

THOMAS P. DINAPOLI
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

November 25, 2014

Mr. Mark M. Finkle
Chairman
Hudson River-Black River Regulating District
350 Northern Boulevard
Albany, NY 12204

Re: Hudson River-Black River Regulating
District: Financial Management Practices
Report 2013-S-55

Dear Mr. Finkle:

According to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 15-2129(9) of the Environmental Conservation Law (ECL), we audited the financial management practices of the Hudson River-Black River Regulating District to determine if its financial management practices in the areas of revenue collection, payroll, procurement, asset and equipment management, cash management, budgeting, and board governance reasonably ensure its operations are efficient and effective.

Background

The Hudson River-Black River Regulating District (District) was established to control the flow of waters of two neighboring watersheds: the Hudson River and the Black River. The District's responsibilities involve reducing floods caused by excess run-off and augmenting river flow at times of drought or other periods when normal river flows are low. Organized as a public benefit corporation, it has a broad spectrum of legal powers to accomplish its mission, including the authority to build and operate reservoirs, issue bonds, and apportion costs to its beneficiaries to finance construction, maintenance, and operations.

The Hudson River area includes the Great Sacandaga Lake (Sacandaga Reservoir), impounded behind the Conklingville Dam, and its shoreline. It also includes the Indian Lake Reservoir and Dam. The Black River area includes reservoirs and dams at Stillwater, Hawkinsville, Old Forge, and Six Lakes. The Executive Director is responsible for the day-to-day operations at the District's three offices in the Hudson River Area (Albany), the Sacandaga Field Area (Mayfield), and the Black River Area (Watertown). The District has a seven-member Board of Directors (Board), appointed by the Governor, that oversees the District's operation. The ECL and the Public

Authorities Law codify in statute the Board's role and responsibilities.

Article 15, Title 21 of the ECL requires the District to prepare a three-year budget (Budget). The District develops separate Budgets for the Hudson River and Black River areas. Based upon these Budgets, the District annually bills beneficiaries (i.e., specific companies and municipalities benefiting from District dams) for a proportional share of its operating and overhead costs. If beneficiaries do not pay their assessment bills timely the District requests that the county where the beneficiaries are located charge the past-due balances to the entities' next tax levy. The District receives a secondary revenue source from agreements with private companies that use two of its dams (Conklingville and Stillwater) to produce hydroelectric power. In addition, it collects permit fees from eligible property owners for access rights to the Great Sacandaga Lake.

The District had total personal service costs, including employee benefits, of \$2.9 million in fiscal 2012-13, comprising about 23 percent of its overall operating costs. As of December 31, 2013, it had 19 full-time employees and one part-time employee. During the two fiscal years ended June 30, 2013, the District incurred cumulative operating losses of \$4.7 million. These operating losses were due primarily to the write-off of previously recorded receivables on Hudson River Area assessments. During fiscal years 2011-12 and 2012-13, the District did not have any long-term debt.

Results of Audit

We found the District had adequate controls over permit fee billing and collection and cash management. However, we identified control weaknesses in the District's practices related to past-due assessments, facility maintenance, equipment inventories, time and attendance, and procurement. We make nine recommendations to address the control weaknesses we identified.

Recovery of Costs

Ideally, revenue from statutory beneficiaries, hydropower agreements, and permit holders, if collected, should be sufficient to cover the District's annual needs. However, the District's past due assessments receivable balance grew significantly during the past several years. Generally, this was due to litigation involving certain beneficiaries. During this time, the District also liquidated its reserves to cover significant liabilities resulting from litigation and other unexpected events. In light of these circumstances, the District cut spending and deferred capital maintenance projects to balance its annual budgets. While these measures addressed past budget gaps, we believe the District could take certain additional steps to help better prepare for its future cash needs.

