



THOMAS P. DiNAPOLI
COMPTROLLER

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET
ALBANY, NEW YORK 12236

GABRIEL F DEYO
DEPUTY COMPTROLLER
DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY
Tel: (518) 474-4037 Fax: (518) 486-6479

February 2019

Hon. Kevin Whitney, Chairman
Members of the Board of Legislators
Cortland County
60 Central Avenue
Cortland, NY 13045

Report Number: S9-18-19

Dear Chairman Whitney and Members of the Board of Legislators:

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 aggregators¹ for energy purchases are ensuring they are procuring electricity and natural gas at the lowest prices. We included Cortland County (County) in this audit. Within the scope of this audit, we examined the County's utility purchases for the period January 1, 2016 through May 31, 2017. We extended our audit scope back to April 2013 to review contract terms and March 2015 to review Board resolutions. 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 and recommendations specific to the County. We discussed the findings and recommendations with County officials and considered their comments, which appear in Appendix B, in preparing this report. County officials disagreed with certain findings but indicated they plan to initiate some corrective action. Appendix C includes our comments on the issues raised by the County's response. 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

County officials did not provide written documentation or verbal assertions during our fieldwork to demonstrate that the County entered into utility contracts without first evaluating the contracts

¹ For the 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.

or comparing prices to other potential procurement options or potential benchmark rates. Between January 1, 2016 and May 31, 2017, the County spent approximately \$360,000 for electricity and natural gas and paid electricity rates that were 84 percent higher and natural gas rates that were up to 54 percent higher than benchmark rates we identified for comparisons. Without an effective evaluation process, there is an increased risk that the County could have spent more than necessary for electricity and natural gas. Comparing the benchmark costs to the County's energy costs, the County paid approximately \$151,000 (72 percent) more for electricity and natural gas than the potential benchmarks we identified.

Finally, officials did not obtain sufficient documentation of the Energy Service Companies' awarded contract terms to ensure that terms they ultimately agreed upon were consistent with the awarded terms. As a result, the County and we were unable to assess whether the utility rates paid by the County are accurate and appropriate. Therefore, there is an increased risk that the County may be paying more than necessary for its utilities.

Background and Methodology

The County is located in the Central New York region and has a population of approximately 49,000 residents. The County is governed by an elected 17-member Board of Legislators (Board), one of whom serves as the Chair of the Legislature (Chair). The Board is responsible for the general oversight of the County's financial affairs and for safeguarding its resources. The Chair serves as the acting chief executive officer because the County Administrator position is currently vacant. The Chair is responsible, along with other administrative staff, for the County's day-to-day management. The Board is responsible for the approval and execution of contracts. The County's 2017 budgeted expenditures totaled approximately \$129.4 million. The County provides various services to its residents, including general government support, road maintenance and snow removal, economic assistance, law enforcement and health and social services.

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. Cortland County uses an aggregator for the procurement of electricity, natural gas and renewable power. The aggregator serves as a procurement manager which, among other things, aggregates the anticipated energy purchases of participants to be used for the electricity and natural gas bid, which is let by Genesee County.² The aggregator's consultant reviews and evaluates the bid submissions and recommends the winning ESCOs. However, there is no requirement for a participant to purchase from the recommended ESCOs.

² 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.

We examined the County'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.³ We also reviewed and compared invoices to the terms (rates, fees, surcharges and timeframes) in the County's contracts and the bid awarded contract.

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 D of this report.

Audit Results

Evaluating Procurement Options – County 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 County's funds are used efficiently.

OGS and County 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 or County 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 authorized⁴ the County to renew its electricity and natural gas contracts with the ESCOs that were recommended by the aggregator. However, County officials told us during fieldwork they did not evaluate the electricity and natural gas contracts prior to entering into them and did not consider any other procurement options. As a result, officials have less assurance that they expended significant resources prudently and in the best interests of taxpayers.

