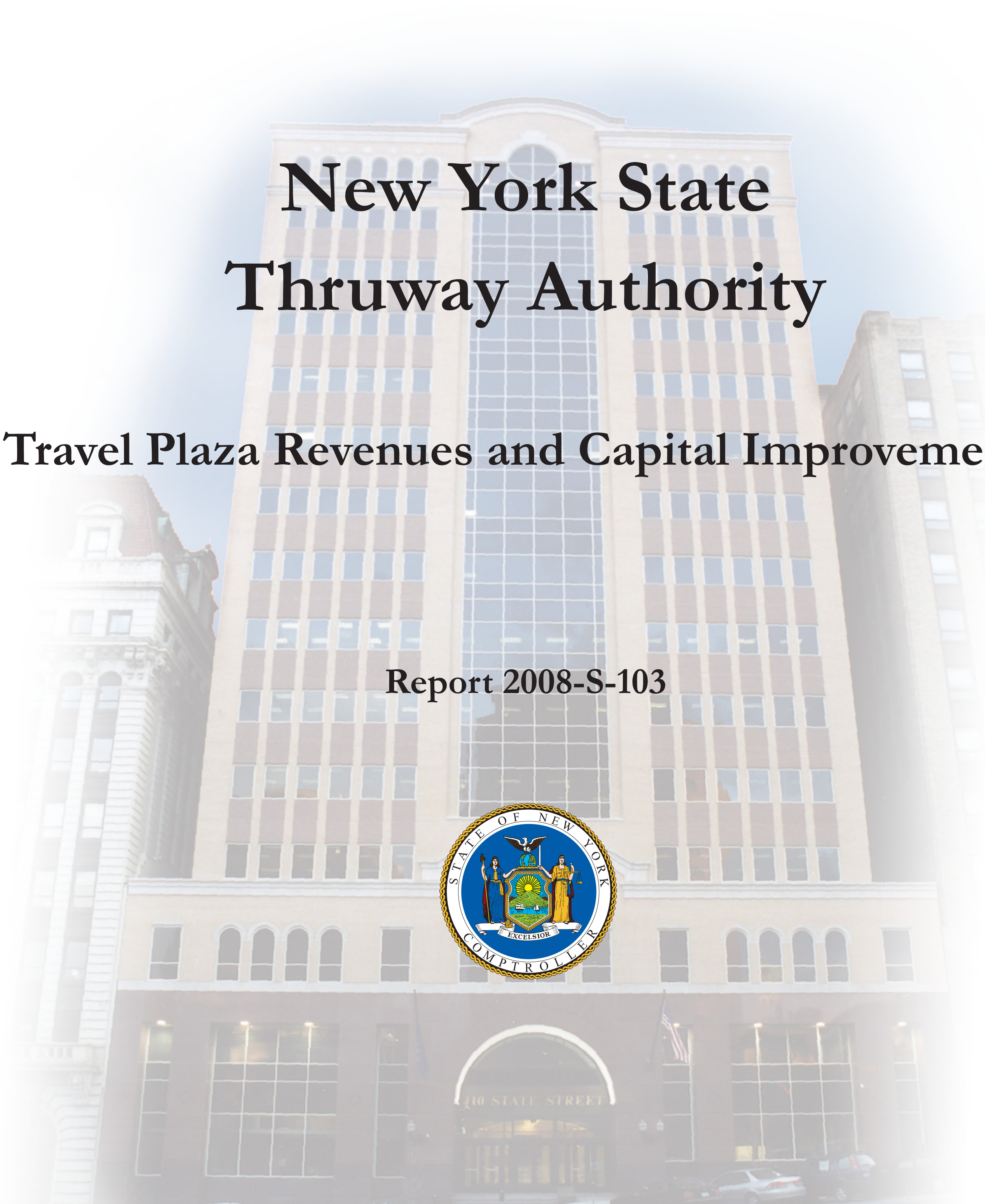
Office of the New York State Comptroller