Uncollectible Accounts

The ECL requires that the District's Budget sufficiently estimates the amount of funds needed to keep its facilities safely operating. However, the District did not include certain transactions in its 2013-14 Budget that impact its overall operating costs. Specifically, we found the District does not consider the lost revenue from uncollectible assessment accounts.

We identified multiple past-due accounts during our testing that do not seem likely to be collected. For example, in the Hudson River Area, the District carries a \$15,994 accounts receivable for one company that a local county official claims is uncollectible. The official indicated the company did not own the related land parcel during the billing period. Additionally, when the District finalized its last three-year Budget in June 2012, assessments overdue at least a year totaled \$109,097 in the Black River Area. District officials indicated that two of the beneficiaries involved have been out of business for several years. Even so, the District continued to bill these two beneficiaries, which owe a total of \$52,857 as of June 2013.

During our review of sampled assessments, we found the District promptly turned past-due accounts over to the counties for collection when appropriate. However, we noted the District generally does not follow up on the status of the counties' collection efforts. In response to our preliminary findings, District officials indicated they will work with the counties to secure payments for past-due assessments and investigate any disagreements about parcel ownership. As part of these efforts, the District should routinely monitor the status of the counties' collection efforts to better identify uncollectible accounts.

Section 10(f) Federal Power Act Fees

The District's operation of the Conklingville Dam affects the water flow at, and provides benefits to, 15 hydropower projects located downstream of the Dam on the Sacandaga and Hudson Rivers. These projects are licensed by the Federal Energy Regulatory Commission (FERC) and are owned by eight different licensees. Section 10(f) of the Federal Power Act (FPA) requires that the licensees reimburse the District for such part of the annual charges for interest, maintenance, and depreciation as FERC may deem equitable.

After FERC licensed the Conklingville Dam in 2002, the District continued to assess the downstream operators for benefits pursuant to State law. In 2006, a complaint was filed asserting the District's assessment of charges pursuant to State law since 2002 was preempted by FPA Section 10(f). In 2009, FERC began a study to determine the final charges owed the District by licensees for the period 2002 through 2008 and to establish interim charges for 2009 and thereafter. In July 2012, FERC issued an order establishing the 2002 through 2008 final charges totaling approximately \$3.8 million and 2009 onward interim charges for each facility totaling approximately \$788,000 annually. These amounts are substantially lower than provided by State law, as FERC does not include certain District expenditures in its calculation. For example, the District's costs for school and property taxes were excluded from FERC's calculation.

FERC's July 2012 Order also established a process for downstream licensees to receive credits against future headwater benefits assessments for the post-2002 payments they had already made to the District pursuant to State law. The District must negotiate settlements with each of the hydropower licensees. According to District records, these licensees are owed credits totaling approximately \$15 million for payments made during the period of 2002 through 2008. The District's CFO indicates it could take up to 19 years (with interest included) to completely offset the credit and realize any payments for the FERC headwater benefit fees.

The District advised it has settled its claim with one licensee; however FERC has not yet approved the agreement reached between the District and the licensee. We recommend the District continue to pursue acceptable outcomes in negotiation and litigation.

Sacandaga Lake Access Permits

We found the District's permit issuance, billing, and collection practices were acceptable. However, the District has kept permit fees the same since 2000. The renewal fees as of December 2013 totaled \$379,564. We believe the District should review permit fees on a regular basis. By not doing so, it may not be maximizing revenue from them.

Facility Maintenance

The District must properly maintain its dams to effectively regulate reservoir levels and river flows and to prevent flooding. To this end, the District has implemented procedures for inspecting and maintaining its dams. These procedures are intended to ensure the District meets applicable State dam safety requirements. Additional federal regulations apply at projects within FERC's jurisdiction - including dams licensed by FERC, such as the Conklingville Dam.