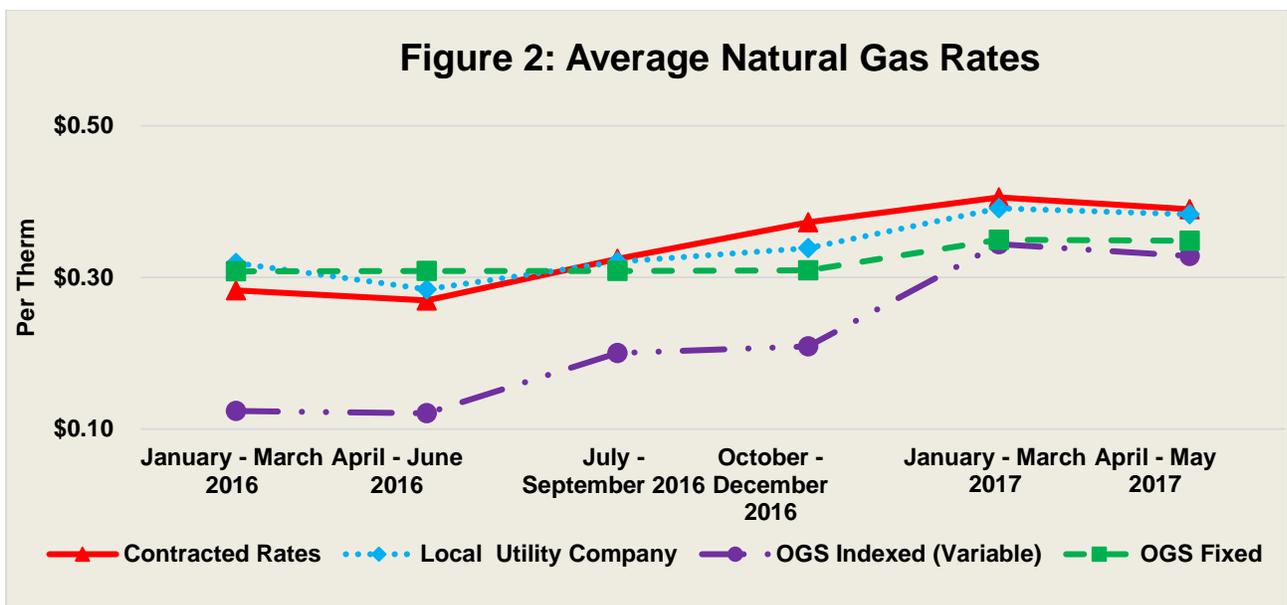
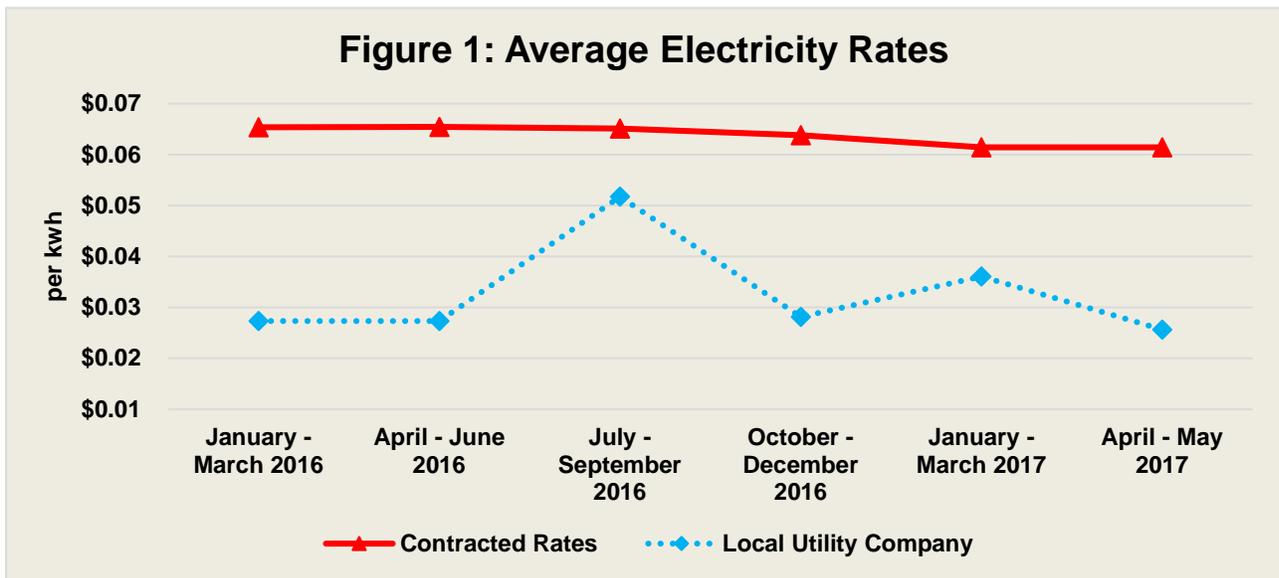
Potential Benchmark Comparisons – We calculated average electricity and natural gas rates paid for three-month periods from January 1, 2016 through March 31, 2017, and for the period April 1, 2017 through May 31, 2017. We compared the rates paid to potential benchmark rates averaged for the same time periods. We found that the County's average electricity rates were consistently higher than the average benchmark rates, by approximately 84 percent (Figure 1). For example, the County's kwh⁵ electricity rates averaged \$0.0632 while the LUC rates averaged \$0.0343. The County's average natural gas rates were also higher than the average OGS variable rates, by approximately 54 percent, but similar to the LUC rates (Figure 2). For example, the