Division of State Government Accountability

New York State Thruway Authority

Travel Plaza Revenues and Capital Improvements

Report 2008-S-103



Thomas P. DiNapoli

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State of New York
Office of the State Comptroller

Division of State Government Accountability

January 15, 2010

John L. Buono, Chairman
NYS Thruway Authority
200 Southern Boulevard
Albany, NY 12201

Dear Mr. Buono:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of Travel Plaza Revenues and Capital Improvements. 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.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

State of New York
Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objectives

Our objectives were to determine whether the New York State Thruway Authority (Authority) is adequately ensuring that fuel and food concessionaires at Thruway travel plazas are (1) paying their rent on time, (2) paying the full amount of rent due under their contracts, and (3) making the capital improvements required by their contracts.

Audit Results - Summary

The New York State Thruway has 27 travel plazas where vendors offer fuel and food to travelers under concession contracts awarded by the Authority. The concessionaires are to pay a certain amount of rent each month, based on either their fuel deliveries or food sales for the month, and make certain capital improvements to their facilities over the lives of their long-term contracts. In 2007, the two fuel concessionaires paid the Authority a combined total of $2.6 million in rent and the three food concessionaires paid the Authority a combined total of $10.2 million in rent.

We examined the Authority's oversight of the monthly rent payments and found efforts were adequate to ensure fuel and food concessionaires pay full rent on time and make required capital improvements. We also found some improvement opportunities. For example, the Authority was not assessing the contractual penalties for late rent payments, even though some of the concessionaires were sometimes late with their payments and two fuel concessionaires were chronically late. We recommend the Authority collect the unpaid penalties discovered during our audit and totaling $18,500 and improve its monitoring of the rent payments to ensure that such penalties are promptly assessed in the future.

We also tested certain months to determine whether the concessionaires were paying the full amount of rent due under their contracts. We found that a fuel concessionaire under reported its fuel deliveries in one of these months, and as a result, underpaid its rent for that month. We also identified certain additional actions that could be taken by the Authority to verify the accuracy and completeness of the concessionaires' monthly rental payments.

Each concessionaire is required to make certain types of capital improvements, and/or spend certain amounts on such improvements, over the life of its contract (generally, any unspent amounts are to be paid to the Authority at the end of the contract). We examined whether the concessionaires were making the required capital improvements and found that, generally, they were. However, there was a risk that one of the food concessionaires might not meet its spending target by the end of its contract.

The concessionaires are also required to submit documentation of their capital expenditures to the Authority. However, we found that one of the fuel concessionaires was not submitting this documentation as the work was completed, as required by the contract, and the Authority was not following up with the concessionaire to ensure that the documentation was submitted. We recommend that the Authority follow up with the concessionaires in such circumstances.

Our report contains eight recommendations for improving the Authority's oversight of its fuel and food concessionaires. Authority officials stated that they have taken steps to improve this oversight. The Authority agreed with our recommendations and have taken actions to implement them.

This report dated January 15, 2010, is available on our web site 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
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Introduction

Background

The New York State Thruway is a 641-mile superhighway system crossing New York State. The Thruway has 27 travel plazas that offer fuel, food and other amenities for travelers. These services are provided by vendors under concession contracts awarded by the New York State Thruway Authority (Authority), a public benefit corporation created in 1950 to construct, maintain and operate the Thruway.

The Authority contracts with two fuel concessionaires: Sunoco, Inc. (R&M) (Sunoco) and Lehigh Gas Corporation (Lehigh). The two concessionaires operate fueling stations at 15 and 12 travel plazas, respectively. Each concessionaire pays the Authority an annual rent based on the number of gallons of fuel delivered to its stations or a guaranteed minimum. In 2007, the two concessionaires paid the Authority a combined total of $2.6 million in rental revenue, based on reported fuel deliveries of more than 71 million gallons.

