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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 Bureau of State Audits (bureau) 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. The U.S. Department of 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.

In December 2009 the bureau issued an audit report titled *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.* Our report concluded that the Energy Commission had only contracted for the use of $40 million and none had been spent yet, despite having access to $113 million of the $226 million in Recovery Act funds it had been awarded for the Energy Program. In fact, as of December 2009 the only Recovery Act funds that the Energy Commission had spent were $71,000 on its own administrative costs. We recommended, in part, that the Energy Commission promptly solicit proposals from entities that could provide the allowable services and execute contracts, grants, or loan agreements with these entities so that California can realize the benefit of the Recovery Act funds.

In its one-year response to our 2009 audit, the Energy Commission reported it had made significant progress implementing newly created programs and awarding Recovery Act funds. However, we found that as of June 9, 2011, the Energy Commission had reported spending only $69.9 million, or 31 percent of the $226 million in Recovery Act funds, as shown in the Table on the following page. Moreover, the $69.9 million in expenditures reported by the Energy Commission do not reflect the amount of Recovery Act funds actually provided for State Energy Program projects. For example, the Table shows that as of June 9, 2011, the Energy Commission recorded that it has spent $25 million for the Energy Efficient State Property Revolving Loan program. However, although the Energy Commission provided $25 million to the Department of General Services to administer the loan program, as of April 19, 2011, only $9 million had been loaned for energy efficiency projects. Similarly, as of June 9, 2011, the Energy Commission had recorded $11.7 million in expenditures for the Clean Energy Business Finance program. However, $11.2 million of those expenditures represented a drawdown by the Energy Commission of federal funds and placement of the funds in the loan revolving fund for the program but those funds have not yet been disbursed for loans for clean energy projects. Actual expenditures for the Clean Energy Business Finance program as of June 9, 2011, were about $530,000 for administrative costs. Based on its agreement with the U.S. Department of Energy, the Energy Commission must spend the remaining funds by April 30, 2012. According to the Energy Commission's deputy director of the Administrative Services Division (administrative deputy director), the Energy Commission is on track to fully use the Energy Program funds by the April 2012 expiration date of the federal agreement. However, we could not verify portions of the Energy Commission's efforts to monitor the status of projects and subgrant funds it had awarded because it was not always able to provide evidence sufficient to support its assertions.

Table

State Energy Program Expenditures as of June 9, 2011

SUBPROGRAM NAME AND ADMINISTRATIVE ACTIVITY	AMOUNT ALLOCATED BY THE ENERGY COMMISSION*	EXPENDITURES REPORTED BY THE ENERGY COMMISSION THROUGH JUNE 9, 2011	AMOUNT ACTUALLY SPENT	AMOUNT REMAINING TO BE SPENT	PERCENT REMAINING TO BE SPENT
Clean energy workforce training program	$20,000,000	$10,612,586	$10,612,586	$9,387,414	47%
Energy Conservation Assistance Act (ECAA) low interest loans	25,000,000	3,552,626	3,552,626	21,447,374	86
California comprehensive residential building retrofit program	50,212,451	8,413,002	8,413,002	41,799,449	83
Commercial building targeted measure retrofit program	29,610,637	4,187,156	4,187,156	25,423,481	86
Local government commission contract	33,176,912	2,497,656	2,497,656	30,679,256	92
Clean energy business finance program	30,600,000	11,684,550	529,253	30,070,747	98
Energy efficient state property revolving loan program	25,000,000	25,000,000	9,000,000	16,000,000	64
Program administration	12,400,000	3,974,838	3,974,838	8,425,162	68
Totals	**$226,000,000**	**$69,922,414**	**$42,767,117**	**$183,232,883**	**81%**

Note: 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. As of April 19, 2011, General Services reported it has committed the entire $25 million subprogram amount to loans but has disbursed only $9 million of these funds. Similarly, the California Energy Resources Conservation and Development Commission (Energy Commission) has executed loan agreements with three clean energy manufacturers totaling $11.2 million under the Clean Energy Business Finance program, but as of June 1, 2011, none of the funds committed to these loans had been disbursed to the borrowers. Actual disbursements in the Clean Energy Business Finance program are about $530,000 in administrative costs.

* According to the administrative deputy director of the Energy Commission's Administrative Services Division, the Energy Commission's Recovery Act Ad Hoc Committee reallocated $7.2 million on June 8, 2011, but as of June 21, 2011, the Energy Commission had not updated its funding chart to reflect the reallocations. Amounts allocated to the subprograms listed in this column are as of April 30, 2011.

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 administrative deputy director, the Energy Commission contract managers are assigned various projects under the subprograms and track the progress of subrecipients in carrying out their activities funded with Recovery Act subgrants. 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 and the Energy Commission's Recovery Act Ad Hoc Committee (committee). The committee's purpose is to gather information to develop guidelines for consideration and adoption by the Energy Commission that will govern the administration and award of Recovery Act funds. Our review of the subprogram status updates provided to the committee found they contained general information pertaining to project status, expenditures, and issues or conflicts. Committee meeting minutes and meeting agendas suggest that contract managers or other Energy Commission staff have provided program status updates to the committee. In February 2011 the Energy Commission formalized a monthly report that informs the committee of the total amount encumbered and the total amount spent under each subprogram. However, the April 2011 report overstated expenditures for the Clean Energy Workforce Training program by $1.8 million, or more than 20 percent.

