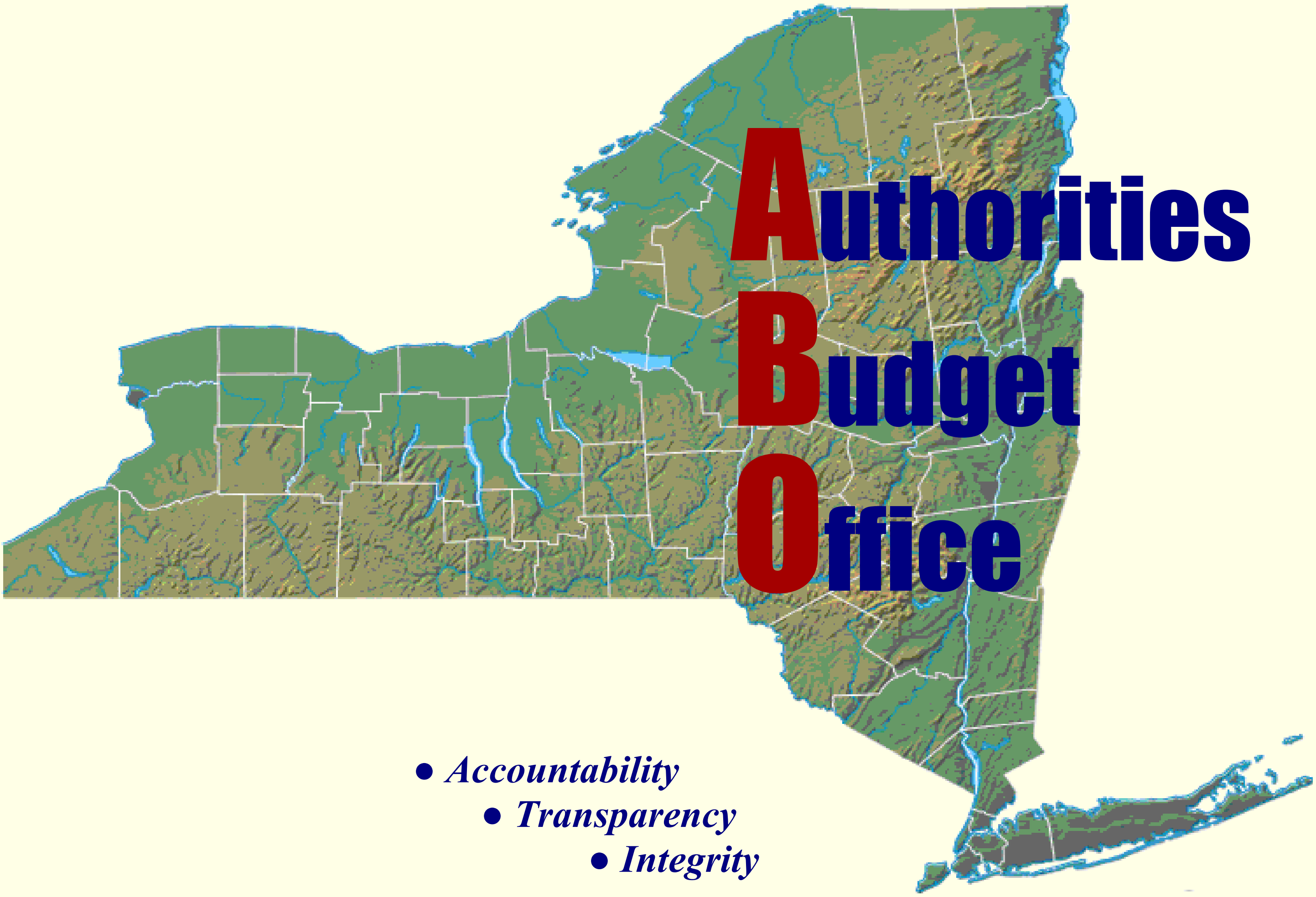

- *Accountability*
- *Transparency*
- *Integrity*

Operational Review

Chemung County Industrial Development Agency

March 3, 2015

OR-2014-02

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Executive Summary

Purpose and Authority:

The Authorities Budget Office (ABO) is authorized by Title 2 of the Public Authorities Law to review and analyze the operations, practices and reports of public authorities, to assess compliance with various provisions of Public Authorities Law and other relevant State statutes, and to make recommendations concerning the reformation and structure of public authorities. This includes rendering conclusions and opinions regarding the performance of public authorities and assisting these authorities improve management practices and the procedures by which their activities and financial practices are disclosed to the public. Our operational review of the Chemung County Industrial Development Agency (IDA) was performed between August 2014 and December 2014 and was conducted in accordance with our statutory authority and compliance review protocols which are based on generally accepted professional standards. The purpose of our review was to provide an objective evaluation of the IDA board's project approval and management practices and to determine if the board effectively monitors project performance and complies with the Public Authorities Law's reporting requirements.

Background Information:

The Chemung County Industrial Development Agency (IDA) was established in 1970 under Section 896 of General Municipal Law. The IDA's mission is to assist projects that create or retain jobs, promote health and recreational opportunities, and contribute to the general prosperity and economic welfare of residents in the County. The IDA is governed by a seven-member board of directors. The IDA has no staff but contracts with Southern Tier Economic Growth (STEG) to carry out its mission and manage its operations. For 2013, the IDA's operating revenues were approximately $4.7 million and operating expenses were approximately $4.1 million. As of December 2013, the IDA reported it had 48 active projects of which 29 projects received property tax exemptions and generated about $3.5 million in annual payment in lieu of taxes (PILOT) payments.

Results:

Our review found that the IDA does not actively recruit businesses or market the County. Rather, STEG serves as the designated economic development corporation for the County and provides administrative support to the IDA. The IDA board routinely approves all financial assistance applications submitted by STEG and appears to provide little to no oversight or guidance regarding project selection, review and pre-approval. Additionally, more than half of the IDA's board members also serve on the board of STEG creating the appearance of potential conflicts of interest for these directors.

This environment contributes to several deficiencies identified in the report. The IDA board has not established policies and procedures to either monitor project performance and the accuracy of PILOTs billed, or to verify that PILOT payments made to taxing jurisdictions are in accordance with the PILOT agreements. Further, the IDA's contract with STEG does not require STEG to perform these functions. In addition, the IDA's agreements with project owners do not require projects to annually report employment data to the IDA.

We reviewed ten IDA projects and found that eight failed to meet employment goals, five projects received financial assistance that exceeded the amount requested and project data for nine projects was reported incorrectly resulting in understating the amount of IDA financial assistance provided to those projects. We also found that of the five projects that have PILOT agreements, three are paying incorrect PILOTs resulting in taxing jurisdictions and special districts not receiving more than $163,000 in revenues.

We found that STEG, acting as the IDA's administrator, negotiates lower administrative and application fees for projects without authorization or board approval. This has resulted in STEG failing to collect over $327,000 in fees owed to the IDA.

The IDA board is actively addressing and implementing the recommendations made in this report.

Introduction and Background

The Chemung County Industrial Development Agency (IDA) was established in 1970 as a public benefit corporation pursuant to Title 2, Section 896 of General Municipal Law. The IDA's mission is to assist projects that create or retain jobs, promote health and recreational opportunities, and contribute to the general prosperity and economic welfare of residents in the County.

The IDA is comprised of a seven-member board of directors. Board members are appointed by the Chemung County Legislature, and serve until replaced. Currently the Chair of the County Legislature, County Executive and Elmira City Manager are IDA board members. The board is responsible for overseeing the general management of the IDA's finances and operations. The IDA has no employees, but contracts with a local development corporation called Southern Tier Economic Growth (STEG) to carry out its mission and manage its operations. STEG's agreement with the IDA (which has been renewed annually since 2003) requires STEG to provide professional staff support to the IDA. The IDA has paid STEG $90,000 annually since 2010 to perform these services, but increased the amount to $100,000 for 2015. STEG is responsible for marketing the IDA's services to businesses, assisting businesses in applying for financial assistance, presenting eligible projects to the IDA board for its approval, identifying property for purchase and development, providing financial record keeping, and preparing required reports.

