: Summary of Implementation of Recommendations at 15 Audited Entities (Follow-up)* which summarizes our follow up on the recommendations included in those audits. Our follow-up was performed according to the State Comptroller's authority under Article V, Section 1 and Article X, Section 5 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 2803 of the Public Authorities Law.

This report is a resource 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*

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Background

Executive Order 111 (Order) set out a broad initiative that directed State agencies and certain public authorities to be more energy efficient and environmentally proactive. The Order was divided into individual sections, each addressing a specific energy-related or environmental initiative, ranging from establishing broad energy efficiency goals to environmentally sensitive practices.

Section IV of the Order required 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 was increased to 20 percent by 2010.

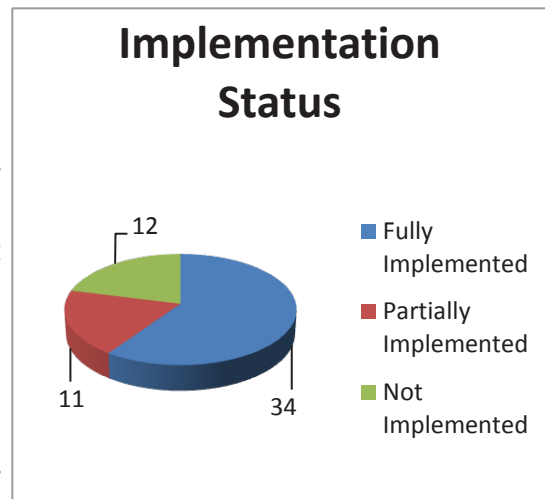
New York State Energy Research and Development Authority (NYSERDA) was designated as the lead agency responsible for coordinating implementation and performance reporting, and for assisting other State agencies to fulfill their responsibilities. Agencies were able to generate renewable energy themselves, purchase renewable energy through their utility provider or acquire Renewable Energy Credits (RECs) through a statewide contract established by the Office of General Services (OGS). NYSERDA also designated OGS as an agency to facilitate other energy related work associated with the Order.

The Order also created the Advisory Council, which was required to meet regularly, but no less than twice a year, for the purpose of advising NYSERDA as to how it can best assist State entities in achieving the Order's goals. NYSERDA and the Advisory Council developed the 2004 Green and Clean Guidelines (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. The Guidelines also charged NYSERDA with the responsibility of developing annual reports summarizing statewide energy reduction efforts and achievements towards the Order's goals.

The Order was rescinded on December 28, 2012, and replaced by Executive Order 88, which emphasizes conservation of energy by State entities. There is less emphasis in Executive Order 88 on acquiring energy from renewable sources and no such purchasing targets are specified. Still, many similarities exist between the Orders, including the designation of a lead agency to oversee implementation (currently the New York Power Authority), provisions for publishing guidelines to assist State agencies, targeted milestones to measure achievement and periodic reporting requirements. In addition, both NYSERDA and OGS continue to have technical assistance responsibilities.

Summary of Findings and Status of Recommendations

Officials at each of the 15 State entities made some progress in correcting the problems we identified in our initial reports, but more improvement could have occurred. In total, our original audits made 57 recommendations to the 15 entities we examined. Our follow up found that 34 have been fully implemented, 11 were partially implemented and 12 were not implemented. Six of the 15 entities implemented all of our recommendations. Exhibit 1 at the end of the report provides a summary of the implementation status of these recommendations by entity.



Overall compliance with the Order's goals doubled for the entities we audited, increasing from 27 percent of the entities having purchased at least 10 percent of their electrical needs from renewable sources by 2005, to 53 percent purchasing over 20 percent of their power from renewable sources by 2010. Still, only slightly more than half of the entities actually met the program goal, leaving considerable room for improvement.

Although the Order has now been replaced with Executive Order 88 and NYSEDA is no longer directly responsible for implementation, we believe our follow up observations can provide insight into opportunities for improvement, as well as areas of strength, that can be built upon for the successful implementation of the current initiative. In particular, our observation that better facilitation, communication and reporting could have improved compliance with Executive Order 111 goals should be applied going forward with the implementation of Executive Order 88.