According to the administrative deputy director, the Energy Commission is on track to spend the Recovery Act funds by the deadline and anticipates expenditures will increase greatly this summer. Specifically, he stated that disbursements to subrecipients have been slow because many of the subprograms funded under the Energy Program took time to implement. For example, some programs require training, marketing, and energy audits prior to the actual retrofit work. He also stated that disbursements have been slow because the Energy Commission makes Energy Program payments in arrears, meaning that subrecipients invoice the State after they incur costs, and that some subrecipients have not invoiced for costs they have incurred and may not until the project is completed. As previously discussed, contract managers provide information such as the status of a project in the reports they provide to their supervisors, executive management, and the committee.

However, our review of the status reports for the subprograms under the Energy Program found that, while many of them indicate the subrecipients are preparing to make large expenditures or have already incurred costs for which they will eventually request reimbursement, the status reports do not provide sufficient evidence that the Energy Commission will be able to spend all of the Recovery Act funds. For example, the Clean Energy Business Finance program status report indicated that as of June 1, 2011, none of the six subrecipients had reported any expenditures. In fact, only three of the subrecipients had executed loans at the time, totaling about $11.2 million. Furthermore, the status report indicated that loan disbursements were planned for three of the subrecipients, but it did not contain the amounts of these planned disbursements. Similarly, the Energy Commission staff prepare a subprogram status report for the Energy Upgrade California element of the Energy Program, which is made up of the California Comprehensive Residential Building Retrofit subprogram, the Commercial Building Targeted Measure Retrofit subprogram, and the Local Government Commission contract, with combined allocations of Recovery Act funds totaling $113 million. As shown in the Table, as of June 9, 2011, the allocations of funds to the three subprograms were 83 percent, 86 percent, and 92 percent unspent, respectively. This report indicates that contract managers for these subprograms track whether subrecipients are or will be experiencing difficulties in spending the funds by the deadline, as well as whether those issues have been or will be resolved. However, the April 22, 2011, report provided by the Energy Commission gave little indication that these projects would be spending or invoicing large amounts of funds this summer, as indicated by the administrative deputy director.

Another example of a status report the Energy Commission provided was for the Energy Conservation Assistance Act Low-Interest Loans, which suggests that as of June 9, 2011, seven of 28 projects under this subprogram are completed, 15 projects are in progress, and six of the subrecipients with loans totaling nearly $8.7 million of the $21.4 million shown in the Table as remaining to be spent for this subprogram had not even started their projects. The status report provides no indication of the completion dates for 12 of the 28 projects. In addition, contract managers rely on the subrecipients for information regarding the status of the project. According to the subprogram supervisor, subrecipients of this subprogram provide regular status updates, but the information on these updates is self-reported and the Energy Commission does not always require the subrecipients to provide supporting documentation prior to invoicing. Some subrecipients provide supporting documentation, such as including photographs of the project site with their updates, and others send in documents such as an agreement with a contract vendor or a request for proposal. According to the subprogram supervisor, project managers may ask for documentation that supports the information the subrecipients provide in the status updates and may perform site visits if they believe the subrecipient is having difficulties, if the information the subrecipient provides is questionable, or after the subrecipient invoices a large portion of the loan. However, if the Energy Commission does not require supporting documentation for the subrecipient status report before the subrecipient submits an invoice, the Energy Commission might have difficulty ensuring subrecipients have incurred costs, as reported in the status report for this subprogram.

Based on the lack of Energy Program expenditures, as shown in the Table, and the information contract managers provide to update executive management and the committee, we expected the Energy Commission to have a plan in place to redirect funds away from subrecipients unable to spend the funds by the April 2012 deadline. However, this was not the case. Rather, the Energy Commission appears to have discussed and considered options for reallocating the Energy Program funds that the current subrecipients will be unable to spend. Instead of a plan, the administrative deputy director provided a document listing potential Recovery Act reallocation options, and stated that on June 8, 2011, the committee redirected $7.2 million to subrecipients suggested in the document. Based on information provided by an economic recovery program analyst at the Energy Commission, the process of reallocating the funds is ongoing and the Energy Commission may decide to redirect additional funds in the future. According to the administrative deputy director, contract managers have provided information demonstrating whether a subrecipient is on schedule to spend its funds, is at risk of returning funds, or has the capacity to spend additional funds in a Contract Manager Spending Exercise report. He stated that contract managers have twice completed this exercise—in April and May 2011—and that the committee uses the information from these exercises to determine which subrecipients are good candidates for receiving redirected funds, as listed in the reallocation options. We asked the administrative deputy director whether contract managers for all subprograms complete this exercise, or if it only applied to a portion of the subprograms. However, he did not provide a clear response to our question. Further, we could not review any of these reports because the Energy Commission did not respond to our requests to obtain the information. Therefore, we were unable to determine the extent of information provided in these reports or whether the information is verified by Energy Commission staff or is based on subrecipient self-reporting.

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.