The IDA has the statutory authority to offer financial incentives to attract, retain, and expand businesses within Chemung County. This financial assistance includes low interest financing through the issuance of Industrial Development Revenue Bonds, and exemptions from mortgage recording taxes and sales and use taxes. In addition, real property owned by the IDA is entitled to an exemption from real property taxes. These exemptions are passed through to assisted businesses that lease the property from the IDA. In return, a portion of the foregone property taxes is recaptured via a payment in lieu of taxes (PILOT) made by the assisted business to affected taxing jurisdictions such as local governments and school districts.

As of December 2013, the IDA reported that it had 48 active projects that were receiving IDA financial assistance. It reported that 29 of these projects received property tax exemptions and paid approximately $3.5 million in PILOTs. Eleven of these projects were financed with Industrial Development Revenue Bonds. The IDA reported total debt outstanding of $42 million associated with those bonds. The IDA reported that the 48 projects were estimated to create and retain 7,498 jobs over the life cycle of their financial assistance. The projects created or retained 6,925 jobs through December 2013, or 573 fewer than the commitments reflected in their project applications. While these projects have not met the overall employment goals, the IDA reported that they created 3,181 jobs in the County that did not exist before IDA assistance was provided. The IDA board approved eight new projects from January through August 2014.

For 2013 the IDA had $4.7 million in operating revenues, $3 million of which was lease and rental payments. The IDA's operating expenses were approximately $4.1 million, consisting mainly of $1.5 million in interest expenses for debt and project development expenses of $1.3 million.

Compliance Review Objectives

The Authorities Budget Office (ABO) is authorized by Title 2 of the Public Authorities Law to review and analyze the operations, practices and reports of public authorities, to assess compliance with various provisions of Public Authorities Law and other relevant State statutes, and to make recommendations concerning the reformation and structure of public authorities. Our operational review was conducted to evaluate the Chemung County Industrial Development Agency board's oversight over project approval and project management practices and to determine if the IDA effectively monitors project performance and complies with the Public Authorities Law's reporting requirements.

Compliance Review Scope and Methodology

Our compliance review was conducted between August and December 2014. To perform our review we relied on the following documentation and data sources:

- Contractual agreements of the authority
- Board meeting minutes
- Financial records of revenues, expenditures and bond obligations
- Project files maintained by the IDA
- Independent financial audits and other reports
- Annual and Budget Reports required by the Public Authorities Law
- Policies and procedures required under Public Authorities Law and Public Officers Law

In addition to reviewing documents and records, we interviewed STEG officials and performed other testing we considered necessary to achieve our objectives. Our report contains recommendations to improve the effectiveness of the operations of the IDA. The results and recommendations of our review were discussed with IDA officials, and their responses are reflected in this report where appropriate.

Review Results

The Chemung County Industrial Development Agency (IDA) does not serve as the primary economic development entity in the County. Rather economic development in Chemung County is led by Southern Tier Economic Growth (STEG), a private not-for-profit corporation that contends it is not subject to the same public accountability and transparency as the IDA. STEG serves as the designated economic development corporation for the County and provides administrative support to the IDA. In addition to administering the IDA, STEG also administers the City of Elmira Loan Program, Village of Horseheads Loan Program, Elmira Empire Zone, and hosts a satellite office of the New York State Empire State Development Corporation. STEG assists businesses with completing applications, administers grants and coordinates zoning and other municipal approvals on behalf of companies. STEG also provides a listing of properties and buildings available for lease or purchase as business development sites.

Businesses that are interested in locating or expanding in the County are either referred to STEG by the New York State Empire State Development Corporation or approach STEG on their own seeking financial assistance. STEG officials will work with these businesses to determine the overall amount and type of financial assistance they qualify for and evaluate each proposed project's viability. The IDA is one of the many funding sources STEG uses to broker an economic development deal. Once a business is committed to developing in the county, STEG officials will negotiate a financial assistance package with the company, utilizing assistance available from the IDA, County and other municipalities, and State grants and loans, if applicable.

As a result of these relationships and the secondary role played by the IDA, the IDA board has not assumed responsibility to develop a strategic economic development plan to attract jobs to Chemung County, nor does the IDA actively recruit businesses or market the County. Since the IDA has delegated economic development responsibilities to STEG, it has not established policies and procedures to collect required data and monitor project performance.

Further, the IDA's contract with STEG does not require STEG to collect data required for reporting. The Public Authorities Reporting Information System (PARIS) is the online, electronic data entry and collection system used for this reporting. The contract also does not require STEG to perform ongoing monitoring of IDA projects, monitor the accuracy of PILOTs billed, or review that PILOT payments made to taxing jurisdictions are in accordance with the PILOT agreements. In response to our report, the IDA board agreed to revise the contract with STEG to require that STEG performs these functions.

This environment contributes to several deficiencies identified in the report. For our review, we selected a judgmental sample of ten projects that had received financial assistance in 2014 or within the last two years. This sample may not be representative of all projects that are provided financial assistance by the IDA. For these projects we reviewed project applications submitted by STEG to the IDA board requesting financial assistance, the commitments approved by the board, and the project performance reported by STEG officials in the PARIS system.

Our review of the ten projects found:

- Eight of the ten projects failed to meet employment goals.
- The board approved financial assistance to five projects that exceeded the amount requested by the companies.
- Three of the five projects having PILOT agreements are paying incorrect PILOTs to taxing jurisdictions. As a result taxing jurisdictions and special districts did not realize over $164,000 in revenues.
- The amount of financial assistance provided by the IDA was significantly underreported for all but one of the projects.

Each member of the IDA board of directors, as required by Section 2824 (1)(h) of the Public Authorities Law, signed an "Acknowledgement of Fiduciary Duties and Responsibilities". This document affirms that the director will perform his/her duties and responsibilities to the best of their abilities; make reasonable inquiry of management and others with knowledge and expertise to inform their decisions; exercise independent judgment; and attend board and committee meetings and engage fully in the board's decision-making process. This review found instances where the board's actions did not appear to meet these standards.

We found that the IDA board routinely approves all financial assistance applications submitted by STEG and appears to provide little to no oversight or guidance regarding STEG's approach to project selection, review and pre-approval. The IDA responded that board members ask questions and engage in discussions during public meetings; however such discussion is not reflected in board meeting minutes. Yet, we reviewed all board meetings for the period covered by our review, and found that the average board meeting was conducted in 17 minutes, with meetings ranging from seven minutes to 35 minutes in length. During this period the board met twenty times and reviewed and approved 17 new projects. In addition to project approvals, the board would also review financial and audit reports, address property development and conduct other operational and administrative actions. The length of time spent during board meetings is insufficient for the IDA to conduct its regular business and at the same time have meaningful public discussion or debate on the details of a financial assistance package, the merits of a project, or the project's potential for creating or retaining jobs.

The IDA also responded that project applications are provided to board members well in advance of the board meeting at which a vote is rendered. The response indicates that a public hearing is held and a subsequent SEQRA review is performed, and that during the intervening period board members reach out to STEG to address any questions or concerns. However board meeting minutes reflect that approvals to hold a public hearing and conduct a SEQRA review are made at one meeting, and that typically the board approves the projects at the next board meeting the following month. Moreover, board meeting minutes document little, if any public discussion on the merits of proposed projects. Therefore it appears that any debate or discussion that does occur takes place outside of the public view. At the close of the review, the IDA board agreed to encourage discussion of projects in public meetings and to ensure that these discussions are adequately documented in board meeting minutes.

Additionally, we found that certain IDA board members also serve on the board of STEG. This presents opportunity for real or perceived conflicts of interest in terms of negotiating the annual contract between the two organizations and considering applications for financial assistance from companies whose officers and executives serve on the STEG board of directors.

Project Performance Monitoring

The IDA board has no policies and procedures to evaluate if project performance is consistent with the goals and expectations identified in the project application. Also, the IDA's contract with STEG does not require STEG officials to perform ongoing monitoring of IDA projects.

We selected a judgmental sample of ten IDA projects that were active in 2014 or reported as having received financial assistance within the last two years and reviewed employment data reported by the IDA for these projects. We found that one project did not identify any job creation or retention goals in its application for financial assistance. Eight of the nine projects receiving IDA assistance have not met their employment goals. The ten projects were projected to create 2,128 jobs but only reported 1,302 full-time equivalent employees as of December 2013, resulting in a shortfall of 826 jobs, or 39 percent of the projected jobs.

