



THOMAS P. DiNAPOLI
COMPTROLLER

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET
ALBANY, NEW YORK 12236

GABRIEL F DEYO
DEPUTY COMPTROLLER
DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY
Tel: (518) 474-4037 Fax: (518) 486-6479

February 2019

Hon. Jason Garner, County Executive
Members of the Board of Legislators
Broome County
60 Hawley Street
Binghamton, NY 13902

Report Number: S9-18-18

Dear County Executive Garner and Members of the Board of Legislators:

We conducted an audit of five local governments (three counties, one city and one town) and two school districts throughout New York State (NYS). The objective of our audit was to assess whether local governments and school districts that utilize aggregators¹ for energy purchases are ensuring they are procuring electricity and natural gas at the lowest prices. We included Broome County (County) in this audit. Within the scope of this audit, we examined the County's utility purchases for the period January 1, 2016 through May 31, 2017. We extended our audit scope back to February 2012 to review Board resolutions and March 2013 to review contract terms. This audit was conducted pursuant to Article V, Section 1 of the State Constitution, and the State Comptroller's authority as set forth in Article 3 of the NYS General Municipal Law (GML).

This draft report of examination letter contains our findings and recommendations specific to the County. We discussed the findings and recommendations with County officials and considered their comments, which appear in Appendix B, in preparing this report. County officials disagreed with certain findings but indicated they plan to initiate some corrective action. Appendix C includes our comments on the issues raised by the County's response. At the completion of our audit of the five local governments and two school districts, we prepared a global report that summarizes the significant issues we identified at all of the local governments and school districts audited.

Summary of Findings

County officials did not provide written documentation or verbal assertions during our fieldwork to demonstrate that the County entered into utility contracts without first evaluating the contracts

¹ For purposes of this report, the term "aggregator" is considered any organization or individual that brings customers together as a group with the objective of obtaining better prices, services or other benefits, such as energy or related services. The legal propriety of a local government or school district utilizing an "aggregator" is outside the scope of this audit.

or comparing prices to other potential procurement options or potential benchmark rates. Between January 1, 2016 and May 31, 2017, the County spent \$2.2 million for electricity and natural gas and paid electricity rates that were 57 percent higher and natural gas rates that were 18 to 54 percent higher than potential benchmark rates we identified for comparisons. Without an effective evaluation process, there is an increased risk that the County spent more than necessary for electricity and natural gas. Comparing the benchmark costs to the County's energy costs, the County paid approximately \$795,000 (56 percent) more for electricity and natural gas than the potential benchmarks we identified.

In addition, County officials paid \$22,600 in fees that were included in the contracts officials signed but could not substantiate they were included in the award documentation. Officials incurred these fees because they did not obtain sufficient documentation of the utility vendor's awarded contract terms to ensure the terms they ultimately agreed upon were consistent with the award terms. As a result, the County and we were unable to assess whether the utility rates and fees paid by the County are accurate and appropriate. Therefore, there is an increased risk that the County may be paying more than necessary for its utilities. Finally, the awarded contract's term ended October 2018, and County officials extended their contracts through December 2022. Consequently, County officials bound themselves to an additional four years of contracts with terms that may not be in the County's best interests.

Background and Methodology

The County is located in the central southern portion of upstate New York commonly referred to as the southern tier with a population of approximately 200,000 residents. The County is governed by an elected 15-member Board of Legislators (Board), one of whom serves as the Chair. The Board is responsible for the general oversight of the County's financial affairs and for safeguarding its resources. The County Executive is the County's chief executive officer and is responsible, along with other administrative staff, for the County's day-to-day management under the Board's direction. The Board of Acquisitions and Contracts (BAC)² is responsible for the approval and execution of certain contracts. The County's 2017 budgeted expenditures totaled approximately \$383.1 million. The County provides various services to its residents, including general government support, road maintenance and snow removal, economic assistance, law enforcement and health and nursing services.

In the 1990s, electric and natural gas industries in NYS were opened to competition. An Energy Service Company (ESCO) is an entity eligible to sell electricity and/or natural gas using the transmission or distribution system of a local utility company (LUC). The LUC may also continue to provide electricity and natural gas. Utility rates are regulated by the NYS Public Service Commission and are generally based on service classifications, such as high usage and whether the customer is commercial or industrial.

