



Town of Eagle

Wind Power Revenues

Report of Examination

Period Covered:

January 1, 2013 — April 8, 2014

2014M-125



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

August 2014

Dear Town Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Town Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Town of Eagle, entitled Wind Power Revenues. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*

Introduction

Background

The Town of Eagle is located in Wyoming County and has approximately 1,200 residents. The Town Board (Board) is the Town's legislative body, which comprises the Town Supervisor (Supervisor) and four council members. The Board is responsible for overseeing the Town's operations and finances, including adopting the annual budget and developing long-term financial plans. The Supervisor is the Town's chief executive and chief financial officer.

The Town provides various services to its residents including general governmental support, road maintenance and improvements, snow removal, public improvements and recreation and cultural activities. The Town's general fund and highway fund budget appropriations for 2014 total \$908,478 and are funded primarily by revenues from serving as a wind turbine host community and the related licensing fees.¹

The Town's revenues have been significantly affected in recent years because two wind turbine parks were constructed within the Town's boundaries. In total, the Town received nearly \$7.4 million in wind power-related revenues during the period January 1, 2006 through April 8, 2014.

Objective

The objective of our audit was to examine the Town's use of and long-term plan for wind power revenues. Our audit addressed the following related question:

- Has the Board properly managed and planned for the use of wind turbine revenues?

Scope and Methodology

We reviewed the Town's long-term plan for wind power revenues and reviewed all wind power related payments received during the period January 1, 2013 through April 8, 2014. We expanded our scope back to January 1, 2006 to acquire background information and perspective and to determine the financial impact wind power revenues have had on the Town's operating funds.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report.

¹ Nearly 80 percent of the Town's general fund and highway fund budgets are financed by wind power revenues. The rest is financed by State aid and services to other governments.

**Comments of
Town Officials and
Corrective Action**

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials generally agreed with our recommendations and indicated they planned to take corrective action. Appendix B includes our comment on an issue raised in the Town's response.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Town Clerk's office.

Wind Power Revenues

The Board is ultimately responsible for overseeing and managing the Town's fiscal activities and safeguarding its resources. This requires the Board to establish internal controls, monitor financial activity and obtain sufficient information for making management decisions. An important Board oversight responsibility includes the required annual audit of the Supervisor's books and records.² Additionally the Board should plan for the future by setting reasonable long-term priorities and goals. To fulfill this responsibility, it is important for management to develop a comprehensive multiyear financial and capital plan which estimates future costs for ongoing services and future capital needs. Effective multiyear financial and capital planning helps the Board make well informed and supported decisions regarding services and capital needs. Finally, appropriately established reserve funds provide a mechanism for legally setting aside money for future use.

We found that the Town's use of wind power revenues was reasonable. However, the Board did not adequately oversee the Supervisor or ensure that wind power revenues were properly reviewed for accuracy. Additionally, the Board did not annually audit the Supervisor's records as required. Consequently, Town officials were unaware the Town was not receiving the correct amount of host community licensing fees. As a result, from January 2009 through March 2014 the Town was underpaid wind power revenue totaling approximately \$356,000. Further, the Board did not have a comprehensive multiyear financial and capital plan in place to adequately address wind power revenue use and the Town's long-term operational and capital needs. Finally, the Board did not properly establish its reserve funds. As a result, Town officials cannot ensure that the current and future use of wind power revenue will be in the best interest of Town residents.

Wind Power Revenue Uses – Currently a renewable energy company (Company) operates 93 wind turbines within the Town's boundaries. The Company remits annual payments to the Town for host community licensing fees and payments in lieu of taxes (PILOTs).³ The annual payments are based on the wind turbines' generating capacity measured in megawatts multiplied by contractually⁴ established rates

² Town Law requires the Board to annually audit, or retain a public accountant to audit, the books and records of any Town officer or employee who received or disbursed moneys in the previous fiscal year.

³ The Town also received one-time payments for permits and application fees from the Company made at the onset of the project. All other fees received are host community fees that the contractual agreement refers to as licensing fees.

⁴ For purposes of our report, we assumed the Town is authorized to enter into the host community agreement and that the contract's terms and conditions are enforceable.

which are increased annually for inflation.⁵ Since 2006, when the Town started receiving these payments, to the end of the audit period, the Town received nearly \$7.4 million in host community licensing fees, PILOTs and related payments. The Town receives approximately \$1 million in wind power related revenue annually and allocated approximately \$745,000 to fund the Town's 2014 general fund and highway fund operations.

We found that these revenues were primarily used to eliminate the Town's general fund and highway fund real property tax levy. In 2006, total real property taxes levied for both funds combined were about \$406,000. Since that time no real property taxes were levied to finance either general fund or highway fund operations. Additionally, the general fund's fund balance increased from \$167,000 as of January 1, 2007 to \$2.4 million as of January 1, 2014, more than 14 times the 2007 fund balance level. The Town also uses approximately \$95,000 of wind power revenues each year to provide curbside garbage pick-up to Town residents at no charge, a service not available to residents until 2009. We commend Town officials for their reasonable uses of these significant operating fund revenues.