In September 2009, the District suspended and/or terminated 37 maintenance projects because of funding limitations. One of these projects had been mandated by FERC in 2007 for public safety reasons. The June 2013 Board minutes reveal the District still had "a fairly significant backlog" of capital projects, particularly in the Hudson River Area, where the 24 projects had an estimated cost of \$7,493,800. At that time, the District established a priority list for these projects. The public safety project has not commenced; and to date, FERC has not set a deadline for the District to complete it. Further, if a deadline is set, the District could be fined as much as \$10,000 for every day the deadline is not met.

In April 2014, the District informed FERC that the project will be completed once funding is available. On June 11, 2013, the Board approved the District's plan to issue \$1,288,000 of serial bonds. The bonds were to finance the public safety project and another capital project. While the District expected a bond issuance by early spring 2014, it still had not happened as of June 2014.

The October 2013 Board minutes indicate the District's Bond Counsel had concerns the District did not have enough Board Members to approve bond resolutions. Under Local Finance Law Section 33.00a, bond resolutions require a two-thirds majority approval vote by the Board's voting strength. District officials indicated the voting strength of the Board is seven members, according to State law. Therefore, at least five members are needed to pass a bond resolution.

However, three of the seven Board seats were vacant as of April 2014, two since 2011 and the other since January 2013. Until this matter was resolved, the District could not advance plans to issue bonds to fund the proper maintenance of its facilities. The ECL requires the Governor to nominate a replacement board member within 30 days of the vacancy occurring. At the audit's closing conference on June 23, 2014, District officials advised that two of the three vacant Board seats were filled on June 11, 2014. Nonetheless, the matter of funding for capital projects remains

unresolved until the Board meets and takes action.

Equipment Inventory Control

The District's Asset Capitalization Policy requires that all assets over \$5,000 be tracked until disposal. The District has seven vehicles and another 29 depreciable assets with an approximate cost of \$3 million. District inventory records from November and December 2013 indicate it also has 926 items of equipment valued under \$5,000.

We performed a physical inventory test of 22 depreciable equipment assets we selected judgmentally and accounted for all but one item, a copier. According to District officials, they disposed of the copier in 2009, although it was still listed on the current inventory record. In addition, we performed a physical inventory of 125 non-depreciable items and could not locate three of them on the inventory records. Management told us all three items (a drill, a copier, and a mini-tower) were disposed of years ago, but the District had not updated its inventory records to reflect the dispositions. In another test, we found nine non-depreciable equipment items present during our site visit to the Watertown office that did not appear on the District's inventory or disposal records. Staff at the Watertown office could not explain why the items did not appear on District inventory records.

As of February 2014, the District did not have a formal policy for periodic equipment inventories. Staff at the four offices told us they conduct annual physical equipment inventories. However, they could not explain why the items listed above were not identified during these inventories. Management indicated the District is developing a new equipment inventory system to more accurately and efficiently manage its equipment across all locations. Unless the District routinely accounts for its equipment, it lacks reasonable assurance that the equipment is properly safeguarded and used as intended.

Time and Attendance

The District's timekeeping policy requires each full-time employee to submit a time sheet every two weeks for supervisory approval before being paid. Employees record the total number of hours worked daily, but not the actual start and end times of the day worked. The District has a practice in which employees submit leave requests by e-mail.

We reviewed the 182 leave request e-mails from 2013 for 13 represented employees. We compared the hours and dates on the e-mail requests to leave charges on the corresponding time sheets. We found that 23 leave requests' hours exceeded leave charged on time sheets by a combined 53.75 hours. In addition, the District provided auditors with the 183 leave requests that were available from seven non-represented employees for the period from December 2012 to January 2014. In 23 instances, the amount of the leave requested exceeded the amount charged per the corresponding time sheet. The 23 discrepancies totaled 48.25 hours.

Also, one part-time employee does not submit a bi-weekly time sheet. Instead, this employee submits a monthly report that details work activities for the time period. However,

these reports do not fully account for the employee's total work hours and hours on leave. While the salary paid to this part-time employee appeared reasonable based on the work performed, it is difficult to account for the actual work hours without a time sheet. We also noted that this employee lives on District property as a part of his employment, and there was no job description for this position during our audit period. The job has not been advertised; instead, the last three individuals who held this position are relatives.

