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## Maine Green Energy Alliance – Start-up’s Weak Controls and Informal Practices Created High Risk for Misuse of Funds and Non-compliance with Laws and Regulations; No Inappropriate Funding Uses Identified but Compliance Issues Noted

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Report No. RR-MGEA-11

**Issues OPEGA noted during this review:**

- MGEA Operated with Weak Financial Controls and Informal Business Practices (pg. 27)
- MGEA Not Compliant with Some Federal Regulations and Contract Requirements (pg. 28)
- MGEA Board Ineffective and Not Compliant with State Law for Public Benefit Corporations (pg. 30)
- MGEA’s Engagement with Its Legal Firm Represented Apparent Conflict of Interest (pg. 31)
- Some Costs Incurred Could Have Been Avoided or Reduced with Better Planning (pg. 32)
- Lobbyist Disclosure Forms Filed by Federle Mahoney, LLC for Services Rendered to MGEA Did Not Include Original Source of Payments (pg. 33)
- EMT Did Not Ensure MGEA had Capacity and Controls to Properly Administer Funds (pgs. 34 & 35)

a report to the  
**Government Oversight Committee**  
from the  
**Office of Program Evaluation & Government Accountability**  
of the Maine State Legislature

August  
**2011**

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# Maine Green Energy Alliance – Start-up’s Weak Controls and Informal Practices Created High Risk for Misuse of Grant Funds and Non-compliance with Law and Regulations; No Inappropriate Funding Uses Identified but Compliance Issues Noted

## Introduction

The Maine Legislature’s Office of Program Evaluation and Government Accountability (OPEGA) has completed a rapid response review of the Maine Green Energy Alliance. This review was performed at the direction of the Government Oversight Committee (GOC) of the 125<sup>th</sup> Legislature after a request from the Joint Standing Committee on Energy, Utilities and Technology (EUT) in early May of 2011. EUT was primarily interested in how the grant funds were used and whether they were properly administered and accounted for. The scope and methods for this review are described in Appendix A.

## Questions, Answers and Issues

1. Have all the grant funds provided to and used by the Maine Green Energy Alliance (MGEA) been properly accounted for? Are all expenses supported by appropriate and adequate documentation?

see page 17 for more on this point

MGEA’s financial controls were quite weak during the first six months of its operation. Key weaknesses included: inadequate separation of duties for review and approval of expenses and bank account reconciliations; inadequate supporting documentation for expenditures; and inadequate time reporting for salaried employees. From this perspective, all the grant funds used by MGEA were not properly accounted for because they were not processed under an appropriate control structure. These control weaknesses resulted in Macdonald Page reporting \$272,673.98 in questioned costs from its recent Single Audit of MGEA, and led OPEGA to conduct a more detailed review of those transactions at highest risk for misuse of funds. No instances of inappropriate uses or missing funds were found.

2. How were the grant funds used? Were the uses allowable and appropriate under the federal grant, relevant contracts and any applicable federal or State laws?

see page 21 for more on this point

Federal grant funds were primarily used for salaries and wages, marketing materials and activities, and contracted professional services. Several conditions present at MGEA created a high risk that grant funds might be used for unallowable expenditures and/or to support inappropriate activities. Those conditions include the weak financial controls, an ineffective Board, informal business practices, and a related lack of organized and detailed documentation showing justification for key decisions made. Consequently, OPEGA conducted a detailed review of those fund uses that were at highest risk. The expenses and activities reviewed appear appropriate and, with one \$580 exception, also appear allowable. While the arrangement between MGEA and legal firm Federle Mahoney, LLC represented an apparent conflict of interest, our review of the work performed under that contract found the amount paid to be reasonable for the services received.

3. Were the grant funds administered by MGEA and Efficiency Maine Trust (EMT) and in accordance with the grant requirements, related contract requirements and any other applicable federal or State laws? Were they administered in accordance with expected practices for grant management?

see page 11 for more on this point

EMT did establish specific performance measures in the contract with MGEA and regularly monitored MGEA's progress toward the performance targets through formal reports. EMT incorporated those results into the required reporting to the US Department of Energy (US DOE). EMT also took some steps to limit financial and compliance exposure, including reviewing MGEA's invoices and assuring there was some support for expenditures prior to releasing grant funds to cover them. In a recent monitoring visit, US DOE found that EMT was adequately administering the grant and had taken appropriate action to discontinue with MGEA when performance was not as expected.

From OPEGA's perspective, however, EMT did not take sufficient steps to ensure MGEA had the capacity, controls and structure in place to properly administer and account for grant funds before the initial grant disbursement in August 2010. MGEA did not have its administrative house in order and was not compliant with some federal administrative regulations throughout the period of its operations. Although MGEA's Board met in September, it provided limited oversight until December 2010. Extra efforts by EMT to mitigate the financial and compliance risks associated with MGEA from the outset would have been prudent given that: MGEA was not an established entity when the grant was awarded; EMT was ultimately responsible for assuring allowable use of grant funds; and EMT knew MGEA had no other source of funding.

OPEGA identified the following issues during the course of this review. See pages 27-36 for further discussion and our recommendations.

- MGEA Operated with Weak Financial Controls and Informal Business Practices
- MGEA Not Compliant with Some Federal Regulations and Contract Requirements
- MGEA Board Ineffective and Not Compliant with State Law for Public Benefit Corporations
- MGEA's Engagement with Its Legal Firm Represented Apparent Conflict of Interest
- Some Costs Incurred Could Have Been Avoided or Reduced with Better Planning
- Lobbyist Disclosure Forms Filed by Federle Mahoney, LLC for Services Rendered to MGEA Did Not Include Original Source of Payments
- EMT Did Not Ensure MGEA had Capacity and Controls to Properly Administer Funds

## In Summary

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MGEA incorporated as a non-profit in Nov. 2009 to apply for a US DOE grant. MGEA was ultimately included as a subrecipient on a grant application submitted by the PUC seeking \$74.4 million in grant funding.

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The Maine Green Energy Alliance (MGEA) was formed in November of 2009 when it filed as a non-profit corporation with the State of Maine. At the time, MGEA was merely a small group of individuals authorized by the Biddeford-Saco Task Force on the Maine Energy Recovery Company (MERC) to pursue federal grant funding for the Task Force's plans. The group was primarily represented by Thomas Federle of Federle Mahoney, LLC who was listed as MGEA's Registered Agent on the incorporation filing.<sup>1</sup> The other members of the group were representatives of the firms Casella Waste Systems, Inc. and Barton & Gingold (a public relations and marketing firm), a grant writing consultant, and an interested private citizen.

MGEA intended to submit its own proposal for the United States Department of Energy's (US DOE) Retrofit Ramp-up competitive grant solicitation and began drafting an application. Meanwhile, the Public Utilities Commission's Energy Programs Division (PUC) and Maine State Housing Authority (MSHA) were collaborating on an application for the same grant. There was concern about having more than one submission for this competitive grant from the State of Maine. Ultimately, a compromise was reached. The PUC submitted an application for about \$74.7 million in grant funding on December 14, 2009. MSHA and MGEA were incorporated in the application as intended subrecipients to receive \$1,300,000 and \$6,499,619 respectively.

In late April 2010, US DOE informed the PUC that its application had been selected, but the grant award would only be approximately \$30 million. US DOE required the PUC to propose how the projects in the original application would be de-scoped. By this time, the PUC was in the process of transitioning all its energy efficiency programs and grants to a new quasi-independent State agency named Efficiency Maine Trust (EMT). Town officials in Biddeford and Saco had disbanded the MERC Task Force and pulled their support of MGEA's originally proposed project.

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US DOE awarded a grant of only \$30 million requiring de-scoping of the originally proposed projects. MGEA remained a subrecipient intended to receive \$3 million for a substantially refocused effort.

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Amidst all this, the decision was made to keep MGEA as a subrecipient in the de-scoped grant with \$3 million in funding for a refocused effort. The MGEA group was purportedly still enthusiastic about advancing energy efficiency through a community based approach and wanted the opportunity to implement that section of the original proposal. From the PUC and EMT's perspectives, it also seemed fair to give MGEA that opportunity. The group had been part of the successful grant application to start with and US DOE had made it clear that community outreach was a desirable program element. Mr. Federle had also been involved with the recent passage of the Property Assessed Clean Energy (PACE) legislation. A PACE loan program was the focal point of EMT's effort under the Retrofit Ramp-up grant. EMT saw Mr. Federle as a valuable resource for getting municipalities to adopt the PACE ordinances critical to the PACE loan program.

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<sup>1</sup> A paralegal at Federle Mahoney, LLC signed the filing as the incorporator of MGEA.

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MGEA began operations in June 2010 and conducted its business rather informally. It ceased operations in Feb. 2011 without having fully established formalized practices and controls typically expected for an entity using public funds.

