



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 – Massachusetts  
State Energy Program



OAS-RA-11-06

March 2011



**Department of Energy**  
Washington, DC 20585

March 22, 2011

**MEMORANDUM FOR THE ACTING ASSISTANT SECRETARY, ENERGY EFFICIENCY  
AND RENEWABLE ENERGY**

**FROM:**   
George W. Collard  
Assistant Inspector General  
for Audits  
Office of Inspector General

**SUBJECT:** INFORMATION: Audit Report on "The Department of Energy's  
American Recovery and Reinvestment Act – Massachusetts State  
Energy Program"

**BACKGROUND**

The Department of Energy's (Department) State Energy Program (SEP) provides grants to states, territories, and the District of Columbia (states) to support their energy priorities. The SEP allows the states to implement energy efficiency and renewable energy projects that meet their unique energy needs and emphasizes the state's role as the administrator for the program. The American Recovery and Reinvestment Act of 2009 (Recovery Act) significantly expanded the SEP by providing an additional \$3.1 billion for states' projects. The Commonwealth of Massachusetts' Department of Energy Resources (Massachusetts) was allocated \$54.9 million in SEP funds under the Recovery Act – a more than 72-fold increase over its Fiscal Year 2008 SEP grant of \$753,000. As specified by the Department in its grant agreement and program guidance, SEP funding was to be obligated by September 30, 2010, and spent by April 30, 2012.

Massachusetts planned to use its grant funds to undertake activities that would preserve and create jobs, save energy, increase renewable energy sources, and reduce greenhouse gas emissions. The Department required Massachusetts to have sound internal controls under the SEP, which became even more important with the increase in funding under the Recovery Act. Because of the states' important role in the implementation of the Recovery Act, we initiated this review to determine whether Massachusetts had internal controls in place to provide assurance that the goals of the SEP and Recovery Act would be accomplished efficiently and effectively.

**RESULTS OF AUDIT**

Massachusetts had, for the most part, implemented processes and controls necessary to manage its SEP Recovery Act funding. For example, Massachusetts employed a project selection process designed to accelerate project implementation and achieve SEP Recovery Act goals. This allowed Massachusetts to disburse \$26.4 million (about 48 percent) of its SEP Recovery Act funds by January 31, 2011. However, we observed that the accomplishment of SEP

Recovery Act goals could be hindered by Massachusetts' incomplete plans for monitoring grant activities. We also found that, contrary to reports that 97 percent of Massachusetts' SEP Recovery Act funding had been obligated, obligations were overstated as contracts for certain projects had not actually been executed. As such, the funds were not available to provide economic stimulus activity as soon as anticipated.

### Sub-recipient Monitoring

We found that, although it had draft plans, Massachusetts had not finalized Recovery Act sub-recipient oversight plans and procedures. Specifically, Massachusetts had not completed its plans for site visits to the sub-recipients that received funding directly from Massachusetts. It also had not finalized the selection methodology for visiting the more than 100 entities that received funding from the sub-recipients (referred to as second-level sub-recipients). In addition, Massachusetts had not determined whether additional staff would be required to properly implement its oversight activities.

Although Massachusetts planned to perform monitoring site visits to all direct sub-recipients and a select number of second-level sub-recipients, it had not defined when and how often such visits would occur. Massachusetts officials indicated that they planned to visit every direct sub-recipient each quarter. However, they had not finalized this approach or developed a definitive schedule, and did not begin conducting initial visits until October 2010. As for second-level sub-recipients, Massachusetts officials told us that they determined monitoring would need to be done on a sample basis, given the large number of such recipients. However, Massachusetts had not developed a sampling methodology to identify how second-level sub-recipients would be selected. While Massachusetts' monitoring documents state that site visits would be conducted periodically, specific site visit schedules and selection criteria are necessary to ensure consistent, objective execution of site visits.

