



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
September 6, 2011**

CALL TO ORDER

The Chair, Senator Katz, called the Government Oversight Committee to order at 9:01 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. Fossel, and Rep. Fitzpatrick
Joining the meeting in progress: Rep. Boland and Rep. Pilon
Absent: Rep. Lovejoy

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA
Wendy Cherubini, Senior Analyst, OPEGA
Etta Connors, 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.

OPEGA FINAL REPORT

• Maine Green Energy Alliance

Chair Katz summarized what had occurred thus far with OPEGA's Report on Maine Green Energy Alliance and at this meeting the public comment and Committee work session will be held on that Report.

- Public Comment Period

Thomas Federle, attending on behalf of MGEA and to also answer any of the GOC's questions. His presentation included:

- Lessons were learned from the MGEA, and hopefully lessons learned for other organizations who may find themselves similarly situated.
- Despite the best of intentions to hit the ground running and trying to make an impact on the level of demand for home energy efficiency, one cannot proceed without first having their administrative house in order. The MGEA did proceed rapidly in trying to deploy its efforts in the communities it was working with before having its house fully in order.
- The MGEA signed up over 1,000 homeowners, and over 200 hired professional home energy auditors who conducted home energy audits for those homeowners. Of those, over 50 had a full energy efficiency retro-fit of their home. The early months of their efforts did not result in large numbers of retro-fits because it takes a period of time to get through the initial pipeline to the completion of the work being performed.
- The MERC Task Force had been formed at the urging of the Mayor of Biddeford who wanted to bring Casella, and the owners of the MERC facility in Biddeford to discuss ways to move MERC out of Biddeford. Mr. Federle was hired by MERC to create a nonprofit company that would be eligible to receive grant funding. MGEA was established for the purpose of both applying for and then carrying the grant forward.
- OPEGA's Report outlines MGEA as a co-applicant with the State of Maine, applying for the same US DOE grant. The State's application was dependent upon a state-wide PACE Program. MGEA became involved with the Legislature's effort to adopt enabling PACE legislation should the funding from the US DOE become available. MGEA transformed through that process into going out to municipalities to get them to adopt PACE ordinances, and education on energy efficiency. Given MGEA's turmoil with the City of Biddeford's support, the US DOE and Efficiency Maine agreed MGEA's role should be narrowed down to advancing the PACE Program, helping municipalities understand what they needed to adopt PACE ordinances, and doing that in the partner communities of the MGEA.
- The first two towns that were partners of MGEA were Old Town and Hampden. Both are host communities of Casella and had been brought into the conversation early when the MERC Task Force was working on its plans. Casella wanted to extend host community benefits offered to Biddeford and Saco to other communities that hosted them, Hampden and Old Town. MGEA had constraints on which towns they could partner with. They could not partner with a town above a certain population level, which was per Efficiency Maine, but driven by requirements in the US DOE grant. MGEA looked to towns that had energy committees, select boards or councils who would agree to immediately begin an adoption process of PACE ordinances. They also wanted to run their pilot program throughout the State to get a geographical diversity. MGEA ended up in five different counties.
- OPEGA noted in the Report the conflict of him serving on MGEA's Board while also being a vendor or service provider for compensation. That is not a prohibited conflict so long as it is disclosed, approved by the Board and is fair. All three apply because it was disclosed, approved and was deemed fair both by the Board and ultimately by OPEGA as well.
- Mr. Federle, although it had nothing to do with MGEA or OPEGA, noted that at one time he was a minority investor and owner in a Company called Hallowell House, LLC. They renovated the old Hallowell House that is now leased to the State and housed by PUC. His original partners were Severin Belleveau and Kevin

Mattson. Mr. Federle has done legal work for Mr. Mattson as a developer for years, continues to do that, was doing legal work on this project when the opportunity to invest came up. It was his first investment in a commercial real estate project and it was a financial disaster for him as an investor. He has exited that partnership.

In response to GOC members' concerns regarding employees hired by MGEA having a connection to the democratic party, Mr. Federle said the hiring responsibility fell to Mr. Murray, Executive Director once he was hired and himself. Mr. Murray would say that he believed he was hiring the best person. Mr. Federle understands the appearance problem, but at the time, he was blind to it. They were trying, as quickly as possible, to hire staff and get the right people on board. The applicants who applied, including the two House Representatives, were hired for being the best candidates. Mr. Federle said he did not know or lobby for either Representative hired. Although the hiring of Representatives from one party was unintentional and, was a mistake, it should be a lesson learned for him and other organizations. Mr. Federle said MGEA was not running a political operation and were completely disconnected with the Maine Democratic party, but federal dollars were spent and MGEA should have considered its appearance.

Sen. Diamond noted the other appearance that caused concern was that it was an inside group who saw an opportunity to capture federal dollars. Mr. Federle said the application for the federal money was created by the MERC Task Force and he is not certain of the political affiliation of Task Force members. The City of Biddeford was the principal beneficiary because the fund applied for was to relocate the front end processing at the MERC facility. When that did not occur, it morphed to MGEA's role of going out into the communities to help them understand what the Legislature did in adopting the PACE program, and helping communities adopt PACE ordinances. Mr. Federle's first hire was Mr. Murray, who he did not know previously, but who was a BPI Certified Home Energy Auditor.