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MGEA commenced operations in June 2010 when an Executive Director was hired. The Executive Director, with Mr. Federle's assistance, began negotiating MGEA's contract with EMT and MGEA began incurring expenses that were ultimately paid with grant funds. Federal grant funds were first disbursed to MGEA in mid-August 2010, but in many ways MGEA was still in start-up mode well into the fall of that year. As might be typical for a start-up organization that is moving quickly to get its goods or services into the market, MGEA was operating rather informally and never did get formalized administrative policies and procedures or appropriate financial controls fully in place prior to ceasing operations in February 2011.

OPEGA found the decision to keep MGEA in the de-scoped grant award questionable given that:

- major portions of MGEA's proposed effort in the original grant application were no longer going to be pursued; and
- MGEA was still only a non-profit corporation on paper, not an established organization, and lacked defined plans and capacity for fulfilling its refocused role.

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OPEGA questions the decisions to keep MGEA in the de-scoped grant award, and then subsequently to disburse federal funds before MGEA was set up to properly administer and account for them.

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During our review, it was also clear that federal grant funds had been disbursed to an organization that was not yet set up to administer, account for and make decisions about use of those funds in the manner expected of entities that spend public funds. (See Recommendations 1 and 2 on page 34 for further discussion.)

The fact that both MGEA and EMT were in the midst of establishing their organizations ultimately created significant potential for misuse of funds, and/or MGEA non-compliance with grant requirements and applicable State and federal laws and regulations. Consequently, OPEGA closely examined those transactions and arrangements that represented the highest risk.

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OPEGA closely examined those transactions and activities at highest risk for misuse of funds. We found no instances of inappropriate use, but did note instances of non-compliance with federal regulations and State laws.

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OPEGA found no inappropriate use of grant funds by MGEA. We observed, however, that because MGEA was not an established organization, grant funds were used to cover start-up and certain administrative costs that would not have been necessary if EMT had contracted for this work with an already established entity. We also identified several instances of expenses incurred that might have been avoided with better planning, and some goods and services that may have been more economically purchased if more formal procurement practices had been in place.

OPEGA noted instances of MGEA's apparent non-compliance with applicable federal regulations governing procurement and recordkeeping. The membership of the MGEA Board was also not compliant with the State's laws governing public benefit corporations for the period June – September 2010. We also observed that MGEA's engagement of the legal firm Federle Mahoney, LLC, and in particular the services of Mr. Federle, represented an apparent conflict of interest.

The public questions raised about the motivations and performance of individuals involved with MGEA are reasonable given the facts associated with this organization and the sequence, timing and nature of certain activities and decisions. OPEGA has, however, seen considerable documentary evidence of the actual plans, activities and work products associated with MGEA's effort. That evidence



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Both EMT and MGEA failed to recognize, or sufficiently address, certain risks associated with MGEA. The questionable decisions and actions of MGEA seem to stem from MGEA pursuing goals before having its administrative house in order, rather than from any unethical or illegal intentions.

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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. As previously mentioned, we found no inappropriate use of grant funds and there have been no specific complaints brought against those employed by MGEA for campaigning or other political activities undertaken while working on MGEA time.

Consequently, it appears more likely that the questionable decisions and actions resulted from MGEA pursuing its performance goals before having its administrative house in order, rather than from any unethical or illegal intentions. It also seems clear, however, that in the early months of this project both EMT and MGEA failed to recognize, or sufficiently address, the financial, compliance and public perception risks associated with MGEA. Whenever public funds or public officials are involved, there are typically rules and regulations that must be followed and additional public scrutiny should be expected. EMT, as primary administrator of the grant, should have taken a more active role in assuring that MGEA understood the requirements and expectations that come with using public funds and was prepared to operate in accordance with them.

## Background: US Department of Energy Retrofit Ramp-up Grant—

### Grant Description

The federal grant money MGEA received was a small part of a larger grant Efficiency Maine Trust received from a U.S. Department of Energy program called Retrofit Ramp-up. The Retrofit Ramp-up program is part of a larger federal program called Energy Efficiency and Conservation Block Grant (EECBG). It was funded with American Recovery and Reinvestment Act (ARRA) funds.

Because ARRA funds were involved, the grant purposes included stimulating the economy and creating and retaining jobs, as well as goals specific to energy efficiency. US DOE was looking for sustainable projects with a broad impact involving partnerships with public and/or private entities to increase the number of building energy retrofits. It was not seeking the development of new technologies, new construction or use of existing programs to make incremental improvements. Specific energy efficiency and conservation goals for the funds included:

- reducing fossil fuel emissions in an environmentally sustainable way;
- reducing the total energy use of eligible entities; and
- improving energy efficiency in the building sector, transportation sector, and other appropriate sectors.

Through the Retrofit Ramp-up Program, US DOE was looking to stimulate activities and investments that would transform energy markets and be sustainable after grant monies were spent. This was a highly competitive program. US DOE anticipated awarding between 8 and 20 grants nationwide for programs that would run for up to three years.

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Through its Retrofit Ramp-up Grant, US DOE sought to stimulate activities and investments that would transform energy markets and be sustainable after grant monies were spent. It was most interested in projects with broad impact involving public and/or private partnerships to increase the number of building energy retrofits.

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## Grant Application

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The PUC's Energy Programs Division submitted an application for \$74.7 million in grant funding. MSHA and MGEA were subrecipients in the application intended to receive \$1.3 million and \$6.5 million respectively. The application specified the proposed activities each entity would undertake.

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On October 19, 2009, US DOE issued a Funding Opportunity Announcement for the grant. Letters of intent were due November 19, 2009 with applications due on December 14, 2009. The Public Utilities Commission's Division of Energy Programs (PUC), on behalf of the State of Maine, submitted an application for \$74,699,650 in grant funding with Maine State Housing Authority (MSHA) and MGEA included as subrecipients intended to receive \$1,300,000 and \$6,499,619 respectively.

The application specified the proposed activities each entity would undertake and detailed the related budget:

- The PUC proposed using grant funds for a revolving loan fund for municipalities with PACE (Property Assessed Clean Energy) programs, customer service and technical and administrative support for participating towns, community based marketing and outreach activities and measurement and verification of energy savings. Eight-five percent of the PUC's \$66.9 million proposed budget was for the loan fund itself.
- MSHA proposed creating a Carbon Markets Manager to quantify and monetize carbon emission savings that would be used to sustain homeowner incentives for weatherization.
- MGEA proposed working with four municipalities retrofitting a large mill and homes, offering discounted electricity for homeowners who complete a weatherization retrofit, renovating the Maine Energy Recovery Company's (MERC) incinerator in Biddeford, and developing a recycling center in Westbrook that would create pellets that would be incinerated at MERC. A significant portion of MGEA's \$6.5 million budget was for construction and other costs associated with MERC and the new recycling center – both facilities of Casella Waste Systems.

## Grant Award

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The grant awarded by US DOE was for only \$30 million, requiring de-scoping of the original proposal. In the final award agreement, all of the original projects were retained at reduced amounts, except for the significant portion of MGEA's original application that was related to the facilities and activities of Casella Waste Systems.

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On April 21, 2010, US DOE informed the PUC that Maine's application had been selected for a grant of approximately \$30 million and a process to negotiate scope and program changes would follow. Significant programmatic as well as budgetary changes were made between the proposed activities in the original application submitted in December 2009 and the final agreement with US DOE.

During negotiations with US DOE, the PUC's Energy Programs Division was being transitioned to a newly formed separate trust governed by the independent Efficiency Maine Trust Board. EMT, a quasi-independent State agency, became the grantee in anticipation of its official separation from PUC on July 1, 2010. EMT hired an Executive Director in late March 2010, but responsibility for the Retrofit Ramp-up grant application remained within PUC until early May when negotiations with US DOE on the final grant amount and program activities were substantially completed.

In the final agreement between EMT and US DOE, all of the originally proposed grant activities were retained, albeit at reduced amounts, except for the significant portion of MGEA's original application that was related to Casella Waste. By April

2010, the activities pertaining to MERC and the Westbrook recycling facility had been cancelled and MGEA's activities under the grant shifted to intensive community outreach and marketing for weatherization retrofits in a few select municipalities.

On June 3, 2010, EMT was formally awarded an EECBG-Retrofit Ramp-up grant in the amount of \$30,000,000. Most of the funds were for EMT's revolving loan fund. The award also included funds for the MGEA and MSHA, which would respectively receive \$3,000,000 and \$500,000 of the grant over three years.

## Background: About Maine Green Energy Alliance

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### MGEA's History

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In April 2009, the MERC Task Force was created to address long-standing issues with Casella Waste's MERC trash to energy plant in Biddeford. Task Force members included municipal and State officials, representatives from Casella Waste and local businesses. In Sept. 2009, the law firm of Federle Mahoney was hired to represent the Task Force in legal, regulatory, and legislative matters.

