U.S. Department of Energy
Office of Inspector General
Office of Audits and Inspections

Audit Report

The Department of Energy's American Recovery and Reinvestment Act – New Jersey State Energy Program

OAS-RA-L-11-07

April 2011

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United States Government **Department of Energy**

Memorandum

DATE: April 15, 2011 Audit Report Number: OAS-RA-L-11-07

REPLY TO
ATTN OF: IG-34 (A10RA035)

SUBJECT: Report on "The Department of Energy's American Recovery and Reinvestment Act – New Jersey State Energy Program"

TO: Acting Assistant Secretary for Energy Efficiency and Renewable Energy

INTRODUCTION AND OBJECTIVE

The Department of Energy's (Department) Office of Energy Efficiency and Renewable Energy (EERE) provides grants to states, territories and the District of Columbia (states) in support of their energy priorities through the State Energy Program (SEP). Based on population and energy consumption, and after a review of proposed projects, EERE allocated a total of $3.1 billion in American Recovery and Reinvestment Act of 2009 (Recovery Act) funds to the states. The grant awards were designed to help states achieve SEP Recovery Act objectives, including preserving and creating jobs; saving energy; increasing renewable energy sources; and reducing greenhouse gas emissions. EERE program guidance held each state responsible for administering the SEP and for implementing sound internal controls over the use of Recovery Act funds.

The State of New Jersey's (New Jersey) Board of Public Utilities (BPU) was assigned responsibility for New Jersey's SEP. BPU received $73.6 million of SEP Recovery Act funds – a 96-fold increase over New Jersey's Fiscal Year (FY) 2009 funding of $768,000. BPU planned to fund $20.6 million in State grants, $36 million in Memorandums of Understanding (MOU) with other State entities, about $16 million in energy rebates, and budgeted about $1 million in administrative costs. Per the Recovery Act, the Department was required to obligate the funds by September 30, 2010. The State was to have spent the funds by April 30, 2012, the date specified in the grant agreement. As part of the Office of Inspector General's strategy for reviewing the Department's implementation of the Recovery Act, we initiated this review to determine whether New Jersey had internal controls in place to ensure that the goals of the SEP and Recovery Act would be accomplished efficiently and effectively.

CONCLUSIONS AND OBSERVATIONS

We found that New Jersey had developed and implemented a monitoring and tracking system designed to ensure that Recovery Act funding was accounted for and properly tracked. The State had also hired additional staff to assist in handling the significant workload increase associated with the huge influx of Recovery Act funding.

However, consistent with our findings at the Department-level and various other states, we found that New Jersey had not made significant progress in expending Recovery Act SEP funds. Delays associated with complying with various regulatory requirements and procedural issues have adversely affected the State's ability to meet the Recovery Act goal of targeting projects that can be started expeditiously. Specifically, we found that more than a year after being granted access to Recovery Act funds for the SEP, BPU had encountered significant delays with implementing projects and initiatives and expending funds. In fact, according to EERE, as of January 31, 2011, New Jersey had only expended about $8.2 million or 11 percent of allocated SEP Recovery Act funds. It may be difficult for BPU to spend all the SEP Recovery Act funds within Department deadlines as a result of the slow spending rate to date and the fact that at least one subproject's planned completion date extends to within days of the Department's April 2012 deadline for spending the Recovery Act funds.

Grants for State Sponsored Renewable Energy and Energy Efficiency Projects

New Jersey experienced delays in awarding and expending $20.6 million in Grants for State Sponsored Renewable Energy and Energy Efficiency Projects (State Grants). As of October 2010, BPU had yet to award one of its seven State Grants and had expended less than $1 million in State Grant funding. This occurred, in part, because of the time it took for the Department to provide and BPU to incorporate guidance for meeting Recovery Act requirements into the State's standard agreement. Specifically, BPU had to develop terms to cover monthly reporting, National Environmental Policy Act (NEPA), Buy American Act references, and the mandatory flow down requirements for sub-recipients into New Jersey's standard agreement terms and conditions. BPU officials told us that they did not receive final guidance from the Department until December 2009, thus delaying issuance of the final agreements.

