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COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**DIVISION OF CRIMINAL
JUSTICE SERVICES**

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

Report 2008-S-78

AUDIT OBJECTIVE

The objective of our audit was to determine whether the Division of Criminal Justice Services (Division) has met the current 10 percent target for purchasing power from renewable sources and have they taken action to meet the 20 percent target level for renewable energy procurements by 2010, as specified by Executive Order 111.

AUDIT RESULTS - SUMMARY

Executive Order 111 (Order) was issued in June 2001 and requires that by 2005 all State agencies, including the Division of Criminal Justice Services (Division), and certain public authorities seek to purchase sufficient quantities of electricity produced by certain specified renewable technologies so that 10 percent of the overall annual electric 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 electric supplier or through a third party provider in the form of a Renewable Energy Certificate.

We found the Division took action to comply with the Order, but did not procure a sufficient amount of renewable electricity in fiscal year 2005-06 to fully comply with the 10 percent requirement. This occurred because the mix of energy it purchased included hydroelectric power, which does not comply with the Order. In fiscal year 2006-07, the Division attempted to exceed the 20 percent target early by purchasing about 47 percent of its electricity usage from renewable sources. However, during the fiscal year its renewable energy supplier changed the mix it supplied to 90 percent hydroelectric. Nonetheless, the Division still procured

qualifying renewable energy that was 11 percent of its total electricity usage for 2006-07, and therefore was in compliance with the Order.

Until we began our audit in May 2008, Division officials were unaware the mix of renewable electricity they were buying had changed. Division officials told us they believed they were purchasing renewable energy in the form of wind power. In June 2008, the Division immediately changed its supplier to receive a mix of 50 percent wind power and 50 percent hydroelectric. Division officials also told us they plan to monitor the mix of renewable energy they receive, and select the supplier offering the most allowable renewable energy for compliance with the 20 percent requirement of the Order.

The New York State Energy Research and Development Authority (NYSERDA) guidelines require every State agency and other affected entities to submit an Annual Energy Report to NYSERDA. The Division submitted all six required reports. However, three of them were not submitted timely.

Our report contains three recommendations to improve compliance with the Order. Division officials agreed with our recommendations and have taken steps to implement them.

This report, dated October 9, 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 Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th 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 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 comes from renewable sources. The target percentage increases to 20 percent by 2010. Guidelines issued by NYSERDA in December 2004 generally required 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, photovoltaic, sustainably managed biomass, tidal, geothermal, methane waste and fuel cells.

The Order designates the New York State Energy Research and Development Authority (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 13 other agencies and authorities. 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 Division's mission is to enhance public safety and improve criminal justice. The Division's core agency functions include: Uniform Crime Reporting, criminal history checks, fingerprinting operations, law enforcement training, accreditation of police departments and forensic laboratories, providing information to criminal justice agencies and institutions, hosting other criminal justice agencies, and breathalyzer and speed enforcement equipment repair. The Division also supports Operation IMPACT, an initiative providing special assistance to the 19 counties that account for nearly 80 percent of the crime outside of New York City.

The Division leases three buildings in the Albany area including its headquarters at 4 Tower Place, 80 Wolf Road, and 100 Watervliet Avenue. The Division's largest building is its headquarters at about 119,000 square feet, of which the Division currently occupies about 85 percent. The remaining 15 percent is occupied by several other State agencies and several private tenants. The

Division pays the landlord for most power consumed in the building based on sub-metered readings for the Division's occupied space. The Division also pays National Grid directly for the electricity for two other meters. The Division occupies 100 percent of the Watervliet Avenue building, which is about 34,300 square feet in size, and is billed directly for the power. The Division occupies 1,500 square feet of the Wolf Road building, which is about 7.7 percent of the 4th floor. The Division pays the landlord for this proportion of the actual sub-metered electrical power usage for the 4th floor.

The Division reported that it used a total of 8,385,000 kilowatt hours (kWhs) of electricity, and purchased 864,000 kWhs (10.3 percent) of renewable energy for the 2005-06 State fiscal year. The Division participated in National Grid's Green Up program to purchase its renewable electricity.

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 renewable sources by 2010. The order specifies that wind, solar, thermal, photovoltaics, sustainable 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.

The Division reported it met the 10 percent requirement on its 2006 Annual Energy Report, which covers the 2005-06 fiscal year. The Annual Energy Report shows that the Division used a total of 8,385,000 kWhs of electricity, and purchased 864,000 kWhs (10.3 percent) of renewable energy. However, we found some of the Division's renewable electricity purchases did not comply with the Order, and as a result, the Division did not fully meet the 10 percent requirement.

In February 2006 the Division purchased 1,183,299 kWhs of renewable energy for the five month period ended June 30, 2006. However, only two of the five months (40 percent) of the purchase, or 473,320 kWhs, was for fiscal year 2005-06. Additionally, the renewable energy was a mix of 75 percent biomass, and 25 percent hydroelectric power. Hydroelectric power is not an acceptable source of renewable energy under the Order. As a result, only 354,990 kWhs (75 percent) of acceptable renewable electricity applied to the 2005-06 reporting period.

We also reviewed documentation of the Division's electricity usage. We traced the kWhs on the Division's spreadsheet for 49 of 59 bills to the actual bills. We found the Division did not accurately calculate the total annual consumption it reported on the Annual Energy Report for fiscal year 2005-06. For

example, the Division mistakenly calculated its kWhs usage for the Wolf Road space using a percentage of the electrical consumption for the entire Wolf Road building, instead of a percentage of the sub-metered amount for the 4th floor. The Division also included the total consumption for the Tower Place building rather than the portion it occupies. Based on the kWhs on the 49 bills we reviewed and the amount of space occupied by the Division, we estimated the Division's total consumption was 5,734,737 kWhs instead of the 8,385,000 kWhs it reported on the 2006 Annual Energy Report. Therefore, the 354,990 kWhs of acceptable renewable electricity purchased was 6.2 percent of the estimated total electrical usage, which was not sufficient to comply with the Order.