Further, Massachusetts had yet to make a decision on whether additional staff would be needed for conducting site visits. Massachusetts developed and provided us with internal procedures for performing monitoring site visits; procedures which appeared, if properly implemented, to be sufficient to address the issues of primary concern under the Recovery Act. However, Massachusetts officials told us that they had not decided whether it would be necessary to hire additional staff to help implement these procedures. Until the necessary arrangements for performing and staffing site visits are finalized, Massachusetts lacks assurance that such visits will be completed in a timely manner, an activity essential to preventing or detecting inappropriate activities and expenditures.

### Status of Obligations

We also noted that Massachusetts' obligations, as defined and subsequently clarified by the Department, were overstated. For example, as of June 24, 2010, Massachusetts' SEP Recovery Act funds were reported as 97 percent obligated even though at least 43 percent, or approximately \$23.8 million, did not have executed contracts in place. While actual obligations have since been brought closer in line with reported obligations, as of September 30, 2010, obligations were still overstated by about 6 percent. Specifically, the funding for two projects

under Massachusetts' High Performance Buildings (HPB) program were reported as obligated even though these projects did not have executed contracts. Under Massachusetts' HPB program, one of its 3 major categories of SEP Recovery Act projects, Massachusetts reported that it had obligated \$16.25 million to 11 discrete projects. However, as of September 30, 2010, the date the Department designated to have all Recovery Act funds obligated, 2 of these 11 projects still did not have executed contracts. Specifically, its United Teen Equality Center project valued at \$1.9 million and its Hawthorne Hotel project valued at \$1.4 million did not have executed contracts. Instead, Massachusetts had Memorandums of Understanding in place, which it understood met the definition for funds being obligated, even though a separate contract still needed to be executed to release the funds.

It is critical that obligations are accurately reported. The Department has stated that obligations by grantees to sub-recipients is a key performance metric that demonstrates that contracts are executed, projects are underway, and jobs are being created or retained, thereby positively impacting economic recovery. Inaccurate reporting of key performance metrics adversely affects management's ability to determine the impact of Recovery Act efforts, and, where necessary, direct remedial or corrective actions.

#### Departmental Guidance

The concerns addressed in this report can be attributed, at least in part, to insufficient guidance from the Department. Specifically, the Department did not provide timely guidance pertaining to sub-recipient monitoring. In addition, the Department's initial guidance did not adequately define an obligation.

As we noted in our status report on [\*The Department of Energy's State Energy Program Formula Grants Awarded under the American Recovery and Reinvestment Act\*](#) (OAS-RA-10-17, September 2010) (See Attachment 2), the Department had not issued sub-recipient monitoring guidance to the states. Although the Department subsequently developed monitoring guidance that became effective on October 26, 2010, Massachusetts officials asserted that more timely formal guidance would have enabled them to incorporate and implement this guidance into their own monitoring plans sooner. In particular, Massachusetts officials indicated that they had a "final draft" monitoring plan in place as of August 2010, but they were waiting for guidance from the Department so that they could finalize the plan and determine the frequency of site visits and finalize their hiring needs. Guidance from the Department was particularly important because, according to Massachusetts officials, they lacked prior monitoring experience since they had not made grants as large as those made possible by the allocation of Recovery Act funds. Also, they stated that most of their prior SEP funding went to developing energy policy and, therefore, had fewer monitoring requirements.

Further, additional clarity in the definition of an obligation may have helped Massachusetts more accurately report its funds obligated. The Department defined an obligation as a "binding commitment" in formal guidance issued in March 2010. Massachusetts officials, however, stated their belief that this definition was not specific and allowed for interpretation. According to the Department and Massachusetts officials, reporting obligations is a new metric for SEP activities. As such, formal guidance, to include a specific definition or examples, was needed to clarify

questions regarding the definition of an obligation. However, it was not until September 20, 2010, that the Department provided formal guidance that defined in more detail what constituted an obligation.