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In April of 2009, Governor Baldacci, at the request of the City of Biddeford Mayor Joanne Twomey, created a task force to address issues with the Maine Energy Recovery Company (MERC) trash to energy plant in Biddeford owned by Casella Waste Systems, Inc. This task force included Biddeford and Saco municipal officials, State officials, representatives of Casella Waste Systems, and representatives of local businesses. In September of 2009, the law firm of Federle Mahoney, and specifically partner Thomas Federle, was hired to represent the MERC Task Force regarding legal, regulatory, and legislative needs. According to Mr. Federle, Casella Waste had agreed to pay the Task Force's expenses, including those for his legal services.

The Task Force developed a plan that would have resulted in Casella moving part of their operation to a new facility in Westbrook. That facility would separate recyclable materials from raw trash and convert the remaining trash into cleaner burning pellets. The MERC trash burning facility in Biddeford would then burn these pellets instead of raw trash to generate electricity, in theory reducing the odor and truck traffic problems in Biddeford and Saco. The plan also included other elements designed to provide discounted electrical power to the local area, and possibly provide energy services such as energy audits, weatherization services, and other assistance to residents.

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The Task Force decided to seek Retrofit Ramp-up Grant funding for its plan. In Nov. 2009, Federle Mahoney incorporated MGEA as a non-profit in the State to be the legal entity that would apply for the grant and carry out the program if grant funding was received.

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Obtaining funding for this plan was an obstacle, but in the fall of 2009 the Task Force became aware of the US DOE's Retrofit Ramp-up grant opportunity. According to Mr. Federle, it seemed the plan developed by the Task Force was exactly the type of "game-changing" idea the US DOE was looking to fund. The MERC Task Force decided to submit a grant application to seek funding for its plan.

The Task Force was not a legal entity so it authorized the creation of a non-profit corporation to be the grant applicant and to carry out the program if grant funds were awarded. On November 30, 2009, Federle Mahoney, LLC filed the paperwork with Maine's Secretary of State to incorporate the Maine Green Energy Alliance. Kimberly Madore, Federle Mahoney's paralegal, signed the Articles of Incorporation as MGEA's Incorporator. Mr. Federle was named as the Noncommercial Registered Agent. The Articles stated the Board would consist of between three and six members, but no specific individuals were listed.

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In Dec. 2009, MGEA was preparing its own \$14 million application for the grant. The PUC and MSHA were also collaborating on a grant application. MGEA was ultimately included as a subrecipient in the PUC's application.

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The MERC Task Force was disbanded in late January 2010. Despite this, MGEA continued to pursue the grant funding. MGEA at that time was a small group that had worked on the grant application. The group was represented primarily by Mr. Federle who lobbied and conducted other activities on behalf of MGEA in Jan. – May 2010.

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MGEA commenced operations in early June when the Executive Director began negotiating MGEA's contract with EMT. MGEA ceased operations in Feb. 2011 when it became clear that its pilot program was not producing desired results.

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In December of 2009, MGEA was preparing its own \$14 million application for the Retrofit Ramp-up grant. Meanwhile, the PUC and MSHA were also collaborating on getting their “game-changing” ideas into an application for the grant. Concern that two competing grants from the same state might diminish the chances for either of them to receive an award resulted in MGEA becoming a partner in the PUC's application as a proposed subrecipient. Descriptions of how this transpired differ among the application partners, but MGEA's proposal was ultimately added into the State's application just prior to the application deadline.

In late January of 2010, Mayor Twomey pulled Biddeford's support for the proposed MGEA project and disbanded the Task Force. Despite this, MGEA continued to pursue the grant funding. MGEA at that time, as described by Mr. Federle, was a small group of individuals who had worked on developing the grant application and who were still enthused about implementing other aspects of the Task Force plan. The group was primarily represented by Mr. Federle. Other members of the group were representatives of the firms Casella Waste and Barton & Gingold (a public relations and marketing firm), a grant writing consultant and an interested private citizen.

Mr. Federle served as MGEA's legal counsel and lobbyist during the period January – March 2010. He was primarily engaged in lobbying and other efforts related to LD 1717 – known as the PACE (Property Assessed Clean Energy) legislation – passage of which was critical to the PACE revolving loan program EMT had proposed in the grant application. In April and May 2010, on behalf of MGEA, Mr. Federle was meeting with potential partner communities, interfacing with the State awardees of the US DOE grant, strategizing ways to drive demand for energy efficiency improvements, meeting with other potential MGEA participants and drafting model PACE ordinances. Mr. Federle's fees for January – May 2010 were still being paid by Casella Waste as MGEA had no funds. (See Issues Section page 33 for further discussion of related concern.)

MGEA officially commenced operations in early June 2010 with its US DOE grant project refocused on intensive community outreach efforts. Seth Murray began as MGEA's Executive Director on June 6, 2010. He immediately began negotiating MGEA's contract with EMT which was ultimately finalized in early August. Mr. Federle was providing legal and project development services that included assisting Hampden/Old Town in adopting PACE ordinances, as well as assisting the Executive Director with some managerial responsibilities. A paralegal at Federle Mahoney, LLC was also hired separately as an independent contractor to assist the Executive Director with administrative tasks. A Community Organizer for Hampden/Old Town was hired as an MGEA employee in July 2010 to begin working with those communities as they were already interested in partnering with MGEA.

MGEA received its first disbursement of \$264,540.66 in grant funds on August 17, 2010. It ceased operations in February 2011 by mutual agreement of the EMT and MGEA Boards when it became clear that the pilot program being implemented by MGEA was not producing the desired results quickly enough and that MGEA's funding could be better used for other EMT programs. In the end, MGEA used \$513,566.51 of the \$3 million in grant funds it was slated to get over the three year period of the US DOE grant.

## MGEA's Board of Directors

On June 1, 2010, Mr. Federle filed MGEA's first annual report with the Secretary of State as required of non-profit corporations. The report listed MGEA's Board members as Mr. Federle, Matthew Arnett (Mayor of Hampden), and Seth Murray, who soon thereafter accepted Mr. Federle's offer to become MGEA's Executive Director. The membership of the Board changed several times between June and December 2010 as shown in Table 1.

<b>Dates</b>	<b>Members</b>
Prior to June 1, 2010	No defined Board
June 1 – Sept. 9, 2010	Thomas Federle, Matthew Arnett, Seth Murray
Sept. 9 – Dec. 9, 2010	Thomas Federle, Matthew Arnett, Keith Bisson, Andrew Fisk
Dec. 9, 2010 – present	Matthew Arnett, Andrew Fisk, Martin Hanish
Source: MGEA Annual Report for June 2010 and minutes of MGEA Board meetings.	

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MGEA's initial three Board members were named in its June 2010 Annual Report, but the Board did not hold its first meeting until Sept. 2010. Membership changes were made at the first meeting and at the second Board meeting in Dec. 2010.

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The Board did not hold its first meeting until September 9, 2010. Mr. Murray resigned from the Board then and two new members joined - Keith Bisson and Andrew Fisk. The Board then reviewed and approved an engagement letter with Federle Mahoney and the employment terms with Mr. Murray. Board minutes reflect that both Mr. Federle and Mr. Murray were asked to leave the room when the respective matters regarding them were discussed and voted on. Board members also passed a resolution authorizing MGEA to accept a personal loan Mr. Murray had already made to the organization, approved the loan's repayment, and suggested Mr. Murray seek a consultant to assist with accounting and financial matters.

The Board next met on December 9, 2010 at which time both Mr. Bisson and Mr. Federle resigned from the Board. Mr. Federle was named MGEA's non-voting Secretary. Martin Hanish joined the Board and was named Treasurer. The minutes of the meeting show the Board also discussed MGEA's internal controls at this meeting. There was discussion about the dollar limit of expenditures that could be made without requiring Board approval and the Board decided that the:

- Board should select the audit firm to be used for financial audits;
- financial audits of the organization should go directly to the Board;
- marketing plan of the organization should be submitted to the Board for review and approval quarterly; and
- Office Manager should reconcile bank statements and the Treasurer should review those reconciled statements monthly.

The last recorded meeting of the Board was on March 9, 2011. The draft minutes from that meeting show discussion of matters associated with winding down operations and dissolving MGEA.

OPEGA noted that the make up of the Board's membership and the low level of engagement through formal Board meetings did not provide for effective oversight or guidance for MGEA's operations, especially through its start-up period. In fact, the Board's membership was not compliant with State statute during June – September 2010. (See Issues Section page 30 for further discussion.)

## MGEA's Program and Staff

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MGEA's Coordinated Community Retrofit Plan was described as a pilot program designed to explore the effectiveness of intensive community outreach in increasing home weatherization retrofits.