Chair Burns asked the names of the Representatives hired, MGEA's hiring process, and how and who hired Mr. Federle. Jim Martin and Steve Butterfield were the two Representatives hired and the Mayor of Hampden recommended the hiring of Shelby Wright. Their first communication was with Mr. Murray. The early job postings were on Monster.com, Craig's List, etc. They knew MGEA existed, that the Legislature passed the PACE enabling law, and the State had received the grant. Mr. Federle was hired by the MERC Task Force for his background in municipal, environmental, and energy law. Kevin Mattson, an advocate and informal advisor to the Mayor of Biddeford and Chair of the Task Force, suggested Mr. Federle to the Mayor. Mark Robinson alerted him that he might be getting a call from the MERC Task Force. John Richardson, the co-chair of the Task Force, and former Commissioner of DECD, asked him and his law partner to attend a meeting to interview for providing legal services to the Task Force.

Chair Burns asked how the communities were chosen. Mr. Federle said Old Town and Hampden were host communities of Casella and the MERC Task Force discussed expanding the host community benefits in Biddeford and Saco. They looked for communities that already had an energy committee or team, were prepared to adopt PACE ordinances, a large enough population to make a difference, and had regional and demographic diversity. MGEA's contract with Efficiency Maine Trust (EMT) allowed them to work with eight communities and the communities chosen included Old Town, Hampden, Scarborough, Cumberland, Yarmouth, Buckfield, Topsham and Belfast.

Sen. Craven asked if Mr. Federle knew Casella's political affiliation. At the time the MERC Task Force interviewed Mr. Federle and his partner, they acknowledged that they, as a Task Force, had no funding and turned to Casella to pay for professional services. Mr. Federle made it clear that his Firm's client was the MERC Task Force and how his services were paid for was between the Task Force and Casella. Once the MERC Task Force fell apart, his client became the MGEA, the organization created by the Task Force.

Sen. Trahan noted that the individuals involved were democrats, that half a million dollars of the taxpayers' money was wasted by the shift from the MERC project to MGEA. Mr. Federle disagreed that the money was wasted. There was about half a million dollars of direct economic activity that MGEA was responsible for by getting the 200 plus energy audits performed and 50 plus energy retrofits completed. MGEA did not have

adequate time to demonstrate if its efforts were productive or not. Mistakes were made and a lot of lessons learned.

In response to Rep. Pilon's question of whether similar programs were looked at before setting up the MGEA, Mr. Federle said MGEA was modeled after a program in Washington, DC, and although their numbers were not good, they were one of the better models. He does not think MGEA was given enough time considering the amount of work that had to be done. Rep. Pilon agreed.

Chair Katz said OPEGA's review of the MGEA had nothing to do with politics, and disagreed with Mr. Federle's statement that the fact there was no financial wrongdoing, was not a matter of luck. From what has been said it appears Mr. Murray is a dedicated and honest man, but he had every opportunity to engage in financial wrongdoing if he weren't that kind of person. A lack of appropriate financial controls when public funds are being used is disturbing, and he asked how that happened. Mr. Federle said MGEA was operating before they were fully structured as an organization and that caused lack in oversight.

Chair Katz asked what level of oversight the Board was given as to how the organization was set up in terms of its internal financial controls, noting Mr. Murray's ability to write his own checks without being reviewed by anyone else. Mr. Federle said by the Board's December meeting they had a Treasurer who was reviewing all the financials, the issues that had been identified were being corrected, and checks written by Mr. Murray were being reviewed by somebody else. They were reviewed initially by an employee of Mr. Murray and subsequently by the Board's Treasurer so it was fair to say, it was not as robust a review as it should have been. OPEGA concluded that process to be inadequate.

Mr. Federle agreed with Chair Katz that it appeared many of the federal regulations and contract requirements for use of a government grant were not being followed. There was no oversight by the Board to know whether MGEA employees were complying with, not only good accounting practices, but specific chapter and verse of federal regulations. In response to the question of MGEA's structure, he said Mr. Murray was hired as the Executive Director so was the boss, and reported to the Board. He hired Mr. Federle to continue to work for MGEA subject to the Board's approval. In September the Board approved Mr. Murray and Mr. Federle's contracts. Chair Katz noted that Mr. Federle was part of the process that hired Mr. Murray and Mr. Murray was part of a process that hired Mr. Federle.

Chair Burns said federal money, especially federal grants, have sanctions that there be absolutely no overtures of political activity. There are certainly overtures here with the lack of accountability for how employees were using their time, and the lack of accountability for allowing political operatives to get involved. Mr. Federle said lessons have been learned.

Sen. Trahan said 53% or \$272,000 of MGEA funding was not acceptable under the single audit and is in jeopardy of having to be paid back to the federal government. Members of the MGEA were being asked to sign letters stating they spent the money as intended. If ignoring the federal requirements under a single audit can be swept away by a letter from employees, then the single audit has no value. Mr. Federle said the monies that were identified and were noted as questionable expenses because they had not seen enough information at the time of drafting the audit report to confirm that they were allowable. The auditors are still reviewing information and the letters from employees attesting to what they spent their time on. It is not a single document upon which anybody is relying, but is in addition to all the other information. What was missing were the daily time sheets.