The time required to comply with NEPA requirements had also adversely impacted project implementation and the overall pace of spending. BPU officials told us that they had to obtain NEPA approval from the Department for all Recovery Act projects. Although BPU received its funding allocation for the State Grants in August 2009, it did not submit the required paperwork for a NEPA determination by the Department until March 2010, 7 months later. In April 2010, the Department concluded that one of the projects required further NEPA analysis due to potential environment impact. During the audit, we expressed concern to the Department and New Jersey officials that it may be difficult for the project to be completed by the April 30, 2012, deadline. BPU replaced the at-risk project and submitted NEPA documentation to the Department in November 2010.

Memorandums of Understandings with State Agencies

New Jersey also experienced delays in implementing MOUs with other State agencies for energy efficiency and renewable energy projects. For example, BPU was not able to implement a $6 million MOU with the New Jersey Office of Energy Savings for installing energy efficient equipment in State facilities until August 2010. BPU attributed the delays to the time required to conduct project energy audits before installing energy efficient measures and to completion of other priority Recovery Act related tasks. The Office of Energy Savings' project experienced other challenges that have further extended the completion date for one of the subprojects to within several days of the April 30, 2012, Recovery Act project completion deadline. Should the completion date slip, any costs not incurred by the April 30, 2012, date specified in the agreement, may not be reimbursable to New Jersey, as outlined in the grant agreement.

Regulatory Requirements and Other Matters

The Department and BPU officials informed us that regulatory requirements which had not previously affected the SEP contributed to delays in selecting Recovery Act projects. Specifically, the requirements of the Davis-Bacon Act, National Historic Preservation Act, Buy American provisions of the Recovery Act, and NEPA have been applied to all Recovery Act projects. BPU officials stated that Recovery Act projects were delayed while additional internal controls were implemented to ensure compliance with these requirements. For example, applicability of the Davis-Bacon Act delayed BPU's residential programs to ensure that contractors and subcontractors would be paid local prevailing wages.

In addition, BPU noted that the development of a Recovery Act implementation plan, coupled with a limited staff and a transition in leadership within the Governor's office, impeded its ability to expend Recovery Act funding in a more timely and effective manner. BPU officials explained that there was a steep learning curve associated with understanding and incorporating the many Departmental requirements related to the implementation of the Recovery Act, such as additional controls, tracking, and reporting requirements. BPU officials also identified a State hiring freeze as an additional impediment.

SUGGESTED ACTIONS

Because of the delay in starting projects, we suggest that the Department and New Jersey closely monitor SEP spending in order to meet Recovery Act goals and ensure that all funds are expended by Department deadlines.

No formal recommendations are being made in this report and a response is not required. We appreciate the cooperation of your staff and the various Departmental Elements that provided information or assistance.

Daniel M. Weeber

Daniel M. Weeber, Director
Environment, Technology, and
Corporate Audits Division
Office of Inspector General

Attachment

cc: Chief of Staff
Assistant Director, Office of Risk Management, CF-80
Audit Resolution Specialist, Office of Risk Management, CF-80
Team Leader, Office of Risk Management, CF-80
Audit Liaison, Energy Efficiency and Renewable Energy, EE-3A
Audit Liaison, National Energy Technology Laboratory

SCOPE AND METHODOLOGY

The audit was performed from April 2010 to January 2011. The scope of the audit was limited to the State of New Jersey's (New Jersey) State Energy Program (SEP). We conducted work at New Jersey's Bureau of Public Utilities (BPU) in Trenton and New Brunswick, New Jersey, and obtained information from the Department of Energy's (Department) Office of Energy Efficiency and Renewable Energy, and the National Energy Technology Laboratory (NETL). To accomplish the audit objective, we:

- Reviewed Federal regulations and Departmental guidance and information related to the SEP and the American Recovery and Reinvestment Act of 2009 (Recovery Act);

- Reviewed New Jersey State legislation, plans and procedures related to SEP and the Recovery Act;

- Reviewed New Jersey's documents for sub-recipients of Recovery Act funds;

- Interviewed personnel from the offices of New Jersey's BPU, Treasury, Division of Law, and State Auditor; and,

- Held discussions with the NETL Project Officer responsible for New Jersey's SEP Program.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings based on our audit objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit. We did not rely on computer processed data to accomplish our audit objective.

We briefed Department officials on January 12, 2011, and New Jersey officials on January 14, 2011. Department officials waived an exit conference.

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