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

⁴ According to Board resolutions, on March 26, 2015, the County Legislature authorized the renewal of the natural gas contract with the ESCO, as determined by the aggregator to be the lowest bidder. On August 27, 2015, the County Legislature authorized the renewal of the electricity contract with the ESCO, as determined by the aggregator to be the lowest bidder.

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

County's average therm⁶ natural gas rate was \$0.3499, while the OGS variable rate was \$0.2277 and the LUC's rate was \$0.3503 (Appendix A).

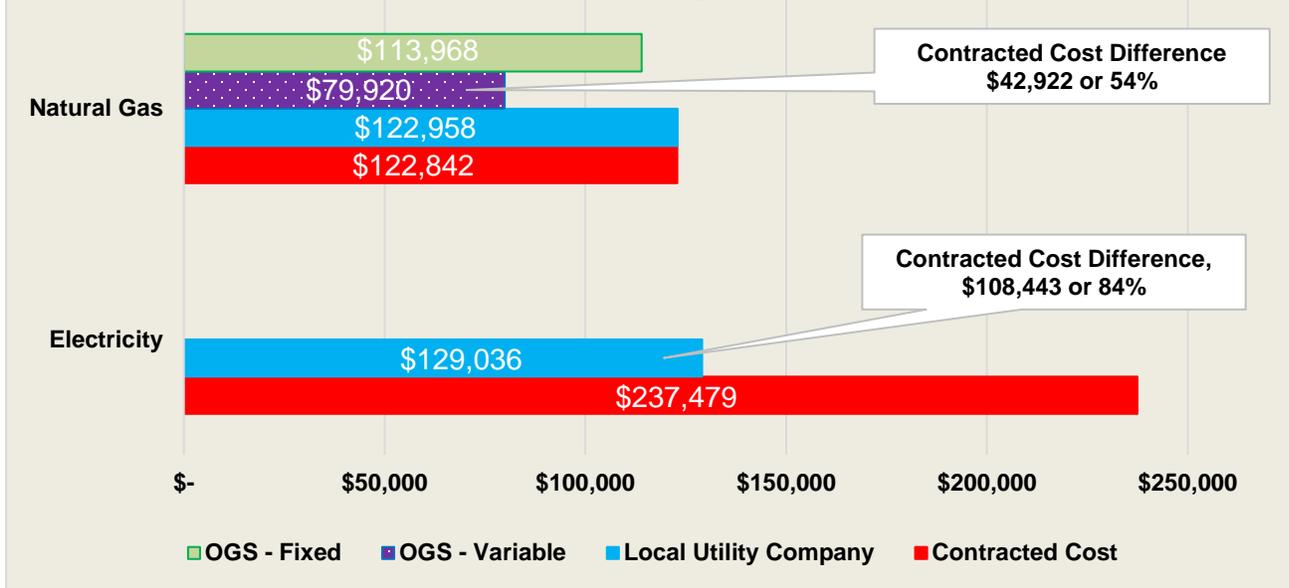


We also analyzed the County's electricity and natural gas purchases and compared the actual costs paid to the rates charged by their LUC⁷ and the OGS natural gas variable and fixed costs from January 1, 2016 through May 31, 2017 (17 months). We found that the County paid significantly more for electricity and natural gas when compared to the benchmark costs, utility costs from other providers. For example, the County paid approximately \$108,000 more for electricity and \$43,000 more for natural gas purchases (Figure 3).