The GOC thanked Mr. Federle for his testimony and for answering their questions.

Edward Spencer, Old Town, Maine. (A copy of Mr. Spencer's written testimony is attached).

Mr. Spencer liked Efficiency Maine Programs, but what bothered him was that all of a sudden it was discovered that Old Town is a part of MGEA's work. At town meetings he and others asked about MGEA and the Town Manager kept saying he did not know what he was talking about. Director Ashcroft said it is

not addressed in the Report, but wanted the GOC to know that the grant applied for had two parts to it. Under Part 1, the US DOE was looking for applications from State level agencies. There was also a Part 2 to the grant that had its own money for municipalities and organizations. She thinks the Old Town application probably went in as a Part 2 application, and the State went in as a Part 1. Director Ashcroft said Mr. Federle explained to OPEGA how MGEA did work with some towns to help them with their own applications.

Sen. Trahan asked Mr. Spencer where he got the information regarding Mr. Federle getting to write the governor's letter of support for the entire State proposal. Mr. Spencer got the information earlier in the year from an article by the Maine Center for Investigative Reporting. Sen. Trahan then referred to the sentence of "Federle seems to have had very little plan what to do with any funds received. It sounds to me like Federle was being paid by Casella to write the governor's letter of support" and asked where Mr. Spencer had gotten that information. Mr. Spencer knew that until the State grant funds were received, MGEA's only source of funding was from Casella. The Task Force chose Mr. Federle to write the grant application letter and he thinks a trash company writing from the governor's perspective to a federal official is bothersome.

Chair Burns thanked Mr. Spencer for coming forward and sharing his information with the Committee.

Michael Stoddard, Executive Director, Efficiency Maine Trust. (A copy of Mr. Stoddard's testimony is attached).

Sen. Trahan asked for clarification of how EMT missed that there was not proper documentation for some of the MGEA's receipts. Director Stoddard said what the auditor and OPEGA found were not that the receipts were lacking, but that the process by which the expenditures were being approved, was lacking and that was upstream from EMT. Sen. Trahan asked who was responsible for missing the \$272,000 in the process. Director Stoddard said the financial weaknesses existed at MGEA. They should have had written policies and procedures in place, and should have kept the proper time sheets. The Executive Director was approving his own expenses without having a segregation of duties or a treasurer. EMT could not see that from their end, but it is something that will turn up in an audit. Their process of approving invoices was correct, but not for employees' time sheets. They just assumed MGEA had the time sheets for its employees. EMT has incorporated OPEGA's recommendation to solve that situation. To avoid that problem in the future they will require sub-grantees to certify ahead of time that they have written or some other kind of protocol in place for providing that information.

Chair Burns asked if EMT spot checked to ensure that MGEA had the documentation to backup their payroll. Director Stoddard said they didn't, but have amended their grants monitoring and administration plan and thinks it would be sufficient if they certify that time sheets are being kept and to spot check periodically to make sure they have them. That procedure is required of nonprofits, but is not required of any of the other grant recipients or vendors. As Mr. Federle said, he hired a former CEO of a small start up business thinking the person knew what he was doing, but had not factored in that the rules are different for nonprofits and it was EMT's responsibility to let them know the rules.

Chair Katz asked the probability of the \$272,000 having to be paid back, and who pays it. Director Stoddard said EMT is gathering additional information, has the corrective action plan responses, and will present it to the US DOE. They will decide if it is sufficient. Anything not sufficiently documented will be owed by the State. He was not certain of the timeline, but thinks EMT may have a final determination within a month or so. MGEA's Board's treasurer has volunteered to keep working and will answer any of the outstanding questions. Mr. Federle will provide information as necessary, and EMT has all of MGEA's files.

In response to Chair Burns' question of whether shutting down MGEA's program would be held against Maine in the future when ranked for other competitive grants, Director Stoddard said that was an issue and why the decision was not easy to make. Although not the best position to be in for the next time a grant is requested, Maine does rate favorably in the eyes of the US DOE in that the matter was handled decisively and quickly. There had been a lot of other issues in the last 6-8 months subsequent to the Macdonald Page audit

regarding the financial weaknesses and structural questions. EMT had taken action based on performance results and made the decision to close the program in collaboration with MGEA staff and their Board.

EMT's contract with MGEA required strict performance reporting every month and for them to set specific concrete targets of what they planned to achieve by the end of the year. EMT also included language in the contract that allowed them to closely track the performance of the program and by the 4th or 5th month you could see they were not going to be even close to their target. Also EMT's Board of Trustees declined to give MGEA a contract for 3 years because it was a new program, so gave a 1 year contract with the option to extend. At the end of 6 months MGEA was trying hard, picking up speed and getting organized, but were not close to hitting the targets set for the year and EMT advised them that they were unlikely to extend their contract. It was decided not to go to the end of the contract, but to end the Program at that time.

