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**Thomas P. DiNapoli  
COMPTROLLER**



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**OFFICE OF THE  
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE  
GOVERNMENT ACCOUNTABILITY**

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**DORMITORY AUTHORITY  
OF THE STATE OF NEW  
YORK**

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

**Report 2008-S-77**

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## AUDIT OBJECTIVE

The objective of this audit was to determine whether the Dormitory Authority of the State of New York (Authority) is meeting the current 10 percent target for purchasing power from renewable sources, increasing to a 20 percent target level by 2010 as specified in Executive Order 111.

## AUDIT RESULTS - SUMMARY

Executive Order 111 (Order) was issued in June 2001 and requires that by 2005 all State agencies and certain public authorities, including the Authority, seek to purchase sufficient quantities of electricity produced by certain specified renewable technologies so that 10 percent of the overall annual electric energy consumption of the buildings they own, operate or lease would come from renewable sources. The target percentage increases to 20 percent by 2010. The agencies can acquire qualifying electric energy by generating it themselves, or by purchasing it either through their electrical supplier or through a third party provider in the form of a Renewable Energy Certificate.

We found that the Authority's Energy Management Committee evaluated options to comply with the Order and took action to purchase sufficient amounts of renewable energy on time. However, a failure in the energy vendor's on-line system caused the order to fail and the order did not go through. When the Authority discovered the problem, after the end of the fiscal year, it purchased double the renewable energy needed in the subsequent fiscal year, in an attempt to comply for both years. This was not required, but the Authority wished to fulfill the spirit of the Order.

We also found that the Authority met the reporting requirements of the Order and

already substantially exceeds the 20 percent target.

Our report contains two recommendations. In their response to our draft audit report, Authority officials indicated that they have accepted the recommendations.

This report, dated November 6, 2008, is available on our website at: <http://www.osc.state.ny.us>.

Add or update your mailing list address by contacting us at: (518) 474-3271 or  
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Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236

## BACKGROUND

Executive Order 111 (Order), issued by the Governor on June 10, 2001, sets out a broad initiative that directs State agencies and certain public authorities, including the Authority, to be more energy efficient and environmentally proactive. The Order is divided into individual sections, each addressing a specific energy-related or environmental initiative ranging from establishing broad energy efficiency goals to instituting energy efficient and environmentally sensitive practices. We have previously audited various agencies' efforts to implement certain sections of the Order, including the procurement of clean fuel vehicles and the purchase of energy efficient products. This audit addresses implementation of the section of the Order that requires agencies to purchase power from renewable sources.

Specifically, Section IV of the Order requires that by 2005 each covered agency should have sought to purchase sufficient quantities of energy from certain specified renewable technologies so that 10 percent of its overall

annual electric energy consumption of the buildings it owns, operates or leases would come from renewable sources. The target percentage increases to 20 percent by 2010. Guidelines issued by the New York State Energy Research and Development Authority (NYSERDA) in December 2004 generally require covered agencies to apply these percentages against all facilities where their power is separately metered and billed, regardless of whether they own or lease the property. Eligible renewable technologies specified in the Order include power generated from wind, solar thermal, photovoltaics, sustainably managed biomass, tidal, geothermal, methane waste and fuel cells.

The Order designates NYSERDA as the lead agency responsible for coordinating implementation and assisting other agencies to fulfill their responsibilities. To assist NYSERDA in this role, the Order also created the State Energy Efficiency Advisory Council (Advisory Council), headed by the President of NYSERDA and composed of the heads of 12 other agencies and authorities, including the Executive Director of the Dormitory Authority. NYSERDA and the Advisory Council have developed guidelines that, among other things, interpret the requirements of the Order and specify criteria for periodic reporting and possible exemption of certain facilities or operations. In general, the guidelines allow agencies to acquire qualifying energy by generating it themselves or by purchasing it, either through their electrical supplier or through a third party provider in the form of certificates referred to as Renewable Energy Credits.

The Authority is a public benefit corporation, created in 1944 to construct dormitories for State teachers' colleges. The Authority

currently finances and builds all types of facilities for use in higher education, health care and courts, as well as certain nonprofit institutions and public agencies. The Authority is governed by an eleven-member Board of Directors, which appointed an Executive Director to manage the Authority's daily operations. The Authority's mission is to be the public finance and construction partner of choice, providing its customers with low cost, quality sources of capital and facilities delivered on time by a responsive, innovative team of professionals.

The Authority owns three buildings including its headquarters in Albany, and offices in Delmar and Buffalo. The Authority also leases space in a building in New York City.

The Authority used 3,615,158 kilowatt hours (kWhs) of electricity in State fiscal year 2005-06. The Authority acquired a 40 kilowatt photovoltaic system for its headquarters building in 2002. The photovoltaic system includes a network of 399 solar panels, attached to the roof of the building, which converts sunlight into electrical power. The Authority also entered into a direct agreement to purchase renewable energy in October 2006.

The Authority has taken an active role in reducing its electricity consumption through energy saving practices. According to its Annual Energy Report for fiscal year 2006-07, it used about 6.4 percent less electricity than it did during fiscal year 2001-02. The Authority has contracted to purchase renewable energy in the future, which it estimates is about 100 percent of the electricity for its headquarters building.

## AUDIT FINDINGS AND RECOMMENDATIONS

### *Compliance With Order*

#### **Procurement of Renewable Energy**

The Order requires State agencies and other affected entities to seek to procure 10 percent of their total electrical energy requirements by 2005 from renewable sources and 20 percent from those renewable sources by 2010. The Order specifies wind, solar thermal, photovoltaics, sustainably managed biomass, tidal, geothermal, methane waste, and fuel cells to be qualifying renewable sources. State agencies and other affected entities can purchase any combination of the qualifying renewable sources to meet the goals of the Order.