An aggregator may be described as an organization or individual that brings customers together as a group with the objective of obtaining better prices, services or other benefits, such as energy or related services. Broome County uses an aggregator for the procurement of electricity, natural

² BAC consists of the County Executive, Commissioner of Public Works, Parks, Recreation and Youth Services and the Chairman of the County Legislature or their designees.

gas and renewable power. The aggregator serves as a procurement manager which, among other things, aggregates the anticipated energy purchases of participants to be used for the electricity and natural gas bid, which is let by Genesee County.³ The aggregator's consultant reviews and evaluates the bid submissions and recommends the winning ESCOs. There is no requirement, however, for a participant to purchase from the recommended ESCOs.

We examined the County's procurement of electricity and natural gas during the period January 1, 2016 through May 31, 2017. We reviewed the LUC's rates for electricity and natural gas and NYS Office of General Services (OGS) rates for natural gas to assess whether the costs were similar.⁴ We also reviewed and compared invoices to the terms (rates, fees, surcharges and timeframes) in the County's contracts and the bid awarded contract.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). More information on the standards and the methodology used in performing this audit are included in Appendix D of this report.

Audit Results

Evaluating Procurement Options – County officials have a responsibility to ensure that they use taxpayers' resources as prudently as possible. Officials should fulfill this responsibility, in part, by fully evaluating procurement options and comparing benchmark rates before committing resources. The more significant the resources that are to be expended, the more effort officials should put into the decision making process to help ensure the County's funds are used efficiently.

OGS and County contracts, along with LUC rates, can provide benchmarks to assist in assessing the reasonableness of the contract rates and terms being considered. However, while purchasing through extended OGS or County contracts have the potential to produce cost savings, municipalities are not required to use these contracts, and doing so does not guarantee a lower price.

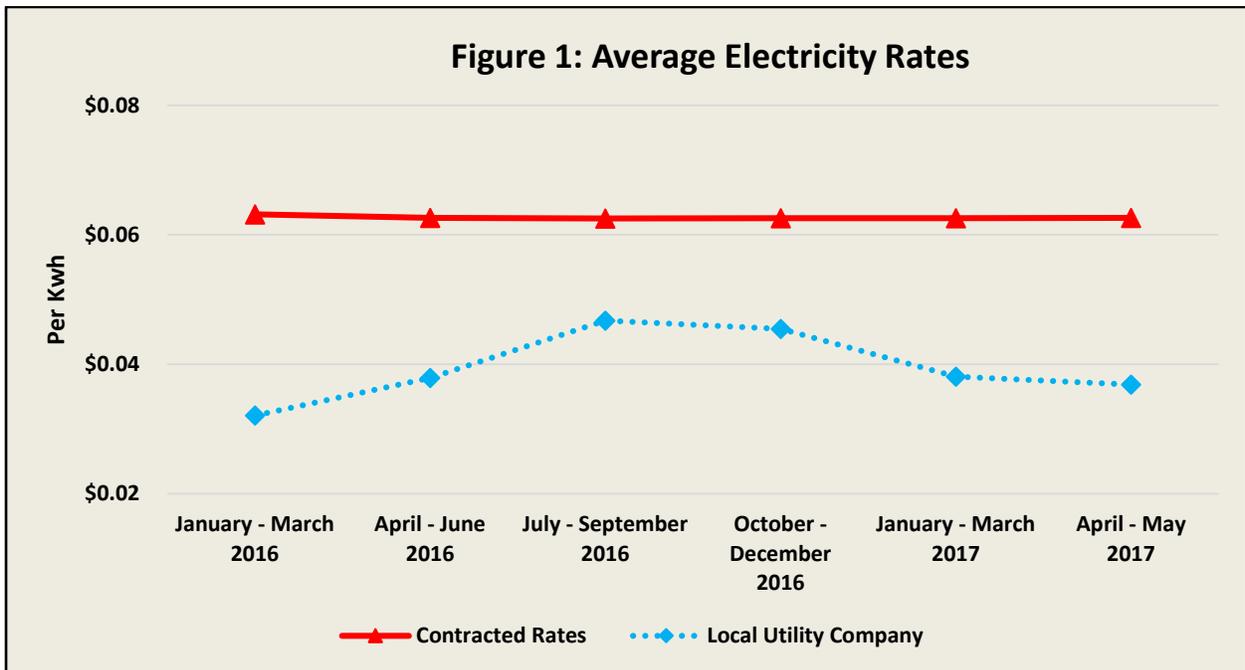
The Board authorized⁵ the County to renew its participation agreement with the aggregator. The BAC approved the electricity and natural gas contracts with the ESCO recommended by the aggregator. However, County officials (including BAC officials) told us they did not evaluate the electricity and natural gas contracts prior to entering into them and did not consider any other procurement options. Rather, we were told that officials relied on the aggregator to get the best rates because they considered this to be the aggregator's job. As a result, officials have less assurance that they expended significant resources prudently and in the best interests of taxpayers.