It was noted by Rep. Fitzpatrick that the federal government provides guidelines for grants received and asked why EMT did not let MGEA know of those guidelines. Director Stoddard said the requirements to comply with the federal rules are extensive and EMT should have given MGEA more directive of where to find the regulations and guidelines. They will do so in the future.

Sen. Craven asked if it was specifically stated in the grant that salaried employees were required to turn in time sheets. Director Stoddard was almost certain it specifically said that in the contract, but would have to check.

The GOC thanked Director Stoddard for his presentation.

Adam Lee, Chair, EMT Board of Trustees.

Mr. Lee commented that EMT could have done a better job and that MGEA did not have sufficient time to complete the job they were trying to do. MGEA was trying to do something new and was not being irresponsible, but were trying an approach, which he thinks, given more time, would have had results. You cannot stop trying to do new things.

The Committee thanked Mr. Lee for his testimony.

RECESS

The Government Oversight Committee recessed at 12:30 p.m.

RECONVENED

Chair Katz reconvened the meeting at 1:10 p.m.

The Public Comment Period was closed at 1:14 p.m.

- Committee Work Session

Following Committee discussion, it was decided that EMT will report back to the GOC at its December, 2011 meeting. Director Stoddard said EMT should have completed its work and have a determination from the US DOE as to whether the State would have to pay the \$272,000 back.

The GOC suggested Legislative action be taken. Director Ashcroft said OPEGA's recommendations were focused, not just on EMT, but also other agencies that might find themselves in the same situation and asked the Committee if they wanted to broaden it to other agencies. Macdonald Page said although under the federal regulations EMT should have made sure that MGEA had all of its procedures and controls in place it is not a completely unusual situation. The federal government expects the receiving agency to take measures to make sure that the capacity,

controls and procedures were in place, and not only be in compliance, but to make sure there is no misuse of funds prior to disbursing grant funds or any public monies.

Chair Katz referred to Recommendation 2 – Criteria should be established for determining when non-State entities can be designated as sub-recipients on grants to State or quasi-State agencies. Director Ashcroft explained the reason for the recommendation was part of the underlying question asked by the Energy, Utilities and Technology (EUT) Committee of how the State got into the situation. That is what OPEGA focused on in terms of its recommendation. It appeared there were two points. (1) The decision to include a non-State agency on a State level grant application. That immediately puts the State at risk or liability for whatever that organization is going to do as a sub grantee. In this particular case, OPEGA got different accounts of how that all transpired. It did seem that if there had been a process in place before incorporating an entity by name into the grant application, a process to make sure the State selected them based on their qualifications, capacity, experience or background, the she was not sure MGEA would have made its way into the sub grantee. The PUC's Energy Division included MGEA in the application and by the time it was transferred to EMT they felt stuck. The partnership had already been established, and even though the roles were changing, they felt obligated to continue with that partnership. (2) Before you hand over any funds, make sure they are ready to be compliant and accountable.

Chair Katz recommended that OPEGA pursue both of those issues in terms of suggested legislation for the GOC's consideration. From the testimony heard at the meeting, Sen. Diamond agreed.

Rep. Burns thought the State had to have rules, regulations or laws in place regarding these issues and asked if OPEGA checked what was in place for State agencies to distribute public monies. Director Ashcroft was not aware of any, and said part of the work done by OPEGA included reviewing what laws and regulations might be relevant and under the State's contracting statutes and procedures there are some guidelines.

In response to Sen. Craven's question of how often this happened Director Ashcroft shared her conversation with someone from Macdonald Page who indicated that DHHS' applications or grants have a partner incorporated into them that is not a State agency, but is a nonprofit. He indicated it happens often enough that this incident was not a completely unusual situation.

Macdonald Page has issued their report with the \$272,000 of questioned costs included and have also incorporated the management actions talked about as corrective actions. It will be up to the US DOE to decide whether the additional material and information that has been put together is sufficient to show the expenditures were properly spent and not require any return of funds.

Motion: That the Government Oversight Committee asks OPEGA to proceed with drafting legislation regarding establishing criteria for when non-State entities can be designated as sub recipients on grants to State and quasi-State agencies that the GOC can consider as a Committee. (Motion by Sen. Diamond, second by Rep. Boland, passed unanimously, 11-0).

Chair Katz asked Mr. Federle to respond to Mr. Spencer's testimony. Mr. Federle said at the time that EMT, PUC, MSHA and MGEA were putting the application together, a request went out to a number of different people to fill one of the items of the grant application, which was letters of support from State officials. He was asked to prepare the letter of support from Governor Baldacci by someone at the PUC. What Mr. Federle drafted was not what was submitted to the US DOE, but he did prepare a draft that was substantially revised, but ultimately became a letter that was signed by the Governor in support of the State's application.

Chair Katz said the GOC will get a report back in December on what steps EMT has taken in response to OPEGA's Report.