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MGEA's Coordinated Community Retrofit Plan (CCRP), as described to OPEGA by both MGEA and EMT staff, was a pilot program. It was designed to see if intensive community outreach on energy efficiency would more deeply penetrate the residential market than general marketing efforts, thereby increasing home weatherization retrofits. The intensive community outreach involved engaging community leaders, door to door canvassing and regular follow-up with homeowners. The program's goal was to have a significant percentage of homeowners in selected towns complete energy audits and retrofits. The CCRP was purportedly modeled after similar programs in other states including one in Washington, D.C.

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MGEA's Community Organizers worked to encourage homeowners to have energy audits and retrofits done. Process Facilitators followed up with interested homeowners and assisted them through the audit and retrofit process.

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MGEA's program model called for Community/Field Organizers to work within selected towns encouraging homeowners to have energy efficiency audits and retrofits done. Working independently with little day to day oversight, Organizers scheduled community meetings, brought in speakers, provided educational materials, and made presentations. They also worked with community volunteers and leaders to increase interest in residential energy efficiency improvements and identify interested homeowners.

Interested homeowners identified by the Organizers were contacted by Process Facilitators who provided them with information and answered questions about the benefits of making energy efficiency improvements. Process Facilitators then guided homeowners through the energy audit and retrofit process over the telephone and via email by scheduling energy audits, checking in as work progressed, and responding to issues that arose during the process. MGEA referred homeowners to energy audit and retrofit contractors that had agreed to partner with MGEA, but homeowners hired the contractors directly. Both Organizers and Facilitators were responsible for recording their activities and personal interactions with homeowners on MGEA's online data system.

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MGEA hired a total of 14 employees. Twelve of them were not hired until after MGEA received grant funds in August 2010. Only seven of the 14 were hired prior to Nov. 2010.

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A Contractor Coordinator position was created to manage partner contractors, resolve issues with homeowners, track contractor performance and capacity, and recruit and screen new contractors. Other staff at MGEA included the Executive Director, an Office Manager, and a Marketer. With the exception of Community Organizers, who were assigned specific towns to work in, MGEA employees worked with all selected towns.

Other than the Executive Director and one Community Organizer, MGEA did not hire any employees until grant funds became available in late August 2010. A total of 12 more employees were hired between then and January 2011 as MGEA ramped up its activities. Table 2 lists the MGEA positions filled by date of hire.

<b>Position</b>	<b>PT/FT*</b>	<b>Date of Hire</b>	<b>Assigned Town(s)</b>
Director	FT	6/7/2010	Not Applicable
Community Organizer	FT	7/6/2010	Hampden, Belfast Old Town until 8/24/10 Buckfield until 1/4/11
Process Facilitator/ Supervisor	FT	8/20/2010	Not Applicable
Field Organizer	FT	8/24/2010	Lincoln Old Town after 8/24/10
Process Facilitator	PT	8/24/2010	Not Applicable
Field Organizer	FT	9/7/2010	Scarborough, Topsham Yarmouth until 11/14/10
Office Manager	FT	9/15/2010	Not Applicable
Marketer	FT	11/8/2010	Not Applicable
Process Facilitator**	PT	11/11/2010	Not Applicable
Community Organizer	FT	11/15/2010	Cumberland, Yarmouth
Process Facilitator	PT	12/7/2010	Not Applicable
Process Facilitator	PT	12/7/2010	Not Applicable
Contractor Coordinator	FT	12/20/2010	Not Applicable
Community Organizer	PT	1/6/2011	Buckfield
*PT indicates Part-time Position, FT indicates a Full-Time Position			
**The individual hired left this position on December 2, 2010			
Source: OPEGA review of MGEA personnel files.			

## Administration of the Grant

EMT, as primary grant recipient, is responsible for centralized grant management and all federal reporting requirements.

Efficiency Maine Trust, as the primary recipient of the US DOE grant, is responsible for centralized grant management and all reporting requirements under the US DOE and ARRA. Grant funds are to be administered in accordance with several terms and conditions specified in the grant award such as compliance with federal procurement regulations, Davis-Bacon wage rates, National Environmental Policy Act requirements, lobbying restrictions, Historic Preservation Act, segregation of funds, and certain prohibitions on uses of funds. Subrecipients MSHA and MGEA are subject to the same or similar requirements in their administration and use of grant funds.

US DOE conducted an on-site monitoring visit of EMT in June 2011 and was satisfied with EMT's administration of the grant to date.

EMT disburses the grant funds to the subrecipients and is ultimately responsible for assuring those funds are spent on allowable uses. EMT is also ultimately responsible for monitoring and reporting the performance of the subrecipients to US DOE. EMT established comprehensive contracts with both MSHA and MGEA to define the terms and conditions under which they would receive grant funds. Some of those terms and conditions are flowdowns of specific requirements imposed upon EMT as primary recipient of the grant. Other terms and conditions in the contract are more generally stated.

In June 2011, US DOE conducted an on-site visit as part of monitoring EMT's administration of the grant and the performance of the programs being funded. The resulting report finds that EMT is appropriately using "monitoring, periodic inspections, and random sampling to ensure compliance with subrecipients and

contractors”. The report also notes that EMT had taken appropriate action to discontinue with MGEA when performance was not as expected.

### **MGEA’s Contract with Efficiency Maine Trust**

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MGEA’s subrecipient agreement with EMT for \$1.1 million was signed in early Aug. 2010. It covered the period June 1, 2010 through Aug. 3, 2011.

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EMT’s subrecipient agreement with MGEA was signed on August 3, 2010 for the period June 1, 2010 to August 3, 2011 in the amount of \$1,104,361. EMT and MGEA negotiated performance goals, a project timeline, and reporting and invoice requirements. Also included were federal requirements associated with US DOE and ARRA funding such as reports, some procurement procedures, wage rates, display of Recovery Act logo, and compliance with Equal Employment Opportunity laws. Attachments to the contract include a description of MGEA’s scope of work, mission and guiding principles, a detailed work plan for the Coordinated Community Retrofit Plan (CCRP) and a one year budget.

In its contract with EMT, MGEA agreed to engage with up to eight communities to pilot the CCRP. MGEA’s performance goals were to complete 1,000 retrofits by the end of the contract period, realize a penetration rate (percent of owner-occupied homes in CCRP communities retrofitted) of 6.75% in the targeted communities, and keep MGEA’s costs below \$1,105 per retrofit. The performance targets were quite ambitious given that MGEA was a start-up organization. The targets also exceeded what had been achieved in similar efforts elsewhere in the country.

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Contract terms and conditions include limitations on the number of towns MGEA can pilot its program in, ambitious performance goals, and various provisions related to finances and compliance. Specific reporting requirements are also established. A detailed work plan and a budget accompany the contract.

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The work plan included in the contract details the outreach activities to be conducted in each community by week. The activities included identifying leaders and civic groups, canvassing, holding community meetings, advertising and working with media outlets. These efforts were to be followed by telephone calls to homeowners who signed up or expressed interest in having an energy audit and retrofit work done. Ongoing follow up involved providing assistance to homeowners with scheduling energy audits, checking-in on energy audit results, identifying contractors to do the retrofit work, and checking in at retrofit start and finish. Finally, MGEA was to track results to document the impact of CCRP on energy efficiency in the community and the effectiveness of community specific outreach tactics and campaigns.

With regard to fund disbursements, EMT agreed to provide 20% of the contracted funding up front and pay 80% of invoiced amounts thereafter. MGEA was to submit one invoice for work performed between June 1, 2010 and July 31, 2010 and monthly invoices from that point forward. The need for additional upfront disbursements to meet cash flow was to be determined by January 5, 2011 or a time mutually agreed to by both parties.

MGEA agreed to submit monthly metrics and narrative reports, quarterly budget reports and an annual report. Semi-annual status meetings and an annual progress meeting with EMT were also required. Additional specific terms and conditions of note are that MGEA was:



- authorized to contract with Opportunity Maine for a canvassing-only effort in three additional towns to see what the impact of community outreach without follow-up contacts would be;
- required to post all job openings on the Maine Career Centers website; and
- required to award any subcontracts as fixed-priced contracts through the use of competitive processes to the maximum extent possible.

The contract generally required that MGEA comply with all applicable governmental ordinances, laws and regulations. It also contained some terms and conditions referencing specific regulations that were, or may be, applicable. We noted, however, that the contract did not contain any terms and conditions referencing, or requiring MGEA to comply specifically with, the requirements contained in federal regulation 10 CFR 600 Sub-Part B - Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations. These regulations include specific requirements related to financial and program management, procurement standards and reports and records. As a non-profit organization receiving federal grant funds, MGEA was subject to these regulations. (See Issues Section page 28 for further discussion.)

### **EMT's Monitoring of MGEA Performance and Use of Grant Funds**

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EMT actively monitored MGEA's performance against the contracted goals from the outset. EMT also ensured there was some support for the invoices MGEA submitted before releasing additional grant funds.