³ The legal propriety of being a participant in the "aggregator" program, as well as the procurement process of the bid award, was not within the scope of this audit.

⁴ We included the LUC rates in the report for potential benchmark purposes only. County officials can use the LUC rates to help assess the reasonableness of the utility contract the County is considering.

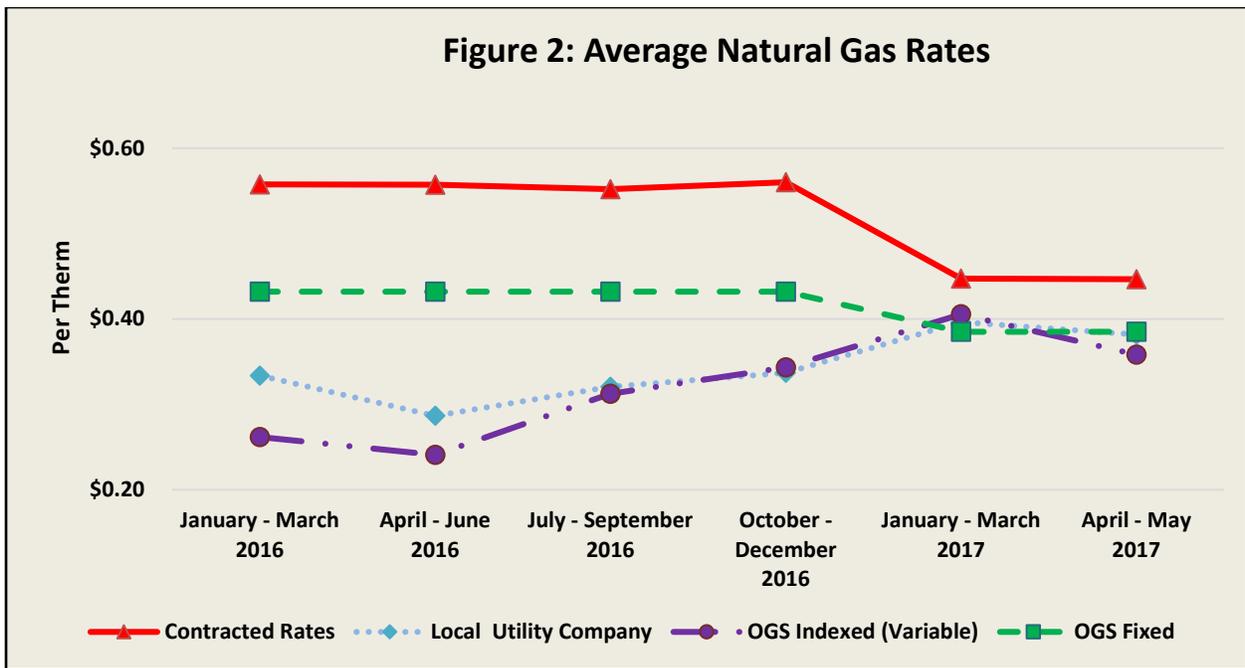
⁵ According to Board minutes, on February 16, 2012, the County Legislature authorized participation from January 1, 2012 through December 31, 2016. On January 19, 2017, the Legislature authorized participation from January 1, 2017 through December 31, 2021.

Potential Benchmark Comparisons – We calculated average electricity rates paid for three-month periods from January 1, 2016 through March 31, 2017, and for the period April 1, 2017 through May 31, 2017. We compared the rates paid to potential benchmark rates averaged for the same time periods. We found that the County’s average electricity rates were consistently higher than the average benchmark rates, by approximately 57 percent (Figure 1). For example, the County’s kwh⁶ electricity rates averaged \$0.0627 while the LUC rates averaged \$0.0398. The County’s average natural gas rates were also higher than other average benchmark rates, by 18 to 54 percent (Figure 2). For example, the County’s average therm⁷ natural gas rate was \$0.4936, while the OGS fixed rate was \$0.4167 and OGS variable rate was \$0.3204 (Appendix A).