The Authority contracts with three food concessionaires: McDonald's Corporation (McDonald's), HMS Host Family Restaurants, Inc. (HMS Host), and Delaware North Companies Travel Hospitality Services (Delaware North). The three concessionaires provide food services at 11, 12, and 4 travel plazas, respectively. Each concessionaire pays the Authority an annual rent based on a percentage of its gross sales at its travel plazas or a guaranteed minimum. In 2007, the three concessionaires paid the Authority a combined total of $10.2 million in rental revenue, based on reported gross sales of almost $103 million.

The Authority is responsible for overseeing the operations of the concessionaires, and ensuring that they comply with the terms of their contracts. For example, the concessionaires are required to make rental payments monthly, submit certain sales and other information monthly, and limit their prices to levels approved by the Authority. Each concessionaire is also required to make certain types of capital improvements, and/or spend certain amounts on such improvements, over the life of its contract.

The contracts with Sunoco and Lehigh began on April 1, 2007 and both expire on March 31, 2017; the Sunoco contract succeeds a prior contract with that vendor, while the Lehigh contract succeeds a 10-month "bridge" contract with that vendor (the bridge contract replaced a prior contract with another vendor, Mobil). The contracts with HMS Host and Delaware North both began on October 1, 2006 and both expire on December 31, 2019 (the contract with HMS Host succeeds a prior contract with that vendor).

The Authority has two agreements with McDonald's. One contract (McDonald's Agreement) includes all travel plazas operated by McDonald's except Angola, and the other just covers Angola (Angola Agreement). The McDonald's Agreement initial term ends on December 31, 2009. The Angola Agreement ends on December 31, 2010. Both Agreements contain renewal provisions and the Authority wants to exercise this option.

The Authority's Travelers' Services Unit periodically inspects the fueling and food operations for cleanliness and compliance with the pricing requirements. In audit report 2008-S-159 *Gas Prices at Thruway Travel Plazas*, issued in April 2009, we examined the Authority's oversight of the fuel concessionaires' compliance with the pricing requirements. In audit report 2001-S-50 *Travel Plaza Operations*, issued in June 2003, we examined the Authority's oversight of various aspects of the concessionaires' operations.

Audit Scope and Methodology

We audited the Authority's oversight of its fuel and food concessionaires for the period January 1, 2006 through January 16, 2009. To accomplish our objectives, we interviewed officials from the Authority's Travelers' Services Unit and Finance Unit. We also reviewed various Authority and concessionaire records, documents and reports.

We conducted our performance 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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 X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

Reporting Requirements

A draft copy of the matters presented in this report was provided to Authority officials for their review and comment. We considered their comments in preparing this final report, and are included as agency comments.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the New York State Thruway 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 why.

Contributors to the Report

Major contributors to this report include Carmen Maldonado, Gerald Tysiak, Joel Biederman, Brandon Ogden, Jeffrey Dormond, Lauren Bizzarro and Dana Newhouse.

Audit Findings and Recommendations

Timeliness of Rent Payments

We found that the Authority was not assessing the contractual penalties for late rent payments, even though some of the concessionaires were sometimes late with their monthly payments and two concessionaires were chronically late with their payments. As a result, we recommend a total of $18,500 be collected from the three vendors who are required to pay interest if payments are over 10 days late.

Fuel Concessionaires

The monthly rental payments for the fuel concessionaires are due by the tenth day of the month (and cover the prior month). We reviewed all the rental payments made by the Authority's fuel concessionaires (Sunoco, Lehigh and Mobil) over the 34-month period January 1, 2006 through October 31, 2008 to determine whether the payments were made on time.

We found that Sunoco was on time with all 34 of its payments during this period. However, Mobil was late with all six of its payments by an average of 19 days (Mobil's contract covered the first five months of 2006, and its payment for December 2005 was due in January 2006), and Lehigh was late on 14 of its 28 payments, as follows:

- Lehigh was late four times during 2007 (June, July, November and December) by an average of 15 days.
- Lehigh was late with all ten payments in 2008 (through October) by an average of 20 days.