In response to our preliminary findings, District officials indicated that leave requests for management are rarely, if ever, documented. District officials indicated they saw no value in recording in and out times on time sheets. They added that the District does not compare time sheets to leave requests during payroll processing. Rather, the District relies solely on supervisory approval of time sheets. In certain cases, supervisors can refer to leave request documentation at their discretion before approving time sheets. But, officials indicated leave requests are not intended for the purpose of time sheet approval.

However, to establish effective internal control over employee time and attendance, all staff should document their leave requests, which should be formally approved by supervisors. In addition, the leave requests should be compared to the timesheets to ensure all leave is charged to appropriate leave credits. District officials indicated they will consider adopting a formal leave request policy in the future to better ensure timesheets accurately reflect employee leave.

Procurement and Contracting

The District's Procurement Policy (Policy) requires competitive procurement processes to obtain goods and services above prescribed dollar thresholds. Furthermore, all purchases over \$250 require a justification form and approval by management. About half of the District's contracts are for Architectural, Engineering and Surveying (AES) services and are governed by State Finance Law (SFL) Section 136a. AES contracts greater than \$25,000 are negotiated on a basis of demonstrated competence and qualification and at a fair and reasonable fee.

The District followed its Policy and SFL Section 136a for most of the contracts and procurements we sampled. However, the District did not follow its Policy for one sampled contract and two sampled procurements. Specifically, the District did not document prior management approval of the two procurements. If prior supervisory approval is not documented, there is an increased risk of unauthorized purchases. The contract was for architect and engineering services totaling \$21,000, and thus, was not covered by SFL Section 136a. The District awarded the contract to the highest rated firm instead of the lowest bidder, as otherwise required under the District's Policy. District officials indicated that they follow SFL Section 136a for all AES contracts regardless of value. They said it is in the best interest of the District to select the most qualified firm for the required work.

We agree that competence and qualifications should be considered in the selection of professional service providers. Nonetheless, the contract award in question was not consistent with the Board-approved Policy intended to help minimize costs. Since the Procurement Policy was approved by the District's Board, management should discuss and resolve this issue with the

Board on a timely basis.

Recommendations

1. Evaluate the collectability of outstanding accounts turned over to counties and adjust Budgets to reflect uncollectible accounts.
2. Continue to pursue acceptable outcomes in negotiation and litigation, in accordance with FERC's Headwater Benefit Determination.
3. Review the rates charged for Sacandaga Lake access and assess increasing the rates to keep pace with inflation.
4. Take the necessary steps to promptly meet applicable Federal and State dam safety requirements.
5. Adopt and follow formal procedures for conducting periodic physical counts of equipment inventories.
6. Promptly record equipment acquisitions and disposals on inventory records.
7. Develop and implement a leave request process to ensure all employee timesheets accurately reflect actual hours worked and leave taken. This process should require supervisors to review and reconcile approved leave requests to timesheets before signing them.
8. Require all employees to prepare time records that document the actual daily hours worked.
9. Comply with the Board-approved policy regarding the award of AES contracts below \$25,000 or request Board approval for amendment of the policy, as may be warranted.

Audit Scope, Objective and Methodology

We audited the District to determine whether its financial management practices in the areas of revenue collection, payroll, procurement, asset and equipment management, cash management, budgeting, and board governance reasonably ensure its operations are efficient and effective. The audit period covers the period July 1, 2011 through March 15, 2014.

To accomplish our audit objective, we assessed the District's financial management practices through inquiry, analytical procedures, observations, and reviews of records and reports. In this process, we reviewed and analyzed various financial-related information (including the District's recent audited financial statements and other required reports filed with the State Comptroller), and tested selected transactions for compliance with established procedures and statutory requirements. In addition, we interviewed District management and staff to obtain an understanding of the internal controls related to the financial management practices stated in the audit objective. We also reviewed applicable policies and procedures and Board and Committee

meeting minutes.