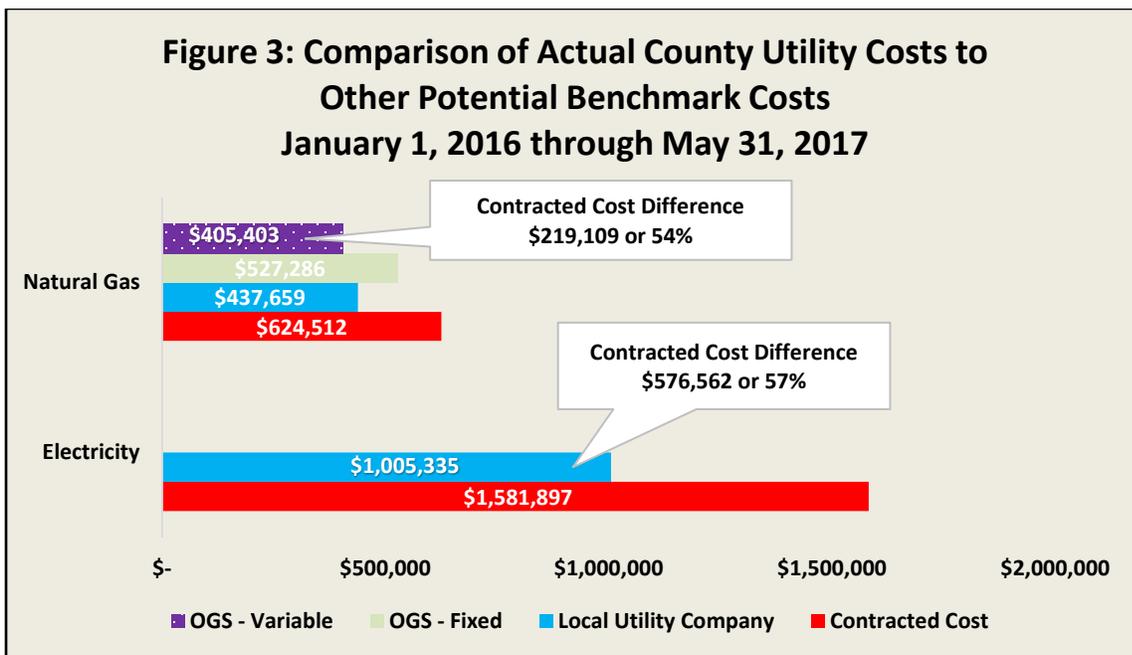


⁶ Kwh (Kilowatt-Hour) is a unit of measurement used to measure electricity consumption.

⁷ Therm (Thermal Unit) is a unit of measurement used to measure gas consumption.



We also analyzed the County’s electricity and natural gas purchases and compared the actual rates paid to the rates charged by their LUC⁸ and the OGS natural gas variable and fixed rates from January 1, 2016 through May 31, 2017 (17 months). We found that the County paid significantly more for electricity and natural gas when compared to the benchmark costs, utility rates from other providers. For example, the County paid approximately \$577,000 more for electricity and \$219,000 more for natural gas purchases (Figure 3).



⁸ Variable rates will fluctuate based on the wholesale market prices.

Without an effective evaluation process, there is an increased risk that the County may have spent significantly more money for electricity and natural gas than necessary.

Contract Terms – When obtaining goods or services from an awarded contract, it is imperative that officials obtain pertinent details, such as the awarded rates and contract terms, prior to entering into their own contracts with the vendor. Officials should then ensure that the terms of their contracts with the vendor(s) mirror what was awarded to help safeguard against paying more than required.

The County received Genesee County’s Board award resolution which identified the electricity and natural gas awarded ESCOs, based upon the bid from the aggregator. In addition, the County received the program agreements between Genesee County, the aggregator and the awarded electricity and natural gas ESCOs. Among other things, the program agreements identified the utility territories and timeframe of the contracts.⁹ However, we were told that County officials did not obtain the awarded ESCOs’ rates and terms. As a result, there is an increased risk that the contracts they engaged in with the ESCO could be inconsistent with the awarded bid rates.

We compared the award resolution and program agreements to the County’s ESCO contracts to assess whether they contained the same terms. Although the program agreements indicate that fixed prices will be determined based on market conditions at the time of contract executions, neither the award resolution nor the program agreements contained a fixed rate price. Therefore, we were unable to assess whether the fixed price paid by the County was accurate or appropriate.

We also found there were very limited contract terms in the award and agreements. For example, neither the award nor agreements described applicable fees and surcharges for fixed rates. The County paid about \$22,600 in fees¹⁰ that were included in the contracts County officials engaged in but officials could not substantiate were included in the award and agreement documentation. Officials incurred these fees because they did not obtain sufficient documentation of the utility vendor’s awarded contract terms to ensure the terms they ultimately entered into were consistent with the award and agreement terms. It was inappropriate to contract for terms above and beyond those included in the award. Therefore, these fees may be improper.