Under their current contracts, Sunoco and Lehigh are required to pay interest (at the rate of 1.5 percent per month) whenever their rental payments are more than ten days late (no such payments were required under the prior contracts with Sunoco and Mobil). Since all 14 of Lehigh's late payments were more than ten days late, Lehigh should have paid interest on each late payment. The total amount of interest due on the payments was $15,026.)

However, Lehigh paid interest on none of the late payments, and we found no indication the Authority attempted to collect the interest on those payments. If the Authority does not enforce the requirements in its concession contracts, the requirements are less likely to be met. We recommend the Authority collect the total $15,026 in unpaid interest from Lehigh, and improve its monitoring of the rent payments to ensure that any late payments are promptly identified and interest on the payments is promptly billed to the concessionaires.

Authority officials stated that they were aware of the interest provision in the Lehigh contract. The officials gave no reason for their lack of action. Officials stated that new procedures were being implemented to ensure the timely billing and collection of such interest in the future.

Food Concessionaires

The monthly rental payments for the food concessionaires are due by either the tenth day (Delaware North) or the twentieth day (HMS Host and McDonald's) of the month. We reviewed all the rental payments made by the food concessionaires over the 34-month period January 1, 2006 through October 31, 2008 to determine whether the payments were made on time.

We found that most of the payments were on time. However, Delaware North was late on two of its payments (one payment was more than one month late), and HMS Host was late on one of its payments (by more than a month).

Under their current contracts, Delaware North and HMS Host are required to pay interest whenever their rental payments are more than ten days late (no such payments were required under the prior contract with HMS Host and are not required under the current contract with McDonald's). Since all three late payments were more than ten days late, interest should have been paid in all three instances. However, in all three instances, interest payments were not made by the concessionaires and were not sought by the Authority. As was the case with the late payments from Lehigh, Authority officials stated that they were aware of the interest provision in the contracts, but took no action when the payments were late.

We recommend the Authority collect the total $3,474 in unpaid interest from the two food concessionaires ($2,619 from Delaware North and $855 from HMS Host), and promptly enforce this contract requirement in the future. We also recommend the Authority ensure that all future concessionaire contracts include a provision for interest on late payments.

Recommendations

1. Improve the monitoring of the concessionaires' rent payments to ensure that any late payments are promptly identified and interest on the payments is promptly billed to the concessionaires.
2. Collect the unpaid interest from Lehigh ($15,026), Delaware North ($2,619) and HMS Host ($855).
3. Ensure that all future concessionaire contracts include a provision for interest on late rent payments.

Accuracy of Rent Payments

We examined whether the fuel and food concessionaires were paying the full amount of rent due under their contracts. We found that, in one of the months we tested, a fuel concessionaire under reported its fuel deliveries, and as a result, underpaid its rent for that month. We also determined that certain additional actions could be taken by the Authority to verify the accuracy and completeness of the concessionaires' monthly rental payments.

Fuel Concessionaires

Generally, the amount of rent that is to be paid each month by the fuel concessionaires is based on the amount of fuel that is delivered to their stations that month. The concessionaires submit monthly reports to the Authority showing the amount of fuel delivered to each station, and the stations maintain their own records of fuel deliveries.

To verify the accuracy of the fuel concessionaires' monthly rental payments, we judgmentally selected three fueling stations for each concessionaire (Sunoco, Lehigh and Mobil). We then reviewed the selected stations' fuel delivery records for certain months, and compared the fuel deliveries recorded on those records to the amounts recorded for those stations on the concessionaires' monthly reports to the Authority.

At the Sunoco and Lehigh stations, our comparison covered three selected months between January 2006 and October 2008. At the Mobil stations, our comparison covered one month between January 2006 and May 2006. We found that, in all but one instance, the fuel deliveries recorded on the stations' records agreed with the amounts recorded on the concessionaires' monthly reports to the Authority, and as a result, in those instances, it appeared that the concessionaires' monthly rental payments were accurate.

