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January 30, 2012 2011-503.6

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

This letter report presents a follow-up review conducted by the State Auditor's Office of the California Energy Resources Conservation and Development Commission's (Energy Commission) use of funds provided by the American Recovery and Reinvestment Act of 2009 (Recovery Act). On February 17, 2009, the federal government enacted the Recovery Act for purposes that included preserving and creating jobs, promoting economic recovery, and investing in environmental protection. On April 21, 2009, the U.S. Department of Energy (Energy) awarded $226 million to the Energy Commission for the State Energy Program (Energy Program). State law authorizes the Energy Commission to use Energy Program funds for energy efficiency, energy conservation, renewable energy, and other energy-related projects and activities authorized by the Recovery Act in the most expedient manner possible, and for the Energy Commission to use Recovery Act funds to award contracts, grants, and loans for projects and activities related to these goals.

The Energy Commission has made significant progress during the last six months in ensuring Recovery Act funds are spent at an increased pace. Although it still has substantial amounts of Recovery Act funds remaining that it must spend before April 30, 2012, the date any unspent funds revert to the federal government, its current efforts and plans appear to be adequate to reduce the risk that the Recovery Act funds will revert. However, not all funds considered by federal guidelines to be spent may immediately further the purposes of the Recovery Act. In our July 2011 letter report, we found that as of June 9, 2011, the Energy Commission had spent only $42.8 million, or 19 percent of the $226 million in Recovery Act funds. However, as of December 20, 2011, the Energy Commission had spent an additional $74.8 million dollars, or 33 percent of the Recovery Act funds for a total of $117.5 million. Based on its agreement with the U.S. Department of Energy, the Energy Commission must spend the remaining $108.6 million by April 30, 2012. The Energy Commission stated that its contract managers are working very closely with its subrecipients to identify projects that will not spend all funds allocated to them before the federal deadline. In such cases, the Energy Commission reduces the funds allocated to these projects and provides those funds to other projects that will be able to spend them by April 30, 2012. Further, new legislation that allows the Energy Commission to allocate additional funds to the Energy Efficient State Property Revolving Loan program will help ensure that the remaining Recovery Act funds avoid reversion as of the federal spending deadline. Nevertheless, although the funds allocated to this subprogram may be technically considered spent under federal guidlines, they might not actually fulfill the intended purposes of the Recovery Act until sometime in the future.

The Energy Commission funds seven subprograms and related administrative costs through the Energy Program. Each subprogram contains multiple projects to be implemented by subrecipients. According to the Energy Commission's deputy director of the Administrative Services Division, the Energy Commission contract managers are assigned various projects under the subprograms and track the progress of subrecipients in carrying out activities funded with Recovery Act funds. Contract managers gather project status information, which is compiled for each of the seven subprograms. Supervisors review the information and forward it to executive management, the Energy Commission's Recovery Act Ad Hoc Committee, and other stakeholders, such as certain members of the Legislature.

As the Table shows, the Energy Commission has spent $117.5 million as of December 20, 2011. This represents considerable progress from six months ago when we reported it had spent only $42.8 million. At the request of the Executive Director of the Energy Commission, in August 2011 the Energy Commission contracted with the Department of Finance, Office of State Audits and Evaluations (Finance) to perform an assessment of Energy Program subrecipients' ability to spend the remaining Recovery Act funds by the April 30, 2012 spending deadline. According to the Energy Commission's deputy division chief of the Fuels and Transportation Division (deputy division chief), the assessment by Finance identified projects at risk of not being able to spend all funds by the deadline. He explained that as a result of those findings, the Energy Commission worked with the subrecipients to develop work plans and schedules to successfully complete their projects and confirm the amount of funds that should be reallocated to other projects. He stated that this is an ongoing process and is reviewed daily between contract managers and management. As the Table shows, the Energy Commission has reduced allocations for the Clean Energy Workforce Training program and the Clean Energy Business Finance program by a combined total of $9.3 million since April 30, 2011. Similarly, the Energy Commission has increased the allocations for the California Comprehensive Residential Building Retrofit program and the Commercial Building Targeted Measure Retrofit program by a combined total of $7 million.

Further, the deputy division chief told us that subrecipients have spent more funds than are reflected in the Energy Commission's records. Specifically, he stated that numerous subrecipients have informed their contract managers that they have spent funds but have elected to wait until the projects are complete before submitting a final invoice. Our review of the Energy Commission's December status reports found it had not paid any invoices for 15 active projects as of December 15, 2011. According to the deputy division chief, for one of these projects the subrecipient reported delays in obtaining approval from the town's legal counsel. For the remaining 14 projects, the deputy division chief stated that the subrecipients plan to submit their invoices when the projects are complete. The deputy division chief also explained that subrecipients have reported losing staff (including administrative staff) and have taken steps to reduce the administrative burden associated with their projects, including submitting one invoice upon project completion, rather than invoicing on an ongoing basis. He indicated that the single, final invoicing process seems reasonable considering that many of these projects are short in duration. He also stated that on at least a weekly basis, contract managers communicate with subrecipients and meet with Energy Commission management to discuss the status of projects.