Project Name	Year Approved	Jobs Before IDA Assistance	Jobs Reported 12/31/13	Net Change in Employment	Job Creation Goal	Difference
Yunis-Welliver	2000	0 *	0	0	300	-300
FM Howell	2003	249	203 (through 12/31/10)	-46	23	-69
Dena	2005	22	42***	20	Not provided***	20
DDR	2006	0	627	627	1,750	-1,123
Riverside	2007	70	87	17	30	-13
Clemens Center	2008	16	14	-2	1	-3
Anchor Glass**	2010	315	296	-19	0	-19
Elmira Lodging	2010	0	17 (through 12/31/12)	17	15	2
Plainview	2010	31	16 (through 12/31/12)	-15	6	-21
Arnot	2012	3	0	-3	3	-6
Total		706	1,302	596	2,128	-1,532

* Yunis-Welliver reported zero jobs existed prior to IDA assistance although project involved relocating from another county.

** Anchor Glass did not submit an application to receive financial assistance. Jobs before IDA assistance obtained from previous project completed in 2010.

*** Dena did not provide the expected number of jobs to be created in the application. Dena reported 30 jobs to the IDA as of 12/31/13, but 42 jobs were identified on a Dept. of Labor report for 2013 obtained by the IDA.

**** Plainview reported 0 jobs to the IDA as of 12/31/12, but 16 full time jobs were identified on a separate Empire Zone report for 2012 obtained by the IDA.

Five of these ten companies will receive property tax exemptions over the life of their contracts, in part because of their commitment to create jobs. The IDA responded that five of the ten projects were not undertaken for the purpose of creating jobs, but rather to support the quality of life in Chemung County. However, the IDA's project files do not support this contention and, as indicated above, only the Dena project did not list job creation as a planned impact of the project.

The IDA implemented a recapture policy in February 2012 that enables it to recover the financial assistance provided to a project if the project fails to meet the employment objectives of its agreement with the IDA. None of the ten projects reviewed, however, are subject to the recapture policy since they were all approved prior to its adoption.

We also identified other instances where STEG officials are failing to adequately monitor projects that have received financial assistance. For example, one project applied for financial assistance in 2000 (FM Howell) to build an addition to an existing manufacturing plant at an estimated cost of $1.4 million. In 2003 the size of the project more than tripled from the original application, and the board formally approved and issued $1 million of tax exempt bonds maturing in 2013, and property tax exemptions with a 15 year PILOT agreement. The company reported that it had lost 46 jobs through 2010 and stopped reporting job information to the IDA. Since that time STEG failed to monitor the project or obtain information regarding the PILOT payments or debt service payments. Although there were outstanding bonds through 2013 and a PILOT agreement through 2018, STEG officials considered the project complete in 2010. As a result of our review the IDA found that the taxing jurisdictions began classifying the property as fully taxable in 2012, two years after STEG had considered it complete.

Agreements between the project owner and the IDA do not require project owners to annually report the number of jobs created and retained by the project to the IDA. Another project (DDR) applied for financial assistance in 2006 to demolish existing buildings and construct a shopping center. The IDA board approved sales tax exemptions, low interest bonds and property tax exemptions for the project. The IDA and taxing jurisdictions agreed that a portion of the PILOT payments would be used to pay the principal and interest on the bonds as they matured. As a result, the taxing jurisdictions are foregoing a portion of revenues related to this project until after all bonds have been retired in 2018. The developer estimated that the project would create 1,750 jobs. The developer reported that 17 jobs had been created during 2007 and there were 52 jobs in 2008, after which it refused to provide requested job information to the IDA. STEG officials have attempted to determine the number of jobs that exist on the project and estimate that 627 jobs had been created as of December 2013. The IDA responded that the 1,750 jobs to be created included in the project application was overstated and in error. However, there was no record in the project file to support this, and no revised application was submitted.

In response to this report, the IDA indicated that future lease agreements will require project beneficiaries to provide all required information.

Financial Assistance to Projects

The IDA approved tax exemptions in excess of that requested by the project applicant. When STEG determines that a project is eligible to receive IDA financial assistance, STEG will work with the business to complete the IDA project application and present this to the board.

We found that the IDA approved financial assistance that exceeded the amount requested by companies for five of the ten projects reviewed. For example, one project (Dena) submitted an application in 2005 for financial assistance to modernize an existing hotel, requesting $82,500 in sales tax exemptions. However, the board approved $3.6 million in tax exempt purchases, resulting in sales tax exemptions of $288,000, or more than three times the amount requested by the project. There was no documentation that STEG or the IDA board received a revised or amended request, and no support was provided to explain the difference between the amount requested and the amount approved. STEG officials told us that the project budget included in the project application was incorrect. STEG could not provide documentation to support this position; there was neither a revised budget for the project nor a request to extend sales tax exemptions submitted to the IDA board, and the board did not question the difference between the amount of exemptions requested and approved.

Another project (Yunis-Welliver) requested $175,000 in sales tax exemptions to construct a building and relocate part of its New York State operations to Chemung County. However, the board approved $2.6 million in tax exempt purchases, which resulted in sales tax exemptions of $208,000, or $33,000 greater than that requested in the application. Again, STEG could produce no record to support why the approved sales tax exemptions exceeded the original amount requested. The IDA responded that it will work with project applicants to obtain better project related costs.

The board has not established an adequate process to monitor the sales tax exemptions actually claimed by a project. Nine of the ten projects we reviewed received sales tax exemptions, but STEG officials obtained documentation to determine the actual sales tax exemptions claimed by only one of the projects. For a project to qualify for exemptions from sales and use tax, the IDA must file form ST-60 with the Department of Taxation and Finance to designate the project as an eligible recipient of the IDA sales tax exemption and to stipulate the value of purchases that would be made under this exemption. Project owners are required to annually report the actual sales tax exemptions claimed to the Department of Taxation and Finance on form ST-340. The expectation is that the sales tax exemptions claimed would not exceed the amount of sales tax exemptions authorized.

The IDA does not require project owners to provide it with a copy of the ST-340 and does not verify the actual amount of sales tax exemptions claimed by projects. The IDA had a copy of the ST-340 for only one of the nine projects that received sales tax exemptions (Arnot). For this project, the board approved tax exemptions for purchases of up to $1 million on the ST-60, resulting in sales tax exemptions of up to $80,000. However, the project owner reported a total of $177,066 in sales tax exemptions on the ST-340, over twice the amount approved by the board. There was no record of follow up by STEG officials with the project owner to determine why it was different. STEG officials told us that there was a mistake on the ST-60, and the amount should have been $10 million, but there was no discussion of this reflected in any board meeting minutes and no revised ST-60 prepared and approved. The IDA responded that it will require applicants to seek additional approval if the initial cost projections are going to be exceeded.

Monitoring of PILOTs

Payments in lieu of taxes (PILOTs) are often miscalculated, resulting in incorrect payments made to taxing jurisdictions. The IDA board has not established a process to ensure that PILOTs are properly calculated, billed and paid in accordance with its agreements with project owners. In addition, the IDA's contract with STEG does not require STEG officials to monitor the accuracy of PILOTs billed, or to verify that PILOT payments made to taxing jurisdictions are in accordance with the PILOT agreements. Our review determined that taxing jurisdictions did not receive at least $120,000 in revenues and special districts did not receive at least $43,000 in revenues that should have been paid pursuant to PILOT agreements.

Real property whose title interest is held by an IDA is entitled to an exemption from real property taxes. These exemptions are passed through to assisted businesses. In return, a portion of the real property taxes exempted are paid by the assisted business to impacted taxing jurisdictions in the form of PILOTs. To ensure that these benefits are properly administered, it is essential for the IDA to have an effective process to track the PILOT amounts billed to businesses and to verify payments received by the affected taxing jurisdictions.

The IDA negotiates the terms of PILOT agreements but does not bill project owners for PILOTs. Instead STEG provides a copy of the PILOT agreement to the taxing jurisdictions and relies on the taxing jurisdictions to bill and collect PILOTs based on the agreement terms. STEG officials generally receive a copy of the PILOT bill, but do not verify that the amount billed adheres to the terms of the PILOT agreement. We also found that the IDA does not always verify that taxing jurisdictions are receiving the PILOT revenue to which they are entitled. For the projects with PILOT agreements, a total of 92 PILOT payments were made during the period we reviewed. However, the IDA obtained copies of checks to verify that PILOTs were paid appropriately for only 35 of the payments.

