



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

Special Report

Recent Events Related to Ecotality, Inc.



OAS-RA-14-01


October 2013



Department of Energy
Washington, DC 20585

October 31, 2013

MEMORANDUM FOR THE SECRETARY

FROM: 
Gregory H. Friedman
Inspector General

SUBJECT: INFORMATION: Special Report on "Recent Events Related to Ecotality, Inc."

BACKGROUND

The Department of Energy's Vehicle Technologies Program awarded three financial assistance awards to subsidiary companies of Ecotality, Inc. over a 6-year period. This included two multi-year projects awarded in 2005 and 2011, valued at about \$35 million to evaluate and test specific vehicles. Ecotality also received an *American Recovery and Reinvestment Act of 2009* (Recovery Act) grant for about \$100 million to deploy an electric vehicle (EV) charging infrastructure and to collect and analyze EV usage information. For each award, Ecotality was required to share in the cost of the projects, 20 percent for the vehicle testing awards and 50 percent for the Recovery Act grant.

In our audit of the funding to Ecotality, *The Department of Energy Vehicle Technologies Program's \$135 Million in Funding to Ecotality, Inc.* (OAS-RA-13-29, July 2013), we found that the Department's management and administration of Ecotality's awards could have been improved. On August 7, 2013, shortly after the release of our audit report, Ecotality informed the Department that it was in financial distress and may not be able to meet its obligations under the Recovery Act award. The Department responded on August 8, 2013, by suspending payment under that award and directing Ecotality not to incur additional costs. Ecotality then filed a notice of "other events" with the U.S. Securities and Exchange Commission (SEC) on August 12, 2013, disclosing that the Company had experienced certain material adverse financial-related developments that significantly impacted its ability to meet its ongoing obligations. On September 16, 2013, Ecotality filed a petition for Chapter 11 Bankruptcy.

Prior to Ecotality's Chapter 11 filing, we initiated this review to determine whether the Department was aware of, and had disclosed to the Office of Inspector General, pertinent events that occurred prior to the completion of our previous audit related to Ecotality's ability to meet its obligations. We also sought to determine whether the Department was effectively managing Ecotality's awards in light of recent events.

RESULTS OF REVIEW

We found that the Department had not fully disclosed known concerns regarding Ecotality's ability to meet its EV project obligations to the Office of Inspector General prior to completion

of our previous audit. Information that raised questions about Ecotality's ability to meet its project goals, including completing planned EV charger installations and the collection of EV usage data, was not provided even though the data had a readily apparent connection to our in-process audit. The Department became aware of the EV project concerns at about the same time that the Program was preparing a response to a draft of our July 2013 audit report.

Program officials asserted that the failure to disclose the information regarding Ecotality's difficulties was unintended. Nothing came to our attention to the contrary; however, we are deeply concerned because the information directly related to the objective of our audit, to determine whether the Department had effectively awarded and managed funding to Ecotality. The disclosure of issues that could have impacted project completion would have led us to perform additional audit procedures to evaluate Ecotality's ability to fulfill its obligations under the Recovery Act award. These issues also could have impacted our overall conclusions regarding Ecotality's performance under the award. In response, Department officials stated that they had always strived to fully disclose everything requested and needed for the audit and never intended to omit anything of interest to the Office of Inspector General.

While the Department moved swiftly to suspend funding of Ecotality's Recovery Act award, it had not taken similar action for the remaining ongoing Ecotality project. Notably, the Department had not suspended payments under Ecotality's 2011, \$26 million award to test EVs. Even though certain mitigating actions had been initiated, we found that the Department had not formally reviewed and documented its determination that suspension was not appropriate for the 2011 award.