The Department, in responding to an initial draft of this report, stated that it provided additional guidance to Massachusetts regarding site visits and the definition of an obligation prior to issuing formal guidance. Specifically, it asserted that telephone discussions were held with Massachusetts officials in early March 2010, that included guidance about how to perform site visits and clarification of what constituted an obligation. In addition, in a letter to SEP grantees in April 2010 to congratulate them for their progress, inform them of upcoming milestones, and offer technical assistance, the Department mentioned that an obligation consists of "funds executed in contracts." While the Department contends that these steps were sufficient to ensure consistent understanding of obligations, Massachusetts officials indicated that they could have benefited from more specificity in the Department's guidance.

#### Other Factors

Other factors also contributed to the situations described in our report. In particular, it took longer than anticipated for Massachusetts to finalize its contracts on all of its projects, a factor that delayed its efforts to implement its monitoring guidance. Additionally, the Department's oversight of Massachusetts did not include validation of amounts claimed as obligated.

Massachusetts officials told us that they initially focused their efforts on developing and signing agreements and contracts to disburse the Recovery Act funds quickly. After completing the procurement process, Massachusetts officials explained that they planned to devote all of their resources to developing plans for monitoring. However, Massachusetts officials noted that Recovery Act requirements turned out to be more complex than anticipated, resulting in delays in finalizing projects. Specifically, and as we noted in our status report on *The Department of Energy's State Energy Program Formula Grants Awarded under the American Recovery and Reinvestment Act*, the mandates placed on the states for Recovery Act reporting, National Environmental Policy Act, National Historical Preservation Act, Buy American provisions of the Recovery Act, and the Davis-Bacon Act required additional time and effort before contracts could be awarded. Massachusetts officials noted they had to become familiar with these requirements in order to help their sub-recipients understand them. Also, the Department issued multiple guidance documents that had to be analyzed and then incorporated into contracts, an effort which also required additional time.

With respect to amounts claimed as obligated, the Department did not adequately verify the status of obligations by the grantee. Specifically, the Department did not ensure that the amount of funds obligated matched the amount of funds from executed contracts. States discussed the obligation status of their funds with the Department during weekly phone calls or other communication. In addition, Department monitoring visits typically included a review of the status of the grantee's obligations. Although Department officials stated that those conducting visits are to cross-check the obligation status of funds with the states' progress on activities and spending as part of the monitoring process, we found that this did not always occur. Given that

the Department has determined that obligations by grantees to sub-recipients is a key performance metric of jobs being created or retained and demonstrates a positive impact on the economy, thorough verification of funds reported as obligated is essential.

## RECOMMENDATIONS

To address the problems outlined in our report, we recommend that the Assistant Secretary, Energy Efficiency and Renewable Energy (EERE) ensure that:

1. Massachusetts finalizes its SEP site visit monitoring activities, to include:
  - a. Developing a schedule for direct sub-recipient site visits;
  - b. Developing a sampling methodology for second-level sub-recipient site visits; and,
  - c. Ensuring that staff and/or contractors are in place to perform each site visit.
2. Obligations reported by the states accurately reflect executed contracts.

## MANAGEMENT COMMENTS

EERE concurred with the recommendations and stated that it will continue to closely oversee the work carried out under Massachusetts' SEP, including regular on-site visits, frequent communication and reviews of all reports. Further, management stated that Massachusetts is refining or developing its internal controls and is implementing a system to identify and monitor high-risk sub-recipients. In addition, EERE plans to verify that appropriate and acceptable sub-recipient monitoring methodologies are in place and to validate their monitoring model during their next monitoring visit to Massachusetts. Finally, EERE agreed to ensure that site visits, when conducted, are performed effectively and obligations are reported accurately. EERE's comments are included in Attachment 3.

Massachusetts officials asserted that they had addressed and rectified all of our report's findings, including finalizing a monitoring plan, by December 2010. Massachusetts' comments indicated that, although contracts had not been executed, sub-recipients were, in fact, implementing staffing plans on the basis of commitments. Additionally, Massachusetts officials stated that they were fully aware of the implementation schedules of SEP projects and had implemented a site monitoring plan for the few projects that had actual work. Massachusetts' comments are included in Attachment 4.