Of the ten projects reviewed, five received property tax exemptions and entered corresponding PILOT agreements. We found that PILOTs were not calculated correctly in accordance with the PILOT agreements for three of the five projects.

For example, one project (Anchor) involved an extension of a PILOT agreement. The company had a PILOT agreement in place since 1993 in exchange for retaining 385 jobs. The company reported that it had lost 70 jobs by 2010, when the initial PILOT agreement ended. In 2010, the company requested an extension on the PILOT through 2015. The new PILOT provided that the amount of the payment would be based on the full taxes owed if the property was assessed at $1 million, although the assessed value of the property was $9.7 million. However, PILOT bills were based on assessed values ranging from $931,953 to $954,288 between 2011 and 2014. This resulted in the company paying taxing jurisdictions nearly $8,000 less than stipulated from 2011 through 2014. The PILOT agreement also specified that special district assessments would not be included in the PILOT calculation. However, fire and sewer district assessments were included in the calculation of the PILOT, resulting in the company not paying $43,000 to the special districts from 2011 through 2014.

Another project (Yunis-Welliver) involved constructing a new building so a company could relocate part of its New York State operations to Chemung County. The PILOT agreement for this project stipulated that the PILOT amount would be based on the full assessed value of the land, and 50 percent of the assessed value of the building. However, the project was incorrectly billed PILOTs equal to 50 percent of the total assessed value of both the land and the building. As a result, the company paid taxing jurisdictions $34,000 less than stipulated from 2007 through 2011. In addition, the company abandoned the project in 2009 and relocated its operations back to its original location outside Chemung County. However STEG officials did not transfer title to the property back to the company or cancel the PILOT agreement and the company continued to receive tax exemptions on the parcel through 2011. As a result, the company received about $121,000 in net tax exemptions for 2009 through 2011 on the abandoned property without providing any jobs for Chemung County. The IDA responded that it continued the PILOT agreement through 2011 for this project because it hoped that the company would return to the property. However, there were no records or documents in the project file that indicated that the board was aware of and approved this practice.

In some cases, we found that projects were overbilled PILOT amounts. For one project (FM Howell) its PILOT payment was incorrectly based on 100 percent of property taxes for the total assessed value of the property, rather than 100 percent of the assessed value of the land and 50 percent of the assessed value of improvements, as stipulated in the PILOT agreement. As a result, the company paid taxing jurisdictions $43,000 more than stipulated from 2006 through 2010. The IDA responded that it would confer with the taxing jurisdictions to verify that the company was billed appropriately, and refund any documented overpayments. The IDA also responded that it would implement procedures to verify that future PILOT payments are properly calculated and billed and to ensure that the IDA is notified when PILOTs are paid.

Data Reporting

Reports reviewed by the IDA board and certified as accurate and complete contain significant data errors and inconsistencies. We found that the IDA has significant errors and inconsistencies in the reports it submits in accordance with the requirements of Public Authorities Law and General Municipal Law. Under its contract with the IDA, STEG officials have the responsibility to accurately report annual information on the IDA's operations in PARIS. Prior to filing this information it is to be presented to the IDA board for its review and approval.

However, for nine of the ten projects the data reported in PARIS relating to financial assistance provided by the IDA, such as tax exemptions and PILOTs, was generally not supported by the source documents. The effect of this misreporting is that the amount of financial assistance being provided by the IDA to private businesses is significantly understated. For the ten projects, reviewed employment data (jobs existing prior to IDA assistance, job creation goals, current jobs) was generally reported accurately.

	Reported in PARIS	Per Source Documents	Difference	Result
Sales Tax Exemption	$218,316	$1,035,466	-$817,150	Understated
Mortgage Recording Tax Exemption	$89,400	$313,342	-$223,942	Understated
Total Property Tax Exemption	$977,180	$1,203,010	-$225,830	Understated
Total PILOT Paid	$467,632	$489,950	-$22,318	Understated

Sales Tax and Mortgage Recording Tax amounts are reported for the year the benefit was received by the project. Property Tax exemptions and PILOT payments are for 2013, or the last year that financial assistance was provided if the project was completed prior to 2013.

For example, one project (Arnot), was provided $89,400 in mortgage recording tax exemptions in 2012 and $177,066 in sales tax exemptions in 2013. While STEG officials reported the correct amount of sales and mortgage recording tax exemptions, they also incorrectly reported that the project received $56,193 in property tax exemptions for 2013. Another project (Riverside) received $160,000 in sales tax exemptions in 2007 and $33,000 in mortgage recording tax exemptions in 2008. No other financial assistance was provided. However STEG officials never reported any sales tax exemption or mortgage recording tax exemption for this project in PARIS, but instead incorrectly reported $127,026 in property tax exemptions in 2013. STEG officials indicated that they routinely report property tax exemptions for projects that receive benefits under other programs, such as Section 485-b of Real Property Tax Law, which is obtained from the municipality, or tax credits under the Empire Zone program. These exemptions should not be reported in PARIS since the tax exemption is not provided by the IDA. The IDA responded that it would adopt procedures to ensure that all future PARIS reporting is accurate and supported by source documents.

Application and Administrative Fees

Since 2012, STEG officials failed to collect more than $327,000 in application and administrative fees due the IDA in accordance with the IDA's Uniform Tax Exemption Policy (UTEP). A project owner that requests financial assistance such as tax exemptions, leaseback transactions or bond financing from the IDA is required to submit a non-refundable application fee of $750 with its project application. STEG has no discretion under its contract to waive or reduce this fee.

We reviewed 19 projects that requested various types of financial assistance from the IDA from January 2012 through August 2014. We found that only 11 of the 19 projects paid the required application fees. As a result, STEG officials failed to collect $6,000 that was owed the IDA, (42 percent of the total.) There is no record that the IDA board approved a waiver of the application fees for these projects, and STEG officials were unable to explain why the application fees were not collected. The IDA responded that it was aware that two of the projects would not pay application fees, yet there is no record that the application fees would be waived for these projects. Further, the IDA provided no additional information as to why application fees were not collected for the other six projects that submitted applications.

The IDA's UTEP also requires projects to pay administrative fees based on the type of assistance provided and the nature of the project. While the UTEP does not specify the basis for how these fees will be determined, STEG officials told us that these fees are based on a percentage of total project costs.

Based on the UTEP and board resolutions, we determined that the IDA should have received approximately $769,000 in administrative fees for the 17 projects provided assistance between January 2012 and August 2014 (one project owner withdrew the request for financial assistance and one project had not closed by August 2014.) However, IDA financial records show the IDA only received $448,000 in administrative fees. This is due to STEG officials negotiating lower administrative fees with 14 of the project applicants and not receiving any fees for two projects (Harmony Water and BG Big Flats). The IDA has no written procedures that indicate these fees may be negotiated. Only one of these projects was presented and approved by the board to pay a lower administrative fee than required by the UTEP. Further, STEG officials were unable to readily provide the basis for how the negotiated fees were determined. The IDA responded that for the two projects that did not pay administrative fees it had approved a variance to its policy for Harmony Water, and that it approved a single administrative fee be charged for BG Big Flats in combination with another project. However, there was no record of these board approvals in either board meeting minutes or the project files.

STEG officials indicated that the ability to negotiate and structure fees on an individual project basis is important when competing for projects. They indicated that fees are always subject to negotiation. However the IDA's UTEP does not provide for negotiation. Moreover, the IDA's agreement with STEG allows for STEG officials "to assist the IDA in negotiations for financial assistance" but does not permit STEG officials to negotiate lower administrative fees without obtaining board approval. The IDA responded that it will take steps to ensure that all board approvals are adequately documented.

The IDA board approved a lower administrative fee for one project (Arnot) primarily because the project was comprised of multiple phases that would extend over several years, and the total project amount would vary based on the actual scope of the project. For this project, the board stipulated that the project developer would provide an affidavit of actual costs incurred at the completion of the first phase of the project and additional costs incurred at the end of each year for the subsequent three years of the project; the IDA's administrative fees would be based on those costs incurred. However, the project developer indicated that he would calculate the administrative fee differently (based on the amount of mortgage obtained), and submitted payment based on that calculation. STEG officials accepted this payment rather than enforce the terms approved by the board.