For the 2006-07 fiscal year, the Division reported purchasing 4,091,624 kWhs of renewable energy on its Annual Energy Report. We calculated the Division actually purchased 3,664,796 kWhs of renewable energy. However, of the 3,664,796 kWhs purchased, only 827,966 kWhs was allowable for compliance with the Order because the Division's supplier changed its mix to a higher percentage of hydroelectric power. The purchase for the first three months of the fiscal year was a mix of 75 percent biomass, and 25 percent hydroelectric power. As of July 1, 2006 the mix changed to 90 percent hydroelectric and 10 percent biomass for the last nine months of the State fiscal year. The Division reported total electrical consumption of 7,788,908 kWhs for fiscal year 2006-07, which it changed during our audit to 7,727,013 kWhs. The 827,966 kWhs of allowable renewable energy represents 10.7 percent of the Division's changed kWhs of electrical usage for fiscal 2006-07, which was in compliance with the Order. Division officials told us they plan to review the accuracy of their 2006 and 2007 Annual

Energy Reports and submit revised versions to NYSERDA.

Until we began our audit in May 2008, Division officials were unaware the mix of electricity they were buying had changed. They told us that they selected their supplier on the recommendation from NYSERDA, and were not aware that the suppliers in the Green Up program could change their mix of renewable electricity without notifying the Division. Division officials told us they believed they were purchasing renewable energy from wind power. To increase its renewable energy purchases, the Division changed its supplier in June 2008. The new supplier has a mix of 50 percent hydroelectric and 50 percent wind power.

Meeting NYSERDA Reporting Requirements

The NYSERDA's guidelines require every State agency and other affected entities to submit an Annual Energy Report to NYSERDA by December 1st 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.

The Division submitted all required Annual Energy Report since 2001. However, the

Division did not submit the three oldest Annual Energy Reports on time.

Recommendations

1. Procure and accurately report renewable energy sources to ensure that it complies with the Order.
2. Monitor the renewable energy sources to ensure that it complies with the Order.
3. Accurately calculate total electricity consumption based on the Division's occupied space.

AUDIT SCOPE AND METHODOLOGY

We conducted our audit in accordance with generally accepted government auditing standards. We audited the Division's procurement of renewable energy, as required by the Order. Our audit covered the period April 1, 2005 through June 11, 2008.

To accomplish our objectives, we met with Division officials to gain an understanding of the number and types of facilities owned by the Division and obtained and reviewed the completed Annual Energy Reports for 2003 through 2007. We also obtained documentation on the purchase of renewable energy from the Division and supporting documentation from the Division's renewable energy supplier. We also obtained documentation of the Division's electricity usage from the Division. To test the Division's annual electricity usage for 2005-06, we obtained a Division spreadsheet of 59 electricity bills used to determine the total electricity consumption. We traced the kWhs for 49 of the 59 bills to the hardcopy bills. We also reviewed the Division's leases to determine what space was subject to the Order.

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.

AUTHORITY

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section I of the State Constitution and Article II, Section 8 of the State Finance Law.

REPORTING REQUIREMENTS

A draft copy of this report was provided to Division officials for their review and comment. Their comments were considered in preparing this report, and are included as Appendix A.

Within 90 days after the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Division of Criminal Justice Services 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.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include Steve Sossei, Sheila Emminger, Steve Goss and Kathy Hotaling.

APPENDIX A - AUDITEE RESPONSE



STATE OF NEW YORK
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DAVID A. PATERSON
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DENISE E. O'DONNELL
COMMISSIONER

October 1, 2008

Steven E. Sossei
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Dear Mr. Sossei:

Thank you for the opportunity to respond to the findings and recommendations detailed in your draft audit report #2008-S-78 addressing whether the Division of Criminal Justice Services (Division) has met the current 10 percent target for renewable energy procurements and has an effective plan in place to meet the 20 percent target level by 2010, as specified within Executive Order 111.

The Division is committed to fully complying with all elements of Executive Order 111 (Order). In January 2008, the Division reissued its Energy Policy outlining steps that must be taken within the agency to reduce energy consumption and stressed the importance of conserving energy to all Division employees.

Although not required under Order, in its efforts to reduce energy consumption, the Division has procured agency vehicles that are powered by alternative energy resources. Currently, over one-half (27) of our fleet of agency vehicles (49) are powered by alternative energy sources. As we move forward, the Division will replace most of its fleet with vehicles that are powered by alternative energy resources.

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Our response to each of your recommendations is detailed below. For ease of review, we have listed your recommendation followed by our response.

1. Procure and accurately report renewable energy sources to ensure that it complies with the Order.

The Division concurs with this recommendation and will continue to make every effort to procure and accurately report renewable energy sources as required under Executive Order 111.

2. Monitor the renewable energy sources to ensure that it complies with the Order.

The Division concurs with this recommendation and will monitor its renewable energy sources to ensure that it complies with all elements of the Order.

3. Accurately calculate total electricity consumption based on the Division's occupied space.

The Division has taken steps to ensure that total electricity consumption is calculated accurately based upon actual occupied space.

In closing the Division remains committed to meeting the renewable energy targets set forth in the Order. In addition, the Division will continuously review its operations to identify and implement practices to reduce energy consumption.

Very truly yours,



Denise E. O'Donnell

Cc: Sean Byrne
Don Capone
Bob Wright
Phyllis Foster