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

⁷ Variable rates will fluctuate based on the wholesale market prices.

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



Without an effective evaluation process, there is an increased risk that the County could spend significantly more money for electricity and natural gas than necessary.

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 ensure that the terms of their contracts with the vendor(s) mirror what was awarded to help safeguard against paying more than required.

The County received Genesee County’s Board award resolution which identified the electricity and natural gas awarded ESCOs, based upon the bid from the aggregator. In addition, the County received the program agreements between Genesee County, the aggregator and the awarded electricity and natural gas ESCOs. Among other things, the program agreements identified the utility territories and timeframe of the contracts.⁸ However, we were told that County officials did not obtain the awarded ESCOs’ rates and terms. As a result, there is an increased risk that the contracts they engaged in with the ESCO could be inconsistent with the awarded bid rates.

We compared the award resolution and program agreements to the County’s ESCO contracts to assess whether they contained the same terms. Although the program agreements indicate that fixed prices will be determined based on market conditions at the time of contract executions, neither the award resolution nor the program agreements contained a fixed rate price. Therefore, we were unable to assess whether the fixed price paid by the County was accurate or appropriate.

⁸ Effective date of April 1, 2015 through October 31, 2018, which may be extended for up to two additional one-year periods through October 31, 2020.

Recommendations

The Board should:

1. Evaluate available electricity and natural gas purchasing options prior to authorizing the County's procurement method.

County officials should:

2. Periodically analyze and review procurement options to help ensure the County is receiving the lowest possible prices for electricity and natural gas.
3. Obtain bid award details and contracts that the County purchases from and review to ensure they contain all relevant information (e.g., rates/surcharges/timeframes) and only engage in County contracts that comply with applicable award terms.

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 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 Clerk's office.

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

Sincerely,

Gabriel F. Deyo
Deputy Comptroller

APPENDIX A

Figure 4: Electricity Usage and Cost Comparison January 1, 2016 through May 31, 2017			
Department	Supply Usage (kwh)	ESCO Supplier (Actual Cost)	Potential Benchmark Costs Local Utility Company
Airport	61,605	\$3,900	\$2,184
Buildings and Grounds	2,753,244	\$175,123	\$93,990
Dwyer Park	31,772	\$2,031	\$1,386
Emergency Response	271,116	\$15,747	\$9,449
Highway	383,940	\$24,401	\$13,191
Mental Health	77,455	\$4,916	\$2,743
Recycling	68,880	\$4,366	\$2,479
Solid Waste	110,480	\$6,995	\$3,614
Total	3,758,412	\$237,479	\$129,036
Supplier Difference to Other Sources			\$108,443
% Difference			84%
Cost per Kwh		\$0.0632	\$0.0343

**Figure 5: Natural Gas Usage and Cost Comparison
January 1, 2016 through May 31, 2017**

			Potential Benchmark Costs		
Department	Supply Usage (Therms)	ESCO Supplier (Actual Cost)	Local Utility Company	OGS Indexed Variable	OGS Fixed
Airport	1,597	\$563	\$564	\$372	\$521
Buildings and Grounds	244,882	\$85,774	\$85,748	\$56,089	\$79,628
Highway	84,455	\$29,564	\$29,662	\$19,068	\$27,382
Mental Health	13,677	\$4,789	\$4,798	\$3,119	\$4,390
Recycling Center	2,244	\$805	\$801	\$546	\$736
Workforce Investment Act	4,185	\$1,347	\$1,385	\$726	\$1,311
Total	351,040	\$122,842	\$122,958	\$79,920	\$113,968
Supplier Difference to Other Sources			(\$116)	\$42,922	\$8,874
% Difference			(0.1%)	54%	8%
Cost per Therm		\$0.3499	\$0.3503	\$0.2277	\$0.3247

APPENDIX B

RESPONSE FROM COUNTY OFFICIALS

County officials' response can be found on the following pages.



