



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Report of Investigation
May 2013

EXECUTIVE SUMMARY

In August 2011, the Inspector General was advised by the New York State Energy Research and Development Authority (NYSERDA) that Route 303 Auto Service, Inc. (Route 303 Auto), the owner of a gas station in Congers, New York, appeared to have submitted fraudulent documentation in support of its grant application to NYSERDA for the installation of alternative fuel pumps and tanks, and had received a grant of \$33,634 based upon the fraudulent submission. Specifically, the Inspector General was advised that Route 303 Auto allegedly submitted a forged letter purporting to be from MRO Pump and Tank, Inc. (MRO), which falsely stated that Route 303 Auto had paid MRO for fuel equipment installation work.

Upon conducting an investigation of this allegation, the Inspector General found that Route 303 Auto did submit fraudulent documentation in support of an application for a \$33,634 grant from NYSERDA for installation of alternative fuel pumps and tanks. The Inspector General further found that while NYSERDA exercised proper oversight of the grant payment process, stronger auditing mechanisms may have revealed inconsistencies in representations Route 303 Auto made to NYSERDA to secure its grant.

The Inspector General referred these findings to the Rockland County District Attorney. On December 5, 2012, Route 303 Auto was charged with Grand Larceny in the Third Degree for Theft of New York State Funds. On April 12, 2013, Route 303 Auto pleaded guilty to the charge and was sentenced to a conditional discharge with full restitution to the state of the \$33,634 in grant money.

INTRODUCTION AND BACKGROUND

NYSERDA's Biofuel Station Initiative Program

NYSERDA is a public benefit corporation established in 1975 to address the state's energy and environmental needs. Initially, NYSERDA's efforts focused solely on research and development with the goal of reducing the state's petroleum use. NYSERDA's current aim is to help New York meet its goals of reducing energy consumption, promoting the use of renewable energy sources, and protecting the

environment. As part of these efforts, NYSERDA's Biofuel Station Initiative Program promotes expanded use of renewable transportation fuels such as E-85 ethanol by increasing the number of retail service stations available to sell biofuels to the general public in New York State. In so doing, the Biofuel Station Initiative Program aims to provide fuel choice at the pump, which can reduce costs to consumers, keep fuel dollars in New York's economy, increase energy security, and reduce harmful emissions like carbon monoxide and greenhouse gases.

The Biofuel Station Initiative Program offers state grants to retail gas station owners and operators throughout the state for the installation of biofuel-related equipment. This funding is available to reimburse eligible retail service station applicants for 50 percent of the cost – up to \$50,000 per site – of installation of biofuel dispensing equipment, storage tanks, and associated piping and equipment.

NYSERDA has publicized funding of its Biofuel Station Initiative Program through Public Opportunity Notices (PONs) posted on its Web site and has advertised through the New York State Association of Convenience Stores and in the New York State Contract Reporter. On May 7, 2007, NYSERDA posted PON 1093, the PON relevant to the instant investigation, announcing the availability of up to \$9 million in grants for the initiative for applications accepted from that date through May 7, 2011.¹ To date, 84 projects have been completed and funded.

Prior to paying grant money, NYSERDA physically verifies that each facility has completed the required measures and is selling biofuel. Such verification was conducted with all 84 projects that have been funded thus far. Of note, should a station cease to sell biofuel during certain reporting periods delineated in the PONs, it is subject to recapture of NYSERDA funds. By these means, NYSERDA, and by extension the public, has complete assurance that it has received the benefit for the grant money, and has a mechanism to recover funds if it ceases to obtain that benefit.

NYSERDA Grant Application Process

Biofuel Station Initiative Program funds are distributed through a grant application process. PON 1093 explained the program requirements for applicants, including eligibility, amount of available funds, and reporting requirements. It also included a program incentive schedule for reimbursement of certain defined costs and set forth station requirements. Applicants were required to submit an applicant checklist and a project application form, both with original signatures. According to PON 1093 and NYSERDA staff, applications are reviewed both by staff and a technical consultant under contract with NYSERDA. The consultant is also responsible for conducting a pre-funding site review.

NYSERDA reviews the submitted information for reasonableness of scope and fuel use estimates. If the consultant's report is approved and funds are available, NYSERDA notifies the applicant that the applicant is eligible for funding. Before issuing

¹ Subsequently, PON 2290 announced the availability of approximately \$5 million in additional funds for applications submitted August 31, 2011, through July 5, 2015. Both PON 1093 and PON 2290 can be found on NYSERDA's Web site, www.nyserdera.ny.gov.

a purchase order to the applicant for funds, the applicant must submit detailed cost estimates for the installation of equipment.