Disclosure of Project Concerns

We concluded that the timeline of events demonstrates that there was adequate opportunity for the Department to provide information about its concerns regarding Ecotality's ability to meet project objectives prior to the time the Office of Inspector General audit report was finalized. Specifically:

- May 21, 2013 – The Department became aware that Ecotality was not on track to meet its September 2013 milestone for completing charging station installations.
- June 14, 2013 – Department officials notified Ecotality that it would be required to submit a corrective action plan to address problems associated with the pace of EV charger installations.
- July 9, 2013 – The Department provided official comments on our draft report, about a month after notifying Ecotality that it would be required to prepare a corrective action plan. In fact, in its comments, the Department asserted that previous award modifications, discussed in our July 2013 audit report, made Ecotality's production and installation goals achievable.

Department officials stated that they did not think that the information was relevant to our audit, which was still in process at the time. They also told us that, while they thought that the

information merited attention on their part, they did not believe that the situation was dire because Ecotality had not indicated in communications prior to August 7, 2013, that the Company was in financial distress. In fact, Ecotality had recently asserted that it had received approximately \$7.5 million in capital that would have supported the completion of its obligations under the Recovery Act project. Department officials, in response to questions regarding why the information was not disclosed to us, contended that it was their understanding that they were only responsible for providing feedback on our draft report's recommendations.

EV Project Difficulties

For 2013, Ecotality asserted that it was planning to increase its installation rate to meet milestones in the award agreement. However, as early as May 2013, Department officials concluded that Ecotality would be unable to complete installations on schedule and would not achieve required data collection milestones. As a result, in June 2013, the Department notified Ecotality that it would be required to complete a corrective action plan describing how it would meet the overall award requirements. As part of the corrective action plan, the Department required Ecotality to provide several specific documents, including a certification of financial commitment. The Department received the requested documentation and was considering the proposed corrective actions when Ecotality made its SEC disclosure in August 2013.

Our analysis of documentation submitted by Ecotality with the corrective action plan confirmed concerns regarding its ability to complete the Recovery Act project. In particular, the documentation revealed that:

- Ecotality would be unable to provide the minimum required data for about 420 charging stations based on its internally developed deployment projections. Ecotality's most recent project plan included collecting a minimum of 3 months of data from all deployed charging stations. As noted in our previous audit, this 3-month minimum was significantly lower than the original project target to collect at least 16 months of data from each installed unit. Ecotality proposed extending the deployment milestone from September 2013 to December 2013, when the project would end, as part of its corrective action plan response. Ecotality also proposed changing the project's infrastructure requirements to allow 13,000 EV chargers to be either residential or commercial rather than including at least 8,000 residential and 5,000 commercial units as required by the award. These changes, specifically including the changes in the distribution of residential and commercial units, were important to the project's goals. They would have further limited, if not virtually eliminated, data collection for certain units. As noted in our previous audit report, these types of changes would impact the quantity and perhaps the overall quality of usage data gathering and analyses. Furthermore, the Department had not formally analyzed the impact of the decreased data collection and analysis periods for a significant percentage of installed units or the ability to achieve overall project goals.
- The cost for some commercial EV chargers was about 200 percent higher than the original budgeted cost per unit, and about 20 percent higher than the estimate in the finalized budget. Department officials cited cost overruns and charger modifications as

contributing factors in Ecotality's potential inability to meet its project obligations. In addition, Ecotality had received reimbursement for all 200 of this type of charger, of which only 107 had been installed as of August 2013.

- Although spending was in line with projections, installations had fallen significantly behind schedule. Specifically, installations were to be completed by the end of September 2013. Based on projections previously provided to us by Ecotality in January 2013, the Company was on track from a financial standpoint. According to the scheduled spending rate at that time, Ecotality would have spent about \$98 million by August 2013. The Company also stated that it would have only 32 commercial installations remaining as of August 2013 with all residential stations completed. Based on the documentation subsequently submitted by Ecotality to the Department in July 2013, however, these installations turned out to be drastically behind schedule. And, the planned increase in installation rates had not materialized as about 1,000 commercial units remained to be installed. In a memorandum discussing the need for a corrective action plan, a Department official noted that the necessary installation rate for completion was about one-half to one-seventh of what was needed for commercial EV chargers.