Procurement of Renewable Energy

Original Audit Results

Our original audits of 15 State entities sought to determine whether the Order's requirements to purchase electrical power from renewable sources were being achieved. In these audits, we found:

- Only four (27 percent) of the 15 entities had achieved the Order's requirement to purchase 10 percent of their electrical power from renewable sources by 2005.
- For the four that had achieved the goal, purchasing ranged from 10 percent at the Dormitory Authority of the State of New York (DASNY) to a high of 50 percent at NYSEDA.
- At the 11 entities that had not achieved the goal, renewable energy purchasing ranged from a low of zero at Rochester-Genesee Regional Transportation Authority (RGRTA) to 9.5 percent at OGS.

The causes for not reaching the goal varied among the entities and included not being aware of the Order's requirement, a late start in implementing the requirement, not including all uses of electricity, and other inaccuracies in calculating the extent of renewable energy purchases needed to reach the Order's requirement. Our audits cautioned that, absent corrective action, eight of the 15 entities were "at risk" of not meeting the Order's requirement to purchase 20 percent of their electricity from renewable sources by 2010.

State entities used a variety of methods to acquire electricity from renewable sources. At the time of our initial audits, we found:

- Four entities relied on renewable energy purchases from their electrical suppliers;
- Five had purchased RECs through OGS' statewide contract;
- Four used a combination of renewable energy acquired from their electrical suppliers, and self generation; and
- Two entities had not participated at any level.

Follow-up Results

We followed up with each of the 15 State entities originally audited to determine if improvements had been made in achieving the Order's goals and to assess the status of our recommendations. Table 1 provides a summary of the extent of renewable energy purchased by each of the 15 State entities for the years 2005 and 2010. We found some improvement.

Eight of the entities (53 percent) achieved the Order's requirement that 20 percent of their electrical consumption be purchased from renewable sources by 2010, including two of the eight agencies that were deemed to be "at risk" in our initial reports: OGS and the Department of Corrections and Community Supervision (DOCCS). For the eight that successfully met the Order's goal, purchasing ranged from 20 percent at DOCCS to a high of 88 percent at DASNY. At the seven entities that did not achieve the goal, renewable energy purchasing ranged from lows of zero at RGRTA and 1/10th of one percent at the Department of Transportation (DOT), to highs of over 19 percent at the Metropolitan Transportation Authority (MTA) and 18 percent at Office of Parks, Recreation and Historic Preservation (OPRHP).

State entities also continued to use different methods to achieve these accomplishments:

- Six entities only purchased renewable energy from their electrical suppliers;
- Five purchased RECs through OGS' statewide contract;
- Two used a combination of electrical suppliers and RECs;
- One used their electrical supplier, conservation and self generation of energy; and
- One entity (RGRTA) continued to not participate at any level.

**Table 1: Renewable Energy Purchased
By State Entity**

	Agency	Original Audit Results			Follow-up Results	
		Achieved 2005 Target	Renewable Energy Purchased	"At Risk" To Achieve 2010 Target	Achieved 2010 Target	Renewable Energy Purchased
1	NYSERDA	Yes	50.00%	No	Yes	50.00%
2	DEC	Yes	17.00%	No	Yes	73.00%
3	OMH	Yes	11.00%	No	Yes	25.40%
4	DASNY	Yes	10.00%	No	Yes	88.00%
5	OGS	No	9.50%	At Risk	Yes	21.70%
6	ORDA	No	8.30%	At Risk	No	6.00%
7	DCJS	No	6.20%	No	No	16.00%
8	SUNY	No	6.20%	At Risk	No	3.00%
9	DMNA	No	5.00%	No	Yes	25.00%
10	DOCCS	No	4.10%	At Risk	Yes	20.00%
11	MTA	No	3.50%	At Risk	No	19.44%
12	DOT	No	3.20%	At Risk	No	10%
13	OPRHP	No	0.01%	At Risk	No	18.10%
14	NFTA	No	0.00%	No	Yes	25.80%
15	RGRTA	No	0.00%	At Risk	No	0.00%

Assistance Provided to Affected Agencies by NYSERDA and the Advisory Council

Our initial audits also examined NYSERDA's role in assisting affected State agencies and coordinating compliance with the Order. At the time, we found NYSERDA took appropriate actions to fulfill its responsibilities including sponsoring several statewide training seminars and workshops, and dealing with individual agency issues through written and electronic communications.