Table

State Energy Program Expenditures as of December 2011

SUBPROGRAM NAME AND ADMINISTRATIVE ACTIVITY	AMOUNT ALLOCATED BY THE ENERGY COMMISSION AS OF APRIL 30, 2011	INCREASE IN ALLOCATION (REDUCTION IN ALLOCATION)	AMOUNT ALLOCATED BY THE ENERGY COMMISSION AS OF DECEMBER 15, 2011	EXPENDITURES REPORTED BY THE ENERGY COMMISSION AS OF DECEMBER 15, 2011	AMOUNT ACTUALLY SPENT AS OF DECEMBER 20, 2011	AMOUNT REMAINING TO BE SPENT	PERCENT REMAINING TO BE SPENT
Clean Energy Workforce Training program	$20,000,000	($308,132)	$19,691,868	$17,154,840	$17,154,840	$2,537,028	13%
Energy Conservation Assistance Act (ECAA) low interest loans	25,000,000	0	25,000,000	11,026,775	11,026,775	13,973,225	56
California Comprehensive Residential Building Retrofit program	50,212,451	6,000,000	56,212,451	24,280,187*	24,280,937*	31,931,514	57
Commercial Building Targeted Measure Retrofit program	29,610,637	1,000,000	30,610,637	15,331,853*	15,332,099*	15,278,538	50
Local Government Commission contract	33,176,912	500,000	33,676,912	12,803,731	12,803,731	20,873,181	62
Clean Energy Business Finance program	30,600,000	(9,001,831)	21,598,169	7,159,540	7,159,541	14,438,628	67
Energy Efficient State Property Revolving Loan program	25,000,000	0	25,000,000	16,926,596	25,000,000†	0	0
Program administration	12,493,000§	(2,121,588)	10,371,412	4,765,168	4,765,168	5,606,244	54
To be reallocated	NA	3,931,551	3,931,551‡	NA	NA	3,931,551	100
Totals	**$226,093,000**	**0**	**$226,093,000**	**$109,448,690**	**$117,523,091**	**$108,569,909**	**48%**

Source: California Energy Resources Conservation and Development Commission (Energy Commission) records.

NA = Not applicable.

* According to the deputy division chief of the Energy Commission's Fuels and Transportation Division (deputy division chief), the difference between the amount reported by the Energy Commission and the amount actually spent was due to a transaction that did not update properly and accounting posting errors. The deputy division chief indicated these errors will be corrected.

† Amounts listed for the Energy Efficient State Property Revolving Loan program represent funds provided to the Department of General Services (General Services) for loans to implement energy efficiency projects in state owned facilities and parking lots. Although General Services reported it had disbursed $16.9 million of these funds, according to the U.S. Department of Energy, grantee funds are considered spent when the funds are transferred to a third party, such as General Services, for the operation of the revolving fund. Thus, in the Table we show the $25 million was technically spent according to federal guidelines.

‡ According to the deputy division chief, $3 million was moved to the California Comprehensive Residential Building Retrofit program shortly after December 15, 2011.

§ According to the Energy Commission, the April 30, 2011 allocation data it provided for our July 2011 report inadvertently omitted $93,000 for program administration. The correct allocation, as of April 30, 2011, for program administration was $12,493,000.

Additionally, Assembly Bill 11 (Statutes of 2009–10, Fourth Extraordinary Session) (AB 11), approved in July 2009, created the Energy Efficient State Property Revolving Fund to be administered by the Department of General Services (General Services) for a revolving loan program. This bill required the Energy Commission to transfer $25 million to the newly created fund in fiscal year 2009–10. In our July 2011 report, we found that as of April 19, 2011, General Services had loaned only $9 million of the $25 million it had received for the Energy Efficient State Property Revolving Loan program. According to a report available on General Services' website, as of November 22, 2011, it had construction contracts totaling $23 million and had disbursed $16.9 million for these contracts for energy efficiency projects such as interior and exterior lighting upgrades, installing occupancy sensors, and optimizing start up routines for chillers and boilers. A similar bill, Assembly Bill 1392 (Statutes of 2011–12) (AB 1392), was approved in October 2011 and authorizes the Energy Commission to transfer an additional $50 million to the revolving loan program in fiscal years 2011–12 and 2012–13. According to guidelines from the federal Department of Energy, General Services is considered a third party and any funds that the Energy Commission provides to a third party for this subprogram are considered spent even if that third party has not yet loaned or spent the funds. According to the deputy division chief, AB 1392 provides a valuable option to reallocate any unspent funds that would otherwise revert to the federal government. He stated that the Energy Commission intends to allocate to the Energy Efficient State Property Revolving Loan program any unspent funds, up to the $50 million authorized by AB 1392, to ensure Recovery Act funds do not revert. Reallocating unspent Recovery Act funds to the revolving loan program will keep funds from reverting back to the federal government; however, it does not fulfill the purposes of the Recovery Act to preserve and create jobs, promote economic recovery, and invest in environmental protection until General Services uses these funds for their intended purposes.

Although the Energy Commission must continue to closely monitor the spending by its subrecipients in the coming months, considering the progress it has made and the efforts it is currently making, the risk that large sums of the Recovery Act funds will revert to the federal government does not appear as significant as in the past.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code. We limited our review to those areas specified in the letter report.

Respectfully submitted,

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For questions regarding the content of this letter, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.