In the one instance of disagreement, Lehigh's monthly report to the Authority for July 2007 did not include 4,599 gallons of fuel that were delivered to its Malden station that month (a total of 284,200 gallons of fuel were delivered to that station that month). As a result, Lehigh underpaid its July 2007 rent by a total of $228. We recommend the Authority collect this amount from Lehigh.

We note that the Authority has controls for detecting such underpayments. For example, the individual fuel station operators are required to report their monthly fuel deliveries to the Authority, as well as manual readings of the fuel in their tanks. The Authority uses this information to maintain a perpetual inventory of fuel at each station, and investigates any discrepancies of 1,000 gallons or more between its perpetual inventory records and the amounts reported each month by the station operators. The Authority also reviews the rental payments for mathematical accuracy and annually verifies that the rent paid is supported by the amounts reported by the concessionaires. Further, the Authority reviews data from prior periods to identify any possible inconsistencies in the reported fuel amounts.

However, the Authority does not independently verify the amounts of fuel that are reportedly delivered to the stations; rather, it relies on the concessionaires and operators to report the deliveries accurately. Our audit test shows that these reports may not always be accurate. Accordingly, we recommend the Authority periodically test fuel inventories at the stations and periodically compare the stations' fuel delivery records to the concessionaires' monthly reports.

Lehigh is also required by its contract to pay the Authority a certain amount each month on its sales of certain non-fuel items, such as foods, beverages, commodities, merchandise, and other specified items. We verified the accuracy of these payments in seven selected months for three selected fueling stations. We compared the gross sales reported by the concessionaire to the amounts on the cash register tapes for the individual stations, and found no significant discrepancies.

Food Concessionaires

Generally, the amount of rent that is to be paid each month by the food concessionaires is based on the reported gross sales at their travel plazas. Each concessionaire is to pay a certain percentage of its gross sales, with the percentage varying for each concessionaire and for some of the individual travel plazas. The concessionaires submit monthly reports to the Authority showing their gross sales for each travel plaza, and the travel plazas maintain their own sales documentation.

To verify the accuracy of the food concessionaires' monthly rental payments, we judgmentally selected three travel plazas for each concessionaire. We then reviewed their cash register receipts and other sales documentation for certain months, and compared the sales recorded on this documentation to the amounts recorded for those travel plazas on the concessionaires' monthly sales reports to the Authority. We performed these comparisons for a total of 21 months at the nine selected travel plazas.

We found no material discrepancies in our comparisons of the two sets of sales records. Accordingly, it appears that the concessionaires' rental payments for those months were accurate.

However, in our review of the Authority's controls over the rental payments, we identified the following opportunities for improvement:

- To determine whether the gross sales reported each month by the concessionaires are reasonable, the Authority compares the amounts reported for each travel plaza to the amounts that were reported in the prior year, and investigates any significant variances. However, this analysis may not be effective for HMS Host, because its monthly sales reports do not break down the sales at each travel plaza by source (e.g., individual restaurants, vending machines, etc.). As a result, any unreported sales are less likely to be identified. For example, HMS Host mistakenly failed to report vending machine sales in four different months, but the Authority only became aware of the error when it was brought to their attention by HMS Host.
- While the Authority hires a public accounting firm to report annually on the accuracy of the sales reported by McDonald's, it does not independently verify the sales reported by HMS Host and Delaware North. We recommend these concessionaires' reported sales also be audited. According to Authority officials, the accounting firm plans to perform such audits in the future.

Recommendations

4. Collect the $228 in underpaid rent from Lehigh.
5. Monitor the accuracy and completeness of the fuel concessionaires' monthly rent payments by periodically testing the fuel inventories at the stations and periodically comparing the stations' fuel delivery records to the concessionaires' monthly fuel delivery reports to the Authority.
6. Require the food concessionaires' monthly sales reports to show the source of sales (e.g., individual restaurants, vending machines, etc.) at each travel plaza.
7. Monitor the accuracy and completeness of the food concessionaires' monthly rent payments by independently verifying the sales reported by each food concessionaire.