## AUDITOR RESPONSE

EERE's and Massachusetts' comments are responsive to our recommendations. Regarding Massachusetts' observation that sub-recipients were executing staffing plans prior to the execution of contracts, our work has shown, in the past, that actual expenditures are an appropriate measure of the amount of work performed under the Recovery Act. An executed

contract is generally recognized as required before funds can be expended. Concerning Massachusetts' statement that it had implemented its site monitoring plan for a few projects; when we inquired, Massachusetts indicated that it had some monitoring site visits planned for the near future, but had not yet performed any visits. Further, until a schedule is in place and finalized, there is no assurance that site visits will be performed consistently and timely.

We also considered Massachusetts' technical comments and made revisions to the report, as appropriate.

cc: Deputy Secretary  
Acting Under Secretary of Energy  
Associate Deputy Secretary  
Chief of Staff

## **OBJECTIVE, SCOPE AND METHODOLOGY**

### **OBJECTIVE**

The objective of this audit was to determine whether the Commonwealth of Massachusetts' Department of Energy Resources (Massachusetts) had internal controls in place to provide assurance that the goals of the State Energy Program (SEP) and the American Recovery and Reinvestment Act of 2009 (Recovery Act) will be accomplished efficiently and effectively.

### **SCOPE**

The audit was performed from February 2010 to December 2010, at the Massachusetts Executive Office of Energy and Environmental Affairs, Department of Energy Resources, in Boston, Massachusetts. We also obtained information from the National Energy Technology Laboratory (NETL) in Morgantown, West Virginia. The audit scope was limited to Massachusetts' SEP.

### **METHODOLOGY**

To accomplish the audit objective, we:

- Reviewed Federal regulations and Department of Energy (Department) guidance related to the SEP and Recovery Act;
- Reviewed State legislation related to the SEP in the Commonwealth of Massachusetts;
- Reviewed Massachusetts' SEP annual plan for Recovery Act funds;
- Reviewed Massachusetts' grantee documents for recipients of Recovery Act funds;
- Held discussions with Massachusetts' personnel; and,
- Held discussions with program officials from NETL.

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 assessed the Department's implementation of the *Government Performance and Results Act of 1993* and determined that it had established performance measures for the management of the SEP and the Recovery Act. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions 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. Finally, we did not rely on computer-processed data to accomplish our audit objective.

We held an exit conference with Massachusetts officials on March 8, 2011, and Department officials waived the exit conference.

## **RELATED AUDIT REPORTS**

### **Office of Inspector General Reports**

- [\*The Department of Energy's State Energy Program Formula Grants Awarded under the American Recovery and Reinvestment Act\*](#), (OAS-RA-10-17, September 2010). This review found that a number of impediments adversely impacted State Energy Program (SEP) spending rates, and, thus, prevented the program from achieving significant economic and energy savings benefits. In particular, compliance with various regulatory requirements slowed spending. As of July 9, 2010, 74 percent of the \$3.1 billion in SEP American Recovery and Reinvestment Act of 2009 (Recovery Act) funding had been approved for spending, but of that amount, only about 7.2 percent had actually been expended. We also identified issues and challenges with preparing projected and reported energy savings for the SEP. Finally, we noted that while the Office of Energy Efficiency and Renewable Energy had recently taken action to address project monitoring shortfalls at the State level, several States' monitoring plans remained incomplete.
- [\*The Department of Energy's American Recovery and Reinvestment Act – Florida State Energy Program\*](#), (OAS-RA-10-12, June 2010). Our review determined that weaknesses in the implementation of SEP Recovery Act projects had impacted and likely will continue to impact Florida's ability to meet the goals of the SEP and the Recovery Act. Specifically, Florida used approximately \$8.3 million to pay for activities that did not meet the intent of the Recovery Act to create new or save existing jobs. Additionally, Florida did not meet state goals to obligate all Recovery Act funds by January 1, 2010, thus delaying projects and preventing them from achieving the desired stimulative, economic impact. We also found that Florida had not ensured that 7 of the 18 award requirements promulgated by the Department of Energy had been passed down to sub-recipients of the award, as required. Further, we identified internal control weaknesses in the State's Solar Energy System Incentives Program that could jeopardize the program and increase the risk of fraud, waste, and abuse. In response to our review, Florida took corrective action to incorporate the additional award requirements in sub-recipient documents and instituted additional controls to correct the internal control weaknesses we identified.
- [\*Management Controls over the Department of Energy's American Recovery and Reinvestment Act – Louisiana State Energy Program\*](#), (OAS-RA-10-09, May 2010). Our review identified certain risks associated with Louisiana's implementation of the Recovery Act that could impact its ability to meet the goals of the SEP and the Recovery Act. Specifically, the State had not: established controls to prevent double payments for Recovery Act energy conservation rebates to individuals who may have been approved or received payment under an existing State rebate program; developed contingency plans to replace projects in the event that they did not receive timely National Environmental Policy Act approval to enable the expenditure of Recovery Act funds before the April 2012 performance deadline; or, fully documented and monitored, in the past, the status of internally managed SEP projects as required by both EERE and Louisiana policies and

