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February 2019

Hon. Brian J. Kulpa, Town Supervisor  
Members of the Town Board  
Town of Amherst  
5583 Main Street  
Williamsville, NY 14221

Report Number: S9-18-21

Dear Supervisor Kulpa and Members of the Town Board:

We conducted an audit of five local governments (three counties, one city and one town) and two school districts throughout New York State (NYS). The objective of our audit was to assess whether local governments and school districts that utilize aggregators<sup>1</sup> for energy purchases are ensuring they are procuring electricity and natural gas at the lowest prices. We included the Town of Amherst (Town) in this audit. Within the scope of this audit, we examined the Town's utility purchases for the period January 1, 2016 through May 31, 2017. We extended our audit scope back to July 1998 to review Board resolutions and May 2015 to review contract terms. 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 NYS General Municipal Law (GML).

This draft report of examination letter contains our findings specific to the Town. We discussed the findings with Town officials and considered their comments, which appear in Appendix B, in preparing this report. Town officials generally agreed with our findings. At the completion of our audit of the five local governments and two school districts, we prepared a global report that summarizes the significant issues we identified at all of the local governments and school districts audited.

### **Summary of Findings**

Town officials regularly monitored and compared their utility costs to their local utility costs, which was the benchmark the utility cooperative identified for a comparison. Between January 1, 2016 and May 31, 2017, the Town spent \$1.7 million for electricity and natural gas and paid electricity and natural gas rates that were less than potential benchmark rates we identified for

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<sup>1</sup> For purposes of this report, the term "aggregator" is considered any organization or individual that brings customers together as a group with the objective of obtaining better prices, services or other benefits, such as energy or related services. The legal propriety of a local government or school district utilizing an "aggregator" is outside the scope of this audit.

comparisons. The Town spent approximately \$57,000 (3 percent) less for electricity and natural gas than other potential procurement options. The Town appears to have paid natural gas and electricity rates based on agreed upon terms. We commend officials' ongoing monitoring efforts to ensure they are expending Town resources in the best interests of taxpayers.

## **Background and Methodology**

The Town is located in Erie County in the Western New York region with a population of approximately 122,000 residents. An elected five-member Town Board (Board) is the legislative body, which consists of the Town Supervisor (Supervisor) and four council members. The Board is responsible for the general oversight of the Town's operations, safeguarding its resources and for the approval and execution of contracts. The Supervisor is the Town's chief executive officer. The Town's 2017 budgeted expenditures totaled approximately \$125.5 million. The Town provides various services to its residents, including general governmental support, police, highway maintenance and improvements, snow removal, sewer and drainage, lighting, and various recreational services (youth and senior citizen programs, and an ice center).

In the 1990s, electric and natural gas industries in NYS were opened to competition. An Energy Service Company (ESCO) is an entity eligible to sell electricity and/or natural gas using the transmission or distribution system of a local utility company (LUC). The LUC may also continue to provide electricity and natural gas. Utility rates are regulated by the NYS Public Service Commission and are generally based on service classifications, such as high usage and whether the customer is commercial or industrial.

An aggregator may be described as an organization or individual that brings customers together as a group with the objective of obtaining better prices, services or other benefits, such as energy or related services. The Town participates in a utility cooperative, which aggregates<sup>2</sup> participants' procurement of electricity and natural gas. The Town is the lead agent responsible for the administration of the utility cooperative. A consultant also provides energy forecasts and reviews and evaluates procurement options.

We examined the Town's procurement of electricity and natural gas during the period January 1, 2016 through May 31, 2017. We reviewed the LUC's rates for electricity and natural gas and NYS Office of General Services (OGS) rates for natural gas to assess whether the costs were similar.<sup>3</sup> We also reviewed and compared invoices to terms (rates, fees, surcharges and timeframes) described in certain agreements of the Town's contracts.

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

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<sup>2</sup> The legal propriety of being a participant in the "aggregator" program, as well as the procurement process of the bid award, was not within the scope of this audit.

<sup>3</sup> We included the LUC rates in the report for potential benchmark purposes only. Town officials can use the LUC rates to help assess the reasonableness of the utility contract the Town is considering.

## **Audit Results**

Evaluating Procurement Options – Town officials have a responsibility to ensure that they use taxpayers’ resources as prudently as possible. Officials should fulfill this responsibility, in part, by fully evaluating procurement options and comparing benchmark rates before committing resources. The more significant the resources that are to be expended, the more effort officials should put into the decision making process to help ensure the Town’s funds are used efficiently.