Officials also inappropriately engaged in contracts that extended beyond the awarded contract term of April 2015 through October 2018. Although the awarded contract contained an extension clause,¹¹ at the time the County extended their contracts, this extension was not invoked. Further, at most, the extension clause would extend the contract through October 2020. The County entered into five electricity contracts for the period ranging from March 22, 2013 through December 21, 2019 and four natural gas contracts for the period January 1, 2015 through December 31, 2018. Further, on June 15, 2017, after we began our audit, the BAC engaged the County into four electricity contracts with the same supplier extending the current contracts through December 2022. Because the initial award’s extension clause could only be extended by approval of the ESCO, Genesee County and the aggregator, County officials themselves were

⁹ Effective date of April 1, 2015 through October 31, 2018, which may be extended for up to two additional one-year periods through October 31, 2020.

¹⁰ \$7,235 gas settlement adjustment and \$15,516 balancing charge.

¹¹ The extension clause allows for two additional one-year extension terms, if accepted by the ESCO, Genesee County and the aggregator.

not authorized to extend them. Consequently, County officials bound themselves to an additional four years of contracts with terms that may not be in the County's best interests.

Recommendations

The Board should:

1. Evaluate available electricity and natural gas purchasing options prior to authorizing the County's procurement method.

The BAC should:

2. Periodically analyze and review procurement options to help ensure the County is receiving the lowest possible prices for electricity and natural gas.
3. Obtain bid award details and contracts that the County purchases from and review to ensure they contain all relevant information (e.g., rates/surcharges/timeframes) and only engage in County contracts that comply with applicable award terms.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Clerk's office.

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

Sincerely,

Gabriel F. Deyo
Deputy Comptroller

APPENDIX A

Figure 4: Electricity Usage and Cost Comparison January 1, 2016 through May 31, 2017			
Department	Supply Usage (kwh)	ESCO Supplier (Actual Cost)	Potential Benchmark Costs Local Utility Company
Aging	305,557	\$18,777	\$12,078
Animal Shelter	49,160	\$3,087	\$1,901
Arena	3,851,479	\$241,834	\$146,769
Aviation	2,639,250	\$166,703	\$106,862
Central Foods	315,360	\$19,547	\$11,930
County Clerk	161,688	\$10,021	\$6,195
Enjoie Golf	1,666	\$105	\$78
Forum	222,900	\$14,001	\$8,568
Health	429,760	\$26,637	\$17,430
Highway	386,660	\$24,273	\$15,236
Landfill	132,113	\$8,295	\$5,178
Library	739,872	\$46,455	\$26,663
Parks	254,851	\$14,190	\$9,916
Public Works	10,694,667	\$671,518	\$432,408
Sheriff	43,883	\$2,755	\$1,953
Social Services	1,350,699	\$84,810	\$54,406
Solid Waste	229,500	\$14,410	\$8,651
Transit	924,818	\$57,678	\$36,487
Willow Point Nursing Home	2,510,991	\$156,801	\$102,626
Total	25,244,874	\$1,581,897	\$1,005,335
Supplier Difference to Other Sources			\$576,562
% Difference			57%
Cost per Kwh			\$0.0398

**Figure 5: Natural Gas Usage and Cost Comparison
January 1, 2016 through May 31, 2017**

			Potential Benchmark Costs		
Department	Supply Usage (Therms)	ESCO Supplier (Actual Cost)	Local Utility Company	OGS Indexed Variable	OGS Fixed
Aging	10,025	\$5,502	\$3,506	\$3,246	\$4,158
Animal Shelter	11,196	\$6,181	\$3,929	\$3,560	\$4,664
Arena	132,588	\$57,703	\$45,902	\$42,275	\$55,197
Central Food	28,188	\$15,790	\$9,460	\$8,401	\$11,826
County Clerk	12,907	\$7,028	\$4,605	\$4,309	\$5,318
Enjoie Golf	10,458	\$5,708	\$3,552	\$3,320	\$4,365
Forum	50,832	\$28,130	\$18,050	\$16,232	\$21,156
Health	26,045	\$14,278	\$9,226	\$8,383	\$10,810
Highway	57,935	\$31,808	\$20,798	\$18,893	\$23,992
Library	46,361	\$25,310	\$16,117	\$15,030	\$19,340
Public Works	559,403	\$277,993	\$191,419	\$178,846	\$233,872
Social Services	20,821	\$11,607	\$7,266	\$6,660	\$8,643
Transit	67,254	\$37,210	\$23,414	\$21,475	\$27,965
Willow Point Nursing Home	231,288	\$100,264	\$80,415	\$74,773	\$95,980
Total	1,265,301	\$624,512	\$437,659	\$405,403	\$527,286
Supplier Difference to Other Sources			\$186,853	\$219,109	\$97,226
% Difference			43%	54%	18%
Cost per Therm		\$0.4936	\$0.3459	\$0.3204	\$0.4167

APPENDIX B

RESPONSE FROM COUNTY OFFICIALS

The County officials' response can be found on the following pages.