procedures. We concluded that Louisiana's ability to meet the SEP Recovery Act objectives in a transparent manner could be hindered unless it successfully addressed the above risks.



**Department of Energy**  
Washington, DC 20585

MEMORANDUM FOR: Ricky R. Haas  
Deputy Inspector General  
For Audit Services  
Office of Inspector General

FROM:  Kathleen B. Hogan  
Deputy Assistant Secretary  
For Energy Efficiency  
Office of Technology Development  
Energy Efficiency and Renewable Energy

SUBJECT: Response to the Office of Inspector General Draft Report on  
"The Department of Energy's American Recovery and Reinvestment Act  
– Massachusetts State Energy Program"

The Office of Energy Efficiency and Renewable Energy (EERE) appreciates the opportunity to review the Office of Inspector General's (IG) Draft Audit Report "The Department of Energy's American Recovery and Reinvestment Act – Massachusetts State Energy Program."

The Department of Energy (Department) takes very seriously its responsibility to oversee and manage each of our Recovery Act projects to ensure that funds are being well spent to stimulate the economy and promote America's clean energy future. The Department concurs with the IG's recommendations and will continue to closely oversee the work carried out under Massachusetts's State Energy Program. The Department will continue to conduct regular on-site visits at least twice per year moving forward. In addition, the Department will continue to communicate frequently with the state and will review all monthly and quarterly state reports.

The Department also agrees with the Inspector General that having appropriate internal controls and procedures in place is necessary for any grant program to ensure that funds are being used appropriately. The Department has implemented a robust monitoring plan for all states, including tracking findings across the country to identify any trends among grantees.

Whenever necessary, the Department acts quickly to address any issues, including increasing oversight and providing technical assistance. Massachusetts is, with the help of the Department and the IG, refining or developing the internal controls necessary to address the weaknesses identified in the report. The state is now implementing a system to identify and monitor any high-risk sub-recipients under the program. Please see the attached "Response to Inspector General Draft Audit Report on the 'The Department of Energy's American and Recovery and Reinvestment Act – Massachusetts State Energy Program'" for the Department's detailed reply to the IG's recommendations.

EERE and the National Energy Technology Laboratory will continue to oversee the Recovery Act State Energy Program (SEP) efforts of the Massachusetts Department of Energy Resources with regular on-site visits, desk monitoring and frequent communication.

Should you have any questions, please contact Anna Maria Garcia at 202-287-1399.

Attachment



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Response to Inspector General Draft Audit Report on the  
“The Department of Energy’s American and Recovery and Reinvestment Act –  
Massachusetts State Energy Program”

Recommendation 1

Ensure that Massachusetts finalizes its SEP visit monitoring activities, to include:

- a. Developing a schedule for direct sub-recipient site visits;
- b. Developing a sampling methodology for second-level sub-recipient site visits; and
- c. Ensuring that staff and/or contractors are in place to perform each site visit.