STEG officials agreed that their controls and procedures over the calculation and collection of application and administrative fees needs to be improved.

Board Conflicts

The composition of the IDA board presents potential conflicts of interest that are not being properly disclosed by board members. The IDA board of directors is comprised of seven members appointed by the Chemung County Legislature. Four of the current members (Santulli, Draxler, Hosey and Quick) are also members of the STEG board of directors. Proper disclosure or recusal is needed when these IDA board members are voting on matters that affect any business conducted between STEG and the IDA. A review of the IDA's 2013 board minutes found that STEG's current contract with the IDA was renewed with two of these members present. Meeting minutes did not indicate that the two board members recused themselves from the discussion or disclosed their relationship with STEG. Further, three IDA board members were absent from this meeting and the affirmative vote of the two conflicted board members was essential to approving the contract. Had these board members properly recused themselves from any discussion or action on the contract's renewal, the board would not have had the quorum needed to conduct official business and could not have voted to approve the contract extension.

The IDA responded that it will confer with its legal counsel to evaluate whether serving on both boards creates a prohibited conflict of interest. This response is disheartening. As indicated, the IDA contracts with STEG to administer the IDA, and any prudent person would view an IDA board member also serving on the board of STEG as presenting a potential conflict of interest.

In addition, we determined that 20 members of the 71-member STEG board are executives or owners of companies that receive or have received financial assistance from the IDA. As discussed in this report, the IDA board routinely accepts all applications submitted, and appears to provide little to no oversight or guidance regarding project selection, review and approval. As a result, there is the appearance that STEG officials are processing and submitting projects submitted by STEG board members for IDA financial assistance with minimal if any independent review and oversight by the IDA board. The IDA responded that STEG's board of directors does not make any determinations as to who is eligible to receive IDA assistance. This position ignores the fact that STEG's president, who serves as the IDA's chief executive officer is making those determinations and presenting recommendations to the IDA board, concerning projects that are related to the companies of STEG's board members.

Other Issues

In conducting this review we learned that in 2006 and 2007 the IDA misused $390,000 in federal funds intended to capitalize a revolving loan fund. The IDA had established the loan program (CREDIT) using $5.3 million in federal Urban Development Action Grant (UDAG) funds. The UDAG agreement specified that the funds were to be used for eligible economic development projects undertaken by eligible applicants. The agreement stated that government or municipal organizations are not eligible, unless the project is for water, sewer or similar services being provided to projects.

However, we found that the IDA used more than $390,000 from the CREDIT fund inappropriately. For example, between March 2006 and January 2007, the IDA paid more than $389,000 to the City of Elmira to encourage the City support an expansion of the Empire Zone boundaries beyond the City limits and to pay interest on the City's federal Section 108 loan. In addition, the IDA used more than $1,000 from the fund in February 2007 to pay its Directors and Officers insurance premiums. The IDA responded that it views the $389,000 paid to the City of Elmira to be within the intent of the use of the UDAG funds, but that it will review the use of these funds with its legal counsel and reimburse the CREDIT fund if the funds were used inappropriately.

Recommendations

1. The board should develop and implement procedures to monitor projects approved for financial assistance and to determine whether job creation goals and expectations are being met.
2. The board should ensure that provisions of the recapture policy apply to all projects and are appropriately enforced.
3. The board should ensure that all required information is obtained from all projects until the terms of financial assistance agreements have been met and financial assistance is no longer being provided.
4. The board should not approve financial assistance that exceeds the amount requested unless adequate records are maintained to justify the amount approved. Such records could include revised project applications, disclosures of increased project scope, or similar explanations as to why additional assistance is warranted.
5. The board should require businesses receiving sales tax exemptions to provide the IDA with ST-340 forms to ensure that the amount of sales tax exemptions used by a project do not exceed the amount authorized in the form ST-60.
6. The board should establish procedures to ensure that payments in lieu of taxes (PILOTs) are properly calculated, billed and paid in accordance with its agreements with project owners.
7. The board should consult with its legal counsel and, as appropriate, take action to recover any underpayments or reimburse any overpayments that are identified in this report.
8. The board should ensure that approved PILOT and lease agreements include specific language requiring that project owners annually report necessary information on jobs required by the IDA.
9. The board should establish and follow procedures to verify that data reported in PARIS is accurate and supported by source documents.
10. The board should ensure that all application fees are remitted by project applicants. If the board determines that an application fee is unnecessary, this decision should be documented in the project files.
11. The board should revise the Uniform Tax Exemption Policy to clearly stipulate the basis for calculating administrative fees for projects.

12. The board should establish and follow procedures to verify that administrative fees are calculated properly in accordance with the Uniform Tax Exemption Policy, and ensure that any provisions for calculating a different fee are approved and documented in the project file.

13. The board should ensure that all administrative fees are appropriately remitted.

14. IDA board members should be cognizant of existing or potential conflicts regarding their responsibilities and take steps to avoid or eliminate such conflicts, such as resigning as board members of other organizations that would present a conflict.

15. IDA board members should publicly disclose any potential conflict of interest that arises, and ensure that appropriate actions are taken, such as recusing themselves from any discussion regarding the conflicted activity.

16. The board should establish appropriate procedures to ensure that all grants and loans obtained by the IDA are used only for their intended purposes and that all program requirements are followed.

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CCIDA
THE CHEMUNG COUNTY
INDUSTRIAL DEVELOPMENT AGENCY

February 4, 2015

Mr. David Kidera, Director
State of New York Authorities Budget Office
PO Box 2076
Albany, New York 12220-0026

RE: NYS Authority Budget Office's Operation Review Chemung County Industrial Development Agency

Dear Mr. Kidera:

I am writing in response to the Authority Budget Office's Operational Review – Chemung County Industrial Development Agency –Draft Report (the "***Report***") emailed to myself and subsequently forwarded to Agency Board (as those terms are defined herein) members on January 12, 2015.

The Chemung County Industrial Development Agency (the "***Agency***") takes very seriously the comments, findings and recommendations made by the Authorities Budget Office (the "***ABO***") in its review of the Agency's operations. The Agency has a proud and successful history of promoting the prosperity and economic welfare of the residents in Chemung County. The Agency strives to promote sustainable economic growth of our community by creating and retaining jobs and facilitating long term capital investments by businesses and institutions.

Please accept this letter as the Agency's response to the Report.

The Agency does not take lightly the ABO's comments that the members of the Agency's Board of Directors (the "***Board***") do not appear to meet the fiduciary duties and responsibilities required by Section 2824(1)(h) of the Public Authorities Law. The Agency's Board is diligent in the fulfillment of its responsibilities and members both individually and collectively take their roles very seriously.

The Report implies that the Agency relies solely on Southern Tier Economic Growth, Inc. ("***STEG***") to select its projects and fails to provide adequate oversight. This, the Report claims, is evidenced by the Board's routine approval of all financial assistance applications submitted coupled with the relatively short duration of its meetings. This is an inaccurate statement[1].

[1] During the course of the audit, the auditors reviewed an application submitted to the Agency by RM14 Holdings, LLC (Calamar) to construct a proposed $9.6 million senior independent living facility in the Village of Horseheads. The Agency rejected this application after several meetings and 6 months of deliberations. As a separate example, the Board invites applicants to appear at meetings in support of their projects and to answer questions from the Board. Such was the case at a recent meeting where the board considered a new project application. Although the auditors asked to participate at the meeting, they failed to appear.

Note 1

While the Agency contracts with STEG to perform certain administrative duties, STEG has no control over the Agency nor does STEG vote on projects presented to the Agency. Prospective applicants are screened by the Agency's executive director to determine whether they are legally eligible for financial assistance. For instance, if an applicant is seeking benefits for a retail project that does not fall into one of the enumerated statutory exemptions, that applicant is so advised and directed to other potential resources for assistance. If an applicant is eligible, the application is presented to the Board.

For qualifying applicants/projects, the applications, containing all of the project information, are provided to the Board well in advance of the meeting at which a vote will be rendered with respect to the undertaking of the project and the conferring of benefits. The Agency's practice, in accordance with its statutory obligations, is to first hold a public hearing relative to the project and then undertake to perform, if it is acting as lead agency, or recognize and adopt the findings of the lead agency, a SEQRA review.