Capital Improvements

Each concessionaire is required to make certain types of capital improvements, and/or spend certain amounts on such improvements, over the life of its contract. If a concessionaire does not spend the required amounts by the end of the contract term, it must pay the Authority the difference (unless the contract is renewed, in which case the unspent amounts may be carried over to the next contract).

We examined whether the concessionaires were making the capital improvements required by their contracts, and found that, generally, they were. However, there was a risk that one of the food concessionaires might not meet its spending target by the end of its contract. In addition, the concessionaires are required to submit documentation of their capital expenditures to the Authority. However, one of the concessionaires was not submitting this documentation as the work was completed, as required by the contract, and the Authority was not following up with the concessionaire to ensure that the documentation was submitted.

Fuel Concessionaires

Lehigh's contract began on April 1, 2007 and it expires on March 31, 2017. Under the contract, Lehigh must expend a minimum of $2.3 million to make the capital improvements specified in the Authority's Development Plan, and must expend an additional $1.5 million on the renewal and replacement of fuel service facilities. Lehigh must submit copies of the paid invoices for all such improvements to the Authority's Chief Financial Officer within 90 days of the completion of each improvement.

We examined Lehigh's progress in meeting these spending targets. We found that Lehigh was making good progress on the $2.3 million target. As of January 31, 2009 (22 months, or 18.3 percent, into the ten-year contract), Lehigh had reportedly spent $762,112 of the $2.3 million (33 percent). We also determined that Lehigh was submitting copies of the paid invoices for the improvements, as required.

However, Lehigh had made little progress on the $1.5 million renewal and replacement target, as it had spent only $10,242 of the required $1.5 million (0.65 percent) for such work. Since Lehigh had more than eight years to reach the target, we concluded that it was too early for concern.

Sunoco's contract began on April 1, 2007 and it expires on March 31, 2017. Under the contract, Sunoco must expend a minimum of $16.8 million to make improvements to its storage tanks and kiosks, and must expend an additional $1.2 million on the renewal and replacement of fuel service facilities. Sunoco must submit copies of the paid invoices for all such improvements to the Authority's Chief Financial Officer within 90 days of the completion of each improvement.

We examined Sunoco's progress in meeting these spending targets. We found that Sunoco was making good progress on the $16.8 million target. As of January 16, 2009 (21.5 months, or 17.9 percent, into the ten-year contract), Sunoco reportedly spent or committed $3.6 million on the required improvements (21 percent of the target amount).

However, contrary to contract requirements, Sunoco had not provided the Authority with paid invoices for the work, which was completed in June 2008 at one travel plaza and May 2008 at another travel plaza. Instead, Sunoco submitted project commitment reports to the Authority. Authority officials noted that the invoices could always be obtained at a later date.

However, we note that, under the contract, the invoices are supposed to be provided within 90 days. We also note that, if the invoices are not provided within this time frame, there is a risk they will become unavailable. We recommend the Authority monitor Sunoco's progress on its required capital improvements and obtain paid invoices documenting this work within the 90-day time frame specified in the contract.

In addition, Sunoco had made no progress on the $1.2 million renewal and replacement target, as it had spent nothing on such work. Again, since Sunoco had more than eight years to reach the target, we concluded that it was too early for concern. Also, Authority officials noted that, since Sunoco had just made improvements to its storage tanks and kiosks, there was less need for additional renewal and replacement work at this time.

Food Concessionaires

McDonald's contract began on October 1, 1991 and it expires on December 31, 2009. Under the contract, McDonald's is required to spend one-quarter of one percent of its gross sales during the contract period on renewal and replacement expenditures (an amount that is projected to be $1.1 million). McDonald's must submit copies of the paid invoices for all such expenditures to the Authority's Chief Financial Officer.