CORTLAND COUNTY

60 Central Avenue
Cortland NY 13045

Kevin Whitney
Chair, Cortland County Legislature

Eric Mulvihill
Clerk of the Legislature

10/17/2018

██████████
██████████

Statewide Audits
Division of Local Government and School Accountability

RE: Cortland County’s Response to OSC Draft Audit of Cortland County Utility Purchasing

██████████

Please see the following information in response to your agency’s audit of Cortland County Utility purchasing.

BACKGROUND:

Cortland County joined the ██████████ in 2013 after participating in a program run by Onondaga-Cortland-Madison BOCES. The OCM BOCES program ties program participants to one another, which resulted in excessive costs to Cortland as a result of another program participant defaulting on their contract.

Part of the reason Cortland County joined ██████████ is due to the endorsement of the New York State Association of Counties (NYSAC). Since 2008, NYSAC has endorsed ██████████ as their preferred energy procurement program for counties. This endorsement is based on a record of savings ██████████ has achieved for local governments as well as ██████████ strict adherence to local government bidding requirements.

See
Note 1
Page 12

RESPONSE TO DRAFT AUDIT FINDINGS:

1. The audit criticizes the county’s decision to not solicit additional offers to compare prices before selecting the ██████████ program.

See
Note 2
Page 12

Cortland chose the ██████████ program in large part because ██████████ procurement provides local governments with competitive pricing while simultaneously satisfying legal public procurement requirements. ██████████ procurement process (covering the time examined in this audit) began on February 12, 2015 and ended on March 12, 2015. ██████████ selected ██████████ as the supplier for program participants (awarded on April 1, 2015). ██████████ advertised in the State Contract Reporter and distributed the bid to a list of more than 70 New York State Licensed Energy Services Companies.

See
Note 3
Page 12

Cortland County found the ██████████ program appealing because it takes advantage of the provisions in State law that allow local governments to “piggyback” off contracts let by other local governments (in this case Genesee County) in order to procure energy. When Cortland County invoked this piggybacking provision, it would have been redundant to simultaneously solicit prices from suppliers. This provision of law (as reflected in NYS County Law Section 408-a, and General Municipal Law Section 103) is designed to save local governments the time and expense of doing their own bid, and to encourage aggregation of local government requirements in order to have more command of the marketplace to the taxpayer’s benefit. ██████████ program is grounded in these principles to provide an automatic financial advantage to participants.

See
Note 4
Page 13

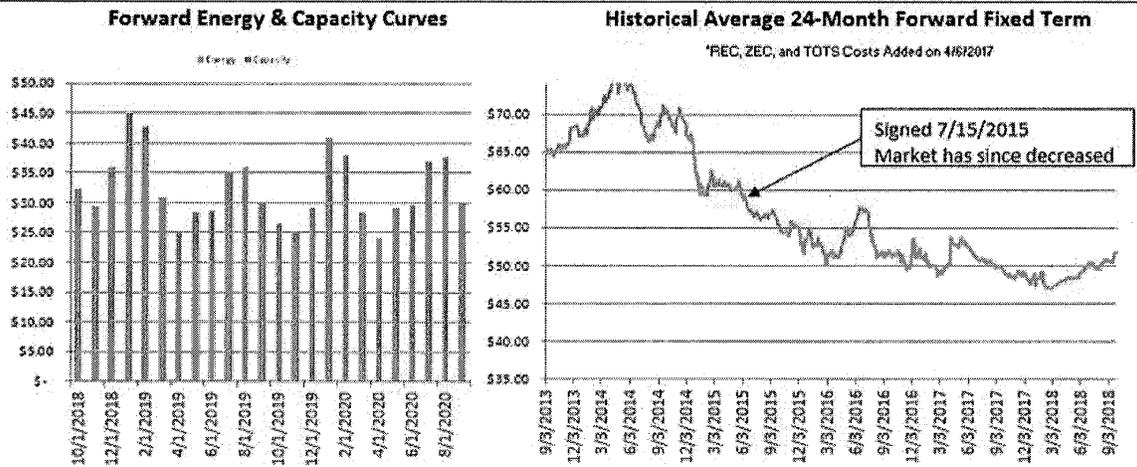
2. The audit compares average electricity rates from the Local Utility Company to the fixed price rate the county paid in their contract. The audit also compares average natural gas rates from the utility and OGS.