During the intervening period of time, it has been the practice of the members of the Board to review the applications and reach out to the executive director of the Agency with any questions or concerns not readily addressed by the application.

It is also worth noting that certain of the Board's actions do not require lengthy deliberation. For instance, of the 17 projects reviewed by the auditors for the Report, 8 involved requests for financial assistance. With respect to those 8 projects, a total of 26 resolutions were adopted by the board; however 10 of those involved SEQRA resolutions where the Agency was not acting as lead agency but rather accepting, as it is required to do by statute, the findings of the lead agency which undertook a coordinated review. In addition, another 8 resolutions authorized, as required by the NYS General Municipal Law ("***GML***"), the holding of a public hearing. While the Agency does not discount the importance of these actions, it is recognized that the approval of these items, as directed by statute, does not require lengthy deliberation. The remaining 8 resolutions are Approving Resolutions which were approved by the Board based upon their review of the financial application provided to them in advance, comments received, if any, from the public hearings previously conducted and other information shared at the meetings. While the Agency may concede the minutes of it' s Board meeting need to better record discussion had at the meeting, the Agency rejects the proposition of the Report that it routinely approves all financial assistance applications submitted without benefit of review or analysis.

Note 2

The balance of the 17 projects reviewed by the Board during the period reviewed by the ABO's auditors involved somewhat administerial actions such as terminations, mortgage assignments and an award of a contract to the lowest bidder. During that relevant time period, one matter involved a requested deviation from the Agency's UTEP which the minutes reflect was ultimately withdrawn by the Company.

We hope that in the future the economy of Upstate New York, and in particular the Southern Tier, will improve such that the Agency will have a great deal more need to deliberate as it considers economic development opportunities for our community.

Regarding the perceived conflict of interest raised by the Report resulting from members of the Board also serving on the board of directors of STEG, it is noted that five current Board members (Tom Santulli, Donna Draxler, Kim Middaugh, Mike Hosey and Don Quick) are also members of STEG's Board of Directors, however the report mistakenly identifies G. Thomas Tranter as a STEG Board member (p.11). Tom Tranter has not served on STEG's Board of Directors since 2008. It should be further noted that STEG does not provide any direct economic development assistance to businesses or institutions, but rather administers programs under contract on behalf of municipalities and governmental entities such as the Elmira Empire Zone. STEG's board of directors do not make any determinations as to who is eligible, or should receive IDA assistance, or assistance for other forms of incentives, such as the Empire State Development Corporation, START- UP NY, Empire Zones, etc. More importantly, STEG does not determine which applications go before the Agency nor which applications get approved.

Note 3

Agency Board members are judicious in acknowledging any conflicts of interest whether real, potential or perceived while conducting Agency business. All members have completed financial disclosure forms as required by the ABO, participated in mandated Board member training and acknowledged their understanding of their fiduciary responsibilities. The Board will confer with its legal counsel to evaluate whether serving on both boards creates a prohibited conflict of interest and take proper action to resolve any conflicts if necessary.

It is acknowledged that the contractual agreement between the Agency and STEG for administrative services does not sufficiently define STEG's role in collecting data and monitoring project performance on behalf of the Agency; and in particular, with respect to its obligations relative to the Public Authorities Reporting Information System ("***PARIS***"). While the contract does not specifically define, or require STEG to perform those functions on behalf of the Agency, it has been STEG's practice to undertake and perform those functions. Notwithstanding, the Agency will review its contract with STEG and its reporting obligations with respect to PARIS and revise the contract in order to clearly define the obligations and responsibilities of each party relative to fulfilling its compliance requirements under the Public Authorities Law.

With respect to the Report's finding that the Agency failed to properly oversee the collection of PILOT payments, please be advised that the Agency was not aware of requirements, statutory or otherwise, that required it to establish procedures to ensure that PILOT billings are correctly calculated. It has always been the practice of the Agency and the affected taxing jurisdictions that the taxing jurisdictions create, issue and collect PILOT invoices. All monies tendered pursuant to a PILOT invoice or bill are tendered directly to the taxing jurisdictions. The Agency is never in receipt of any of those funds nor has the Agency ever been advised that a project failed to remit a PILOT payment or remitted an improper amount. While the Agency has a statutory obligation to remit any PILOT payments received directly to the taxing jurisdictions, the aforementioned practice eliminates the Agency from receiving any funds. Moreover, the Agency currently reviews PILOT invoices issued by the taxing jurisdictions to ensure that the proper percentage of abatement is used and covers the applicable time period. However given that tax rates may vary on an annual basis, the Agency does not review the calculations but leaves that to the taxing jurisdiction most familiar with the tax rates to calculate the invoice based upon the applicable tax rate.

The GML provides that a delinquent PILOT payment is subject to a late payment and further provides the *taxing jurisdiction* with a right to bring an action to collect any delinquent PILOT payments. Notwithstanding, the Agency was never made aware by the taxing jurisdictions which assumed responsibility for creating, billing and collecting the PILOT payments that there were any issues relative to missed payments.

The Agency recognizes the importance of ensuring that PILOT billings are accurate. As such, the Agency will, effective immediately, direct its staff to meet with the appropriate person or persons at the Chemung County Real Property Tax Office as well as the other affected taxing jurisdictions (schools, municipalities) to arrive at procedures to ensure, going forward, that the calculations for PILOT bills are properly performed.

During the operational review by the ABO, staff learned that certain property governed by a PILOT agreement entered into by F. M. Howell & Company in 2003, which called for portions of the property to remain on the tax roll while other portions be treated as exempt,, was not treated as exempt property by the City assessor, but rather was left on the taxable roll. As a result, a PILOT bill was not generated by the Chemung County Office of Real Property Tax Services, and therefore not reported on PARIS. It is Agency's staff's understanding that at the time of the project, the City Assessor, new to their role, did not know how to treat a portion of a tax parcel exempt while leaving other portions taxable; and therefore determined to leave the entire parcel on the tax rolls but make a manual adjustment to the real property tax assessment to reflect a 50% abatement on the increased assessed value resulting from the real property improvements covered by the PILOT agreement.

The Agency is confident, but will confirm with the taxing jurisdiction, that the company has not been over billed as a result of this construct. If it is determined in this review that F. M. Howell & Company is due any refunds of PILOT/Tax overpayments, that company will be refunded.

In addition, the Agency will work with the County Real Property Tax Office and the City Assessors office to determine how to properly reflect the treatment of this property on the tax rolls such that the appropriate PILOT bill is generated going forward. In addition, the Agency will correct its PARIS reporting for this project for 2009-2011 to accurately input the required tax, PILOT and job dates for this economic development project.

The Agency acknowledges that PARIS can be a valuable tool in monitoring project performance as it relates to job creation goals and financial assistance expectations. As noted in the Report, some Agency contracts do not specifically require project beneficiaries to report jobs annually. The IDA has, and will further ensure that future project documents include this requirement. Many, if not most, Agency transactions are with a real estate holding company where the jobs created or retained are through a business tenant. Leases between property owners and tenants generally do not require the tenant provide job reports. This has caused problems with the Agency's ability to acquire job/wage information from entities it does not contract with; namely, the tenant. The lease transaction with Developers Diversified Realty is sited in the report as an example. Staff shared with the ABO auditors other tools the Agency utilized to monitor projects such as those reports provided to the Empire State Development Corporation ("ESD"), the NYS Office of Community Renewal for projects that receive State economic development assistance. Once such tool is the Business Annual Reports ("***BAR***") required by the ESD for all Empire Zone Certified businesses. The BAR provides information on jobs in addition to valuable information regarding annual payroll and capital investments made by companies which are also performance measures valuable to the Agency. In addition to the Agency's review of these reports and publications, the Agency endeavors to have either its members or staff conduct an annual on-site visit to each project. Notwithstanding its prior efforts to collect and report on job creation (where applicable), the Agency is currently working with its legal counsel to ensure that all future Agency lease agreements providing financial assistance require project beneficiaries provide all required reporting information.