UNFINISHED BUSINESS

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

The GOC's discussion regarding the meaning of confidential and expected responsibilities of those receiving a copy of an OPEGA confidential report included:

- It is the second report that where the GOC is aware that confidential information in a report has been leaked to the public.
- What appeared in the newspaper prior to the release of this report was a violation of OPEGA's confidentiality statute. EMT and Director Stoddard were well instructed on how to handle the confidential information and still they talked about it publicly.
- When someone receives a copy of a report prior to public release, that report has "CONFIDENTIAL DRAFT" written in red at the top of the report. It would be hard to find any ambiguity in that. It does not say confidential except or confidential except legislators, etc.
- Did not know how there could be any confusion in the confidential nature of the report.
- The confidentiality of OPEGA reports are critical because it goes to the integrity of the organization of OPEGA and its ability to do their work in an objective way and be immune from influence by anybody.
- If the GOC cannot see an OPEGA report before it is issued, that should mean nobody can see a report until it is issued.
- The statute was intended to cover any disclosure period.
- The draft report goes to one or two key people at the agencies being reviewed with instructions that it should be kept confidential, but could be shared within their organization or chain of command as necessary. The GOC receives a copy a couple of days prior to its meeting where the report will be released to the public.
- One day prior to the release of the final report under statute OPEGA has to provide the agency with the actual final report prior to the meeting. As a courtesy, a final report is also given to the Governor's Office. At the time these reports are given, the recipient is given instructions that the report is confidential until it is publicly presented to the GOC at a meeting.
- The fact that OPEGA informs those who receive a confidential copy that it can be shared within the organization laid the responsibility in OPEGA's lap for it being distributed, and it has to be clarified that any distribution of the information essential to the elements of the report, are the agency's responsibility.
- There needs to be definition of how far the report can go within the agency before being in violation of the law.
- The 15 days for an agency to receive a copy of OPEGA's draft report is in statute, and aside from how long anyone has the report, there are times when that lengthens out OPEGA's process in terms of turning a report out to the GOC. However, it is a valuable addition for the agency to have the opportunity to comment and have their comments printed with the report when delivered to the GOC. Having a period of time for that to occur, results in the GOC receiving a package they may not otherwise get.
- Unless otherwise warranted, OPEGA tries to make sure that the agency is not surprised by anything being released publicly.

Comments and recommendations regarding release of an OPEGA confidential report:

- A review of the section regarding confidentiality in GOC/OPEGA statute by the Attorney General (AG).
- Individuals would have to sign that they are receiving a confidential copy of a report.
- OPEGA draft language for the GOC's review which will get signed by everyone who receives a confidential report including a notation that violation can be a Class E crime.
- Director Ashcroft contact the AG's Office for clarification because if the GOC wanted to pursue a Class E crime the AG's Office would have to have something iron clad in the statute. The AG's office may be able to offer advice of what the language needed to be, preventing not just disclosure of the actual written material, but disclosure of its contents by verbal or any other means.
- Whether the GOC wanted to consider limiting the distribution.

- That the Governor receives a copy prior to the public release is going beyond the confines. It should go to only the entity and whoever is in charge of the entity.
- The distribution of a confidential copy of the report has to be limited.
- Whether 15 days the agency gets to respond to OPEGA's draft report is too long.
- Before changing the process, OPEGA would like to try being absolutely clear to everyone involved who receives a copy of a confidential draft that they do not distribute, talk about, agree on who will receive a copy, and who will not be privy to it.
- Having a sheet for individuals to sign who receive a copy of a report won't work because a lot is sent by email.
- Perhaps the point person should be responsible for keeping a log of who got information regarding the report.
- That Director Ashcroft, and perhaps the GOC Chairs, could meet with the AG's representative to discuss the issues and report the results of that meeting at a future GOC meeting.

Director Ashcroft had enough information from the GOC's discussion to draft legislation for the Committee to review at its next meeting. She was cautioned not to take on the responsibilities of administrator.

Director Ashcroft referred the Committee to the memo from Jonathan Wayne, Executive Director, Commission on Governmental Ethics regarding the lobbyist disclosure issue. The memo gave the background of the statute, and the Commission's action to date. Mr. Federle did meet with Director Wayne and has taken steps to amend the lobbyist disclosure forms that OPEGA said did not appear to be in compliance. Director Wayne will be meeting with the attorney for the Commission to discuss how to apply the statute and the Commission's rule and whether the members of the Ethics Commission should take any action. Director Ashcroft will stay in touch with Director Wayne and report their decision of action back to the GOC.

Motion: That the Government Oversight Committee endorses OPEGA's Report on Maine Green Energy Alliance. (Motion by Sen. Diamond, second by Sen. Craven, passed unanimously 11-0).

STATUS REPORTS FROM DIRECTOR

• Current Work in Progress

Director Ashcroft reported that the MGEA is complete and OPEGA is currently working on the Child Development Services review. The Cost Per Prisoner review is in fieldwork and is progressing. The GOC had tasked OPEGA to do more research regarding real estate sales of State property and said they had received the needed information from the agencies, so the Information Brief can be presented at the next GOC meeting

Chair Burns asked for clarification of what to do with information a Committee member may receive regarding an OPEGA review. Director Ashcroft said any information forwarded to OPEGA is considered a work paper and is reviewed to determine if the questions being asked are related to the review. If they are, they are incorporated, but if they do not, OPEGA keeps it on a tickler list in case something related to it comes up during the review. Any information received by members should be forwarded to OPEGA who will incorporate it, as appropriate, into the review. The legislator should use their judgment as to whether it is pertinent to the review before forwarding it to OPEGA, but if in doubt, forward it. Rep. Fitzpatrick suggested informing the person that there will be a public hearing in the future and they were welcome to send their information to OPEGA for the public hearing.