Monitoring and Oversight – Town officials, however, did not properly review wind power revenues to ensure that the amounts received were accurate and complied with the contracts' terms. As a result, since January 2009, the Town did not receive the correct contractual payment amounts. Because the Company incorrectly calculated the amount due each year,⁶ as of January 2014 the Company underpaid the Town by approximately \$356,000. When we brought this to the attention of Town officials, the Supervisor took immediate action to notify and request payment from the Company. The Company acknowledged the underpayments and agreed to pay the Town once a mutually acceptable payment plan can be reached with Town officials.

Although the Board received monthly budget-to-actual reports, it did not request or receive monthly financial reports summarizing the Town's financial position and results of operations. Financial reports such as trial balances, balance sheets, and cash balances for each fund would include assets, liabilities and equity (fund balance) accounts. Therefore, the Board did not have sufficient information on which to base effective management decisions or properly monitor

⁵ The contract terms specify that each year the payment amount is to be increased based on the prior year payment plus the rate of inflation. The rate of inflation is defined as the greater of 2 percent or the five-year average Consumer Price Index for the Northeast Region as published by the United States Bureau of Labor and Statistics.

⁶ The Company applied the inflation adjustment to the amount paid during the first year of the contract instead of the amount paid in the prior year as required.

wind power revenues. Additionally, we found no evidence in the minutes or elsewhere that the Board annually audited, or provided for an audit of, the Supervisor's books and records, as required. Board members stated that they did not provide for an audit of the Supervisor's financial records at any point during the period January 1, 2007 through December 31, 2013. The Board's failure to review key financial reports and perform required annual audits diminishes its ability to effectively monitor the Town's financial operations, and could result in errors or irregularities occurring and remaining undetected and uncorrected.

Comprehensive Multiyear Plan – The Town's wind power revenues allowed the Board to eliminate real property taxes and significantly increase fund balance. However, the Board has not yet developed a comprehensive multiyear financial and capital plan. Additionally, there was no other mechanism in place, such as a road condition survey or fleet replacement schedule, to adequately address the Town's long-term operational and capital needs. A comprehensive plan can help Town officials identify the potential effect of financial decisions and identify uses for wind power funds.⁷ Such a plan could include funding future capital needs, providing a way to solicit public input and establishing practical goals to manage fiscal changes over time. For example, the Board could identify planned capital improvements or equipment acquisitions for which capital reserves could be legally established to provide long-term funding.

Reserve Funds – Despite the absence of a comprehensive multiyear financial and capital plan, the Board took action to establish and fund certain reserve funds. Since January 2008, the Board annually approved resolutions to fund these reserve funds without appropriations for these purposes in the annual budgets. In January 2014 the Board approved a resolution increasing the funding level of the "wind turbine tax relief reserve fund" from \$1 million to \$1.75 million and funding two separate "capital improvement reserve funds."⁸

The reserve referred to as the "wind turbine tax relief reserve fund" was not properly established. Further, there is no authority for a town to accumulate funds in this manner, unless a contingency and tax stabilization reserve fund is properly established by Board resolution and maintained in compliance with statutory requirements.⁹ A contingency and tax stabilization reserve fund requires a Board

⁷ See our publication entitled *Multiyear Capital Planning* available at: http://www.osc.state.ny.us/localgov/pubs/lmg/capital_planning.pdf.

⁸ A general fund capital reserve totaling \$450,000 and a highway fund capital reserve totaling \$100,000

⁹ See General Municipal Law Section 6-e and our publication entitled *Reserve Funds* available at: <http://www.osc.state.ny.us/localgov/pubs/lmg/reservefunds.pdf>.

resolution, subject to permissive referendum, and can only be funded to an amount equal to ten percent of the Town's total general and highway fund budget. As of January 2014 the amount reserved exceeded the statutory maximum by more than \$1.6 million, more than 18 times the legal limit. By not complying with General Municipal Law (GML) requirements, the public was not afforded the opportunity to voice its opinion regarding the accumulation of funds for this purpose. Pursuant to permissive referendum procedures,¹⁰ Town voters would have been able to file a petition to require a referendum on the question of whether to establish this reserve fund to accumulate money and could have had an opportunity to reject this plan to accumulate money.

Board resolutions establishing and funding the two "capital improvement reserve funds" did not clearly identify these reserves' purposes. The GML¹¹ authorizes the Town to establish capital reserve funds for "capital improvements"¹² and "equipment."¹³ How the reserves are to be established, funded and used are dictated, in part, by whether they are established for a "type" of improvement or equipment or for a "specific" improvement or item(s) of equipment. For example, the purpose of a "type" capital improvement reserve fund could be "buildings" while a "specific" capital improvement reserve fund could be "town garage." Town officials should take steps consistent with the statutory requirements for establishing these reserve funds to ratify their establishment.

Town officials stated that because the Town receives significantly more wind power revenue than needed to fund operations, they would like to establish and fund a reserve that would ensure that the same tax relief currently being provided to residents can continue in the event that wind power revenues cease unexpectedly or when the contract terms expire. To address the current statutory limitations on funding a contingency and tax stabilization reserve, Town officials are seeking special legislation from the New York State Legislature. We commend Town officials for taking steps to ensure that the Town's growing fund balance will be properly accounted for in a reserve that has been legally established and has a clearly defined purpose.¹⁴

¹⁰ See Town Law, article 7.