To test revenue billing and collection procedures, we reviewed a judgmental sample of 20 Black River Area assessment invoices worth \$2.7 million (from a total of 69 assessment invoices worth \$3.2 million) for the three fiscal years ended June 2014. We selected the largest invoices from each of the three years and also sampled smaller invoices. We reviewed all 18 assessments for the Hudson River Area for the same period, totaling \$13.9 million. Also, we reviewed all 55 revenue transactions, from July 1, 2011 through March 14, 2014, related to the two hydroelectric agreements. In addition, we reviewed a judgmental sample of 54 permit renewals totaling \$60,556 of the 4,868 Sacandaga Lake Access renewals due by March 15, 2014. Our sample included permits associated with both commercial and non-commercial property, beaches, and permits held by District employees or their families.

To test whether the District followed its own procurement policy and applicable laws, we judgmentally selected six contracts over \$15,000. Also, we sampled 47 non-contract procurements over \$249 from July 2011 through January 2014 based upon the transaction type. Additionally, we judgmentally selected three months (July 2011, October 2012, and April 2013) and reviewed the gas card purchases for those months made by all employees. To determine whether the District can account for its equipment, we judgmentally sampled 22 depreciable assets and 125 non-depreciable assets. To test whether the District's inventory records were complete, we reviewed whether random non-depreciable assets present during our site visits were actually on the inventory records.

In addition, we reviewed timesheets for 18 employees for three payroll quarters to test if the timesheets properly reflected actual hours worked. We reviewed 182 leave request e-mails that the District had archived during 2013 from 13 represented employees and we reviewed the 183 leave request e-mails for non-represented employees that the District provided following the draft report. Furthermore, we reviewed whether the District accurately reported employees' retirement credits to the State and contributed the proper amounts towards employee health insurance.

We conducted our audit in accordance with generally accepted government auditing standards. 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.

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

performance.

Reporting Requirements

We provided a draft copy of this report to District officials for their review and formal comment. We considered the District's comments in preparing this report and have included them in their entirety at the end of it. Also, our rejoinders to certain District comments are included in the report's State Comptroller's Comments.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Hudson River-Black River Regulating District 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 why.

Major contributors to this report were Robert Mehrhoff, Mark Ren, Wayne Bolton, Jeffrey Dormond, and Robert Horn.

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

Very truly yours,

Carmen Maldonado
Audit Director

cc: M. Clark, P.E., HRBRRD Executive Director
R. Ferrara, HRBRRD Chief Fiscal Officer
NYS Division of the Budget

Agency Comments

STATE OF NEW YORK



Board of Hudson River-Black River Regulating District
350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-3491
FAX (518) 432-2485

August 29, 2014

Carmen Maldonado
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, New York 12236

Ms. Maldonado,

The Hudson River – Black River Regulating District received the Comptroller's draft audit report (2013-S-55) assessing the Regulating District's financial management practices via email on July 30, 2014. On behalf of the Board, please allow me to express our thanks to the Comptroller's audit team for their comprehensive five and one half month on-site review of the Regulating District's revenue collection, payroll, procurement, asset and equipment management, cash management, budgeting, and board governance practices. The Regulating District board appreciates the depth and scope of the Comptroller's review and is proud such review validates the Board's effort to maintain the highest standards against fraud, abuse and/or waste.

