



SEN. ROGER J. KATZ, CHAIR
REP. DAVID C. BURNS, CHAIR

MEMBERS:

SEN. MARGARET M. CRAVEN
SEN. BILL DIAMOND
SEN. EARLE L. MCCORMICK
SEN. NANCY B. SULLIVAN
SEN. DAVID TRAHAN
REP. DONALD E. PILON
REP. ANDREA M. BOLAND
REP. JOYCE A. FITZPATRICK
REP. LESLIE T. FOSSEL
REP. STEPHEN D. LOVEJOY

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
August 22, 2011

CALL TO ORDER

The Chair, Senator Katz, called the Government Oversight Committee to order at 9:02 a.m. in the Burton Cross Building.

ATTENDANCE

Senators: Sen. Katz, Sen. Craven, Sen. Diamond, Sen. McCormick, and Sen. Trahan
Joining the meeting in progress: Sen. Sullivan

Representatives: Rep. Burns, Rep. Pilon, Rep. Boland, and Rep. Fossil
Absent: Rep. Fitzpatrick and Rep. Lovejoy

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA
Wendy Cherubini, Senior Analyst, OPEGA
Scott Farwell, Analyst, OPEGA
Matthew Kruk, Analyst, OPEGA
Etta Begin, Adm. Secretary, OPEGA

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

The members of the Government Oversight Committee introduced themselves for the benefit of the listening audience.

UNFINISHED BUSINESS

None

NEW BUSINESS

- **Presentation of Final Report on Maine Green Energy Alliance**

Director Ashcroft extended OPEGA's gratitude and appreciation to Seth Murray, Executive Director and Thomas Federle, Legal Counsel, Maine Green Energy Alliance (MGEA), and Michael Stoddard, Executive Director and John Quatararo, Chief Financial Officer from Efficiency Maine Trust (EMT).

Director Ashcroft presented OPEGA's Report on Maine Green Energy Alliance. (The Report is on OPEGA's website at www.maine.gov/legis/opega).

Some Committee members voiced their concerns regarding MGEA employees campaigning or involved in other political activities while working on MGEA time and what the process would be to get that question answered. Director Ashcroft said a question raised was whether MGEA employees, who were being paid with grant funds, also doing campaign activities. During the pre-election season, 3 individuals employed by MGEA were running for a legislative seat. Two were sitting legislators and 1 a legislative candidate. Two were part-time process facilitators, paid on an hourly basis, and reported their hourly time regularly before payment. The other was salary and employed as a community organizer. Mr. Murray noted there was 1 other sitting legislator, Rep. Melissa Walsh Innes, MGEA hired after the November election, but she was not an employee or otherwise compensated prior to becoming an employee. One weakness in the financial controls, questioned by both Macdonald Page and OPEGA, was that MGEA did not keep time sheets for salaried employees. The employees did not work a regular schedule of hours because they were out in the community, working at various meetings, etc. trying to get groups together to talk about energy efficiency and working with community leaders. The only time reported was their leave time. There was no confirmation of what employees were doing when being paid by MGEA. That is a risk because there were not many controls in place. OPEGA did go to lengths to look at the employees' activities and felt comfortable they were able to see what employees were engaged in, but she could not give a definitive answer or a positive confirmation that nothing occurred. The best OPEGA can give is a negative confirmation that no evidence was found to suggest that anything inappropriate was going on. The Maine Ethics Commission had not received any specific complaints and OPEGA has received no complaints. To go further would require talking with individuals who interacted with the individuals employed by MGEA during that period of time, and that would take quite a lot of time. The Ethics Commission's Executive Director said they have not received any specific complaints and absent complaints, would find themselves in the same position as OPEGA of making a determination of whether to spend their resources.

As part of MGEA's response to the Macdonald, Page review, Mr. Murray obtained written certifications from all the employees specifically stating that anything they were paid for by MGEA, was time spent doing MGEA activities. The GOC will be provided a copy of that documentation.

In response to a question of whether MGEA had to act and make decisions quickly to get the grant money, Director Ashcroft said the grant involved the Retrofit Ramp-up program funded with American Recovery Act Funds. They had to apply for the grant by December 15, 2009 so she would not put it in the category of needing to be shovel-ready to get the money. In addition to MGEA, the PUC and MSHA were also thinking about pursuing funding from the grant.

Director Ashcroft said the United States Department of Energy (US DOE) issued a funding opportunity announcement and the announcement contained all the criteria that had to be met in applying for the grant.