NEXT GOC MEETING DATE

The next Government Oversight Committee was scheduled Tuesday, October 18, 2011 at 9:00 a.m.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 2:20 p.m. (Motion by Rep. Pilon, second by Rep. Fossel, unanimous).

Public Testimony

Sept. 6, 2011

Government Oversight Committee Public Hearing

I mentioned in my e-mail to you that my curiosity led to a look at Old Town's Grant Appl. to DOE. Since we weren't satisfied with evasive answers from our City Manager, several of us Old Town residents filed a FOAA request. We also asked about the landfill gas pipeline project to UMaine. After repeated further requests, we were told that City Manager Daigle was involved with about 20 meetings or conference calls with MGEA. Yet somehow, there were no notes taken at any of these meetings. It makes me wonder if there was a policy of secrecy at these Casella/Federle/MGEA discussions. We never did learn which (if any) State or UM officials were present.

We are being told that the Casella/Federle/MGEA Grant was included in the State Grant so that there would be no competing Grant. On Dec. 13, 2009, Old Town's Grant asking \$3million from DOE to fund Casella's landfill gas pipeline to UMaine was submitted. The State Grant went in one day later, Dec. 14, 2009. Yet, somehow the State was not aware that Old Town was looking for DOE dollars. Casella and Federle certainly knew, yet somehow the Governors office, PUC, and Efficiency Maine Trust had no idea. This is difficult to believe.

One of the most bothersome bits of information to emerge is that Federle got to write the governors letter of support for the entire state proposal, and this letter was quite flattering of MGEA. This was during a time when Federle seems to have had very little plan what to do with any funds received. It sounds to me like Federle was being paid by Casella to write the governors letter of support which just happened to benefit Federle. I'd have to say this was a major conflict of interests for those involved.

Part of this messy situation facing you as legislators and we as interested members of the Public concerns: How do we treat former high-ranking members of a Governors staff? One train of thought is to cut them some slack; surely they were trustworthy enough to *be* legal counsel, so we can trust that there was no malfeasance intended. I am with the other group that wants the highest standards of conduct applied to more accomplished insiders. This is a good example of why we need revolving door legislation.

Thank you for your time, and I'd be happy to answer any questions.

Edward S. Spencer

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Testimony of the Efficiency Maine Trust

Michael D. Stoddard, Executive Director

On the OPEGA Report on the Maine Green Energy Alliance (MGEA)

Presented to the Government Oversight Committee

of the Maine Legislature

Augusta, Maine

September 6, 2011

Senator Katz, Representative Burns, and Honorable Members of the Committee:

On behalf of the Efficiency Maine Trust (the Trust), thank you for this opportunity to present public comment on the recently completed OPEGA Report on the Maine Green Energy Alliance (MGEA).

The Trust is pleased with the OPEGA Report because it is helpful to us in several ways. First, it has generated analysis and findings that will assist the Trust in fulfilling its oversight obligations for this sub-grant. Significant issues about the MGEA project were raised by the legislature in February and by an independent financial audit drafted in June, and the Trust welcomes the input of the OPEGA review since it will help us bring closure to these issues and to the grant. Second, the Report offers helpful recommendations for the Trust and similarly situated fiscal agents overseeing future sub-grants, and we have already taken steps to incorporate this advice. Third, the findings of the Report provide further justification for the decisive action that was taken by the Trust staff and Board in shutting down the MGEA project, after just six months of a three year grant, and reallocating the funds to other uses that would better help Maine homeowners reduce their home heating costs.

For these reasons, we thank the OPEGA staff for their efforts in generating their review in such a short period, with objectivity and professionalism. The integrity of the Report will significantly advance our efforts to address any outstanding issues and complete our final reports on the grant to the United States Department of Energy (US DOE).

I. The MGEA Sub-Grant

The OPEGA Report provides a useful history of the origins and context of the grant to MGEA. In the summer of 2010, the Efficiency Maine Trust inherited all program and financial obligations for administering energy efficiency programs that had been operated previously by the Maine Public Utilities Committee. At that time, the staff and Trustees were very excited to begin implementing a new project that would help Maine homeowners get financing to make energy upgrades to their homes which, our experience shows, reduces wasted energy by more than 40%. This project has the potential to provide a core strategy for Maine to reduce its dependence on heating oil and help Mainers lower their energy costs.



We were able to begin this project because we had just been awarded a \$30 million grant from the US Department of Energy. Most of those funds are dedicated to providing so-called "PACE loans" of up to \$15,000 for home energy upgrades. But a portion of the funds belonged to a project of the Maine Green Energy Alliance to fund their sub-grant proposal for community outreach and education that would teach homeowners about the new PACE loans and help facilitate them setting up energy audits, hiring contractors, and navigating the loan process.