Attached, please find the Regulating District's formal written response to the draft findings report 2013-S-55. The Regulating District acknowledges that there are a few practices upon which we could improve, and that minor modifications to Regulating District policies may warrant consideration. However, as indicated below, the Regulating District must object to several factual inaccuracies and faulty recommendations outlined in the Comptroller's draft report. We have included comments with respect to detailed findings included in the report as well as responses to recommendations provided by the Office of the State Comptroller.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Mark M. Finkle
Chairman
Hudson River-Black River Regulating District

* Comment 1

*See State Comptroller's Comments, page 15

Results of Audit and Recommendations

The Comptroller found that the Regulating District has adequate controls in place over permit fee billing, collection and cash management practices. The Regulating District concurs in this finding and will continue to follow a path to accomplish its mission in the most cost effective manner possible. The Board will consider whether any increase in access permit fees is warranted.

Recovery of Costs/Uncollectible Accounts

The Regulating District has reviewed the Comptroller’s findings and recommendations related to collection of revenue from statutory beneficiaries. The Comptroller’s draft audit report asserts that the Regulating District did not include certain transactions in its 2013-14 budget; which the Comptroller determined could impact the Regulating District’s overall operating costs. Specifically, the audit team notes that the Regulating District did not reduce the 2013-2014 budget to reflect uncollected assessments levied in 2012-2013 (and earlier fiscal years) which the Comptroller now determines are unlikely to be collected.

The audit team’s findings represent a fundamental misunderstanding of the Regulating District’s enabling statute. Pursuant to ECL §15-2125(2), the Regulating District prepares a three-year budget by estimating the total expense necessary to maintain and operate the Regulating District’s facilities. The Regulating District’s enabling legislation makes no provision for consideration of lost revenue. Absent recourse to the reapportionment provisions outlined at ECL §15-2123, the Board cannot unilaterally determine to forego collection of an assessment. Stated differently, the Board’s decision to forego collection of a past due assessment would constitute a reapportionment of costs among the balance of the identified beneficiaries. Instead, unless the Board follows the reapportionment process outlined at ECL §15-2123, the Regulating District’s enabling statute requires the Board to pursue the penalties which may be imposed for the failure to pay general taxes within the time prescribed; including, but not limited to, foreclosure.

As such, in accordance with ECL §15-2123, and as articulated in the Comptroller’s draft report, the Regulating District timely turned past due accounts over to the relevant counties for collection and foreclosure as appropriate. The Regulating District acknowledges that it has experienced difficulty securing commitments from some affected counties to consummate the foreclosure process. However, relatively recent events provide motivation for the affected counties in the Hudson River Area to now address past due accounts. As touched upon only briefly in the Comptroller’s report, the Regulating District engaged in protracted and contentious litigation with several of the affected counties long before and during the audit period. The agreement settling such litigation apportions ultimate responsibility for several of the uncollected accounts squarely upon five counties downstream from the Conklingville Dam. The Regulating District will continue to pursue action, including foreclosure where appropriate, by the affected Hudson River Area counties. As articulated to the Comptroller’s audit team, the Regulating District staff has met with county government in the Black River Area. The Regulating District will continue to work with the affected counties to address their concerns and push for

* Comment 2

appropriate resolution, including foreclosure if appropriate, to the past due Black River Area assessments.

The Comptroller's draft report notes that the Regulating District's past due assessments receivable balance grew significantly over the past several years. The report correctly indicates that this was due to litigation involving several beneficiaries. However, the draft report fails to capture the breadth, depth and scope of the shortfall; or how a United States Court of Appeals decision completely changed the paradigm under which the Regulating District is funded. The significance of this decision, and the steps taken by the Regulating District to curtail costs while it re-established necessary revenue, should not be discounted.

Section 10(f) Federal Power Act Fees

HRBRRD will continue its efforts to address all aspects of the FERC Headwaters Benefit Determination.

Facility Maintenance

HRBRRD will continue its efforts to meet applicable State and Federal dam safety requirements.

Equipment Inventory Control

The Regulating District Board will consider adoption of a formal policy mandating periodic equipment inventories to track its capital assets; including a formal procedure to record equipment acquisitions and disposal on inventory records.