State of New York County of Broome Government Offices

Office of the Broome County Executive
Jason T. Garnar, County Executive

October 16, 2018

State of New York – Office of the State Comptroller
110 State Street
Albany, NY 12236

Attn: Gabriel F. Deyo - Deputy Comptroller

Re: Broome County Response
Draft Audit – Report No: S9-19-19

Dear Mr. Deyo,

Please consider this letter as Broome County’s written response to the draft audit report dated September 2018 related to the County’s procurement of electricity and natural gas (report number S9-18-19). We disagree that Broome County is making unsupported decisions with respect to utility purchases. Following is our understanding of the [REDACTED] program and utility commodity pricing / purchasing.

See
Note 1
Page 15

See
Note 2
Page 15

For several years, Broome County has been classified by the State Comptroller as “fiscally stressed”. The realities of this designation mean that budgeting decisions must be made through the lens of budget certainty or managing risk by predictability and stability. Broome County cannot assume the risk of variable utility rates as we simply do not have financial reserves necessary to gamble in this manner. As responsible leaders, it is our duty to prepare and function within budgets that are known and can be controlled at set levels. As a commodity, energy prices fluctuate significantly on a season to season and even a day to day and hour to hour basis. It is difficult, if not impossible to accurately budget for energy costs with these variations. Without adequate reserves to cover utility cost fluctuations it would be irresponsible for the County to purchase energy in such a manner. It is always easy to look backwards and decide that another approach would have saved us money.

In 1998, following the deregulation of electricity in New York, and the successful completion of an Aggregation Pilot Program in Tompkins and Tioga Counties, Broome County joined the [REDACTED] program. Broome County was one of the first counties to join Tompkins and Tioga Counties in this endeavor and is a current corporate member of [REDACTED] and a past board member for many years. This program began as a bi-county partnership and grew into a non-profit community-based energy savings program that has grown to benefit 35 county governments and over 270 municipalities across the state. In 2008, the New York Association of Counties (NYSAC) endorsed [REDACTED] as its preferred energy procurement program for New York counties. This endorsement is based on [REDACTED] strict adherence to government bidding requirements, as well as their record of savings achieved for local governments. NYSAC’s endorsement supports Broome County’s decision to remain a [REDACTED] participant.

In the following sections of this letter we will respond to and address the draft audit points one at a time.

1. The OSC audit claims that Broome County entered into utility contracts without evaluating the contracts or comparing prices to other potential procurement options or benchmark rates.

Broome County chose the ██████ program in large part because the procurement process provides local governments with competitive pricing while simultaneously satisfying legal public procurement requirements. For the contract time examined in this audit, ██████ procurement process began on 02-12-2015 and ended on 03-12-2015. The RFP was advertised in the New York State Contract Reporter and the bid was distributed to over 70 New York State Licensed Energy Service Companies. ██████ was selected as the low bidder in this solicitation, and the contract was awarded on April 1, 2015.

See
Note 2
Page 15

Broome County found the ██████ program appealing because it takes advantage of the provisions in State law that allow local governments to “piggyback” off contracts let by other local governments (in this case Genesee County) to procure energy. When Broome County invoked this piggybacking provision, it would have been redundant to simultaneously solicit prices from suppliers. This provision of law (as reflected in NYS County Law Section 408-a, and General Municipal Law Section 103) is designed to save local governments the time and expense of doing their own bid, and to encourage aggregation of local government requirements to have more command of the marketplace to the taxpayer's benefit. ██████ program is grounded in these principles with the goal of providing a financial advantage to participants coupled with budget stability.