We examined McDonald's progress in meeting this spending target and found that, as of October 2008 (17 years or 94.4 percent, into the 18-year contract). McDonald's renewal and replacement expenditures totaled only $708,943, or 64 percent of the projected target amount. It thus appears that McDonald's is at risk of not meeting the target. The Authority has identified the sprinkler systems at McDonald's travel plazas as projects that should be completed prior to the contract's expiration. If these projects are completed, the target should be met.

In addition, we determined that McDonald's was submitting copies of paid invoices for the renewal and replacement expenditures, as required.

The contracts with HMS Host and Delaware North both began on October 1, 2006 and both expire on December 31, 2019. Under the contracts, the concessionaires are required to spend one-half of one percent of their gross sales during the contract period on renewal and replacement projects. The concessionaires must submit copies of the paid invoices for all such projects to the Authority's Chief Financial Officer.

We examined the two concessionaires' progress in meeting their spending targets. We found that HMS Host was making good progress. As of September 2007 (the most recent data available at the time of our review), HMS Host had already spent $419,936 on renewal and replacement projects, which was 68 percent more than was expected ($250,060) on the basis of its reported gross sales at that point in the contract period. (We note that HMS Host exceeded this spending requirement in its preceding one-year contract with the Authority, spending a total of $304,488 on renewal and replacement projects when only $100,000 was required.)

Delaware North had not made as much progress, as it had expended only 22 percent ($9,958) of the amount that would be expected ($45,056) on the basis of its reported gross sales at that point in the contract period. However, since Delaware North had more than 12 years to reach its spending target, we concluded that it was too early for concern.

In addition, we determined that both concessionaires were submitting copies of paid invoices for the renewal and replacement projects, as required.

Recommendation

8. Monitor the concessionaires' progress on required capital improvements and obtain paid invoices documenting this work within the time frames specified in the contracts.

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Agency Comments

John L. Buono
Chairman

New York State Thruway Authority
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Michael R. Fleischer
Executive Director
TDD/TTY 1-800-253-6244

December 4, 2009

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
Division of Governmental Accountability
123 William Street, 21st Floor
New York, NY 10038-3804

Dear Ms. Maldonado:

On behalf of the New York State Thruway Authority (Authority) Chairman Buono, I offer the following comments on the Office of the State Comptroller's (OSC) draft audit report 2008-S-103 concerning *Travel Plaza Revenues and Capital Improvements (Report)*.

The Authority prides itself on providing the best possible service to its customers and recognizes the importance of collecting monthly rent payments from concessionaires in a timely manner. OSC recognized in the Report that in the overwhelming majority of cases, required concessionaire rentals are timely made and required contractual expenditures are likewise being made in accordance with contract terms. Further, the Authority on its own initiative included new provisions requiring interest on late payments in concessionaire contracts the Authority awarded in 2006 and 2007. When during the course of the subject audit OSC staff advised that this new provision had not been fully implemented, Authority staff promptly instituted procedures to ensure that it would be.

Authority staff has reviewed the recommendations contained in the report and offers the following responses:

Recommendation #1 – Improve the monitoring of concessionaire's rent payments to ensure that any late payments are promptly identified and interest on the payments is promptly billed to the concessionaires.

As noted above, the Authority has instituted procedures to ensure that late payments are promptly identified and interest promptly billed. Most monthly rent has always been paid on time, and *all* monthly rent from the Authority's five concessionaires has been paid on time since November of 2008.

Recommendation #2 – Collect the unpaid interest from Lehigh ($15,026), Delaware North ($2,619) and HMS Host ($855).

As of March 9, 2009 all interest due the Authority has been collected.

Recommendation #3 – Ensure that all future concessionaire contracts include a provision for interest on late rent payments.

As noted above, the Authority on its own initiative included such a provision in the four latest concessionaire agreements that were executed in 2006 and 2007. Future Requests for Proposals for concessionaire agreements will contain a similar provision.

Recommendation #4 – Collect the $228 in underpaid rent from Lehigh.