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EMT's processing of MGEA invoices involved review by both program and finance staff with final approval by EMT's Chief Financial Officer (CFO). OPEGA reviewed a sample of the invoices MGEA submitted and saw evidence of EMT's review in the form of signature and dates of the reviewers and approvers. According to the CFO, EMT's review of MGEA invoices became more rigorous in mid-December 2010 when he was able to assign additional accounting staff to focus on them. EMT's effort to ensure there was supporting documentation for invoiced expenses included delaying the disbursement of grant funds until support was provided.

EMT staff also developed reporting forms and systems in collaboration with MGEA to track metrics for the program. OPEGA reviewed a sample of the progress reports including a comprehensive project update report MGEA submitted in December 2010. It was evident that MGEA was struggling to hit stride on both the community outreach and process facilitation fronts and was not having the desired impact at the community level.

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The EMT and MGEA Boards agreed to discontinue the contract when it became clear that MGEA's program was not having the desired impact so that grant funds could be used on other programs.

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By December 2010, EMT realized that MGEA was highly unlikely to achieve the contracted performance goals. At the same time, EMT's Home Energy Savings Program (HESP) – which relied exclusively on financial incentives, training and advertising – was proving highly successful in achieving weatherization goals but was running out of funding. MGEA and EMT Board members and staff discussed MGEA's performance in December 2010 and January 2011. The decision was made to cancel the contract and cease operations so the remaining grant funding earmarked for MGEA could be used to extend the HESP program.

## MGEA's Administration

EMT played a fairly active role in overseeing the implementation and performance aspects of MGEA's pilot program, but did not pay as much attention to how MGEA was establishing itself administratively. According to EMT staff and MGEA's Executive Director, EMT met with MGEA to coordinate and get status reports on program implementation, but did not provide proactive technical assistance or guidance on administrative or financial matters. (See Recommendation 1 on page 34 for further discussion).

MGEA's Executive Director had successfully started and expanded his own private businesses, was a certified energy auditor knowledgeable about the weatherization industry, and was enthused about MGEA's plans. However, he had no first hand experience with running a non-profit or administering federal grant funds.

In addition, MGEA lacked a well-established Board, had few human resources and no financial resources for its first three months of operation. Responsibility for developing written policies and procedures and establishing other administrative practices fell to the Executive Director, who was also in the process of staffing up the organization and getting MGEA on track to meet its ambitious performance goals. Subsequently, he was spending considerable time on programmatic challenges, and monitoring and reporting on MGEA's performance.

Perhaps understandably, MGEA's administrative structure and practices were informal from the start and, although evolving, stayed fairly informal throughout MGEA's relatively short existence. This informality was evident in two key administrative practices OPEGA examined – procurement of goods and services and hiring of employees.

## MGEA's Procurement Practices

MGEA had no written policies and procedures governing procurements. According to the Executive Director, there were no formal competitive bid processes undertaken for selection of any vendors – whether for goods or services. He described a couple of instances where prices from several vendors were obtained and compared, but could not provide sufficient documentation of the price quotes being compared. For example, he said that he developed a list of what MGEA needed for mailing and printing services and the Office Manager obtained cost estimates from multiple vendors, but could provide no copies of the cost estimates received. In another instance, he provided a document that purports to show that MGEA considered bids for payroll services, but it is not conclusive as it only shows a cost proposal received from one vendor that was not hired.

MGEA also sole sourced work to a number of vendors mainly because of their associations with persons involved with MGEA or the original MERC Task Force. Federle Mahoney, LLC was selected because of Mr. Federle's involvement with the the Task Force and MGEA, Barton & Gingold had been involved with preparing the grant application, Kimberly Madore was Mr. Federle's paralegal, and the consultant from Bisson Financial Services was related to a MGEA Board member.

MGEA's regular practice of non-competitive procurements appears non-compliant with the Terms and Conditions of its contract with EMT. Rider B, Section 33 of

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EMT did not pay as much attention to how MGEA was establishing itself administratively, or provide any proactive guidance on administrative or financial matters. MGEA's administrative structure and practices were informal from the start and, although evolving, stayed fairly informal throughout MGEA's relatively short existence.

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MGEA had no written procurement policies and procedures. For the most part, goods and services were not competitively procured and there were few formal contracts with vendors. Work was sole sourced to a number of vendors because of their associations with persons involved with MGEA or the original MERC Task Force.

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that agreement states that the Provider (MGEA) must, to the maximum extent possible, award any subcontracts as fixed-priced contracts through the use of competitive processes. In addition, the sole sourcing, lack of written procurement policies and procedures, and lack of documentation justifying its procurement decisions put MGEA in jeopardy of violating federal procurement rules contained in 10 CFR 600 Subpart B. (See Issues Section pages 27 and 28 for further discussion.)

OPEGA also noted that MGEA did not establish many formal contracts with its vendors. OPEGA identified 18 vendors as being involved in assisting or supporting MGEA in energy efficiency efforts. OPEGA reviewed MGEA's files for these vendors which are listed in Table 3. Five vendors had signed agreements that could be considered contracts. There was also a signed engagement letter and a signed amendment with the law firm Federle Mahoney, LLC, and an outreach plan from Maine Interfaith Light and Power. There were no signed agreements, bids or proposals found for any of the other 11 identified vendors.

<b>Company</b>	<b>Service</b>	<b>Amount of Agreement</b>	<b>Signed Contract</b>
Opportunity Maine	Canvassing	\$57,000	Yes
Federle Mahoney, LLC	Legal Services	\$52,500	Yes/Engagement Letter
Federle Mahoney, LLC Amendment	Legal Services	\$7,500	Yes
Macdonald Page & Co., LLC	Financial Audit	\$12,000	Yes
Voter Activation Network (VAN)	Voter file and contact mgt system	\$9,000	Yes
Maine Interfaith Power & Light	Community Outreach	\$7,007	No/Proposal & Plan
North Forty Creative	Website	\$4,500	Yes
Stone's Throw Consulting	Marketing	\$2,100	Yes
Barton & Gingold	Marketing	N/A**	No
Curry Printing	Printing/graphics	N/A**	No
Mailings Unlimited	Mailings	N/A**	No
Salesforce	Sales Mgt system	N/A**	No
Xpress Copy	copying	N/A**	No
Lavender Designs	Graphic Designs	N/A**	No
Cherry Bomb Graphics	printing & graphics	N/A**	No
Kimberly Madore	Legal Services	N/A**	No
Bisson Financial Consulting Services	Internal policy consulting	N/A**	No
Portland Presort	Mailings	N/A**	No
Paychex	Payroll processing	N/A**	No
N/A** There were no contracts and thus no total agreement amounts for these vendors. The total paid to them can be found in Table 5 on pg. 22. Source: OPEGA review of MGEA vendor files.			

Regarding oversight of contractors, with the exception of Opportunity Maine, MGEA could not provide OPEGA with any reports or filings from contractors regarding costs and performance. The Director explained that Opportunity Maine's entries into the database were reviewed nearly every day by the Community Organizer overseeing them, and by himself about once a week. He did not perform any systematic monitoring of the progress of other contractors as it was more on an “as appropriate” basis.

### MGEA Hiring Practices

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MGEA's first two employees were not hired through any formal process. A formal written hiring process, detailed job descriptions, and job announcements were in place for positions filled after Aug. 3, 2010. There was little evidence, however, that the formal hiring process was consistently followed.

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Included in MGEA's contract with EMT were several requirements related to hiring staff, such as compliance with Equal Employment Opportunity laws and the posting of position announcements on the Maine Department of Labor Career Center website. MGEA's first two employees, the Executive Director and one Community Organizer, were hired prior to the finalization of that contract on August 3, 2010 and with no formal process. The jobs were not advertised and there were no other applicants. Both were approached about working for MGEA rather than having to apply for the position. The Executive Director was offered his position by Mr. Federle and the Community Organizer was recruited by the Executive Director.

An extensive written hiring process appears to have been developed by August 1, 2010. That process requires candidates being interviewed for the positions of Process Facilitator or Community/Field Organizer to also answer a specified set of questions in writing. MGEA appears to have intended to use this more formalized hiring process for positions that were filled after August 3, 2010. Detailed job descriptions for each position were developed and used as a basis for the job postings that appeared on the Career Center website beginning on August 23, 2010. MGEA also reported posting jobs on Craigslist and MGEA's website.

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It was not possible to determine, from the documents provided to OPEGA, how each job application was processed, which candidates were being considered at any point in time, or how candidates were evaluated and selected. It also does not appear that all position openings were advertised.

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OPEGA requested MGEA's files of documentation related to the recruitment of positions, the job applicants and selection of candidates. We were provided with two unorganized file folders containing cover letters and/or resumes from 109 job applicants, and spreadsheets containing the written responses to test questions from some interviewed candidates.