According to NYSERDA's guidelines, State entities can fulfill their renewable-power procurement obligations in the following ways:

- On-site generation of all renewable power requirements,
- A mix of on-site generation and open-market electricity, and
- Purchasing all renewable-power requirements from the open market.

We conclude that the Authority met the Order because they sought to purchase at least 10 percent of its electricity needs from renewable power sources. Our audit determined that the Authority's Energy Management Committee (Committee) evaluated its options to comply with the Order and took action to purchase sufficient amounts of renewable energy.

The Committee elected to enroll in Niagara Mohawk's Green Up Program during 2005. However, the Authority disclosed in the Annual Energy Report for 2006 that it discovered that it was never enrolled in the Green Up program due to an error by the energy vendor. Authority officials told us they attempted to enroll in the Green Up program on-line and only found out later that the transaction was not properly processed.

To fulfill the spirit of the Order in October 2006, the Authority purchased 740,000 kWhs of biomass energy, far in excess of its 10 percent goal, including 370,000 kWhs to retroactively comply with the 10 percent requirement for fiscal year 2005-06, and another 370,000 kWhs to comply for fiscal year 2006-07. Thus, we conclude the Authority substantively met the 10 percent requirement for fiscal year 2005-06. We also verified that the Authority accurately reported its total electricity consumption of 3,615,158 kWhs reported to NYSERDA on the 2006 Annual Energy Report.

We found that the Authority met the 10 percent requirement for fiscal year 2006-07 by purchasing 370,000 kWhs (10.4 percent) of renewable energy and generating another 37,550 kWhs (1.1 percent) from its photovoltaic system. In total, the Authority's renewable energy totaled 11.5 percent. We also found that the Authority exceeded the 20 percent target early by acquiring about 37.9 percent of its annual electricity usage for fiscal year 2007-08. The Authority procured the power consisting of 10 percent wind and a 90 percent mix of wind, solar, hydropower, geothermal, biomass, and/or landfill gas sources through a renewable energy supplier.

The Authority has also contracted to procure the same mix of electricity totaling 2,693,400 kWhs (about 75.8 percent) for fiscal years 2008-09, and 1,346,700 kWhs (about 37.9

percent) during 2009-10. Although hydropower is not allowable under the Order, Authority officials indicate they purchase such a high percentage from renewable sources, that hydropower would have to be a very large portion of the mix for them to not meet the 20 percent target. We believe the Authority should periodically check with the supplier to ensure the mix they receive is sufficient to meet the 20 percent target and to allow accurate reporting of the mix to NYSERDA on the Annual Energy Report.

### **Reporting**

The NYSERDA's guidelines require every state agency and other affected entities to submit an Annual Energy Report to NYSERDA by December 1<sup>st</sup> following the close of each fiscal year. The first Annual Energy Report was due December 1, 2002 for the period April 1, 2001 through March 31, 2002.

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

We found that the Authority submitted all its Annual Energy Reports on time.

### **Recommendations**

1. Continue to comply with the requirement in the Order to procure renewable energy.

2. Periodically check the renewable energy mix being supplied to ensure compliance with the 20 percent target and accurate reporting to NYSERDA.

### **AUDIT SCOPE AND METHODOLOGY**

We conducted our audit in accordance with generally accepted government auditing standards. Our audit determined if the Dormitory Authority of the State of New York was in compliance with Section IV of Executive Order 111 by reporting its annual electrical energy consumption to NYSERDA, procuring at least 10 percent of its power from renewable sources by 2005, and increasing purchases from renewable sources to 20 percent in 2010. Our audit period was from January 1, 2005 through August 17, 2008.

To accomplish our audit objectives, we interviewed Authority officials to determine what steps were taken to comply with the Order and what plans were made to meet the 2010 requirements. We verified the Authority's annual electricity consumption to supporting documentation for State fiscal year 2005-06. We also obtained data on the Authority's photovoltaic system output.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted

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government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

### **AUTHORITY**

The audit was performed pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution, and Section 2803 of the Public Authorities Law.

### **REPORTING REQUIREMENTS**

We provided draft copies of this report to Authority officials for their review and formal comment. We considered the Authority's comments in preparing this report. A complete copy of the Authority's response is included as Appendix A.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Executive Director of the Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

### **CONTRIBUTORS TO THE REPORT**

Major contributors to this report include Brian Mason, Steve Goss, Kathy Hotaling, Dave Pleeter, and Kelly Evers Engel.

## APPENDIX A - AUDITEE RESPONSE



*Gail H. Gordon, Chair  
Paul T. Williams, Jr., Executive Director*

October 6, 2008

Mr. Steven E. Sossei  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, New York 12236

Re: Compliance with Executive Order 111 Requirements  
To Purchase Power from Renewable Sources Report 2008-S-77

Dear Mr. Sossei:

The Dormitory Authority – State of New York (the "Authority") has reviewed the Office of the State Comptroller's draft report on the Compliance with Executive Order 111 Requirements to Purchase Power from Renewable Sources (Report 2008-S-77).

The audit recognized the Authority's compliance in meeting the requirement to the purchase of 10 percent of renewable energy and will continue to comply with the Order. The Authority has accepted all of OSC's recommendations.

We appreciate this opportunity to respond to the Comptroller's evaluation of our compliance in purchasing renewable energy, and we look forward to updating the Comptroller, the Governor and the Legislature on our process upon the final release of the report.

Sincerely,

Paul T. Williams, Jr.  
Executive Director

cc: Gail Gordon, Chair  
Michael T. Corrigan, Deputy Executive Director  
Steven D. Curro, Managing Director Construction  
Joel A. Brophy, Director, Internal Audit  
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