In summary, Ecotality's submission revealed data collection concerns, cost overruns, and charger installation delays, issues that were highly relevant to our earlier audit. More importantly, the submission raised serious questions as to whether the nearly \$100 million Recovery Act project would be fully successful in meeting project expectations. In September 2013, Department officials commented that they did not plan to approve the proposed corrective action plan from Ecotality as written, and the plan would have required significant modifications. As previously noted, Ecotality had submitted the corrective action plan to the Department, but it had not been approved by the Department at the time of the August SEC filing and subsequent bankruptcy petition.

Notice of Financial Concern

On August 7, 2013, 13 days after issuance of our audit report, Ecotality notified the Department that it had become increasingly difficult to raise needed capital and that it may not be able to fulfill its operational obligations, including its Department-funded Recovery Act project. Over the next 2 days, Ecotality informed Department officials that it had hired a consulting firm for financial and restructuring advice and that additional funding being pursued by the Company had not been forthcoming. Department officials informed us that during this timeframe, Ecotality also asked them to withhold payment on its most recent invoice submission for about \$1 million, made 8 days prior to the notification. Department officials said they were not certain why this request was made, but told us that the Company indicated that it did not want to appear to be receiving money immediately after it had notified the Department about its financial difficulties.

After receiving notification of Ecotality's August SEC filing from non-Department sources, we followed up with Department officials who told us that they had no prior indication that Ecotality was in financial distress. Although the Department asked Ecotality for a financial commitment letter in June 2013, officials indicated that this was not in response to financial concerns, but rather this was standard business practice in dealing with general project concerns. Ecotality sent the Department a financial commitment letter on July 5, 2013, which noted that the

Company had established a \$7.5 million reserve, of which a portion would be used to fund operations including obligations remaining under its Recovery Act project. Ecotality sent the financial commitment letter to the Department just 38 days prior to its August 12, 2013, filing with the SEC, indicating it had financial concerns. Further, Ecotality had publicly disclosed that it had acquired significant funding to support ongoing operations in June 2013.

To its credit, on August 8, 2013, the Department suspended payments for the Recovery Act award after receiving notification of financial concerns from Ecotality. In particular, Ecotality was notified that it was not authorized to incur any new costs or obligations under the award while the Department investigated the situation and a determination could be made on whether the award should continue. As of August 14, 2013, Department officials stated that Ecotality had not provided them information beyond that made available to the general public concerning the status of the \$7.5 million reserve or its current financial status. On September 16, 2013, Ecotality filed a petition for Chapter 11 Bankruptcy.

Vehicle Testing Award

Despite concerns about Ecotality's viability and its actions to suspend the Recovery Act award, the Department continued funding the \$26 million advanced vehicle testing project awarded in 2011. Funding for the award was separated into five separate budget periods, with the award scheduled to end in September 2016. When discussing the possibility of suspension, Department officials told us:

- They did not have a legal basis to suspend the award because the project had progressed in accordance with its terms and conditions and there was not a material non-compliance;
- The risk to the Government was minimal because the vast majority of the Company's non-Federal cost-share was provided by third parties;
- In-process vehicle testing activities were permitted to proceed in order to protect the value of Federal investment in tests that were underway;
- Ecotality provided assurances that the project was not affected by the Company's financial difficulties; and
- They directed Ecotality not to purchase additional testing vehicles or equipment.

This information notwithstanding, we are concerned that the Department had not formally reviewed and documented its determination on Ecotality's ability to comply with its 2011 award requirements. Specifically, in regard to the Department's statement that it had directed Ecotality not to purchase additional vehicles, we found that this requirement was conveyed in an informal email. In fact, on August 13, 2013, the day after its SEC disclosure regarding financial concerns, Ecotality requested advanced payment from the Department to purchase additional vehicles noting "cash shortage" concerns. The Department responded by email stating, "given the current situation...we should hold off on acquiring additional vehicles," which constituted the extent of the "direction" referenced by Department officials. Additionally, while we understand the

Department is bound by legal and award requirements, the terms and conditions of Ecotality's 2011 award stated that upon occurrence of insolvency, bankruptcy or receivership issues, the Department reserves the right to conduct a review to determine compliance with the required elements of the award, to include cost-share, progress towards technical project objectives, and submission of required reports. Ecotality's current and future financial uncertainty underscores the importance of formalizing reviews and documenting decision-making processes to ensure that the Department has taken every action available to safeguard taxpayer dollars and initiate suspension actions if necessary in the future. Department officials told us that in light of the recent bankruptcy filing, Ecotality's ability to perform on the 2011 award would be reassessed.