OGS contracts, along with LUC rates, can provide benchmarks to assist in assessing the reasonableness of the contract rates and terms being considered. However, while purchasing through extended OGS contracts have the potential to produce cost savings, municipalities are not required to use these contracts, and doing so does not guarantee a lower price.

The Board authorized<sup>4</sup> the Town’s participation in the utility cooperative for the cooperative purchasing of electricity and natural gas. The utility cooperative’s energy consultant, at quarterly meetings, provides participants with energy price forecasts and monitors the Town’s energy budgets. In addition, the consultant provides the Town with monthly summary reports showing a comparison of the Town’s invoiced energy costs to the LUC’s costs. We reviewed the reports’ comparison costs and found them to be reasonable. As a result, the ongoing evaluation and monitoring process provides greater assurance that officials are expending significant resources prudently and in the best interests of taxpayers.

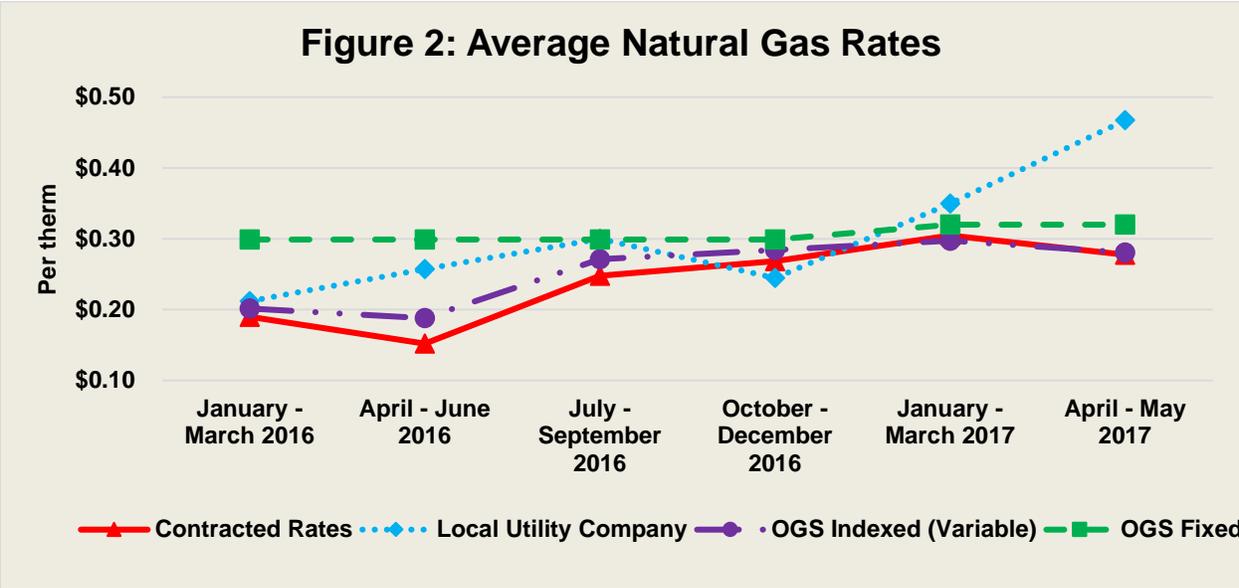
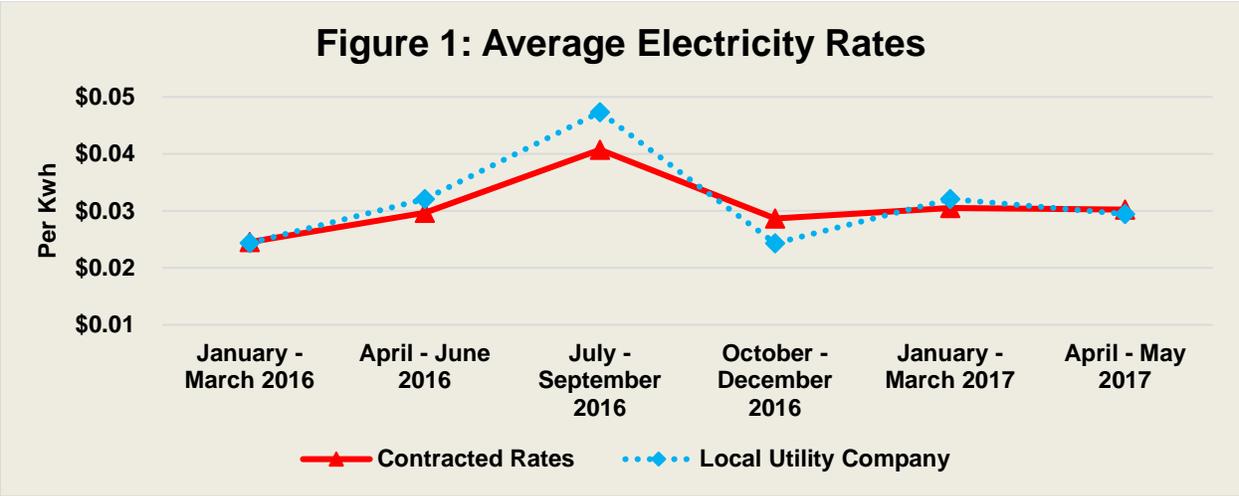
Potential Benchmark Comparisons – We calculated average electricity and natural gas rates paid for three-month periods from January 1, 2016 through March 31, 2017, and for the period April 1, 2017 through May 31, 2017. We compared the rates paid to potential benchmark rates averaged for the same time periods. We found that the Town’s average electricity rates were slightly lower than the average benchmark rates by approximately 3 percent (Figure 1). For example, the Town’s kwh<sup>5</sup> electricity rates averaged \$0.0308 while the LUC’s rates averaged \$0.0317. The Town’s average natural gas rates were also lower than other average benchmark rates, by 4 to 21 percent (Figure 2). For example, the Town’s average therm<sup>6</sup> natural gas rate was \$0.2437, while the OGS variable rate was \$0.2529 and OGS fixed rate was \$0.3070 (Appendix A).