From the documents provided to OPEGA it is not possible to determine how each application submitted was processed, whether criteria from job descriptions were used to rank or score applicants, and consequently whether such criteria were consistently applied. Indeed, OPEGA saw no written record of which candidates were being considered at any point in time, which were rejected or chosen for interviews and no documentation of a systematic process used in evaluating candidates for any of the positions. The documentation of responses to the test questions included some candidates who were hired and some who were not. There is nothing, however, to indicate how many candidates were tested or how they scored. Whether all applicants who were interviewed took the tests was not apparent. (See Issues Section page 27 for further discussion.)

The files were also incomplete, as resumes for all of the individuals MGEA hired could not initially be found. The Executive Director did subsequently provide the resumes for all MGEA employees, but acknowledged that the files likely do not include all applications MGEA received.

OPEGA obtained the Career Center postings for MGEA jobs and compared them to the positions MGEA filled. MGEA began posting positions on Maine DOL's Career Center site in late August 2010. We noted that the Office Manager position had not been posted on that site. It does not seem that the openings for one Field Organizer and two Process Facilitators that were filled in August 2010 were posted there either. OPEGA saw evidence of candidates responding to job postings on both Craigslist and MGEA's websites and observed that MGEA received multiple applications for several positions - indicating that at least some openings were well advertised. It is unclear, however, whether the Office Manager position and the three positions filled in August were advertised anywhere. (See Issues Section page 28 for further discussion.)

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Based on our review of resumes for MGEA employees, it does appear that the persons hired were generally qualified for the positions they filled.

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Overall, OPEGA found MGEA's hiring process to be informal, lacking in structure, and poorly documented as there was little evidence that the formal written hiring process was consistently followed. MGEA was also not fully compliant with the contract terms requiring posting of jobs on the Career Center website. However, based on our review of resumes for MGEA employees, it does appear that the individuals hired were generally qualified for the positions they filled.

## Accounting for Grant Funds

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The grant funds were MGEA's only source of revenue. The funds were deposited into one of two bank accounts established and controlled by the Executive Director. He also initiated all payments out of the accounts and reconciled the bank statements.

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### Revenues and Payments

MGEA's only source of revenue was the US DOE grant. On August 17, 2010, MGEA received its initial disbursement of \$264,540.66 in grant funds. In accordance with MGEA's contract with EMT, this amount included a 20% upfront payment of \$220,872.20, plus 80% of MGEA's first invoice submitted to EMT for an additional \$43,668.46. Subsequent disbursements occurred as MGEA submitted its monthly invoices.

When received, MGEA's grant funds were deposited into one of two bank accounts established by the Executive Director. One account was a checking account and the other an interest-earning money market account. The Executive Director transferred funds between the two accounts as necessary to earn the most interest while maintaining enough in the checking account to cover MGEA's payments.

The Executive Director was the lone signatory on the bank accounts and was responsible for paying all of MGEA's bills. MGEA's Office Manager entered the bills and associated expense accounting to a QuickBooks system. Payments were made by the Executive Director either with actual physical checks that were in his possession, or by initiating an electronic bill payment through Camden National's online system. The Executive Director also performed the bank statement reconciliations for both accounts. The reconciliations were not reviewed or approved by anyone until December 2010 when a new MGEA Board member became Treasurer and began reviewing monthly reconciliations. According to the Executive Director, the Office Manager was also involved in performing the bank reconciliations, but OPEGA saw no documentary evidence of that involvement.

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Most of MGEA's expenses from June to Aug. 2010 were personally covered by the Executive Director. Federal Mahoney covered rent and utility expenses. Several vendors providing services, including Federle Mahoney, also deferred their billings during this time period. All parties were ultimately paid or reimbursed with grant funds.

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MGEA began incurring expenses in June 2010, prior to the receipt of grant funds. During the interim period between start-up and receipt of grant funds, MGEA's rent, internet, and electricity expenses were covered by Federle Mahoney, LLC. The Executive Director deferred his compensation, and lent the organization \$15,000 interest free on July 19, 2010. This loan was used to cover the salary for MGEA's second employee, the Community Organizer for Hampden/Old Town. Several firms providing services also deferred their billings during this time period, including Federle Mahoney. All parties were ultimately paid or reimbursed using grant funds in September 2010. The Executive Director also repaid himself the loan, after that repayment was approved by the MGEA Board at its September meeting.

Other MGEA purchases made during this time period, and over the rest of MGEA's existence, were charged on the Executive Director's personal credit card. These included purchases of marketing materials, office supplies and other items associated with the creation of a new office—desks, chairs, printers, computers, software, etc. The Executive Director explained that he used his personal credit card because MGEA had been declined for a corporate credit card. OPEGA noted that a debit card was issued to the organization for the checking account, but it was not used. According to the Executive Director, it did not occur to him to use it.

The Executive Director recouped the MGEA charges to his credit card by submitting expense reimbursement forms which the Office Manager often prepared and which the Executive Director approved himself. Similarly, the Executive Director also approved his own mileage expense reimbursements. In December 2010, MGEA's Treasurer began reviewing the Executive Director's requests for reimbursements and related supporting documentation. Prior to that time, the only independent review was done by EMT in conjunction with its review of MGEA's monthly invoices.

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In Dec. 2010, MGEA's Board Treasurer began reviewing the monthly bank reconciliations and expense reimbursements to the Executive Director. Prior to that time, however, there was a lack of proper controls that prompted OPEGA to conduct detailed review of bank account activity and expense reimbursements. We found no missing funds, misconduct or inappropriate expenses.

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MGEA encountered cash flow problems in early January of 2011 and the Executive Director again made a personal loan to the organization, this time for \$25,000. This loan allowed the organization to make its payments while waiting for EMT to approve the latest invoice and release funds. On February 18<sup>th</sup>, the Executive Director repaid himself by transferring \$25,000 from MGEA's checking account to his personal bank account.

In the period June – December 2010, the Executive Director had full and sole access to and control of MGEA's bank accounts, payments out of those accounts and reconciliation of those accounts. He was also approving his own expense reimbursements. These conditions represent significant weaknesses in financial controls that prompted OPEGA to reconcile the bank account activity with MGEA's recorded expenses and to review in detail the expense reimbursements made to the Executive Director over that period. We found no missing funds, misconduct or inappropriate expenses as a result of this detailed review. (See Issues Section page 26 for further discussion.) More description of our review of the reimbursed expenses can be found in the next section of this report.

## Time Reporting

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Only MGEA's five part-time, hourly paid, employees were required to track and report their actual hours worked. All other employees were salaried and only reported their leave time.

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As a non-profit organization receiving federal grant funds, MGEA was required to maintain appropriate support for salaries and wages sufficient to allow a determination of whether payroll costs were allowable or unallowable under the grant. Only employees in MGEA's five part-time positions however, were required to regularly track and report their actual hours. These employees were the Process Facilitators and one Community Organizer, who were paid on an hourly basis. They reported time weekly on a standard form that was then reviewed and approved by a supervisor. OPEGA reviewed the time reports and noted inconsistencies among employees in the level of detail given on what activities they were engaged in. The information in the "Notes" field on time reports ranged from detailing who they were interacting with and what they were doing, to general descriptions like "calls" and "emails". Sometimes the field was blank.

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The lack of sufficient time reporting is another weakness in controls and makes it difficult to confirm that grant funds were used to pay for allowable activities.

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The other nine employees at MGEA were in full-time salaried positions. They were not required to report actual time worked, but rather only to report leave time taken. Four of these employees were Community Organizers who worked fairly independently from home offices on flexible schedules. The Executive Director explained to OPEGA that he was aware of what these employees were working on, and the progress they were making on work plans, through regular communications he had with them.

The lack of sufficient time reporting is another weakness in MGEA's financial controls that affects the proper accounting for grant funds. Without time reports that have been reviewed in real time by a supervisor knowledgeable of the employees' activities, it is difficult to confirm that employees worked the full amount of hours expected. Without formal tracking of what the time was actually spent on, it is also difficult to confirm that grant funds were being used to pay for allowable activities. (See Issues Section page 27 for further discussion.)

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OPEGA reviewed a considerable amount of documentary evidence associated with the activities of MGEA employees. It appears they were engaged in an earnest effort to achieve the entity's goals. We saw no evidence of unallowable or inappropriate activities being supported with grant funds.

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Public questions have been raised about whether MGEA employees, particularly the three who were legislators or legislative candidates in the fall of 2010, might have been inappropriately campaigning on MGEA time. OPEGA took extra steps to assess whether any inappropriate activities occurred. We sought from the Executive Director, and have reviewed, considerable documentary evidence of the actual plans, activities and work products associated with the efforts of MGEA's employees. That evidence indicates that those employees were engaged in a substantial and earnest effort to make a difference in residential energy efficiency at a community level. We found no evidence of inappropriate activities being supported with grant funds. Lastly, we note that despite the publicity surrounding MGEA, neither OPEGA nor the Maine Ethics Commission has received any complaints of MGEA employees campaigning or conducting other political activities while working on MGEA time.