¹¹ See GML Section 6-c.

¹² The term "capital improvement" means: any physical betterment or improvement or any related preliminary studies and surveys; lands or rights in land; any furnishings, equipment, machinery, or apparatus for any physical improvement acquired at the time when such betterment or improvement is constructed, reconstructed, or acquired (GML Section 6-c [2][b]).

¹³ The term "equipment" includes any equipment, machinery, or apparatus not included in the definition of capital improvement and for which a period of probable usefulness has been provided by law (GML Section 6-c [2][c]; see Local Finance Law Section 11.00[a]).

¹⁴ Our reference to the proposed special act is not intended as a recommendation by this Office with respect to any particular legislative measure.

Town officials also indicated that they began discussions about the best future use of wind power revenue and the Town's growing fund balance and plan to develop a multiyear capital plan in the coming months. A comprehensive plan that is reviewed and updated annually will allow Town officials to manage the use of ongoing wind power revenue and provide a way to solicit public input and establishing practical goals.

Recommendations

1. The Board should consult with the Attorney for the Town to determine whether steps should be taken to recover the wind power revenue underpayments identified in this report.
2. The Board and Supervisor should ensure that all payments received from the Company are accurate and in accordance with applicable agreements.
3. The Board should request that the Supervisor provide additional financial information which would allow the Board to more effectively manage the Town's financial operations.
4. The Board should develop a comprehensive multiyear financial and capital plan.
5. The Board should annually audit, or retain a public accountant to audit, the Supervisor's books and records.
6. The Board should ensure that reserves are established, funded and used in accordance with statute.

APPENDIX A
RESPONSE FROM TOWN OFFICIALS

The Town officials' response to this audit can be found on the following pages.



SUPERVISOR:

Joseph Kushner
3468 E. Main Street
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July 28, 2014

Office of the State Comptroller
Division of Local Government and School Accountability
PSU-ACP Submission
110 State Street 12th Floor
Albany, NY 12236

Town of Eagle
Title: Wind Power Revenues
#2014M-125

Dear Sir;

The Town of Eagle would like to thank the State Comptroller's Office for our recent audit. The auditor, [REDACTED] did an excellent job with the audit and explaining what steps would be necessary to correct our inefficiencies. We do agree with the audit findings, and this will serve as our Corrective Action Plan.

#1 In reference to money owed by the wind company to the town: I am pleased to inform the State Comptroller's Office that on June 30, 2014, the town received \$397,000.00 in money owed to the town.

#2 To ensure that further future wind payments are accurate, the town has established a special committee to review all future payments.

#3 Although the Board receives a ten page financial statement each month, the Supervisor will provide further financial information to the Board as provided by the State Comptroller Guidelines. This will include journal entries and all other information needed to ensure complete transparency.

#4 The Board is presently working on a five year financial and capital plan.

#5 The Board will actively plan to audit the Supervisor's books annually, following State Comptroller Guidelines. If necessary, the Board will engage a public accountant to assist in the audit.

#6 To ensure our reserves are established and funded in accordance to statute; the town is actively seeking a special municipal law to allow us to establish reserves in accordance with statute with the assistance of the State Comptroller and Senator Gallivan's Office. A special local law was introduced to our State government. In July, this municipal law was unanimously passed by the Senate. However, the law did not leave a committee in the State Assembly. As a result, the Town of Eagle's special municipal law will be reintroduced in January 2015.

See
Note 1
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The Town of Eagle thanks the State Comptroller's Office for their assistance and believes our Corrective Action Plan is acceptable.

Thank you,

Joseph Kushner
Town of Eagle Supervisor

APPENDIX B

OSC COMMENT ON THE TOWN'S RESPONSE

Note 1

The audit team's assistance was limited to referring Town officials to the Attorney for the Town and their legislative representatives to obtain special legislation.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

Our objective was to review the Town's use of and long-term plan for wind power revenues. To accomplish our audit objective and obtain relevant audit evidence, our procedures included the following steps:

- We interviewed Town officials to gain an understanding of the impact of the wind power revenues. We inquired about whether a multiyear financial and capital plan was prepared.
- We reviewed the host community agreements and PILOT agreements and the related payments. To acquire background information and perspective, we extended our scope period back to 2006, prior to when the Town started receiving significant payments related to wind power.
- We reviewed adopted budgets to determine the allocation of the wind power revenues to the general and highway funds.
- We interviewed Town officials and reviewed Board meeting minutes, bank statements and accounting records to identify uses of the wind power revenues.
- We examined financial data from the Town's annual financial reports filed with the Office of the State Comptroller (OSC), cash receipt records and wind power agreements to determine the total amount of revenues the Town received from wind power projects for the period January 1, 2006 through March 31, 2014.
- We examined financial data from the Town's annual financial reports filed with OSC for fiscal years 2006 through 2013 to assess fund balance and changes in the real property tax levy.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX D

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