Time and Attendance

The Regulating District has reviewed the Comptroller's findings and recommendations related to effective control over employee time and attendance. The draft audit report suggests that the Regulating District should document each employee leave request. The Regulating District accomplishes this objective by requiring each leave request to be submitted to that employee's supervisor in advance in writing. Such advance notice affords the supervisor with an opportunity to ensure proper coverage where appropriate. Perhaps obviously, exceptions are made for use of sick or personal leave where advance notice in writing is not possible. As noted in the Comptroller's draft audit report, Regulating District policy requires each full-time employee to submit a time-sheet every two weeks for supervisory approval.

The Comptroller's draft audit report incorrectly asserts that the Regulating District has no formal requirement that employees submit leave requests except when represented employees use personal leave. In practice, the Regulating District requires each employee, represented and non-union, to submit leave requests in writing. As reflected in the draft audit report, the practice employed at the Regulating District requires employee leave requests to be submitted to the relevant supervisor via email. The Regulating District Board will consider adoption of a revision to its time and attendance policy to memorialize this requirement.

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Comment
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The draft audit report notes that the Regulating District requires each employee to record the number of hours worked, but not the start and end times of the day worked. In addition, the draft audit report notes that it is difficult for the Regulating District to account for the total work hours and hours on leave reported by the Regulating District's single part-time employee. That employee's \$5,000 annual salary compensates the employee for duties; including non-regular gate operations at his remote work station located adjacent to the Regulating District facilities at Indian lake. The Regulating District Board will consider adoption of a revision to its time and attendance policy to address these concerns.

The Comptroller's draft audit report asserts that the Regulating District should compare each leave request to the relevant timesheet during payroll processing to ensure that the leave requested is properly reflected upon the relevant timesheet. The Comptroller's draft audit report appears to suggest that this additional level of scrutiny will ensure effective internal control over employee time and attendance. The audit team tested 182 leave requests for 13 represented employees comparing the hours and dates of leave requested against leave charges on the corresponding timesheets. The report asserts that the leave requested exceeded the leave taken. The reader is left with the impression that the audit team believes that a supervisor approving leave should then ensure that such leave is reflected upon the employee timesheet without regard to whether the employee in question determined to forego the leave approved. Plans change. It rains. Surgeries are re-scheduled. In short, the audit team's report draws an unsupportable inference which should be excised from the report.

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The Regulating District strongly disagrees with the audit team's assertion at page 5 of the draft audit report that non-represented employees did not take any personal leave during the audit period (32 months). A simple review of the timesheets submitted by the Regulating District's non-represented employees, which were audited by the Comptroller's field audit team, would reveal that each non-represented employee charged personal leave, sick leave and/or vacation leave during the audit period. To assert otherwise is factually inaccurate. The auditors appear to base their finding solely on the fact that the judgmentally selected leave requests the audit team asked to review did not include any emails from non-represented employees. The audit team neither requested that the sample provided include leave requests from non-represented employees, nor followed-up with a subsequent request when they realized the failure of their initial request. Inclusion of the incendiary, factually inaccurate, statement and the audit team's failure to attempt to refute its shaky conclusion before publication suggests an unwarranted bias against the Regulating District's non-represented employees. The Regulating District respectfully requests that the final two sentences of the fifth full paragraph on page 5 be stricken from the final report. Upon exclusion of that statement, the Regulating District would request that it be permitted to revise this response to excise the foregoing paragraph as well.

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Procurement and Contracting

The Comptroller's draft audit report noted that the Regulating District follows its policy and State Finance Law section 136a for most of the contracts and procurements the field audit team sampled. Specifically, the draft audit report noted that the Regulating District did not follow its procurement policy for one of the contracts and for two of the sampled procurements.