The Trust became the fiscal agent for this pass-through grant. As the fiscal agent for a pass-through grant, the Trust did not have the authority to direct the MGEA on its program design or implementation, the way we might for any of the many vendors who provide services to the Trust. We did, however, have oversight responsibilities for the performance of the grant, which includes ensuring full reporting of activities and results, and accounting for the use of funds.

II. Issues with the MGEA Sub-Grant

The OPEGA Report also provides a thorough recounting of a variety of issues and concerns that emerged in the MGEA project.

Program Performance

The first category of issues to emerge is program performance. As has been chronicled in the minutes of our Board meetings, press releases, press reports, and hearings at the Energy, Utilities and Technology Committee (EUT), a mere five months into the three-year grant, principals at MGEA and the Trust became concerned that the approach MGEA was piloting in eight communities was not delivering the level of results that we all expected. By the end of six months, it was agreed by both MGEA and the Trust that while results were improving as the group got up and running, they were going to fall far short of their one-year targets. It was further agreed that other program approaches funded by the Trust were working more effectively, and the funds set aside for this sub-grant would be better spent on those other approaches. Boards of both organizations voted to end the project.

Fund Uses and Accounting

The second category of issues related to whether the funds of the MGEA were used for appropriate purposes and were properly accounted for.

Some of these issues first emerged when the Trust began processing invoices from MGEA. The Trust used a reimbursement model, requiring receipts for itemized expenses prior to releasing funds for invoices. From this review process, the Trust could see that MGEA was not proficient in providing documentation, but that it did generally have receipts for all of its expenses and that the expenses related to activities that were consistent with the grant.

Additional issues emerged in hearings at the EUT, after the project was discontinued, related to certain employees of MGEA who were also members of the legislature. In response to the Committee's requests, MGEA provided hundreds of pages of documents to the Committee members, to the Trust, and to members of the media. These documents included:

- email correspondence among employees and supervisors

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- expense reports
- mileage reports and purposes
- invoices showing data and amount of expenses
- attorney work product, invoices, and explanation of the remedy of a potential conflict
- accounting of community outreach expenses
- phone records showing employee pre-election calls
- timesheet records for hourly employees
- personnel policy for conduct of outreach and canvassing
- guidelines for canvassing procedure

Next, a range of procedural issues emerged in the independent annual audit, performed by MacDonald Page, as required for all federal grants of this size to a non-profit group. This audit was scheduled before the OPEGA review began. The draft of that audit, shared with the Trust by MGEA principals in June, indicated that a preliminary review of MGEA's files revealed a range of issues suggesting the organization had "weak financial controls" that resulting in significant "questioned costs." The MacDonald Page audit specifically identified:

- Improper segregation of duties related to:
 - the Executive Director approving his own expenses without proper review and approval;
 - the Executive Director approving his own entries to the accounting system;
- Insufficient documentation related to:
 - Timesheets — lacking appropriate support for salaries and wages charged;
 - Mileage reimbursements lacking documentation of business purpose;
 - Legal Expenses lacking appropriate itemized detail;
- Lack of knowledge and capacity for accounting and compliance contributing to:
 - Lack of compliance with disclosure requirements;
 - Improper financial statements;
 - Risk of misstatement of financial information; and
- Lack of written policies and procedures.

The Trust also noted that the audit did not specifically identify any cases of fraud or missing funds.

After the audit identified these specific issues, the MGEA's executive director and board treasurer initiated a Corrective Action Plan, which has been overseen by the Trust. During the course of June, July and into August, MGEA gathered and shared with the Trust its progress on preparing documentation to address outstanding financial weaknesses, including the provision of:

- employee activity reports,
- employee and supervisor certification of hours worked,
- independent review and authorization by the Board Treasurer of certain expenditures,
- indication of "business purpose" for certain travel expenses, and
- itemized detail for certain legal expenses.



Finally, the Trust had additional indications from the US DOE site visit report that the Trust's approach to reviewing invoices was appropriate.

III. Answers to Issues — Working to Close Out the Sub-Grant

For the past eight months, the Trust has been carefully monitoring and reviewing the wind-down of the MGEA project. This started before OPEGA began its review and will continue even after the OPEGA Report is issued. We still have 18 months left in the DOE grant period. The Trust has been on the front lines of fulfilling our obligation to the US DOE and the people of Maine as the fiscal agent for this grant to determine what happened with the funds and whether the reporting of these uses satisfies all of the relevant requirements.

To that end, since January of this year the Trust has been reviewing:

- the invoices and accompanying receipts presented directly to us by MGEA for reimbursement in 2010;
- all of the correspondence and documentation presented to the EUT Committee in February;
- the issues and findings of the independent MacDonald Page audit on MGEA that was presented to the Trust in June; and
- the documentation resulting from MGEA's Corrective Action Plan in July and August.

The progress of MGEA's Corrective Action Plan, while not complete, supports our sense from the past eight months of reviewing this file that the funds of the grant were not misused and that many of MGEA's procedural deficiencies have been or can be cured with some extra effort. If the Corrective Action Plan is completed successfully, the Trust is hopeful that when the final results are reported to the US DOE, the Department will agree that most of the questioned costs have been addressed.