See
Note 5
Page 13

The fixed price from ██████████ through ██████████ cannot be accurately compared to variable pricing or to benchmarked averages over time. Comparing the price that the county paid in their contract to the variable price is an inaccurate portrayal of the county’s decision process because the customer is also buying stability. The county may save money over time with a fixed price if market/index prices rise. Even if markets decline while a fixed price is in effect, the customer still has the benefit of being able to forecast energy spending based on historic consumption. Stability ensures budgeting security and is a highly sought-after feature for many local governments. Fixed pricing offers local government an important insurance policy that the local utility company cannot give them. Utility tariffs, following long-standing policies of the New York State Public Service Commission, prohibit them from offering fixed or hedged pricing to any customers.

The timing of Cortland County's contract unfortunately came when forward prices were higher. There are other participants in the [redacted] program that have fared better based on when they committed to a fixed price. This is unfortunately unpredictable and beyond the foresight of any decision maker. All local governments share the concern over budget certainty. Looking at the data available now, we know that during the times when market rates exceeded the contracted fixed price, Cortland County would have had to absorb the additional \$36,054.59 in costs. This would have placed immediate strain on the county's energy budget. This is precisely the reason decision makers deemed a fixed price to be the best option. A 2007 OSC report looked at energy purchases of SUNY campuses and noted that market price fluctuations made it difficult for school officials to budget their electricity costs. That audit noted a fixed pricing preference.

Cortland County has found that, over time, fixed pricing has performed well for the county's largest accounts. Fixed price operated effectively for the county during the 8/2013 and 4 /2015 time period and especially during a spike in late 2017-early 2018 that resulted in cost avoidance. The chart below illustrates the market over the time when Cortland County locked into their current fixed price contract. As the chart illustrates, forward prices have declined since the time that the current contract was signed on 7/15/2015. The new contract that begins November 2018 will begin a rate of \$0.05698/kWh. This new rate will reduce costs, but since Cortland County signed this contract on 6/8/2016 the market has experienced another forward increase.



Many local governments have seen prices rise after they locked in a fixed rate and have saved a great deal of money. The Polar Vortex of 2014 was an example of a volatile prices spike which posed serious financial problems for customers paying a variable rate. Long-term fixed pricing provides budget certainty and protection against unpredictable future costs. The audit should acknowledge the advantages that fixed pricing can offer and the rationale behind Cortland County choosing such a stable rate.

Furthermore, comparing contracted price to average benchmarked rates only shows the variation from the average. It does not illustrate the information that the county had at the time. Officials in Cortland County did not have the luxury of knowing what those averages would be at the time they were making their purchasing decision. No customer, energy consultant, local government or otherwise, has the ability to know what the average will be in the year ahead. All they can do is act on the best information they have at the time, i.e. forecasts of the future based on current market conditions. The actual future may be, and frequently has been, different from the forecasts. Cortland County acted to avoid the risk associated with recent weather-related price spikes. Cortland also acted to secure their expenses in order to remain under the state mandated property tax cap. Had Cortland County chosen variable pricing, taxpayers would have been vulnerable to unexpected energy costs that could have forced their budget to exceed the cap.

3. The audit recommends the County obtain bid award details and contracts that the County purchases from and review to ensure they contain all relevant information and only engage in County contracts that comply with applicable award terms.

The County agrees that it does need to have proper documentation regarding award details and contracts. To that end the County has reached an agreement with [redacted] to ensure the required documents are provided to the County in a timely manner for review.

In closing [redacted] thank-you for your review of Cortland County's utility procurement and purchasing process. We look forward to the follow-up correspondence when the final report is prepared and will submit our comments and corrective action plan.

