California Energy Resources Conservation and Development Commission

It Is Not Fully Prepared to Award and Monitor Millions in Recovery Act Funds and Lacks Controls to Prevent Their Misuse

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California Energy Resources Conservation and Development Commission's response as of December 2010

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits conduct a review of the preparedness of the California Energy Resources Conservation and Development Commission (Energy Commission) to receive and administer federal American Recovery and Reinvestment Act of 2009 (Recovery Act) funds awarded by the U.S. Department of Energy for its State Energy Program (Energy Program). The federal government enacted the Recovery Act for purposes that include preserving and creating jobs; promoting economic recovery; assisting those most affected by the recession; investing in transportation, environmental protection, and other infrastructure; and stabilizing state and local government budgets.

Finding #1: Because the Energy Commission is not yet prepared to administer Recovery Act funds, the State is at risk of losing millions.

As of November 16, 2009, the Energy Commission had entered into contracts totaling only $40 million despite having access to $113 million of the $226 million in Recovery Act funds it had been awarded for the Energy Program—the Energy Commission is not authorized to spend the remaining $113 million until January 1, 2010. Although these funds have been available to the Energy Commission since July 2009, it has approved the use of only $51 million for Energy Program services, and of this amount has entered into two contracts totaling $40 million with subrecipients for only two of the eight subprograms it intends to finance with Recovery Act funds. The funds from these two contracts, which were awarded to the Department of General Services and the Employment Development Department, will be used to issue loans, grants, or contracts to state departments and agencies to retrofit state buildings to make them more energy efficient and to provide job skills training for workers in the areas of energy efficiency, water efficiency, and renewable energy. However, none of the $40 million has been spent. Therefore, except for the $71,000 that the Energy Commission has used for its own administrative costs, no Recovery Act funds have been infused into California's economy. Additionally, the Energy Commission has been slow in implementing the internal controls needed to administer the Energy Program. Furthermore, based on the time frames provided by the Energy Commission, the Recovery Act funds will likely not be awarded to subrecipients until at least April 2010 to July 2010.

The Energy Commission still needs to complete several critical tasks before it can begin implementing the Energy Program and award Recovery Act funds to subrecipients to be spent for various projects. For example, the Energy Commission has not completed guidelines for subrecipients to follow when providing services under some of the new subprograms, or completed and released solicitations to potential subrecipients who will provide program services.

If the Energy Commission continues its slow pace in implementing the necessary processes to obligate the Recovery Act funds, the State is at risk of either having the funds redirected by the U.S. Department of Energy or awarding them in a compressed period of time without first establishing an adequate system of internal controls, which increases the risk that Recovery Act funds will be misused.

According to the Energy Commission's administrator for the Economic Recovery Program (program administrator), several factors have contributed to the delay in spending the Energy Program's Recovery Act funds. He stated that seven of the eight subprograms being funded by the Recovery Act funds are new, and therefore it was necessary to develop program guidelines. He indicated that the Energy Commission had to wait until a bill was signed on July 28, 2009, giving it the statutory authority to develop and implement the guidelines and to spend the federal Recovery Act funds.

We recommended that the Energy Commission promptly solicit proposals from entities that could provide the services allowable under the Recovery Act and execute contracts, grants, or loan agreements with these entities.

Energy Commission's Action: Partial corrective action taken.

The Energy Commission reported it has made significant progress implementing newly created programs and awarding Recovery Act funds. It stated that it has allocated its Energy Program funds in the following manner:

- $25 million to the Energy Efficient State Property Revolving Loan Program managed by the Department of General Services. The Energy Commission stated that as of December 21, 2010, retrofit work has begun at 62 state-owned facilities and five parking lots and more than $6.5 million has been disbursed by the Department of General Services.

- $25 million to the One Percent Energy Efficiency Loans program. The Energy Commission reported that initially the program was fully committed to 25 loans, however, four of the original loan recipients cancelled their projects and the Energy Commission is working to find replacements projects. It reported that one of the original projects is completed and the borrower will begin repayment in December 2010.

- $20 million to the Clean Energy Workforce Training Program managed by the Employment Development Department (EDD) and the Employment Training Panel (ETP). The Energy Commission asserts that as of October 31, 2010, EDD had awarded $14.5 million in grants to 28 regional partnerships and trained 2,909 people, and ETP had awarded $4.5 million to 14 entities and trained 482 people.

- $30.6 million to the Clean Energy Business Financing Program, administered by the California Business, Transportation and Housing Agency under a $1.6 million interagency agreement. The Energy Commission reported that six loans have been approved, totaling $23,999,000. The first loan for $5 million was executed on December 3, 2010, with five more anticipated to be executed by January 28, 2011. A seventh loan may be awarded through a forthcoming notice of proposed awards.

