

September 12, 2013

Jerry Barber, Assistant Comptroller  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street – 11<sup>th</sup> Floor  
Albany, NY 12203-6399

Dear Mr. Barber:

This letter constitutes the response of the New York State Energy Research and Development Authority (NYSERDA) to your audit report (2012-F-1) entitled *Executive Order 111: Requirements to Purchase Renewable Energy: Summary of Implementation of Recommendations at 15 Audited Entities (Follow-Up)*.

Although the audit notes that many of the State agencies and public authorities identified in the report did not meet the renewable goals, which were quite aggressive, we wish to acknowledge that many State entities made significant improvements. NYSERDA agrees that several entities made decisions that reduced their renewable energy purchases in the later years of the Order.

In general, however, those decisions were made in response to significant fiscal stresses that occurred as a result of the weakness in the economy. In order to lower operating costs, many in this group made energy purchases based on predicted energy use several years in advance, and signed long-term contracts (e.g. MTA, etc.). Despite the challenging operating environment, many State agencies and public authorities came very close to achieving the goals stated in Executive Order No. 111. Therefore the Executive order achieved its intended purpose by increasing New York's level of power purchased from renewable sources.

With this in mind, and the fact that compliance, as stated in both the Order and the Guidelines, is the responsibility of each individual Affected State Entity (ASE), NYSERDA reiterates that we agree with the Comptroller's assessment that NYSERDA fulfilled its role to coordinate and assist ASE and restates that it is the responsibility of each individual ASE to comply with the Executive Order.

In addition, NYSERDA believes that the following comments will help clarify some of the audit report's findings and recommendations.

The draft audit report indicates that NYSERDA was late in producing reports. As the comptroller notes, many ASEs were late in their submissions to NYSERDA and NYSERDA had to spend significant time following up with some ASEs to ensure an appropriate percentage of State owned square feet was included in the statewide report. NYSERDA also spent time reviewing ASE reports for reasonableness.

New York State Energy Research and Development Authority

**Albany**  
17 Columbia Circle, Albany, NY 12203-6399  
(P) 1 (866) NYSERDA | (F) (518) 862-1091

nyserda.ny.gov | info@nyserda.ny.gov

Francis J. Murray, Jr., President and CEO

**Buffalo**  
726 Exchange Street  
Suite 821  
Buffalo, NY  
14210-1484  
(P) (716) 842-1522  
(F) (716) 842-0156

**New York City**  
485 Seventh Avenue  
Suite 1006  
New York, NY  
10018-6815  
(P) (212) 971-5342  
(F) (518) 862-1091

**West Valley Site  
Management Program**  
9030-B Route 219  
West Valley, NY  
14171-9500  
(P) (716) 942-9960  
(F) (716) 942-9961

The audit also says that better communication and reporting could have improved compliance. NYSERDA believes that this reflects a misperception of NYSERDA's assigned role in EO No. 111. Section VI of the Executive Order defines NYSERDA's role as follows: "NYSERDA shall coordinate implementation of this Executive Order and shall assist each agency and affected entity in the fulfillment of the responsibilities imposed herein in a cost-effective manner." The Executive Order also assigns to NYSERDA the tasks of developing certain guidelines and criteria.

NYSERDA was not assigned responsibility for "oversight" or given enforcement authority. The Executive Order is clearly structured to place upon each individual State agency and public authority responsibility for compliance. The Guidelines clearly place on each individual ASE responsibility for accurate reporting of its progress. NYSERDA believes it fulfilled its role to coordinate and assist affected State entities, and that it made public the information that each ASE was responsible for providing accurately. During the time EO No. 111 was in effect, NYSERDA issued multiple editions of the guidelines (which were communicated to all agency heads and many other key stakeholders and published on NYSERDA's web site). NYSERDA also published annual reports and made public presentations on both the requirements and outcomes to ASEs and key stakeholders. NYSERDA required all ASEs to submit implementation plans for their plan to comply with the renewable energy requirements of EO No. 111 (including for those affected State entities that the Comptroller's Report found did not meet the goal). Lastly, NYSERDA communicated the requirements repeatedly to ASE staff responsible for implementing the Order and held training sessions and was available for one-on-one discussions and Q&A.

In OSC's January 16, 2009 audit, *Compliance with Executive Order 111: Requirements to Purchase Power From Renewable Sources*, NYSERDA was encouraged to work with the Advisory Council to update the Guidelines. NYSERDA proposed this to the Advisory Council as an option, but consensus was to focus the Advisory Council and its members on discussions for a replacement order, which ultimately became EO No. 88.

The Comptroller's report correctly notes that the price of wind power was decreasing during this period. However, wind power was the most expensive renewable resource available and most agencies sought other lower-priced renewable resources. The cost of most other resources which were 30-50% of the cost of wind remained flat during this period, so the decrease in the cost of wind power would not have likely impacted their procurement choices or amounts.

NYSERDA would like to thank the Office of State Comptroller staff who participated in this audit for their professionalism and for their positive collaboration to ensure compliance with EO No. 111.

Sincerely,

A handwritten signature in dark ink, appearing to read "Francis J. Murray, Jr.", with a stylized flourish at the end.

Francis J. Murray, Jr.  
President and CEO