Into this picture the OPEGA Report comes at a critical juncture. Bringing deeper review and analysis, together with its reputation for being independent, non-partisan, objective and thorough, OPEGA's findings provide extremely valuable support for decisions that will now fall to the Trust and ultimately the US DOE in closing out this sub-grant. Perhaps most significantly, the OPEGA Report finds:

"OPEGA has seen considerable documentary evidence of the actual plans, activities and work products associated with MGEA's effort. That evidence indicates that those employed by MGEA, as contractors or employees, were engaged in a substantial and earnest effort to make a difference in residential energy efficiency at a community level.... [Me found no inappropriate use of grant funds." (OPEGA Report, at p. 4).

Additionally, the recommendations provided to the Trust by the OPEGA Report are both timely and constructive. While noting that the Trust could have done a better job to assure that the sub-grantee had sufficient capacity and controls in place, the OPEGA Report did not recommend any sanction of the Trust. As we noted in our written response attached to the OPEGA Report, the Trust has welcomed the OPEGA recommendations and has already taken steps to incorporate them into our operating procedures for grant applications and administration.

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The oversight and reporting obligations of the Trust do not stop now that this Report is complete, nor could they be interrupted during OPEGA's review. We see our duties to keep certain parties informed of the grant's progress extending to our Board of Trustees, key legislators, and DOE officials. This is consistent with the message that has been conveyed repeatedly to the staff from our Board and from key legislators that we must strive to operate openly and transparently, so that Maine's ratepayers can be assured that the funds we hold in trust for their benefit are being appropriately used and accounted for.

This is why, for example, the Staff of the Trust provided briefings to the Trust's Governance Committee and Finance Committee throughout the summer to update them that:

- the Macdonald Page audit of MGEA identified significant questioned costs due to weak financial controls, lack of formal policies, and lack of organizational capacity;
- the audit did not identify fraud or missing funds;
- MGEA's Corrective Action Plan was emerging that could potentially resolve these questioned costs;
- the US DOE site visit team reported satisfaction with the Trust's oversight practices and decision to discontinue the grant;
- the Trust Staffs internal review of MGEA's publicly available files and responses to the Corrective Action Plan turned up significant documentation of appropriate business activity and no evidence of misuse of funds;
- the final draft of the OPEGA Report was scheduled for release on August 16, it contained no surprises, and the findings were consistent with the MacDonald Page audit and our internal review;
- the OPEGA Report found that the Trust performed well in monitoring program performance of the MGEA project but should have taken extra efforts to ensure that MGEA had the capacity to properly administer the sub-grant; and,
- the OPEGA Report recommended that in the future, the Trust and other fiscal agents handling pass-through grants (a) institute procedures to ensure from the outset that sub-grantees have appropriate capacity and controls to handle funds and (b) establish criteria and a process for selecting sub-grantees in grant applications.

A similar briefing was provided to key legislators and the US DOE once the final draft of the OPEGA Report was done. The Trust staff believed such briefings were consistent with the desire for transparency in our operations and with our obligations to keep key institutions that oversee the Trust updated on the progress of a project — the MGEA sub-grant — that had been associated with significant concerns needing extra attention. We firmly believe that these briefings did not constitute a release to the public, and note that due to the significant overlap of issues in the OPEGA Report and the issues and information independently generated from our own eight-month, parallel review, the vast majority of the information we discussed was already publicly available information and not confidential. It appears to us that this a very unusual situation in which both OPEGA and an agency such as the Trust are simultaneously reviewing the conduct of an organization. We wish to emphasize that at no time did I or

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any member of the Trust staff provide or show a copy of the OPEGA Report, or any portion of the Report, to anyone outside our organization.

The OPEGA Report makes an important and valuable contribution to the Trust's efforts to properly administer the MGEA sub-grant and to bring it to proper closure. It is precisely because of the integrity of the OPEGA Report —the quality and depth of analysis, the objectivity, the lack of partisanship — that it is so valuable to us. The Trust did not have any desire to change the Report from its final draft, and did not ask anyone to change the Report from its final draft. Nor did we seek advanced media coverage of the Report or stand to benefit from such coverage. The Trust had the least to gain and the most to lose if the Report's integrity were called into question. Therefore, we hope the Committee will appreciate that the staff and the Board of the Trust would not want to do anything to detract from the integrity of the Report and if any of our actions inadvertently had the opposite effect, we would deeply regret that and would follow a different course in the future.

XI. Conclusion

In the end, the analysis and findings of the OPEGA Report appear to us to be thorough and objective and extremely timely. The Report corroborates other sources of information about financial control issues and how the funds were used, and will make our efforts easier to bring the grant to its final disposition.

The OPEGA Report is helpful to the Trust because it:

- has generated analysis and findings that will assist the Trust in fulfilling its oversight obligations for this sub-grant;
- offers helpful recommendations for the Trust and similarly situated fiscal agents overseeing pass-through sub-grants; and
- the findings of the Report provide further justification for the decisive action taken by the Trust staff and Board in shutting down the project after just six months of a three year grant, and reallocating the funds to other uses that would better help Maine homeowners reduce their home heating costs.

The integrity of the Report will significantly advance our efforts to address any outstanding issues and make final reports on the grant to the US DOE.