Chair Katz noted that it appeared MGEA's role started out being mainly concerned with Casella's Waste System facility in Biddeford and morphed into soliciting homeowners to fix their home heating systems. Director Ashcroft said OPEGA observed that MGEA's initial proposed project was only tangentially related to the projects that were going to be undertaken by the PUC and MSHA. They were looking to work with four municipalities retrofitting large homes and to entice homeowners in the communities where Casella Waste Systems could provide discounted power as an incentive to people to retrofit their homes. There was a portion of what they were intending to do that involved an intensive community outreach. A small portion of their original project involved working at the community level trying to entice homeowners in that community to have an energy efficient community. The morphing occurred at the same time the US DOE had come back and said they were going to give a grant, but it was only for \$30 million. At that same time the

support for the project with the Casella Waste facilities had been dropped and the decision that MGEA would pursue a pilot program of whether intensive community outreach could make a difference in getting homeowners engaged in retrofitting their homes. MGEA was not an entity at that time, but there were people with enthusiasm around the idea and a plan they wanted to try. The decision was made to let MGEA be the organization to try a pilot project to do that.

The communities served by MERC are Biddeford, Saco, Westbrook, Hampden, Old Town, and Bangor where Casella also has a facility. Chair Katz asked how the communities were selected to be the sites for the outreach efforts. Director Ashcroft said the communities kept changing over time. She thinks once the Casella piece dropped out, EMT began negotiating the contract with MGEA regarding how to make it a broader spectrum of communities across the State not just Southern Maine. She believes they were looking for communities that were willing to partner with them and pass PACE ordinances. Mr. Federle did a lot of that work and traveled around the State looking for towns that would partner with MGEA to coordinate community retrofit plans. The communities selected were Hampden, Old Town, Yarmouth, Buckfield, Belfast, Topsham, Scarborough and Cumberland. A criteria in choosing the community was its willingness to partner with them and had community volunteers who would participate in the effort. MGEA became a facilitator of a broader community effort.

OPEGA did not see anything in writing between US DOE and EMT that described the operational state of MGEA and to what extent it was revealed in the grant application that MGEA was a paper organization only when the grant was received. The US DOE was excited about the idea of trying the intensive community outreach, but whether they recognized that MGEA was not formed yet, Director Ashcroft did not know.

MGEA was not an organization that already had employees, office space, or had a presence of doing other work in the community. EMT could have chosen to do those kinds of efforts with other organizations and maybe there should have been a point when someone stepped back, and before deciding to move forward, asked what the best way to do that would be. EMT was the primary recipient of the grant so had the responsibility of overseeing the grant. OPEGA has taken them to task for not making sure that MGEA had policies, procedures, etc. before they gave them grant funds. They did try to make sure they had good performance goals, but did not look at the administrative piece. That left MGEA's Executive Director, not only trying to meet performance goals, but also trying to set up an organization from scratch.

The original grant was applied for with the idea that Biddeford, Casella and the Westbrook plant would be the main focus. The MERC Task Force was formed at the request of the Mayor of Biddeford to deal with longstanding issues. The Task Force was to come up with solutions for building a facility in Westbrook that would take the trash and turn it into pellets that would then be trucked to Biddeford to be burnt at the plant with the idea that it would reduce the traffic, smells, etc. There were other components, but a significant portion of the \$14 million they were originally seeking, had to do with those facilities. The Task Force became aware that the grant was available and decided to seek that as funding to carry out the plan. They were on the PUC application and while that application was pending, the Mayor of Biddeford withdrew support for the project. Despite that, the group that had been part of putting the grant application together still felt they wanted to go forward with it regardless of whether there was support at the Mayor's office. It ultimately became clear that Casella Waste was not going to be able to make that happen for a variety of reasons and dropped their plan. Director Ashcroft said in conversations with Mr. Federle regarding the MERC Task Force, it was not the absence of a willing community that ultimately made them decide not to go forward, but was economics and how to bring the plan together so it would work financially for Casella. They could not make that work.

It was noted by some of the Committee members that MGEA hired three candidates for office from the same political party to knock on people's doors. Didn't MGEA see the real risk that there would be an appearance that the new organization was involved in political activity? Director Ashcroft said MGEA employees did not knock on doors, but hired Opportunity Maine to do some of that work. When asked that question, MGEA answered they did not have a formal or structured hiring practice, and were hiring, at one point, people they knew or who they felt had good ideas. OPEGA never got the sense that political affiliation was the driving factor of who was being hired, it was more about who was enthused about their effort and had ideas to contribute. It did not occur to MGEA it would be a perception issue.