### MGEA's Efforts to Assess and Improve Controls

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MGEA began assessing its internal control structure in Sept. 2010. Those controls were reviewed by the Board in Dec. 2010 and additional financial controls were established then. Unfortunately, this action was rather late in relation to when MGEA began receiving and spending grant funds.

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In early September 2010, after receiving the first grant disbursement from EMT, MGEA hired Bisson Financial Consulting Services to assist with business setup activities. This work initially included setting up MGEA's QuickBooks and chart of accounts.

Bisson Consulting was also engaged to document MGEA's internal control system and began that work in October 2010. The consultant produced a deliverable titled "Maine Green Energy Alliance Internal Accounting Controls and Systems" which described how MGEA's internal controls worked, but did not include any recommendations for improvement. For example, the document stated "at this time, employees do not track their time", but did not suggest that employees should track their time. Similarly, the accounts payable section of the document notes that the Executive Director reviews and approves all invoices and reimbursable mileage, but no mention is made of a need for someone other than the Executive Director to approve the Executive Director's reimbursements.

According to Macdonald Page, an external accounting firm, the Executive Director and the consultant also sought its input in the fall of 2010 on what needed to be in place for controls to satisfy federal grant requirements. MGEA's Board reviewed MGEA's internal control structure at its December 9, 2010 meeting and instituted new controls to address separation of duties weaknesses. Specifically, the new MGEA Board member and Treasurer began checking the Executive Director's bank statement reconciliations and reviewing the Executive Director's expense reimbursements. Unfortunately, this action was rather late in relation to when MGEA began receiving and spending grant funds.

### MGEA's Single Audit Results

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Macdonald Page & Co. LLC has recently completed the Single Audit required for non-profits receiving federal assistance. The audit identified a number of deficiencies in internal controls over financial reporting and compliance consistent with the weaknesses OPEGA had also identified.

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Non-federal entities such as non-profit organizations are required by the Single Audit Act Amendments of 1996 (Single Audit) and the Office of Management and Budget Circular A-133 to have an annual audit of their Federal awards, including Recovery Act programs such as the Department of Energy grant received by MGEA. Audits must also be conducted in accordance with Government Auditing Standards. MGEA hired Macdonald Page & Co., LLC in February 2011 to audit their financial statements and compliance with these requirements.

Macdonald Page identified certain deficiencies in internal control over financial reporting and deficiencies in internal control over compliance considered to be material weaknesses, as well as some significant deficiencies. They found MGEA had not complied with requirements

***Material Weakness:*** A deficiency, or combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the organization's financial statements will not be prevented, or detected and corrected on a timely basis.

***Significant Deficiency in Internal Control over Compliance:*** A deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

**From Macdonald Page Single Audit Report**



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As a result of these weaknesses, Macdonald Page reported \$272,673 in questioned costs on the federal grant and was unable to express an opinion on MGEA's financial statements.

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The report's findings indicate MGEA lacked capacity to adequately administer federal funds when the grant was received. The audit also noted MGEA's complete economic dependence on the grant funds.

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regarding allowable activities, and did not properly document, review and approve federal program expenses applicable to the US DOE funded program.

The audit noted significant questioned costs related to the federal grant due to lack of documentation for items such as payroll expenditures to the extent that the auditor was unable to express an opinion on MGEA's financial statements. Questioned costs totaled \$272,673.98 or 53% of grant funds expended.

Specifically, Macdonald Page reported the following findings that correlate with financial control weaknesses noted by OPEGA:

- “material weakness and noncompliance” related to employee reimbursements and payroll with associated questioned costs of \$12,513.98 and \$208,192 respectively;
- “noncompliance and significant deficiency” on mileage reimbursements with associated questioned costs of \$3,681;
- “noncompliance” related to legal expenses with associated questioned costs of \$48,287;
- “material weakness” on financial reporting and general journal entry process; and
- “noncompliance and significant deficiency” on procurement policies and procedures.

The report's findings indicate MGEA lacked the capacity to adequately administer federal funds when the grant was received. MGEA staff was not aware of compliance requirements associated with receiving federal grant funds and lacked knowledge of basic financial statements and disclosure requirements. In addition, the organization did not have written policies and procedures in place to guide employees. The audit also noted MGEA's complete economic dependence on the grant awarded by Efficiency Maine Trust. (See Recommendation 1 on page 34.)

## Use of Grant Funds

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MGEA expended \$513,566 in grant funds. The largest expense category was salaries and benefits which accounted for nearly 53% of the total expenditures. Other significant expense categories were marketing materials and activities at about 21% and professional services at 13%.

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### Analysis of Expenses

MGEA expended \$513,566.51 in grant funds from June 1, 2010 to April 30, 2011 when the organization's books were closed. OPEGA analyzed these expenses by both category (Table 4) and payee (Table 5).

As expected for a service-based organization, salaries and benefits were the single largest expense category for MGEA, comprising nearly 53% of the expenditures. Marketing materials and activities was the next largest expense category at about 21%. Costs included in this category were for public relations and marketing consultation, marketing material development and printing, advertising, mailing, canvassing efforts, and promotions and discounts. The only other major expense category was Professional Services at \$67,034, or about 13% of MGEA's total expenditures. Professional Services included legal services, accounting and reporting services, and administrative and project development services.

<b>Expense Category</b>	<b>Total \$</b>	<b>% of Total</b>
Salaries, Wages & Benefits	\$272,007.01	52.96%
Marketing Materials and Activities	\$105,878.30	20.62%
Professional Services	\$67,034.65	13.05%
Office Equipment & Supplies	\$17,604.42	3.43%
Travel, Meals & Lodging	\$15,875.57	3.09%
Technology	\$15,708.97	3.06%
Rent and Utilities	\$13,050.29	2.54%
Other	\$6,407.30	1.25%
<b>Total</b>	<b>\$513,566.51</b>	<b>100%</b>

Source: OPEGA analysis of MGEA expenditure data.

There were 74 payees in MGEA's expenditure file, including employees receiving payments that were not salaries and wages processed through the payroll services vendor. Twenty two of the vendors received more than \$2,000 in payments.

MGEA had a total of 74 payees in its expenditure file. Table 5 lists the vendors that received more than \$2,000. These vendors include MGEA employees receiving payments that were not salaries and wages processed through payroll, i.e. expense reimbursements.

<b>Vendor</b>	<b>Total</b>
Murray, Seth V	\$56,538.10
Federle Mahoney, LLC	\$55,501.71
Barton & Gingold	\$22,488.19
Opportunity Maine	\$20,631.12
Curry Printing	\$13,894.41
Macdonald Page	\$13,853.00
Mailings Unlimited	\$10,705.57
Dirigo Health Agency	\$8,124.44
Maine Interfaith Power and Light	\$6,713.99
Voter Activation Network	\$6,000.00
Wright, Shelby V	\$5,180.37
XPress Copy	\$4,307.66
Trust Asset Management	\$4,000.00
Lavender Designs	\$3,264.08
Cherry Bomb Graphics	\$3,104.33
Atwood, Debbie	\$2,786.56
Battin, Thomas M. V	\$2,660.45
Madore, Kimberly C.	\$2,500.00
Bisson Financial Consulting Services	\$2,472.00
North Forty Creative	\$2,250.00
US Cellular	\$2,200.09
Stone's Throw Consulting	\$2,100.00
All Others	\$22,828.11

Source: OPEGA analysis of MGEA's expenditure data.

## Detailed Review of Selected Payments

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OPEGA examined supporting documentation for those payments at highest risk for potential misuse of grant funds. In cases where that documentation did not contain sufficient detail, we took additional measures to determine whether any misuse had occurred. No unallowable or inappropriate uses of grant funds were identified.

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OPEGA examined the supporting invoices and reimbursement forms for those payments at highest risk for potential misuse of grant funds due to MGEA's weak financial controls and informal business practices. Our review included reimbursement forms for all MGEA employees, payments associated with energy audit promotions, and invoices for the following vendors<sup>2</sup>:

- Federle Mahoney, LLC;
- Barton & Gingold;
- Opportunity Maine;
- Voter Activation Network;
- Kimberly Madore;
- Bisson Financial Consulting Services; and
- Stone's Throw Consulting.

Some of the invoices and reimbursement forms did not contain sufficient detail for us to assess the allowability and appropriateness of the expenses. In these cases, we performed further analysis and/or reviewed additional documentation to determine whether any misuse occurred. The payments that we spent additional time on are detailed below. Ultimately, we did not identify any unallowable or inappropriate uses of grant funds although there were some expense reimbursements, of relatively low dollar amounts, for which we could not make a final determination. (See Issues Section page 27 for further discussion.)