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<sup>4</sup> According to Board Resolution, on July 6, 1998, the Board authorized and directed the Supervisor to execute a cooperative agreement to facilitate the formation of the utility cooperative.

<sup>5</sup> Kwh (Kilowatt-Hour) is a unit of measurement used to measure electricity consumption.

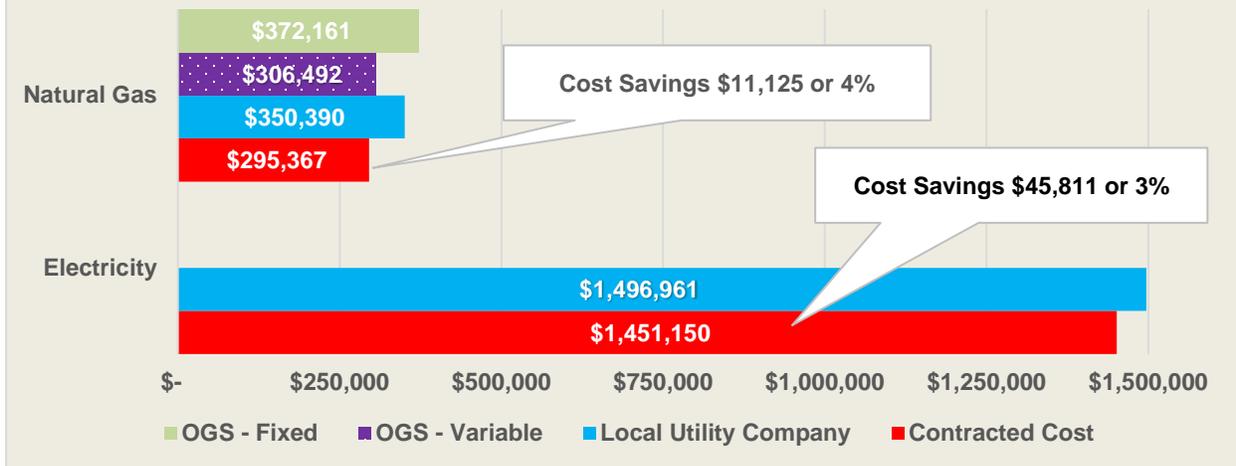
<sup>6</sup> Therm (Thermal Unit) is a unit of measurement used to measure gas consumption.



We also analyzed the Town’s electricity and natural gas purchases and compared the actual costs paid to the costs charged by the LUC<sup>7</sup> and the OGS natural gas variable and fixed rate contracts from January 1, 2016 through May 31, 2017 (17 months). We found that the Town paid less for electricity and natural gas when compared to the potential benchmark costs, utility costs from other providers. For example, the Town paid approximately \$46,000 (3 percent) less for electricity. The Town paid \$11,125 (4 percent) less than the OGS indexed variable benchmark and \$76,794 (21 percent) less than the OGS fixed benchmark costs for natural gas (Figure 3).

<sup>7</sup> Variable rates will fluctuate based on the wholesale market prices.

**Figure 3: Comparison of Actual Town Utility Costs to Other Potential Benchmark Costs  
January 1, 2016 through May 31, 2017**



Because officials evaluated and monitored their utility procurement options, there is an increased assurance that the Town is prudently spending money for electricity and natural gas.