Response

Concur

During the August 23-27, 2010, monitoring visit, the Department’s project officer reviewed the state’s sub-recipient monitoring plan. He found that Massachusetts had not yet begun sub-recipient monitoring, and that the state’s monitoring manual did not establish consistent guidelines for the process. The manual did not require monitoring of all projects and set forth periodic monitoring for projects. There were also no instructions for how to set up and conduct monitoring visits, leaving project managers to each develop their own processes. Finally, the manual did not directly refer to the applicable Federal regulations and program guidance documents.

During the visit and in the associated monitoring report, the Department recommended that Massachusetts finalize its monitoring procedures and checklists and incorporate them into its monitoring manual. Recommended procedures included establishing the specific scope and frequency of sub-recipient monitoring, as well as guidance for setting up and conducting onsite visits. The Department also requested that Massachusetts provide a copy of the updated sub-recipient monitoring manual and report the beginning of monitoring activities. During the visit, the need for additional staff and/or contractors to assist with monitoring was discussed. The Department instructed Massachusetts to submit a written response within 15 days indicating the follow-up actions it planned to take with regard to concerns and corrective actions. In part because of lessons learned from the Massachusetts’s monitoring visit, and at the request of many grantees, the Department issued SEP Notice 10-015 (effective October 26, 2010) to assist grantees with sub-recipient monitoring.

The Inspector General Draft Audit Report notes that “Massachusetts had not decided whether it would be necessary to hire additional staff to help implement” monitoring procedures and that the state “had not finalized the selection methodology for visiting the more than 100 entities that received funding from the sub-recipients (referred to as second-level sub-recipients)” (p. 2). The Draft Audit Report concludes that “[u]ntil the necessary arrangements for performing and staffing site visits are finalized, Massachusetts lacks assurance that such visits will be completed in a timely manner, an activity essential to preventing or detecting inappropriate activities and expenditures” (ibid.). While the Draft Audit Report itself recognizes that Massachusetts has no expectation of visiting all second-level sub-recipients, having “determined that monitoring would need to be done on a sample basis, given the large number” of these entities (ibid.), the Department intends to verify that appropriate and acceptable sub-recipient monitoring methodologies are in place. The adequacy of the Massachusetts monitoring model will be validated as it is observed in actual use during the next monitoring visit to the state.

In concurring with the recommendation, the Department recognizes that it has the responsibility to ensure that site visits, when conducted, are performed effectively. This responsibility, and the IG’s specific recommendations, will be addressed during the next scheduled monitoring visit at the end of March 2011.

Estimated Completion Date: March 25, 2011.

Recommendation 2

Ensure that Obligations reported by the state accurately reflect executed contracts.

Response

Concur

The Department has provided guidance to grantees informing them that the obligation of funds by grantees to sub-recipients presupposes a binding agreement or contract between grantees and their sub-recipients. SEP Notice 10-06 (effective March 1, 2010) defined obligations as “the binding commitment of Recovery Act funds by the recipient to other entities for the execution of projects.” Additional guidance was provided to the state during telephone discussions between senior management of the State Energy Offices and the SEP in early March 2010 and in a letter sent to SEP grantees in April 2010 by the Acting Program Manager of the Weatherization & Intergovernmental Program that explicitly defined obligations as “funds executed in contracts.” Effective September 20, 2010, SEP Notice 10-006A further defined an obligation as “the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the prime recipient during the same or a future period.”

During an October 22, 2010, telephone call, it was discovered that two of Massachusetts’s High Performance Buildings projects had Memoranda of Understanding (MOUs) rather than executed contracts (representing \$3.3 million). Between state agencies and between state agencies and utilities, MOUs typically precede executed contracts.

The Draft Audit Report states that Massachusetts’s “actual obligations have...been brought closer in line with reported obligations” since the summer of 2010. In concurring with the recommendation, the Department underscores its efforts to ensure that obligation levels are reported accurately.