Upon completion of the installation, the applicant is responsible to notify NYSERDA, after which the NYSERDA consultant performs a final site inspection. The consultant drafts a post-construction inspection report, including a description of the project, results of the site inspection, photographs of the site, and follow-up recommendations to NYSERDA where relevant, such as obtaining any documentation that the applicant failed to provide during the inspection. To the extent proper documentation has not been supplied at the time of the consultant's site inspection, NYSERDA staff work with applicants to ensure that all documentation has been properly submitted.² Once the consultant's report reflects that the job is complete and documentation properly reflects that the work has been paid for by the applicant, NYSERDA staff notifies the applicant that the project is approved for funding. That funding is provided within 30 days after the applicant's submission of an invoice to NYSERDA.

THE INSPECTOR GENERAL'S INVESTIGATION FINDS ILLEGAL CONDUCT BY ROUTE 303 AUTO

The Route 303 Auto Grant Application

Vincent DeStaso and Francesco "Frank" Savino are the principals of Route 303 Auto.³ On November 20, 2008, Route 303 Auto submitted a Biofuel Station Initiative Program application to NYSERDA in response to PON 1093, seeking a grant for the installation of ethanol tanks at its station in Congers. The application and accompanying checklist, which were completed by hand, listed DeStaso as Route 303 Auto's "point of contact." The application was signed by DeStaso, who identified himself as the firm's "Prez." Route 303's submission included itemized costs for ethanol tank installation work to be performed by MRO.

The Inspector General's investigation confirmed that, in or about August 2008, Route 303 Auto contracted with MRO to install ethanol tanks and pumps, which are covered costs under the NYSERDA grant. MRO also performed non-covered work at the gas station. The work began in or about December 2008 and was completed in February 2010 at a total cost, according to MRO, in excess of \$583,000. On October 26, 2010, NYSERDA's consultant, having conducted a final site inspection, provided NYSERDA its report which noted that facilities for dispensing E-85 alternative fuel had been installed and that E-85 was being sold. The consultant also noted that "[m]ore detailed cost documentation is required including cancelled checks and invoices."

On November 24, 2010, David McCabe, Alternative Fuel Vehicle Project Coordinator for NYSERDA, informed Route 303's DeStaso by e-mail that NYSERDA had not received complete documentation regarding work performed by, and payment

² NYSERDA staff informed the Inspector General that, in order to minimize consultant costs, NYSERDA – not the consultant – is responsible for any follow-up interaction with the applicant to obtain documents.

³ In an October 20, 2009, filing with the State Liquor Authority relating to the gas station selling alcohol, DeStaso is listed as Vice President and also as an Officer, Stockholder, and Manager of Route 303 Auto. In the same listing, Savino listed himself as an Officer, Stockholder, and Manager.

made to, MRO and other contractors. As noted, such documentation is required before a Biofuel Station Initiative Program grant payment can be made. Lacking any response, on December 31, 2010, McCabe sent another e-mail to DeStaso, informing him that NYSERDA was still awaiting various documents, including proof of payment to MRO.

On January 3, 2011, NYSERDA received 36 pages of documents transmitted by facsimile. While no cover page accompanied the fax, all of the page headers contained the word “vinny,” and NYSERDA records reflect that the fax was transmitted from Route 303 Auto’s phone number. The faxed documents included printouts of the November 24, 2010, and December 31, 2010 e-mails from McCabe to DeStaso; copies of partial bank account statements for a JPMorgan Chase account for the period February 27, 2010, through March 31, 2010, reflecting canceled checks paid to MRO and another contractor; photocopies of individual checks to MRO and another contractor; and a letter dated February 7, 2010, purportedly from MRO stating that the work by MRO was complete.

Following its review of this submission, NYSERDA issued \$33,624 in grant money to Route 303 Auto by check dated March 2, 2011. The check was deposited on March 4, 2011, to the same JPMorgan Chase Bank account reflected on the bank statements submitted to NYSERDA on January 3, 2011. The printed endorsement reads “For Deposit Only Route 303 Auto Service Inc.”

MRO Questions NYSERDA Grant Payment to Route 303 Auto

Contrary to the faxed documentation and unbeknownst to NYSERDA, Route 303 had not paid MRO in full for the installation work. According to MRO owner Michael Oliva, Route 303 had failed to pay MRO approximately \$264,000 of the money it was owed, and on February 24, 2010, MRO filed a lien against Route 303 Auto property for that amount.⁴ Several days later, Oliva, who was familiar with Biofuel Station Initiative Program grant procedures, called McCabe at NYSERDA to report that Route 303 still owed him money. Oliva said that McCabe told him not to worry as NYSERDA required documentation that contractors had been paid before grant funds could be issued. In fact, as noted, NYSERDA did not make a grant to Route 303 until more than a year later, after it had received the purported documentation of Route 303’s payment to MRO.