See
Note 3
Page 15

2. The OSC audit compares average variable electricity rates from NYSEG to fixed rates paid the County in its contract.

The fixed price from ██████ through ██████ cannot be accurately compared to variable pricing or to benchmarked averages over time. Comparing the price that the county paid in its contract to the average variable price is an inaccurate portrayal of the county's decision process because the county is also buying stability. The county may or may not save money over time with a fixed price depending on whether market/index prices rise or fall. Even if markets decline while a fixed price is in effect, the county still has the benefit of being able to forecast energy spending based on historic consumption. Stability ensures budgeting security and is a highly sought-after feature for Broome County due to our current financial constraints. Fixed pricing offers local government an important insurance policy that the local utility company cannot provide. Utility tariffs, following long-standing policies of the New York State Public Service Commission, prohibit them from offering fixed or hedged pricing to any customers.

See
Note 4
Page 16

Broome County has found that over time, fixed pricing has performed well for the county's largest accounts. The OSC audit looked at one short snapshot in time where variable rates have been historically low but did not examine the flip side when variable rates were high. Fixed prices saved thousands of dollars for the county during the period from December 2013 through April 2014 when Broome County was locked into a fixed rate far below the variable market rate. No one can predict upcoming weather conditions and market volatility could force market prices up again. Many other local governments have also seen prices rise after they locked in a fixed rate and have saved significant amounts. Long-term

fixed pricing provides budget certainty and protection against unpredictable variability.

Furthermore, comparing contracted price to average benchmarked rates only shows the variation from the average. It does not illustrate the information that the county had at the time the decisions were made. Broome County officials did not know what those averages would be at the time that we were making these purchasing decisions. No customer, energy consultant, local government or anyone, has the ability to know what the average will be in the years ahead. All they can do is act on the best information they have at the time, such as forecasts of the future based on current market conditions. The actual future may be, and frequently has been, different from the forecasts. Broome County acted to avoid the risk associated with weather-related price spikes and market variability. Broome County also acted to secure their expenses to remain under the state mandated property tax cap.

See Note 4 Page 16

3. The OSC audit indicates that Broome County did not obtain pertinent details from the Genesee County contract, including awarded rates and agreement terms. The audit also states that the award and agreements entered into by Genesee County didn't describe applicable fees and surcharges for fixed rates.

While the price of energy fluctuates daily, the markup an energy services company charges a customer is an important element that impacts pricing differences. For electricity, the markup is called the "fixed adder" and for natural gas it is called the "fixed basis". These markups are what [REDACTED] bids out when they execute a procurement for electricity and natural gas. The adder includes ancillary services, losses, Clean Energy Standard, [REDACTED] fee and the supplier margin. The fixed basis includes transmission capacity, pipeline services and other costs, [REDACTED] fee and the supplier margin. This is comparable to the utility's Merchant Function Charges, which are now variable month to month.

The price of electricity obtained from the New York Independent Systems Operator is not included in [REDACTED] bid, since this cost fluctuates on a daily basis and is the same for all energy service companies depending upon the specific date and time of pricing. Requiring bidders to fix this price in their responses would significantly increase costs, likely adding \$.03/kwh to the cost of electricity due to hedging. Focusing the bid on the adder and basis eliminates this cost factor.

Broome County acknowledges the fact that we did not have this bid documentation on hand at the time that the OSC audit was done; however, we will make sure that we have necessary paperwork in the future. One thing that [REDACTED] does is to ensure that all documentation concerning the bid is complete, and they have assured us that this information will be provided automatically to all participants in the future.

4. Related to the comment above, the OSC audit mentions that the County paid \$22,600 in fees that could not be substantiated in the award documents.

Buyers of gas from the NYSEG system are responsible for a monthly Balancing Charge calculated using the Buyers Maximum Daily Transport Quantity (MDTQ). While this bill is charged by NYSEG to the supplier, the end-user customer acknowledges payment responsibility for the Balancing Charge in addition to all other charges provided for in the supplier's Gas Sales Agreement. The Balancing Charge that will be invoiced by the suppliers as "LDC Tariff Pass-Thru" to the end user customer, is a straight pass-through of

the amount billed to the supplier by NYSEG and does not include any additional costs or mark-up. \$15,340 of the \$22,600 fee were Balancing Charges collected by the energy service company and paid directly to NYSEG as a pass-through no additional processing fees. The remaining \$7,260 of this fee was for Gas Settlement Costs resulting from the credit/debit for gas used or sold due to the County's actual usage varying from contract volumes.

5. Finally, the OSC audit charges that the County inappropriately engaged in contracts that extended beyond the awarded contract term of April 2015 through October 2018.