It was noted that MGEA purchased and used the SmartVAN for soliciting customers and that is considered a campaign tool for the democratic party that not just lists voters and their party, but also includes other information regarding the voter. If MGEA was using just that program it would exclude others who may be interested in taking advantage of their program. Director Ashcroft said OPEGA did talk with representatives from both Maine State level parties and understood that the applications they maintain at that level are available to candidates who are running for political office, but what MGEA purchased was not an updated version. She said the SmartVAN was not the primary or only way in which MGEA tried to identify interested homeowners. There was a lot of work done in the community to bring people into meetings.

Senators Trahan, Craven and Sullivan discussed the distribution of informational pamphlets when working for an organization and campaigning for a political position. Director Ashcroft thought that was more a question for the Ethics Commission.

Under the federal grant there are allowable uses of funds spelled out and because MGEA was receiving the federal grant, it was required to have an annual single audit. MGEA hired Macdonald Page to do their audit. Their single audit goes to the federal government to monitor whether funds are being used as intended. Macdonald Page has to be able to determine whether the funds are being used as intended, and if what was paid for was an allowable activity under the grant. Because there were no time sheets that specified the hours of employment or what activities the employees were working on, Macdonald Page was not able to determine whether they were allowable because could not see what the activities were. MGEA is required to retain sufficient documentation to allow the auditor to determine that. MGEA used Paychecks for their payroll services, but the salaried employees were set up to receive a standard rate with automatic payment without having to fill out a time card or report.

Director Ashcroft responded to the question of who was responsible for overseeing that MGEA was compliant with the federal regulations and contract requirements saying it is part of what the single audit that Macdonald Page conducts. The Office of Management and Budget Circular is the driving force behind the regulations and if the grant comes directly to your organization, then the federal government has already informed the organization what regulations they need to comply with. In this case, MGEA was a sub-recipient of a federal grant given to EMT. Therefore, in OPEGA's view, it was EMT's responsibility to assure that MGEA was going to be in compliance with the federal regulations, but ultimately it was MGEA's responsibility to make sure they were compliant with the federal and state regulations that applied to them.

Director Ashcroft said EMT had to report to the US DOE and in their contract with MGEA, MGEA had to report to EMT. EMT then incorporated that information into the reporting it did to the federal government. In regard to their goals, targets and measures around energy audits or retrofits completed, that information was being reported on a regular basis as required by the contract. The US DOE did conduct a monitoring visit in June, 2011 and found EMT's administration of the grant to be satisfactory at that time so she would have to assume that the reporting going to US DOE was as needed under the grant.

The PACE Loan Program that was related to the initial PUC project under their application for a grant became Efficiency Maine's project. The key aspect of their project under the grant is to establish the PACE Revolving Loan Fund. Critical to being able to do that was getting legislation passed that would allow municipalities to pass ordinances that would allow homeowners in those communities to be eligible for PACE loans. The largest part of the money from the federal grant was intended for the PACE Revolving Loan Fund so having PACE ordinances passed by the municipalities was a critical aspect to making the larger grant work successfully. This is the point where Mr. Federle and MGEA came in and some of the work they were doing was assisting municipalities in getting ready to pass those PACE ordinances and drafting model PACE ordinances for them.

It was Chair Burns' opinion that a mismanagement of federal dollars in Maine occurred and asked how MGEA's assets that were purchased with federal dollars were going to be disbanded. Director Ashcroft said the EUT Committee also questioned that and were told the assets relating to computers, printers, and office equipment was in the process of being bid out for sale. Questions regarding those assets and the SmartVAN could be better answered by Mr. Murray.

Sen. Diamond followed up on statements regarding the SmartVAN noting it was a very minor part of MGEA's gathering of data, and asked Director Ashcroft what she learned from speaking with representatives from both parties about the voting lists they have. She said both parties maintain that kind of database. The version of the SmartVAN that MGEA purchased was not exactly the same as what is used by the democratic party.

Rep. Fossel asked what kind of organization the Voter Activation Network (VAN) was. Director Ashcroft did not know if it was a nonprofit, but its' purpose is to develop contact and volunteer management information. From his point of view, it is distinctly possible that the \$6,000 spent on the VAN license, in some way or another, supported democratic campaigns, labor unions and similar organizations and therefore was a partisan activity.

Some GOC members expressed concerns regarding the \$272,674 in questioned costs by MGEA and how could they now provide documentation for undocumented expenses already processed. Director Ashcroft said OPEGA reviewed a large portion of expense reimbursements for the Executive Director, and although the documentation was not what OPEGA would normally hope for, OPEGA was able to infer the business purpose bringing together different details on different documents. On most of the expense reimbursements, a judgment on the business purpose could be made and therefore be able to determine if it was allowable. MGEA is addressing it with Macdonald Page by having the Board Treasurer review all of Mr. Murray's expense reimbursements to determine whether he would have approved them. In regard to the mileage reimbursements and activities of the salaried employees, they are asking for certification from individuals of what the business purposes were for their travel and for the individuals to go on record with a signature that they did not engage in any unallowable or inappropriate activities. She would refer to Mr. Murray for the level of detail that involved.