Status of Awards

For the Recovery Act award, even though \$2.5 million in unexpended funds remained as of the date of the suspension, Department officials stated that Ecotality claimed it would need about \$10.3 million to complete the project. We were unable to substantiate this projection. As of the August 2013 suspension, Ecotality had been reimbursed for about \$97.5 million of its \$100 million award.

In January 2013, Ecotality requested a 1-year extension for its 2011 award through January 2014, to complete required tasks in its first budget period. This request was approved by the Department. According to the last progress report submitted in July 2013, Ecotality had purchased 14 vehicles with its project funding between January and June 2013 and continued testing on other previously purchased vehicles. Additionally, Ecotality continued submitting invoices for reimbursement, with three invoices submitted between August 27, 2013, and September 23, 2013, all within 45 days of the August SEC filing.

After receiving the recent reimbursement requests, Department officials withheld payment on the invoices pending further review. On October 1, 2013, management officials notified us that the Department had the ability to continue its hold on payments in anticipation that funds may be due under the Recovery Act award. Those officials noted, however, that they elected not to do so because Ecotality's performance on this award had been satisfactory and because they did not wish to risk disruption or termination of testing activities. As previously noted, considering the financial condition of Ecotality, we believe that the project objectives could still be in jeopardy. As of October 2013, Ecotality had been reimbursed about \$2.7 million of the \$6 million it was authorized to spend during the first budget period.

Favorable Actions and Path Forward

Management told us that as a result of our July 2013 audit report, it had taken action designed to improve financial assistance award management. Specifically, Department officials distributed a memorandum to project management officials that addressed opportunities to enhance project management practices. The memorandum focused on weaknesses in the areas of documenting alternatives reviewed as well as the allowability, allocability and reasonableness of third party in-kind cost-share. The memorandum further directed the project management officials to fully consider alternatives and the corresponding implications to the Government and to ensure that the negative and positive aspects of various options are documented. In regard to cost-share, the memorandum stated that project management officials should ensure proposals for third party,

in-kind contributions are assessed and documented within technical evaluations of costs. Those evaluations should include the value of the project to the Department, assumptions or data used for analyses, rationale for approval of cost-share contributions, and references to applicable sections of Federal regulations. Finally, for both areas of emphasis, the memorandum stated that project management officials should ensure completed documentation was entered into appropriate Department databases.

In addition, Department officials reiterated that the non-disclosure was not intentional, but was based on a misunderstanding of when audit work is considered complete. In particular, Department officials noted that once the draft audit report was issued, they assumed the audit was complete and had not considered the information about the corrective action plan to be relevant. In response to this information, the Office of Inspector General will work with Department officials to ensure overall audit responsibilities and timeframes are understood.

RECOMMENDATIONS

Given concerns about Ecotality's ability to meet its financial assistance award obligations, even with Federal funding, we recommend the Assistant Secretary for Energy Efficiency and Renewable Energy:

1. Determine the impact of Ecotality's financial condition on the objectives of its multiple ongoing financial assistance awards;
2. Formally document decisions related to Ecotality's ongoing award for vehicle testing in light of its recent notification of financial concerns and its ability to sustain operations; and
3. Provide training to personnel to ensure that all pertinent information is disclosed to the Office of Inspector General over the course of future reviews.