Estimated Completion Date: Completed



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Commissioner

February 14, 2011

Mr. George W. Collard  
Assistant Inspector General for Audits  
U.S. Department of Energy  
Office of Inspector General  
1000 Independence Avenue, SW  
Washington, DC 20585

RE: Draft Report on "The Department of Energy's American Recovery and Reinvestment Act – Massachusetts State Energy Program"

Dear Mr. Collard,

Attached for your review is a copy of our response to the draft report on the subject audit. We appreciate the opportunity to provide comment on the accuracy and comprehensiveness of the information contained therein. If needed, our staff will be available to discuss any comments further.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Sylvia".

Mark Sylvia  
Commissioner  
Massachusetts Department of Energy Resources

cc: Phil Giudice, Undersecretary of Energy, Massachusetts DOER  
Cathy Zoi, Acting Under Secretary for Energy and Assistant Secretary for Energy Efficiency and Renewable Energy, US DOE  
Alice Dasek, Project Officer, Energy Efficiency and Renewable Energy, US DOE  
Stephen Humble, Contract Officer, National Energy Technology Laboratory, US DOE

### Massachusetts Department of Energy Resources Response

The Massachusetts Department of Energy Resources (DOER) appreciates the opportunity to respond to the Draft Report of the Inspector General (IG) regarding DOER's administration of ARRA SEP funds. DOER recognizes the importance of providing the public with a thorough, impartial, and transparent assessment of this program. To that end, we appreciate the Inspector General's extensive efforts to prepare this Draft Report.

DOER takes pride in its work. We have sought to invest ARRA SEP funds prudently yet expeditiously with a goal of providing taxpayers optimal clean energy benefits. Massachusetts has invested ARRA SEP funds more quickly and with greater leverage than most other states. We have always exceeded benchmarks established by the Department of Energy (US DOE), and have faithfully complied with all reporting requirements according to guidance provided by US DOE. Currently, Massachusetts has obligated 100% of funds granted, and expended 47% of those funds. DOER ranks 14<sup>th</sup> in the country for funds expended. Massachusetts has also been able to leverage substantial private investment through innovative program design.

We believe that much of the program's success can be attributed to our continued and ongoing collaboration with DOE and your office. We continue to believe that the constructive feedback we receive from our federal colleagues provides us with the best means of implementing the ARRA initiatives in the best interest of the public. It is against this backdrop that we are somewhat discouraged by some of the conclusions reached in your report. Specifically, we believe certain components of the Draft Report do not adequately acknowledge the successes of our work and do not reflect the scrupulous efforts our staff has taken to comply with applicable US DOE guidance in effect at the time certain actions were taken.

As a general matter, we are of the view that many of the issues identified in the report stem from the timing of certain guidance we received from DOE. For example, the report notes that Massachusetts had "incomplete plans for monitoring grant activity." In fact, Massachusetts had a monitoring plan in place (as per normal business process) which was ready to be made "final" once DOER received sub-recipient monitoring guidance from US DOE on the frequency of site visits. The fact that the plan was not "final" did not have a significant impact on program activities and oversight, including site visits. When DOE monitoring guidance was received, it was immediately incorporated into Massachusetts' existing sub-recipient monitoring plan and the updated plan has been final since December. In light of these efforts, DOER maintains that it scrupulously monitored SEP activity at all times; the Draft Report's statement to the effect that "accomplishment of SEP Recovery Act goals could be hindered" is, in our opinion, misleading and inaccurate.

The Report also states that Massachusetts "overstated" its obligations of SEP funding. However, please be reminded that US DOE's then-existing guidance reasonably led Massachusetts to initially understand the term "obligation" to mean that a binding commitment was in place with an awardee; such a commitment was sufficient for many awardees to begin implementing staffing plans. US DOE subsequently changed its definition of the term from "binding commitment" to "executed contracts." When DOER learned about DOE's change in interpretation, it immediately updated its reporting accordingly. At all times, Massachusetts complied with all material reporting requirements in accordance with US DOE guidance. If there were discrepancies in the reporting of the Commonwealth's progress, they were the result of inconsistent DOE guidance, not DOER compliance.

With that overview, the following list provides detailed responses to the text.