Sincerely,

Kevin Whitney, Chair
Cortland County Legislature

See
Note 1
Page 12

See
Note 2
Page 12

See
Note 6
Page 13

See
Note 1
Page 12

See
Notes
1 & 4
Pages
12 & 13

See
Note 5
Page 13

APPENDIX C

OSC COMMENTS ON THE COUNTY'S RESPONSE

Note 1

Officials state that they used the aggregator, in part, because the New York State Association of Counties endorsed the company and that the endorsement is based on a record of savings the aggregator has achieved for local governments. Regardless of any endorsement, officials have a responsibility to exercise due diligence to ensure they are minimizing operating expenses and using the taxpayers' dollars wisely.

Officials were unable to provide any written documentation during fieldwork to support their utility procurement practices have saved money. Moreover, officials provided no written documentation or verbal assertions during fieldwork to support they evaluated or assessed the prices for electricity and natural gas were reasonable prior to entering the utility contracts. Further, officials told us they did not evaluate the electricity and natural gas contracts prior to entering into them and did not consider any other procurement options.

Note 2

Our report does not criticize officials for not soliciting additional offers to compare prices before selecting the aggregator. Our audit found that officials did not evaluate the County's electricity and natural gas contracts before signing them. Therefore, officials have less assurance that they expended significant resources prudently and in the best interest of taxpayers.

Note 3

County officials state they chose the aggregator because of the competitive pricing the company provides. However, officials did not provide written documentation or verbal assertions during fieldwork to support they assessed the pricing was reasonable.

We agree "piggybacking" may save local governments the time and expense of doing their bid. Although exercising due diligence would require, at some level, an analysis of the County's utility procurement options, officials could not support they evaluated the utility bid or considered or analyzed other procurement options.

Further, when an entity piggybacks a contract, General Municipal Law⁹ requires the officer, board or agency to consider whether the contract will result in cost savings after all factors, including charges for services, material and delivery, have been considered. However, the Buildings and Grounds Supervisor told the auditors they went with the aggregator because there was no separate administration fee.

Aggregating local governments' utility needs can help procure more favorable pricing. However, cost savings is not guaranteed and, in certain instances, too much aggregation could have the

⁹ General Municipal Law Section 103(3)

potential of limiting competition. The County's response states the aggregator advertised the bid in the State Contract Reporter and distributed the bid to a list of more than 70 New York State licensed energy service companies. However, only four companies bid on the variable electricity RFP and only two were considered. Three companies bid and were considered for the variable natural gas RFP. There was no fixed price bid summary for either electricity or natural gas.

Considering the cost for procuring utilities, the justification for the procurement decision should have been documented. However, officials were unable to provide written documentation or verbal assertions during fieldwork to support they analyzed the utility bid, considered other procurement options or assessed the aggregator's pricing was competitive. Had officials done so, they may have spent less for the County's electricity and natural gas resources.

Note 4

We disagree; benchmarks can assist in assessing the reasonableness of contracts being considered.

Note 5

Officials state they are "buying stability" through fixed pricing. However, officials lacked any written documentation or verbal assertions during fieldwork that showed what the "stability" has historically saved or cost the County or what buying future stability may cost the County's taxpayers. We acknowledge that fixed pricing should be a consideration in the decision making process. However, officials should still evaluate whether the fixed price is reasonable and what cost is associated with fixed pricing.

Note 6

During the audit, officials were unable to provide any written documentation or verbal assertions to support the utility contract they entered was in the best interest of the County taxpayers. The charts included in the County's response were not provided to the auditors during fieldwork, and do not provide sufficient information (such as service classification and load) to assess whether they are relevant and accurate.

APPENDIX D

AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to assess whether local governments and school districts that utilize energy 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 County 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 compared the Genesee County electricity and natural gas bid award resolutions and program agreements to the County's contracts to assess whether the terms were the same.
- We reviewed contracts between the County and ESCOs to assess whether the County paid the contract rates, fees and surcharges.
- We reviewed all electricity and natural gas invoices to assess total supply usage, service classifications and rates paid.
- We obtained rates, based on service classifications, from the LUC and OGS and compared the County'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 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.