With respect to the two sample procurements identified by the audit team, both involved purchases over the Regulating District procurement policy's \$250 discretionary purchase threshold, but below the \$5,000 Board approval bid threshold. In both cases, the Chief Fiscal Officer and the Executive Director executed the resulting payment voucher. The audit report suggests that the Regulating District failed to document prior management approval for the two procurements. The Regulating District concedes the omission of written expenditure requests for either purchase. However, subsequent review and approval of the payment voucher incident to each purchase by the very personnel who would have delivered prior written approval ultimately provided the control necessary to obstruct unnecessary purchases. Nonetheless, absent the circumstances involved here, including the close proximity of the requester to the approval authority and near simultaneous verbal request to purchase and preparation of the necessary vouchers, we will endeavor to prepare expenditure requests in advance where required by the Regulating District's procurement policy.

The draft report correctly noted that a majority of the Regulating District's contracts are for Architectural, Engineering and Surveying. As pointed out in the draft report, Architectural, Engineering and Surveying (AES) services over \$25,000 are governed by State Finance Law 136a requiring negotiation on the basis of demonstrated competence and qualification. The draft audit report identified a single contract for AES which the report determined was valued at \$21,000. The draft audit report concluded that the Regulating District was not constrained by State Finance Law 136a to award the contract to the most competent firm, but that it should have awarded the contract to the lowest bidder as would have otherwise been required by the Regulating District's procurement policy.

The Regulating District disagrees that the contract was "valued" at \$21,000. The Regulating District's engineering staff estimated the project would cost over \$25,000. Based on the Regulating District's estimate, staff followed the procurement requirements of State Finance Law 136a. Only after Board authorization to negotiate with the highest rated bidder did staff's efforts result in a negotiated contract price below the \$25,000 threshold. The Regulating District respectfully requests that should the final audit report continue to address this issue, the field audit team distinguish between the contract's estimated value and the final negotiated contract amount.

* Comment 6

State Comptroller Comments

1. We stand by the factual accuracy of the matters presented in this report. Based on information the District provided to us in its response and other information obtained after we issued the draft report, we made minor changes to the final report to improve its technical accuracy. Our subsequent State Comptroller's Comments clarify certain matters that are presented in the final report and are addressed by the District in its response to the draft report.
2. The District's response mischaracterizes our audit observation and related recommendation. More specifically, our report does not recommend that the District forgo collection of assessments. Rather, we identified unpaid assessments (accounts receivable/current assets) that the District will likely be unable to collect. Consistent with generally accepted accounting principles, when the collection of a receivable is doubtful, an entity should establish a reserve for the likelihood the receivable will not be collected. This process results in the acknowledgement of an expense at the time the reserve entry is posted. Furthermore, from a budgetary perspective, this would help the District to more accurately project revenues that management can reasonably expect to collect.
3. Based on the District's comments, we revised our presentation of this matter in the final report. Moreover, although the District requires the use of leave requests "in practice," that requirement was not sufficiently prescribed. We are pleased that the "District Board will consider adoption of a revision to its time and attendance policy to memorialize this requirement."
4. We stand by our observations as presented in the report. Further, we do not state explicitly or otherwise imply that supervisors should ensure that requested leave is reflected on an employee's timesheet without regard to whether or not the employee elected to forgo all or some portion of the approved leave. In fact, the comparison of leave requests with corresponding time sheets is a good internal control over employee time and attendance. This practice gives the supervisor an opportunity to compare leave requests with time sheets and reconcile any differences prior to approving the time sheets for processing.
5. Based on the District's comments, we revised our presentation of this matter in the final report. Further, during the course of the audit fieldwork, auditors made comprehensive requests for the policies, procedures, and records the District used to manage and document employee leave use. In fact, contrary to the District's response, OSC auditors requested leave requests for non-represented employees on January 29, 2014. In addition, as a result of the District's comments, we site visited the District on October 23, 2014 and reviewed 183 leave requests for seven non-represented employees. We included the results of that review in the final report.
6. We believe that our presentation of this matter is correct. In fact, the District's Chief Engineer told us that he anticipated the cost would be below \$25,000 and would require an open competitive bid process. The contract was awarded for \$21,000.