### Detailed Responses

#### 1) *Page 1, Paragraph 3: Results of Audit*

- a) DOER believes that the Audit Report's statement of DOER's expenditures and obligations is not fully accurate. According to DOER's most recent quarterly ARRA report, DOER had actually disbursed \$21.5 million (38%) and had actually obligated 93% of the total SEP ARRA budget by September 30, 2010.
- b) We also note that the *Results of Audit* section implies that none or a small fraction of funds were at work in the economy. Unfortunately, these observations fail to recognize that sub-recipients were in fact developing project plans and implementing their staffing plans on the basis of commitments signed prior to the negotiation and execution of fully scoped contracts. For example, the vendor for the Enterprise Energy Management System for state facilities indicated that staffing was underway during the scope negotiation process in order to meet the aggressive project schedule once the final contract was executed.

#### 2) *Page 2: Sub-Recipient Monitoring*

- a) The *Sub-Recipient Monitoring* section suggests that plans for site visits were "not completed" and the need for additional oversight staff had not been "determined." In fact, DOER's monitoring plan was in its final form in August 2010 and monitoring had been underway since the initial expenditures per standard business process. DOER acknowledges that it was awaiting promised guidance from DOE to integrate into the plan. This was to ensure that any DOER monitoring activities met DOE's requirements. The delay of this crucial DOE guidance had two direct consequences:
  - DOER's monitoring plan, while in effect at the time of the audit, was labeled as "final draft" pending promised DOE guidance for their expected threshold for site visits and frequency, rather than as "final."
  - DOE's monitoring requirements would define the number of sites to visit and the frequency of those visits--two critical determinants of staffing resources needed to implement a sub-recipient monitoring plan. In the absence of guidance from DOE, Massachusetts would not be in a position to determine whether it required additional monitoring staff or not.
- b) DOER would also urge the Inspector General to consider DOER's monitoring efforts underway at the time of the audit. DOER was fully aware of the implementation schedules for all SEP ARRA projects and understood that, for many of these sites, ramp-up stages would involve project mobilization, design and engineering, permitting, etc. As site visits performed during ramp up would not be a prudent expenditure of resources, DOER waited for DOE guidance before finalizing a project schedule for monitoring. However, for the few projects that did have active work going on, site visits were planned and implemented in accordance with the monitoring plan.

3) **Page 2: Status of Obligations**

- a) DOER understood that its definition of *obligated funds* – a signed agreement awarding a specific amount of SEP ARRA funding – as comporting with DOE’s then-definition of “obligation” as a “binding commitment.” DOER shared that definition with DOE during periodic calls. It was on this basis that DOER issued reports of its *obligated funds*, until DOE informed Massachusetts that the definition of “obligation” was being refined. Once notified by DOE of the revised definition of *obligated funds* on September 20, 2010, DOER adjusted its reported figures immediately. The IG’s initial sentence in this first paragraph (“Status of Obligations”) is at variance with the guidance given by US DOE at the time. The concluding paragraph of this section repeats the same inaccuracy. In fact, the Inspector General recognized this US DOE inadequacy in the first paragraph of the next section of this report, “Departmental Guidance.”
- b) The IG report chose June 24, 2010, as its “for example” date for judging Massachusetts’ progress in obligating funds. According to DOER data, on June 24<sup>th</sup> – referenced on Page 2, paragraph 5 – DOER had \$33 million *obligated* (as that term was subsequently defined by DOE on September 30<sup>th</sup>). However, just six days later, on June 30<sup>th</sup>, Massachusetts had \$41.6 million obligated, or 75% of SEP ARRA funds.

4) **Page 4: Other Factors**

- a) DOER notes that this section implies Massachusetts encountered delays that were in some way unique rather than encountered by all states, and in no way reflects the reality that Massachusetts has been a leader in both spending and project progress.

5) **Additional DOER Comments**

- a) We respectfully request that the IG acknowledge that DOER has addressed and rectified all of the Report’s alleged deficiencies by December 2010, which was within the scope of the audit period.

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