As part of our follow-up, we again asked State entities about the role NYSERDA and OGS had in facilitating and assisting them in achieving the Order's requirements. Twelve entities stated that NYSERDA and OGS were both supportive and assisted them achieving, or attempting to achieve, the Order's 20 percent requirement for 2010. Only one State entity told us support was limited. During our follow up we also observed that NYSERDA and OGS were each still providing agency support to achieve the Order's goals, but that these efforts were occurring more on an individual one-on-one basis rather than as a statewide effort.

The Advisory Council that was established by the Order also had a role in providing statewide assistance and support, but on a more comprehensive level. The Order required the Advisory

Council to meet at least twice annually to carry out these responsibilities. Our original audits found the Advisory Council did meet at least twice each year from 2001 through 2004, but only once in 2005, 2007, and 2008, and not at all in 2006. At that time, we recommended NYSERDA's President convene meetings of the Advisory Council at least twice a year as required by the Order. Our follow up found this recommendation was not implemented. The Advisory Council has only met one time since our audits were issued in November 2009.

We believe that more intervention and better communication by the Advisory Council would have enabled State entities to be more diligent and achieve higher compliance with the Order's goals. In discussing the one recent Advisory Board meeting with NYSERDA officials, they stated that members discussed how the higher cost of renewable power combined with the State's fiscal crisis caused entities to make difficult budget decisions and how purchasing renewable power was not always chosen. Several entities made similar statements during our follow-up. Yet, during our follow-up at DASNY, officials told us they had increased their purchases of electricity generated from wind power, in part because they found the price was decreasing. Sharing of this type of information on a statewide basis through a vehicle like the Advisory Council could have aided State entities to deal with fiscal issues while still attempting to comply with the Order's goals. This could have also resulted in an overall higher compliance rate with the Order on a statewide basis.

Similar to our recommendation that the Advisory Council meet twice annually to provide statewide support to State entities, we also recommended that the Guidelines issued by NYSERDA and the Advisory Council be periodically revised to address new and emerging issues that had arisen in more recent times. The Guidelines set a framework that affected agencies can utilize for meeting the renewable power procurement component of the Order. However, revised Guidelines were not issued. Again, we believe that more support and facilitation by NYSERDA and the Advisory Council may have resulted in more State entities complying with the Order's goals.

EO 111 Performance Reporting

Our follow up showed several agencies improved their performance reporting since our initial audits, but some problems continued. Our original audits and follow-ups showed a mixture of accurate and timely reports, flawed reports, and instances where entities did not report at all. Flawed reports consisted of reports that were not timely, did not report accurate information or were both untimely and inaccurate. Table 2 provides a summary of reporting conditions observed at each of the State entities included in our follow-up.

**Table 2: Reporting of Renewable Energy Purchased
By State Entity**

	Agency	2005 Reporting	2010 Reporting
1	NYSERDA	Timely and Accurate	Timely and Accurate
2	DEC	Timely and Accurate	Timely and Accurate
3	OMH	Timely and Accurate	Timely and Accurate
4	NFTA	Timely and Accurate	Timely and Accurate
5	DASNY	Timely and Accurate	Timely and Accurate
6	DMNA	Timely and Accurate	Timely and Accurate
7	OGS	Flawed Reporting	Timely and Accurate
8	DOCCS	Flawed Reporting	Timely and Accurate
9	MTA	Flawed Reporting	Timely and Accurate
10	DOT	Flawed Reporting	Timely and Accurate
11	OPRHP	Not Reporting	Timely and Accurate
12	DCJS	Flawed Reporting	Flawed Reporting
13	SUNY	Flawed Reporting	Flawed Reporting
14	ORDA	Not Reporting	Not Reporting
15	RGRTA	Not Reporting	Not Reporting

In addition to gathering reports from State entities, NYSERDA was also responsible for issuing its own Statewide Annual Energy Report in December of each year, nine months after the end of the State's fiscal year. Although the reports were generally produced, timeliness remained a substantial issue.