While it is acknowledged that the Agency's reporting in the PARIS system has in some instances been deficient the system can often be cumbersome. Staff reported to the ABO's auditors that they have attempted to learn, understand, report and correct entries in the system, and will continue to participate in ABO training sessions when they are available. In addition, as noted herein, the Agency will require additional reporting information from applicants going forward which will improve its ability to report on PARIS.

With respect to the Report's allegation that Agency projects have not met employment goals, the Report cites the Plainview Associates project. The report is incorrect. Staff shared with ABO staff evidence, as set forth in the BAR, that demonstrated the project tenants of Plainview– Holiday Inn, Anthony's Grill, etc. did in fact create the jobs as projected by the applicant. It should be further noted that 5 of the 10 projects reviewed by ABO Auditors; namely, Dena, Clemens Center, Elmira Lodging, Plainview and Arnot Realty, were undertaken by the Agency for corporate purposes ***not including*** job creation, but rather to support the quality of life of residents and promote recreational opportunities, tourism, business visitors, create workforce housing and generate sales, room and property taxes – all of which are statutorily enumerated corporate purposes of the Agency.

The Agency is proud of many other projects undertaken which promote the health, general welfare and recreational opportunities to the residents of the County. These projects, all in furtherance of the Agency's corporate purposes and permissible under the GML, are not tied to job creation. These projects include financing of Arnot Hospital, St. Joseph's Hospital and expanses of senior living facility at Woodbrook and Bethany Village. In addition the Agency has provided financing to the creation of Corning Community Colleges Airport Corporate park facility as well as an Academic and Workforce development Center in the City of Elmira providing easier access to college education and training opportunities to County residents. The Agency's financing help build modern facilities that will allow Elmira Colleges to expand its student population and educational offerings. Financial Assistance was also provided to the human services organization, Economic Opportunity Program, to provide adequate facilities to serve the disadvantaged populations in our community. Finally, the Agency provided financial assistance to provide state of the art sports and cultural entertainment facilities with the construction of the " First Arena", home of the professional hockey team the Elmira Jackals, and the modernization of the fabulous Clemens Center for the Performing Arts.

The Report identifies five other projects which had job retention and/or creation as goals; namely, Anchor Glass, F. M. Howell, Riverside Realty and Yunis-Welliver. The Yunis-Welliver project was undertaken to support Corning Inc.'s rapid growth that saw its regional labor force add over 1,000 jobs within a few years. Corning, Inc., is New York's premiere technology based manufacturer and maintains its world headquarters in the Southern Tier. Unfortunately, due to market conditions, Corning suffered a rapid decline in a very short period of a time resulting in over 200 lost jobs. However, the Agency elected to retain the PILOT structure for the final two years of the 10 year schedule in hopes that market conditions would improve and the tenant would reoccupy the property it continues to pay rent on today. We are proud that Corning maintains its world headquarters in the Southern Tier and believe the Agency made the correct determination based upon the facts of this case. Regarding the other manufacturing businesses sited for job loss, these businesses strive to compete in what is a very expensive business environment. We are equally proud that Anchor Glass, F. M. Howell and Talisman Energy (Riverside Realty) are able to maintain operations in our community and together employ over 600 people in our community. Numerous businesses across the country, have struggled over the past decade to survive, much less retain and create jobs. The Agency continued to value the creation/retention of these 600 jobs and did not want to risk further layoffs if PILOT benefits were terminated or reduced thereby increasing operating costs to these entities. The upstate New York economy, and in particular the Southern Tier, has struggled significantly in this regard and the Agency's efforts in recognizing those concerns and maintaining a significant number of jobs is commendable and in furtherance of its statutorily enumerated corporate purposes.

Regarding the DDR project, it was acknowledged that the job creation goal of 1,750 new jobs related to the new shopping mall was overstated in the developer's application. This should have been corrected at the time of application, but was recognized by all involved to be an exaggerated goal. However, it was further acknowledged, and the auditors were informed, that job creation was not the primary goal of the DDR project. DDR acquired a 1.2 million sq. ft., 100 acre, 50 year old industrial brownfield site that had stood vacant for over 20 years and served as a symbol of rust belt decline in the heart of the Southern Tier. The property had a reduced assessment of under $7 million in attempts to encourage its redevelopment. Today, DDR and its tenants have invested millions of dollars in new retail operations which generate much needed sales and property tax revenues and created 675 jobs in our community. The Agency's primary goal with this project was the removal of blight in the heart of our community. It is also worth noting that the DDR project is not complete. New retail facilities are constructed annually that generate new jobs and revenue. Several out parcels remain available for future development. While we hope the project will continue to create new jobs – perhaps even exceeding 1,000 over the next few years, even at its current rate this project is an example of the Agency successfully using its powers to eliminate blight, improve the quality of life of its residents, create increased tax revenue for the County and create over 650 jobs. The Report criticized DDR for refusing to provide job information but failed to recognize that DDR did not have the ability to obtain this information from its tenants or businesses that purchased property (Walmart, Kohl's, Cracker Barrel, etc.). Again, as noted herein, the Agency will ensure that its lease agreements require such reporting in the future.

The ABO auditors election to report on 10 of the projects reviewed, failed to include or recognize several projects undertaken by the Agency that have exceeded their employment goals, notwithstanding the auditors' in-depth review. The CVS Distribution Center has created nearly 400 new jobs. While the Report criticizes the Agency for not collecting an administrative fee from CAF USA, the Report failed to acknowledge that the company created over 360 more new jobs than originally projected. General Revenue Corporation likewise created 200 more jobs than originally estimated. In addition, Vulcraft of NY has surpassed its employment projections as has DeMet's Candy which is currently considering expanding.

Economic development is an ongoing effort impacted at all times by the national economy. The Agency is not blind to the fact that certain projects fail to reach projections while others fail altogether. However the Southern Tier has suffered significant economic decline and population losses over the past decade. The Report acknowledges that the 48 active Agency projects have created or retained 6,925 jobs, albeit 573 fewer than reflected in project applications. When measured against the Southern Tier and upstate economic performance overall, we find these job numbers to be encouraging. In addition, as noted in the Report, Agency assisted projects generate \$3.6 million in new property tax revenue annually via PILOT payments.

Regarding the Report's statements that the Agency approves tax exemptions in excess of what is requested by the project applicant; the Agency responds as follows. It is a fact of construction that project costs sometimes exceed initial expectations at time of application. In many of these projects, the numbers included in the application, as well as that required on the ST-60 filed with the New York State, represent only an estimate of what the costs and exemptions will be, as many of these construction projects have not been commenced at the time of the Agency's approval. Once ground is broken, various cost over runs occur due to site conditions, increases in cost of materials (asphalt, steel, equipment, etc...) and sometimes unexpected environmental conditions. It is respectfully submitted that the reality of construction is why the ST-60 only requires an estimate of these costs and benefits. The report cites the Yunis-Welliver project, an \$8.2 million newly constructed office building, exceeded the sales tax exemption approved by the board at time of application by \$33,000. That reflects an increase of \$412,500 additional taxable purchases made in constructing the modern office building or a 5% increase in the projects original cost estimate. It is respectfully submitted that an over-run of \$33,000 in exemptions on an \$8.2 million dollar project is a relatively diminimus amount compared to the resulting economic benefits.

It is acknowledged that the Agency did not collect application fees on certain projects. On two projects sited, application fees were not collected because one was an amendment to a prior lease transaction which was not treated as a new application, and the second was not required by the Agency as a third party (Dick's Sporting Goods) paid a fee which covered the larger project including the referenced application.

In the initial negotiations with representatives of Ernst & Young representing Dick's Sporting Goods, it was agreed that one administrative fee and one application fee would be paid by Dick's Sporting Goods for the entire Field and Stream Store project. The applications for Dick's Sporting Goods and BG Big Flats covered the same costs for the new Field and Stream Store project. The applications were approved separately, because of the legal ownership relationship between the two entities for the store.

Regarding the CAF-USA administrative fee, the amendment to the original Lease Transaction has not been concluded. Upon closure, the fee will be collected. With respect to the Harmony Water project, the Agency approved a variance of its administrative fee policy to allow for the payment of a negotiated $75,000 administrative fee to be collected over a period of 10 years after the lease transaction closed. The project was never constructed and as a result the fee not collected. Based upon the Report's criticism, the IDA Board will consult with its legal counsel to determine the appropriateness and ability to collect this fee.