- $79.8 million to the Energy Efficiency Program. The Energy Commission states that it has awarded seven contracts, and has approved and executed six of them.

- $33.2 million to the Energy Upgrade California program. The Energy Commission reported that on October 21, 2010, it executed an agreement with the Local Government Commission to support the program. The Energy Commission describes the program as the statewide energy and water efficiency and renewable energy generation retrofit program for single and multiple family residential and commercial buildings. The program will provide a web portal that will be a one-stop energy upgrade resource center for building upgrades, financing and incentives, finding a qualified contractor, workforce training, and home energy ratings. Implementation of the web portal is planned for three phases and the Energy Commission anticipates implementation will begin in January 2011 and last through December 2011.

- $12.4 million to the Energy Commission to administer the Recovery Act funds.

Finding #2: The Energy Commission's current control structure is not sufficient to ensure proper use of Recovery Act funds.

The Energy Commission has not yet established the internal control structure it needs to adequately address the risks of administering Recovery Act funds. The Energy Commission is in the process of seeking help in establishing such a control structure, but as of November 16, 2009, had not issued a request for proposal (RFP) from potential contractors. The Energy Commission's contract manager estimates that it takes three to five months from the time the commission releases an RFP until the contract is executed. Added to the three to five months estimated to execute a contract will be whatever time the contractor needs to render the services it is hired to perform. Further delay increases the risk of delays in implementing the subprograms, possibly inhibiting the Energy Commission's ability to obligate Recovery Act funds before the September 30 deadline. Alternatively, the Energy Commission might try to award the funds to subrecipients without first establishing an adequate system of internal controls, increasing the possibility that Recovery Act funds will not be used appropriately and heightening the risk of fraud, waste, and abuse.

Our assessment of the Energy Commission's preparedness to administer the Recovery Act funds it received for the Energy Program showed that in some areas it appeared to be ready or almost ready, but we identified several areas in which the Energy Commission's controls are not adequate. For example, despite its assertions that its present internal control structure will enable it to properly administer the Recovery Act funds, the Energy Commission could not provide documentation to demonstrate that its existing controls are sufficient to mitigate and minimize the risks of fraud, waste, and abuse. In addition, the Energy Commission could not show it has a process in place to effectively monitor subrecipients' use of the Recovery Act funds and noted that it did not have reporting mechanisms in place to collect and review the data required to meet the Recovery Act transparency requirements.

We recommended that the Energy Commission, as expeditiously as possible, take the necessary steps to implement a system of internal controls adequate to provide assurance that Recovery Act funds will be used to meet the purposes of the Recovery Act. These controls should include those necessary to mitigate the potential for fraud, waste, and abuse. Such steps should include quickly performing the actions already planned, such as assessing the Energy Commission's controls and the capacity of its existing resources and systems, and promptly implementing all needed improvements.

Energy Commission's Action: Partial corrective action taken.

The Energy Commission reported that it has been addressing our recommendation through two contracting efforts. The first contract is for an audit support services contract to provide a commission-wide review of processes and procedures, including recommendations in areas where controls can be improved or strengthened. The contractor will also conduct risk assessments and audits of funding recipients. The second contract is for monitoring, evaluating, verifying, and reporting services to provide programmatic and performance reviews. The contractor will also validate data collected from or reported by funding recipients.

According to the commission, since the execution of the first contract on May 13, 2010, the contractor has completed a preliminary assessment of the Energy Commission's operations and expects to complete the final assessment in December 2010. The commission reports that a training series for commission project managers covering financial accountability is underway, and a second training module, scheduled for January 2011, will cover on-site monitoring. Further, a risk analysis tool has been sent to subrecipients so its controls can be assessed. This will allow the contractor to determine higher risk entities so it can focus their early auditing efforts. The commission believes that these activities taken as a whole will serve to further protect against fraud, waste, and abuse.

According to the commission, its second contract is for monitoring, evaluating, verifying, and reporting services. Since the commission executed the contract on April 28, 2010, the contractor has developed a database of planned projects and conducted some desk reviews and field visits to review installations. In addition, the contractor is developing a checklist tool to assist contract managers when they conduct on-site verification visits. The commission further reports that the contractor is developing monitoring and evaluation plans for projects funded with federal stimulus funds, and, as guided by the U.S. Department of Energy, will focus on job creation and retention, energy and demand savings, renewable energy capacity and generation, and carbon emission reductions.