In the summer of 2018, [REDACTED] offered Broome County amended contracts with lower electric rates that would offer significant savings to the County. Because we were aware that recent variable rates were quite a bit lower than the fixed rates that we had locked in, we saw this as an opportunity to save Broome County a significant amount of money on electricity costs. We approved this offered change in our fixed rates to lower our costs through 2023. We are now aware that this offered end date was not appropriate based on the existing contract negotiated by [REDACTED] and acknowledge that this will not happen again.

Please accept this response from Broome County to the draft audit performed by the NYS Comptroller's Office. Please feel free to contact me directly if you would like to discuss this further.

Sincerely,

Jason T. Garnar
Broome County Executive

JTG:lgb

APPENDIX C

OSC COMMENTS ON THE COUNTY'S RESPONSE

Note 1

Our audit found that County officials did not evaluate the electricity and natural gas contracts before signing them. We stand by our conclusion that officials have less assurance that they expended significant resources prudently and in the best interest of taxpayers.

Note 2

Officials were unable to provide written documentation or verbal assertions during fieldwork to support they evaluated their utility procurement options or the utility bid before entering the utility contract. In response to the audit, officials said they "...chose the {aggregator's} program in large part because the procurement process provides local governments with competitive pricing..." In fact, on July 12, 2017 the Deputy Commissioner of Buildings and Grounds told us that they relied on the aggregator to obtain the lowest prices. This statement is further supported by the County's response, which states "...we did not have this bid documentation on hand at the time that the OSC audit was done..."

Exercising due diligence would require, at some level, an analysis of the County's utility procurement options and determining whether the aggregator's pricing is competitive. Considering the cost for procuring utilities, the justification for the procurement decision should have been documented. However, officials did not provide us with any written documentation or verbal assertions to support they analyzed the utility bid, considered other procurement options or assessed the aggregator's pricing was competitive.

The audit report does not state or suggest officials should have performed an independent bid.

Note 3

We agree "piggybacking" may save local governments the time and expense of doing their own bid, and that aggregating local governments' utility needs can help procure more favorable pricing. However, cost savings is not guaranteed and, in certain instances, too much aggregation could have the potential of limiting competition. The County's response states that, in addition to advertising the bid in the New York State Contract Reporter, the bid was distributed to over 70 New York State licensed energy service companies. However, only four companies bid on the variable electricity RFP. Two of the bids were disqualified; therefore, only two were considered. Three companies bid and were considered for the variable natural gas RFP. There was no fixed price bid summary for either electricity or natural gas. Officials were unable to provide written documentation or verbal assertions during fieldwork to support that there was a financial advantage to using the aggregator's program.

Because officials piggybacked from the Genesee County contract, General Municipal Law¹² requires the officer, board or agency to consider whether the contract will result in cost savings after all factors, including charges for services, material and delivery, have been considered. Officials told us they did not evaluate the electricity and natural gas contracts prior to entering into them and did not consider any other procurement options.

Note 4

We believe the comparison is valid. Our report is summarized by weighted averages of electricity and natural gas usage. We compared the County's actual electric and natural gas usage and cost to the local utility company's cost for the same usage and service classifications. However, as noted in our report, we included the LUC rates for potential benchmark purposes only. County officials can use the LUC rates to assist in assessing the reasonableness of the utility contract the County is considering.

Officials state they are "buying stability" through fixed pricing. However, officials did not provide us with any written documentation or analysis or verbal assertions during fieldwork that showed what the "stability" has historically saved or cost the County, or what buying future stability may cost the County's taxpayers. We acknowledge that fixed pricing should be a consideration in the decision making process. However, officials should still evaluate whether the fixed price is reasonable and what cost is associated with fixed pricing.

¹² General Municipal Law Section 103(3)

APPENDIX D

AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to assess whether local governments and school districts that utilize aggregators are ensuring they are procuring electricity and natural gas at the lowest prices for the period January 1, 2016 through May 31, 2017. To accomplish the objective, our audit procedures included the following:

- We interviewed County officials and employees to gain an understanding of the electricity and natural gas procurement process.
- We reviewed policies, procedures and Board minutes related to the procurement of electricity and natural gas.
- We compared the Genesee County electricity and natural gas bid award resolutions and program agreements to the County's contracts to assess whether the terms were the same.
- We reviewed contracts between the County and ESCOs to assess whether the County paid the contract rates, fees and surcharges.
- We reviewed all electricity and natural gas invoices to assess total supply usage, service classifications and rates paid.
- We obtained rates, based on service classifications, from the LUC and OGS and compared the County's electricity and natural gas costs (usage and service classifications) to the LUC and OGS costs to assess whether there was a cost variance.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). 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.