Our original audits reported that NYSERDA issued its annual reports summarizing statewide energy reduction efforts and achievements for fiscal years 2001-2002, 2003-2004 and 2005-2006. For fiscal years 2002-2003 and 2004-2005 NYSERDA did not issue a formal report, but instead shared the information with the Governor's Office and publicly through several presentations and seminars. Beginning with fiscal year 2006-2007, NYSERDA started being substantially late in issuing its report. This trend continued through the 2009-2010 report, which was not put on the website until December 2011, a year after it was due to be issued. When performance reports such as this are delayed, not only are policy makers deprived of useful information that can aid in making informed decisions, but program momentum can suffer due to a perceived lack of interest or attention.

As of January 2013, NYSERDA officials indicated the 2010-2011 report was not yet complete and they were still working with some of the ten largest consumers of electricity to get their information and complete the report. In July 2013, the report has still not been published and is now over a year and a half late.

Scope and Methodology

To accomplish our objectives, we analyzed the Order, the associated guidelines, select annual energy reports, and entities' reported energy consumption data. We also interviewed NYSERDA and agency officials to determine what steps they took to comply with the Order and to implement the specific recommendations included in our previous reports. To assess the level of assistance and guidance provided, we reviewed relevant correspondence issued by NYSERDA, information on its website, and supporting documentation for training sessions and seminars that it administered.

Authority

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 and Article X, Section 5 of the State Constitution; Article II, Section 8 of the State Finance Law and Section 2803 of the Public Authorities Law, we have followed up on the actions taken by officials at 15 State entities to implement the recommendations contained in our prior audit reports, Compliance With Executive Order 111 Requirements To Purchase Power From Renewable Sources.

Reporting Requirements

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report.

Contributors to This Report

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Vision

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To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Exhibit 1: Implementation Status of Prior Audit Recommendations

	Agency	Audit Report Number	Recommendations Issued	Fully Implemented	Partially Implemented	Not Implemented
1	DOT	2008-S-83	9	5	3	1
2	NYSERDA	2008-S-74	6	2	1	3
3	MTA	2008-S-85	6	3	3	0
4	PARKS	2008-S-73	5	1	1	3
5	DMNA	2008-S-79	4	4	0	0
6	RGRTA	2008-S-84	4	2	0	2
7	OGS	2008-S-72	3	3	0	0
8	DOCCS	2008-S-86	3	3	0	0
9	SUNY	2008-S-76	3	2	0	1
10	DCJS	2008-S-78	3	1	1	1
11	ORDA	2008-S-75	3	1	1	1
12	OMH	2008-S-80	2	2	0	0
13	DASNY	2008-S-77	2	2	0	0
14	NFTA	2008-S-82	2	2	0	0
15	DEC	2008-S-81	<u>2</u>	<u>1</u>	<u>1</u>	<u>0</u>
		Total	57	34	11	12

Exhibit 2: List of Audited Entities

1	DOT	Department of Transportation
2	NYSERDA	New York State Energy Research and Development Authority
3	MTA	Metropolitan Transportation Authority
4	PARKS	Office of Parks, Recreation and Historic Preservation
5	DMNA	Division of Military and Naval Affairs
6	RGRTA	Rochester-Genesee Regional Transportation Authority
7	OGS	Office of General Services
8	DOCCS	Department of Corrections and Community Supervision
9	SUNY	State University of New York
10	DCJS	Division of Criminal Justice Services
11	ORDA	Olympic Regional Development Authority
12	OMH	Office of Mental Health
13	DASNY	Dormitory Authority of the State of New York
14	NFTA	Niagara Frontier Regional Transportation Authority
15	DEC	Department of Environmental Conservation