MANAGEMENT REACTION

Management concurred with our recommendations and indicated that it had completed or initiated certain corrective actions. Regarding Recommendation 1, management stated it had immediately responded to Ecotality's notification of financial concerns. The comments also stated that through the bankruptcy proceedings, substantially all of Ecotality's assets were subsequently acquired by three entities, two of which purchased assets pertaining to Ecotality's financial assistance awards with the Department. Department officials informed us that the entities have indicated an intention to seek a novation of the agreements and to continue performing the projects. Accordingly, management stated it would work closely with these entities and the Department of Justice toward a result that fulfills the objectives of the awards. Completion is anticipated in December 2013. For Recommendation 2, management formally documented the rationale and consideration for not suspending the vehicle testing award and how it managed the award after Ecotality filed for bankruptcy. Management also stated in response to Recommendation 3 that it had distributed the latest version of Department Order 221.2A, *Cooperation with the Office of Inspector General*, and had planned to conduct training in this area for its Federal and contractor staff.

Management's response stated that Department officials relied on a memorandum from the Office of Inspector General that stated the audit was performed between October 2012 and May 2013 and an entrance document which indicated that the audit verification phase was completed when the audit report was drafted. Management also stated that it first became aware that the audit had been extended beyond the verification phase during recent discussions and that it is committed to working closely with the Office of Inspector General to ensure that audit timeframes are fully understood.

AUDITOR COMMENTS

Management provided corrective actions that were responsive to our recommendations. Regarding the sale of Ecotality's assets and the intention of other entities to continue the funded projects, we concluded that the Department's stated approach of working with those acquiring entities to ensure the fulfillment of the projects' objectives was responsive to Recommendation 1. Similarly, other Department actions taken and planned were responsive to our recommendations.

Although management stated that it had relied on audit timeframes identified in our draft report and an entrance document, the Office of Inspector General had noted in its communication to Department officials that draft documents did not represent its final position. Further, the Office of Inspector General held multiple meetings with officials in which it was communicated that the audit had not been finalized. As noted in our report, the information not communicated to the Office of Inspector General was pertinent to our previous review, would have led us to conduct additional audit procedures, and could have altered our audit conclusions. In addition, we did not extend the previous audit beyond the original timeframes as asserted by Department officials. In fact, we initiated this separate, subsequent review in response to information that had not been disclosed during our previous audit.

Management's comments are included in the Attachment.

Attachment

cc: Deputy Secretary
Acting Under Secretary for Science and Energy
Assistant Secretary for Energy Efficiency and Renewable Energy
Chief of Staff




Department of Energy

Washington, DC 20585

October 21, 2013

MEMORANDUM FOR: GREGORY H. FRIEDMAN
INSPECTOR GENERAL FOR AUDITS
OFFICE OF INSPECTOR GENERAL

FROM: KATHLEEN B. FRIEDMAN 
DEPUTY ASSISTANT SECRETARY FOR ENERGY EFFICIENCY
ENERGY EFFICIENCY AND RENEWABLE ENERGY

SUBJECT: Office of Energy Efficiency and Renewable Energy (EERE) Response to
Draft Special Report, "Recent Events Related to Ecotality, Inc.," dated
October 2013

The Office of Energy Efficiency and Renewable Energy (EERE) appreciates the opportunity to work with the Office of the Inspector General (OIG) to improve financial assistance award administration and review and comment on the draft report. EERE is committed to transparently and accurately responding to OIG information and data requests with reliable, useful and timely information. EERE would like to provide some clarifications regarding concerns in the OIG report that EERE did not disclose information to the OIG prior to completion of the previous audit.

The OIG has conducted two audits (OAS-RA-12-11 and OAS-RA-13-29) involving Ecotality's American Recovery and Reinvestment Act (Recovery Act) project spanning nearly two years and covering the majority of project accomplishments and reimbursements.

In the latest audit, EERE personnel relied on the OIG memorandum of May 31, 2013, which stated, "The audit was performed between October 2012 and May 2013, at the Department's Headquarters in Washington DC and Ecotality, Inc.'s (recipient) office in Phoenix, Arizona." In addition, the OIG audit entrance document of October 10, 2012, indicated the audit verification phase was completed when the audit report was drafted. EERE personnel first became aware that the OIG had extended its audit beyond the audit verification phase and publication of the final audit report during recent discussions with OIG officials. Moving forward, EERE is committed to working closely with OIG to ensure that audit timeframes are fully understood.