Around July 2011, while legal proceedings related to the dispute between MRO and Route 303 were continuing, Oliva learned from DeStaso that Route 303 had received the grant funds from NYSERDA. Knowing he had not provided either Route 303 or NYSERDA with documentation that MRO had been paid in full for its installation work, Oliva contacted NYSERDA and inquired about the grant to Route 303. In explaining its actions, NYSERDA informed Oliva of the February 7, 2010 letter it had received by fax purporting to be from MRO. After obtaining a copy of the letter from NYSERDA, Oliva contacted NYSERDA’s counsel advising that the letter was a forgery. In that conversation with NYSERDA’s counsel, Oliva also stated that he had faxed a copy of MRO’s lien against Route 303 to NYSERDA in March 2010. NYSERDA attempted

⁴ Following arbitration, in late 2011 a settlement was reached under which Route 303 paid MRO an additional sum of money and the lien was removed.

unsuccessfully to find this faxed copy of MRO's lien in NYSERDA's files.⁵ NYSERDA then referred the matter to the Inspector General.

Purported MRO Letter of February 7, 2010 Found to be Fraudulent

The Inspector General analyzed the faxed February 7, 2010 letter that bore MRO letterhead and interviewed both Oliva and his secretary, Linda Thurston, about the document. The signature itself appeared to reflect that Thurston had signed the letter on Oliva's behalf: a lower case "it" appeared in a circle next to a signature for Oliva in the same handwriting as the "It." The print quality of the fax was typically imperfect, and nothing about it obviously reflected that it was not authentic. Oliva, however, informed the Inspector General that he had never directed such a letter to be drafted or signed on his behalf, and he believed the letter was not genuine. Thurston specifically informed the Inspector General that she had neither drafted nor signed the letter, and that while the signature handwriting appeared to be hers, the signature line appeared to have been copied and pasted from another letter that she had signed on Oliva's behalf.

Further examination of the letter revealed that the signature was in fact pasted onto MRO letterhead. For example, there are dots around the signature where none exist elsewhere on the document. Based on the testimony of Oliva and Thurston and the condition of the document, the Inspector General determined that the letter was a forgery and referred the matter to the Rockland County District Attorney's Office. On December 5, 2012, Route 303 Auto was charged with Grand Larceny in the Third Degree for Theft of New York State Funds. On April 12, 2013, Route 303 Auto pleaded guilty to the charge and was sentenced to a conditional discharge with full restitution to the state of the \$33,634 in grant money.

FINDINGS AND RECOMMENDATIONS

The Inspector General found that Route 303 Auto Service, the corporate owner of a gas station in Congers, New York, submitted fraudulent documentation in support of an application it filed with NYSERDA for a \$33,634 grant. The Inspector General referred its investigation findings to the Rockland County District Attorney, and Route 303 Auto was charged with Grand Larceny in the Third Degree for Theft of New York State Funds. On April 12, 2013, Route 303 Auto pleaded guilty to the charge and was sentenced to a conditional discharge with full restitution to the state of the \$33,634 in grant money.

The Inspector General also found that NYSERDA's review of grant applicant payments to contractors was proper, but that stronger auditing mechanisms may have revealed inconsistencies in representations Route 303 Auto made to NYSERDA to secure its grant.

⁵ Following this search of the files, NYSERDA's Information Technology department searched the electronic facsimile files and located Oliva's March 2010 fax of the lien.

The Inspector General recommended that NYSERDA review its grant award oversight process and that random audits of grants be conducted to ensure the integrity of the grant program. The Inspector General also recommended that NYSERDA require every grantee-owner to submit a certification to NYSERDA prior to the issuance of a grant award certifying that the work under the grant is completed and that the funds were expended consistent with the terms and conditions of the grant documents to ensure that the monies have been used for the intended purpose of the program.

RESPONSE BY NYSERDA

In a letter dated April 2, 2013, NYSERDA responded to this report. NYSERDA thanked the Inspector General for the thorough investigation of Route 303 Auto that culminated in its prosecution and repayment of grant monies. NYSERDA will implement the Inspector General's recommendations to require an owner certification regarding the use of the grant money and to conduct periodic random audits.

NYSERDA also informed the Inspector General of a significant change to the Biofuel Station Initiative Program. Specifically, during the pendency of the Inspector General's investigation, NYSERDA analyzed the Biofuel Station Initiative Program and developed a plan to be implemented in the near future to transform it to a performance-based fixed-incentive program, in which an applicant would be eligible to receive a flat incentive upon completion of the biofuel installation and verification that the biofuel is being dispensed to the public. This new method will significantly reduce administrative costs resulting in a net savings of approximately \$200,000-\$340,000 to be used to fund additional biofuel stations thereby increasing the benefit to the public.