The Authority believes that the 4,600 gallons of fuel related to the $228 that the Report revealed as due was likely delivered to another Mobil location off the Thruway. Nevertheless, the Authority has billed Lehigh for the $228 which remains outstanding. Lehigh will either have to pay the $228 or substantiate to the Authority that the fuel was delivered to another location.

Recommendation #5 – Monitor the accuracy and completeness of the fuel concessionaires' monthly rent payments by periodically testing the fuel inventories at the stations and periodically comparing the station's fuel delivery records to the concessionaires' monthly fuel delivery reports to the Authority.

The Authority will pursue having Service Area Representatives periodically oversee, on a sample basis, the end of the month physical measurement of fuel inventories. The Authority presently *does* compare each station's on site fuel delivery information reports to the concessionaire's monthly rental statements, but the Authority will consider also implementing a review of operator fuel delivery invoices on a sample basis, as an additional verification of gallons delivered in post audits performed by the Authority.

Recommendation #6 – Require the food concessionaires' monthly sales reports to show the source of sales (e.g. individual restaurants, vending machines, etc.) at each travel plaza.

Presently food concessionaire monthly sales reports *do* show the source of sales, and the Authority will continue to require this. The Authority believes that these detailed reports provide sufficient information with which to verify and audit food sales. Vending machines are not considered a separate food concept and, therefore, vending sales are not reported separately. They are typically included as an additional line in gift shop sales or the sales of other food concepts. In the case of any discrepancies disclosed by Authority review, concessionaires would be required to substantiate all sales.

Recommendation #7 – Monitor the accuracy and completeness of the food concessionaires' monthly rent payments by independently verifying the sales reported by each food concessionaire.

The type of independent review recommended has recently been completed, and the Authority will continue to have such independent verification performed

Recommendation #8 – Monitor concessionaires' progress on required capital improvements and obtain paid invoices documenting this work within the time frames specified in the contracts.

The Authority presently monitors, and will continue to, monitor concessionaires' progress on required capital improvements. The Authority will continue to require submission of spending documentation, per the concessionaire contracts. In addition, the documentation will continue to be reviewed by the Authority's Office of Travelers' Services and the Office of Fiscal Audit and Budget. The Authority has been, and will continue to be, vigilant in ensuring the concessionaries expend the amounts required by the contracts in accordance with contract terms.

I wish to bring to your attention a couple of errors Authority staff noted in the Report. On page 9, there is a reference to "Sunoco, Incorporated." The entity's name should be listed as Sunoco Inc. (R&M). On page 10, there is a reference to a *single* contract with McDonald's that expires on December 31, 2009. The Authority actually has two agreements with McDonald's, and, as described below, McDonald's will continue operating all eleven plazas after December 31, 2009.

* Comment

One contract (McDonald's Agreement) includes all travel plazas operated by McDonald's except Angola, and the other just covers Angola (Angola Agreement.) The McDonald's Agreement has an initial term that ends December 31, 2009, and the Angola Agreement ends on December 31, 2010. The McDonald's Agreement contains two five (5) year renewal options that may be exercised by McDonald's if it is not in default and expressly provides that the facility at Angola will be included in the McDonald's Agreement when the Angola agreement ends. McDonald's has advised the Authority that it would like to renew the McDonald's Agreement, and as it is not in default, the McDonald's Agreement will continue in effect and also apply to Angola on January 1, 2011.

* State Comptroller's Comment: The report was revised to reflect information provided in the Authority's response.

Thank you for the opportunity to comment on the Report. The Authority is committed to excellence, and will continue to address the opportunities for improvement. If you need additional information, please contact Mr. Kevin Allen, Acting Director of Audit and Management Services at (518) 471-5853.

Sincerely,

Michael R. Fleischer
Executive Director

cc: John Buono, NYSTA Chairman
Donald Bell, Director of Maintenance and Operations
John Bryan, CFO
Kevin Allen, Acting Director of Audit and Management Services