RECOMMENDATIONS: EERE concurs with all three recommendations in the OIG's report.

The OIG report identified three EERE awards with Ecotality subsidiaries. Two of the awards are currently ongoing and the other, successfully completed on March 31, 2013, is not an ongoing financial assistance award and is therefore not addressed in our response to recommendations. For clarity in responding to the OIG recommendations:

- **"EV Project"** refers to the Recovery Act grant "Recovery Act - Electric Drive Vehicle Demonstration and Vehicle Infrastructure Evaluation." The project's objective is to collect and analyze usage data for a large population of plug-in electric vehicles (PEVs) and charging infrastructure.
- **"AVTE Project"** refers to the Annual Appropriation Cooperative Agreement "Advanced Vehicle Testing and Evaluation." The AVTE project's objective is to perform vehicle fuel economy,



degradation, and system reliability testing of commercially available, early production, and pre-production advanced technology vehicles.

RECOMMENDATION #1: *Determine the impact of Ecotality's financial condition on the objectives of its multiple ongoing financial assistance awards.*

RESPONSE: CONCUR

EV Project: On August 7, 2013, Ecotality notified DOE contracting officials that it might be unable to meet its financial obligations under the EV Project. Within 24 hours, DOE reviewed the impact of this risk on the ability to achieve project objectives, and suspended any incurrence of additional costs under the EV Project award to minimize risk or impact to federal funding.

AVTE Project: When Ecotality notified DOE the company was in financial difficulty, EERE and the National Energy Technology Laboratory considered suspending payments under the award. They decided not to suspend payments because:

- Ecotality's performance under the award was satisfactory (including but not limited to, provision of the non-federal cost share, most of which is provided by parties other than Ecotality);
- Initiation of new vehicle testing was placed on hold (DOE has control over testing plans and vehicle purchases under the award - vehicle testing can take many months, the "hold" suspended new vehicles from entering the testing process);
- Suspending payment could jeopardize the completion of testing activities already underway; and
- The project was progressing in accordance with the award terms and conditions and the legal basis to take action under 10 CFR 600.352 to suspend the award was uncertain.

On September 16, 2013, Ecotality and its U.S. subsidiaries filed for relief under Chapter 11 of the Federal Bankruptcy Code. On October 9, 2013, the Bankruptcy Court approved the sale of substantially all of Ecotality's assets to three separate entities, two of which purchased federally funded assets related to the EV and AVTE Projects. Car Charging Group, Inc. won the auction for the BLINK Network and other assets related to the EV Project, and Intertek Group won the auction for the assets related to the AVTE Project. Both entities have indicated an intention to seek a novation of the relevant assistance agreements, and to continue performing the projects. The Department will work closely with these entities and the Department of Justice toward a result that fulfills the objectives of the awards and protects the interests of the United States.

Close out date: Anticipated December 2013

RECOMMENDATION #2: *Formally document decisions related to Ecotality's ongoing award for vehicle testing in light of its recent notification of financial concerns and its ability to sustain operations.*

RESPONSE: CONCUR

EERE formally documented the rationale and considerations for not suspending the Ecotality AVTE award, and how it managed the award after Ecotality filed for bankruptcy, in a Memorandum to File dated October 9, 2013, and provided it to the DOE OIG on the same day.

Close out date: October 9, 2013

RECOMMENDATION #3: *Provide training to personnel to ensure that all pertinent information is disclosed to the Office of Inspector General over the course of future reviews.*

RESPONSE: CONCUR

EERE distributed the latest version of DOE Order 221.2A, "Cooperation with the Office of Inspector General," to all EERE staff on October 3, 2013. EERE has scheduled training on working with the OIG for headquarters federal and contractor staff on October 24, 2013, and will schedule this training for Golden Field Office staff in the near future. NETL has had the training before, and is in the process of scheduling additional training.

Close out date: Anticipated end of October 2013

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