The IDA is proud of its utilization of administrative fees to build business parks, construct roads, extend utilities, purchase land and build buildings that have retained and created thousands of jobs. The use of agency administrative fees to invest in industrial infrastructure has enabled Chemung County to put forth economic development projects without utilizing public tax dollars.

The Agency agrees that it's fee policy is not clear with respect to the procedure for calculating the fee owed nor is the contractual agreement between the Agency and STEG clear regarding the negotiation of those fees. As discussed in the response to the ABO's recommendations in the appendix, the Agency's fee policy will be revised to clearly establish procedures for calculating the administrative fee and require Board approval for the reduction of any fee. Further, it is acknowledged that the Agency's fees are sometimes negotiated. However, this is done with the full knowledge of the Board but may not be adequately reflected in Board meeting minutes. As noted herein, the Agency will immediately undertake to ensure its minutes more closely capture the discussions that occur at the meetings.

The report concludes with concerns that the Agency may have misused $390,000 of the $5.3 million dollars in the UDAG loan program CREDIT fund it received when Toshiba closed its manufacturing operations in 2004, displacing over 1,000 workers. The Agency used a portion of these funds to facilitate the expansion of the Elmira Empire Zone to economic development projects outside of the City, as well as $1,000 towards IDA Directors and Officers insurance. The expansion of the Empire Zone outside of the city helped facilitate several significant economic development projects such as Synthes USA (400 new Jobs), the retention of X-Gen Pharmaceuticals, the expansion of Sikorsky Aircraft (700 new jobs), Demet's Candy (200 new jobs), CVS Distribution center (400 new jobs), etc. The intent of the UDAG funds was certainly met with these important economic development projects. The balance of UDAG funds, $4.9 million, were used to revitalize a brownfield site in the Town of Southport (Remington Rand), to construct an office building for Talisman Energy, to redevelop a vacant blighted public school building in the City of Elmira into a new Academic and Workforce Development Center, and to construct a 100,000 sq. ft. manufacturing facility for Sikorsky Aircraft that created 700 new jobs over a period of 4 years until the plant closed. The Agency will consult with its legal counsel concerning the use of the CREDIT fund in its Inter-municipal Agreement with the City of Elmira. If it is determined they were used inappropriately the funds will be reimbursed to the CREDIT fund.

This is the first and only time that the operations and procedures of the Agency have been reviewed, other than by independent financial auditors insuring compliance with generally accepted accounting principles procedures. The Agency Board and staff are committed to implementing the recommendations set forth in the Report's appendix, and to establish procedures and policies that improve the Agency's compliance with the Public Authorities Law reporting requirements. The Chemung County Industrial development Agency will continue to promote the economic development opportunities that retain and create jobs in Chemung County and the Southern Tier and to continue to promote the health and economic welfare of its residents as it believes the Report demonstrates it has been doing.

Respectfully,

George E. Miner
Executive Director of the Agency

CC: Agency Board of Directors

APPENDIX

Response to ABO Recommendations

1. *The board should develop and implement procedures to monitor projects approved for financial assistance and to determine whether job creation goals and expectations are being met.*

   The Agency, through its Governance Committee will develop and recommend implementation of formal procedures to monitor projects, job creation goals (where applicable) and other economic development expectations.

2. *The board should ensure that provisions of the recapture policy apply to all projects and are appropriately enforced.*

   The Agency has adopted a Recapture Policy that applies to all projects that receive financial assistance and reviews and applies, and will continue to do so, the policy as it deems appropriate under the circumstances of each case.

3. *The board should ensure that all required information is obtained from all projects until the terms of financial assistance agreements have been met and financial assistance is no longer being provided.*

   Per recommendation #1, the Board will amend their transactional documents to require the submission of required information from all project beneficiaries for the term of their financial assistance.

4. *The board should not approve financial assistance that exceeds the amount requested unless adequate records are maintained to justify the amount approved. Such records could include revised project applications, disclosures of increased project scope, or similar explanations as to why additional assistance is warranted.*

   The Board will work with project applicants to better project related project costs and the Agency will require Applicants to seek additional approval if they are going to exceed the projections.

5. *The board should require businesses receiving sales tax exemptions to provide the IDA with ST-340 forms to ensure that the amount of sales tax exemptions used by a project does not exceed the amount authorized in the form ST-60.*

   All projects receiving some financial assistance in the form of sales tax exemptions will be required to provide the agency with ST-340 forms, to which said reporting will be used to monitor and ensure that sales tax exemptions do not exceed authorized amounts.

6. *The board should establish procedures to ensure that payments in lieu of taxes (PILOTs) are properly calculated, billed and paid in accordance with its agreements with project owners.*

   The Board will meet with the affected taxing jurisdictions to implement procedures for the billing nad collection of PILOT payments to ensure that PILOT payments are properly calculated, billed and paid in accordance with its agreement with project beneficiaries.

7. *The board should consult with its legal counsel and, as appropriate, take action to recover any underpayments or reimburse any overpayments that are identified in this report.*

   The Board will review the matters with the affected taxing jurisdictions first to determine whether there were any over or underpayments. If so, the Board will consult with its legal counsel and determine, as appropriate, whether action, legal or otherwise is needed to recover any underpayments or reimburse any identified overpayments.

8. *The board should ensure that approved PILOT and lease agreements include specific language requiring that project owners annually report necessary information on jobs required by the IDA.*

   The amend its transactional documents to include specific language requiring that project beneficiaries annually report information needed by the Agency to comply with its PARIS reporting requirements.

9. *The board should establish and follow procedures to verify that data reported in PARIS is accurate and supported by source documents.*

   The Board will establish procedures to correct prior deficiencies in PARIS reporting (where able) and adopt procedures to ensure that all future PARIS reporting is accurate and supported by source documents.

10. *The board should ensure that all application fees are remitted by project applicants. If the board determines that an application fee is unnecessary, this decision should be documented in the project files.*

    The board will review and revise its policy and procedures relative to the calculation and collection of both its application and administrative fees, including the process for waiving any or all of such fee(s).

11. *The board should revise the Uniform Tax Exemption Policy to clearly stipulate the basis for calculating administrative fees for projects.*

    See #10 above.

12. *The board should establish and follow procedures to verify that administrative fees are calculated properly in accordance with the Uniform Tax Exemption Policy, and ensure that any provisions for calculating a different fee are approved and documented in the project file.*

    See #10 above.

13. *The board should ensure that all administrative fees are appropriately remitted.*

    See #10 above.

14. *IDA board members should be cognizant of existing or potential conflicts regarding their responsibilities and take steps to avoid or eliminate such conflicts, such as resigning as board members of other organizations that would present a conflict.*

    The Board will continue to strive to be cognizant of any existing or potential conflicts of interest. The Board will meet with its legal counsel to identify actual or potential conflicts regarding individual member's responsibilities and take appropriate steps to avoid, disclose or eliminate such conflicts.

15. *IDA board members should publicly disclose any potential conflict of interest that arises, and ensure that appropriate actions are taken, such as recusing themselves from any discussion regarding the conflicted activity.*

    The Board members will continue to publicly disclose any potential conflict of interest that arises. The board will require that minutes of agency meetings are recorded to better capture the dialogue of the meeting, and that minutes are sent to all board members prior to a meeting for member review and comment.

16. *The board should establish appropriate procedures to ensure that all grants and loans obtained by the IDA are used only for their intended purposes and that all program requirements are followed.*

    The board, through its committees and in consultation with its legal counsel, establish procedures to ensure that all grants and loans obtained by the IDA are used for their intended purposes and that all program requirements are followed.

Authorities Budget Office Comments

1. Contrary to the IDA’s assertion, ABO staff never reviewed or received any application documents for an RMH14 Holdings LLC or a Calamar project. Further, there is no mention of any such project in the board meeting minutes for 2012 through 2014, and no indication of any application fees being paid by such an entity during that period.

2. During the exit conference, IDA officials indicated that they misunderstood the issue presented in the draft report, and that as a result, this section of their response is inaccurate and should be ignored.

3. The IDA indicates that five current board members are also board members of STEG. However, according to a listing of board members on STEG’s web site as of February 12, 2015, only four of the members listed are also IDA board members.