There is also an issue of whether Maine will have to pay the money back to the federal government. Director Ashcroft said in EMT's favor is that the US DOE is pleased with the program that is being run in Maine, and likes the results being had from the grant overall. In reviewing a number of expenditures in detail, OPEGA did not find inappropriate use of money. If invoices were not sufficient to show the detail, OPEGA asked the vendors for additional documents to be able to determine that they received what was paid for. She could not speak to the employees' time piece because there was not anything to look at and unfortunately the salaried employees' time is a substantial amount of the funds that were expended.

In response to Rep. Pilon's questions regarding how many homes were weatherized and how many jobs were created by MGEA, Director Ashcroft said 53 homes went through the retrofit process, and a number of others had an energy audit, but did not proceed further. MGEA did partner with contractors who were also working on energy efficiency retrofits under other programs in the State so she could not speak to whether there were additional contractor jobs created just because of MGEA's efforts. She deferred the question of what impact the program had on Maine's economy to MGEA and EMT.

Director Ashcroft summarized MGEA and EMT's responses to OPEGA's report which are included in the back of the Report.

The next step in the process is for the Committee to set a date for a public comment period and work session on the Report. Following Committee discussion that meeting was scheduled for September 6, 2011 at 9:00 a.m.

- **Discussion of Possible Committee Action on Public Release of Information From OPEGA's Confidential Draft Report**

Chair Katz said the GOC takes very seriously, and is protective of, OPEGA's process, the integrity of the agency and the nonpartisan makeup of the GOC. That includes the process by which reports are released and made public. The reports are first to be made available to the agency which is being reviewed so they will have an opportunity to comment on the accuracy of the report and also to participate in the development of the recommendations. After that the GOC receives a confidential copy of the report a couple of days prior to the report presentation meeting. At that meeting the report is made public so everyone sees it at the same time and can draw their own conclusions. When Committee members receive their copy of the report it is made very clear that the report is confidential. When the agency in question gets the report for their opportunity to comment on it, weeks in advance of the report's presentation,

that is also confidential and in fact the report is marked confidential on the front page. He believes the Committee takes it very seriously when the confidentiality is breached and under certain circumstances, it is a crime. A breach occurred with the MGEA Report. It was leaked to a number of legislators, not including any member of the GOC, and also to the press. The question the Chair had was what, if anything, the Committee wanted to do about that. They can decide to do nothing, could undertake an investigation, ask OPEGA to review what happened, or they could refer the matter to the Attorney General's Office to review. Chair Katz thought asking the AG's Office to review was the best alternative and suggested that the GOC make that request.

Director Ashcroft suggested changing OPEGA's statute to make it clearer that not only can you not give the confidential copy of the report to anyone, you also cannot talk with anyone about its contents. Chair Katz wanted to know what happened in the breach of confidentiality of this report. Rep. Fossel said it was a matter of future trust of the agency or organization who knowingly breached the confidentiality. Sen. Trahan noted that this was the second time it has come to his attention that an OPEGA report was being discussed prior to its release to the public. Sen. Sullivan recommended a strongly worded letter, approved by the GOC, explaining the GOC/OPEGA's report process be sent out to the Legislature. Director Ashcroft wanted to make it clear that OPEGA did not, in any way, mean to suggest that it was not made absolutely and perfectly clear to EMT and MGEA that it was a confidential matter from the beginning of the review to the end. Her suggestion was only to make sure that they are on record that they recognized it, but felt there should have been no question in anyone's mind about what was meant by confidential. Sen. Diamond agreed with Chair Katz that he wanted to find out what had happened, but if there was going to be a motion to send the matter to the AG's Office at this meeting, he would not vote for it because he would like to see what comes out at the September 6th GOC meeting. Chair Burns would be willing to wait until after the next meeting before making a decision of how to proceed. He noted that the Committee Chairs had several conversations with Director Ashcroft after the matter happened and there was no question in his mind whatsoever that everybody involved knew that it was a confidential document and every legislator knows about confidentiality. Whether it is indifference or carelessness, it continues to happen, it needs to come to an end, and people need to respect confidentiality, especially when it is under the state statute.

SCHEDULE NEXT COMMITTEE MEETING

The next GOC meeting was scheduled for Tuesday, September 6, 2011 at 9:00 a.m.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 12:10 p.m. (Motion by Rep. Boland, second by Sen. Diamond, unanimous).