Contract Terms – When obtaining goods or services from an awarded contract, it is imperative that officials obtain pertinent details, such as the awarded rates and contract terms prior to entering into their own contracts with the vendor. Officials should then ensure that the terms of their contracts with the vendor(s) mirror what was awarded through the aggregator to help safeguard against paying more than required.

As the lead agent of the utility cooperative, the Town is responsible for reviewing, with the consultant’s assistance, the billings for the electricity and natural gas purchases to ensure the Town and other participants are paying the proper rates and usage. It appears the Town paid agreed upon rates and terms.

We commend Town officials for their ongoing evaluation and monitoring efforts to ensure that they procure energy services prudently and in the best interests of taxpayers.

We thank the officials and staff of the Town for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo  
Deputy Comptroller

## APPENDIX A

<b>Figure 4: Electricity Usage and Cost Comparison January 1, 2016 through May 31, 2017</b>			
Department	Supply Usage (kwh)	ESCO Supplier (Actual Cost)	Potential Benchmark Costs Local Utility Company
Town Facilities	6,276,309	\$232,455	\$251,823
Town Lighting	7,756,093	\$191,976	\$173,920
Northtown Center	5,659,486	\$202,089	\$216,517
Wastewater Treatment Facility	27,475,825	\$824,630	\$854,701
Total	47,167,713	\$1,451,150	\$1,496,961
Supplier Difference to Other Sources			(\$45,811)
% Difference			(3%)
Cost per Kwh			\$0.0317

<b>Figure 5: Natural Gas Usage and Cost Comparison January 1, 2016 through May 31, 2017</b>					
Department	Supply Usage (Therms)	ESCO Supplier (Actual Cost)	Potential Benchmark Costs		
			Local Utility Company	OGS Indexed Variable	OGS Fixed
Town Facilities	744,238	\$192,598	\$216,623	\$190,245	\$228,798
Wastewater Treatment Facility	467,880	\$102,769	\$133,767	\$116,247	\$143,363
Total	1,212,118	\$295,367	\$350,390	\$306,492	\$372,161
Supplier Difference to Other Sources			(\$55,023)	(\$11,125)	(\$76,794)
% Difference			(16%)	(4%)	(21%)
Cost per therm			\$0.2891	\$0.2529	\$0.3070

## **APPENDIX B**

### **RESPONSE FROM TOWN OFFICIALS**

Town officials' response can be found on the following page.



**Town of Amherst**  
**Brian J. Kulpa**  
Town Supervisor

October 11, 2018

State of New York  
Office of the State Comptroller  
110 State Street  
Albany, New York 12236

To whom it may concern:

The Town of Amherst was happy to participate in the recent audit evaluating the use of aggregators for the purpose of procuring electricity and natural gas.

We were pleased to be commended for our ongoing evaluation and monitoring efforts to ensure that we procure energy services prudently and in the best interests of taxpayers.

The [REDACTED] was formed in 1998 for the purpose of obtaining better pricing for our Town, the Village of Williamsville, Williamsville CSD, Amherst CSD and Sweet Home CSD. We would also like to thank [REDACTED] for their assistance with this audit. They have been a valuable resource to the [REDACTED] Consortium since its inception.

We hope this audit will result in some best practices that can be utilized by other Government entities to ensure their taxpayers are procuring electricity and gas at the lowest cost.

Sincerely,

Brian J. Kulpa  
Town Supervisor

## **APPENDIX C**

### **AUDIT METHODOLOGY AND STANDARDS**

The objective of our audit was to assess whether local governments and school districts that utilize aggregators are ensuring they are procuring electricity and natural gas at the lowest prices for the period January 1, 2016 through May 31, 2017. To accomplish the objective, our audit procedures included the following:

- We interviewed Town officials and employees to gain an understanding of the electricity and natural gas procurement process.
- We reviewed policies, procedures and Board minutes related to the procurement of electricity and natural gas.
- We reviewed contracts between the Town and ESCOs to assess whether the Town paid the contract rates, fees and surcharges. We judgmentally selected November 2016 for electricity and May 2017 for natural gas, with no expectations of greater or lesser results.
- We reviewed all electricity and natural gas invoices to evaluate total supply usage, service classifications and rates paid.
- We obtained rates, based on service classifications, from the LUC and OGS and compared the Town's electricity and natural gas costs (usage and service classifications) to the LUC and OGS costs to assess whether there was a cost variance.
- We reviewed the consultant's comparison of the Town's electricity and natural gas purchases to the LUC costs for January 2017. We selected January 2017, as it was a recent comparison, with no expectation of greater or lesser results.

We conducted this performance audit in accordance with generally accepted government auditing standards (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.