### **Seth Murray**

Of the total payments made to MGEA's Executive Director, \$18,804, or 33.3%, was salary and accrued vacation, most of that being a portion of the back pay owed Mr. Murray for the period when his salary was deferred. This deferred compensation was paid to Mr. Murray directly rather than through MGEA's payroll services vendor. The remaining \$37,734 in payments were reimbursements to Mr. Murray for MGEA business expenses charged on Mr. Murray's personal credit card and mileage he incurred on MGEA business.

OPEGA reviewed the supporting documentation for a sample of 65 transactions, representing \$27,720 of Seth Murray's expense reimbursements. The charges were for items like computers, office equipment (printers, desks, chairs, etc.), office supplies, business cards, software licenses, marketing materials, postage, and meals.

While explicit business purposes were not documented for any of the charges, OPEGA could infer the business purpose for 53 of the transactions from some other details available in the documentation. We found these charges to be acceptable and allowable uses of funds. No business purpose could be inferred for the remaining 12 transactions, which totaled \$667.70. We also assessed the transactions for reasonableness and necessity and deemed 46 of them, totaling \$18,901.84, to meet both criteria. There was insufficient documentation to determine the reasonableness of cost and/or necessity of the items for the remaining 19 transactions totaling \$8,818.22.

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<sup>2</sup> These vendors were selected for review either because of their associations with individuals involved with MGEA, or because of risk that their goods or services may have been used for unallowable activities.

### **Federle Mahoney, LLC**

Federle Mahoney, LLC is a law and government affairs firm in which Thomas Federle, former MGEA Board member and non-voting Secretary, is a partner. A portion of the payments to this vendor, \$7,866.71, was reimbursement for Federle Mahoney covering the cost of MGEA's rent and utilities. The remainder of the payments were for legal and project development services provided by Mr. Federle and billed at a flat monthly rate. That rate was \$7,500 per month for June – November 2010 and \$2,500 for the month of December 2010. An engagement letter covering Federle Mahoney services for June 1 – December 31, 2010 was approved by the MGEA Board on September 9, 2010 and Mr. Federle was on the Board at that time.

The anticipated costs for Mr. Federle's services were originally budgeted as Legal Services in MGEA's contract with EMT. However, as detailed in the contracted scope of services, most of Mr. Federle's time on MGEA was spent more as a consultant or co-director of the organization. Matters he was involved in included selection of partner communities, presentations to community leaders, discussions with potential lenders, and formation of the marketing plan. He was also involved in the interviewing and hiring of employment candidates and provided other general assistance in the development of the organization.

OPEGA noted that MGEA's engagement of Federle Mahoney as a contractor appeared to be a conflict of interest. (See Issues Section page 31 for further discussion.) We also found that the invoices supporting MGEA's payments to Federle Mahoney lacked detail as to what work was performed in each billing period. Consequently, we requested and reviewed documentary evidence of Mr. Federle's work for MGEA which included: numerous documents drafted by Mr. Federle, lists of events and meetings attended and/or organized by Mr. Federle; and numerous emails. Based on this, and descriptions of his efforts from several sources, we determined that Mr. Federle's services were an allowable and appropriate use of grant funds. We also found the amount paid to be reasonable given the volume of work and amount of time spent by Mr. Federle.

### **Opportunity Maine**

Opportunity Maine is a non-profit organization whose mission is to organize grassroots initiatives that address Maine's educational, economic and energy challenges. Opportunity Maine originally signed a contract with MGEA to do door to door canvassing in selected communities. The purpose of the canvassing was to make homeowners aware of MGEA and identify those who were potentially interested in energy audits and retrofits. The contract was for \$57,000 and covered a one-year period with a targeted goal of knocking on 18,000 doors – a rate of \$3.17 per door. An initial, upfront payment of 25% of the contract, \$14,250, was made on August 26, 2010.

Canvassing efforts did not go smoothly due to constant changes to plans made by MGEA, including numerous script changes, community changes, and canvas postponements. Under these circumstances, initial results were dismal. An amendment was made to the contract in October 2010 to reflect this. Opportunity Maine ended up only knocking on 4,829 doors and was paid only \$20,631.12 of the original contracted amount. This represents a per door knocked rate of \$4.27 which is higher than the \$3.17 originally expected. In essence, MGEA ended up compensating Opportunity Maine for additional costs incurred in adjusting to MGEA's required changes. While allowable, these added costs might have been avoided with better planning on MGEA's part. (See Issues Section page 32 for further discussion.)

### **Voter Activation Network**

Voter Activation Network (VAN) is a provider of database software enabling voter contact, volunteer management, and organizing for Democratic campaigns, labor unions, and non-profit organizations. MGEA paid \$6,000 of an original \$9,000 contract for a license to the SmartVAN application. The intent was that Community Organizers and Process Facilitators would use it to generate leads and track subsequent follow up contacts with interested homeowners all the way through the weatherization retrofit process. MGEA made the purchase in August 2010 and by September had determined that the application was not sufficient for the work the Process Facilitators were doing. MGEA purchased the Salesforce application for them to use instead. In November it became apparent that using two different data systems was inefficient and the Community Organizers were also migrated to Salesforce. An agreement was reached with VAN limiting MGEA's liability at \$6,000. While the purchase of SmartVAN was an allowable use of funds, the costs associated with SmartVAN might have been avoided with a better upfront evaluation of the product relative to the activities MGEA wanted to undertake. (See Issues Section page 32 for further discussion.)

Public questions have been raised about MGEA's motivation in purchasing SmartVAN. Although there are reasonable explanations for this purchasing decision, the fact remains that some MGEA employees who were involved in political campaigns did have access to SmartVAN and could have used it for campaign purposes. Three MGEA employees were running for office while MGEA was using SmartVAN. We reviewed a substantial volume of documents associated with MGEA employee activities, i.e. correspondence, work plans, progress reports, and saw no indication of any misuse of this application. We also confirmed with both the Maine Democratic and Maine Republican Parties that campaign tools similar to SmartVAN are available to their members who are running for office. The databases maintained by the Parties are purportedly kept up to date. They are, therefore, more current in their voter contact information, and thus likely more useful for campaigning, than the standard database MGEA purchased from VAN. This reduces the likelihood the MGEA employees would have chosen to improperly use MGEA's SmartVAN database for campaigning efforts.

### **Mileage Reimbursements to MGEA Employees**

MGEA had 12 employees who received a total of \$13,611.50 in reimbursements for mileage. Of this amount, \$3,785.50 was reimbursed to the Executive Director. OPEGA reviewed the employees' mileage reimbursement forms and found that of those paid prior to December 15, 2010 only 59% had the "purpose of travel" field completed. Even the Executive Director, who could approve his own mileage reimbursements, completed this field for only 28% of his entries prior to that date. After December 15, 2010, all employees were consistently documenting the business purpose of their trips.

The mileage reimbursements prior to December 15, 2010 do appear reasonable in relation to the level of employee activity we have seen evidenced in other documentation reviewed. Without an adequate description of the business purpose, however, it is not possible to confirm the allowability or appropriateness of the mileage expenses paid with grant funds. (See Issues Section page 27 for further discussion.)

### **Energy Audit Promotions**

Due to the nature of the expense, OPEGA also reviewed the documentation supporting the \$3,700 MGEA paid toward free or discounted energy audits that were offered through several special promotions. These included invitations for \$50 off an energy audit to Maine Audubon members, with an additional \$50 donation made to Maine Audubon for every audit scheduled. Five Maine Audubon members took advantage of this promotion, costing MGEA a total of \$500. MGEA also held drawings for free or half price energy audits at community events to encourage attendees to sign up to receive more information on energy audits and retrofits. Nine individuals ended up receiving free energy audits, costing a total of \$3,000. One half-price energy audit was awarded, costing \$200. These discounted energy audits appear to have been directly related to MGEA's mission and used successfully as a promotional tool. None of the individuals receiving free or discounted energy audits through MGEA's grant funds were MGEA employees or legislators.

## Issues with MGEA

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OPEGA noted a number of issues, described below, that would normally require corrective action by MGEA. Since MGEA has ceased operations, we have not made recommendations for MGEA actions to address them. We have instead made recommendations focused on assuring that EMT and other State and quasi-State agencies avoid issues similar to those identified for MGEA in the future. Those recommendations are discussed in the next section.

### ***MGEA Operated with Weak Financial Controls and Informal Business Practices***

MGEA was a start-up organization when it began negotiating its contract with EMT in June 2010 and, in many ways, remained in start-up mode well into the fall of that year. As might be typical for a young organization that is moving quickly to get its goods or services into the market, MGEA was operating rather informally and never did get formalized administrative policies and procedures or proper financial controls fully in place prior to ceasing operations at the end of February 2011. The lack of formality in policies and procedures may be acceptable for organizations supported by private funds, but it does not meet the expectations or requirements associated with the use of public funds.

From at least June – December 2010, there were inadequate controls over MGEA's financial transactions. Specifically we noted the following concerns:

- **Inadequate Separation of Duties for Reimbursements to the Executive Director.** The Executive Director was approving his own expense and mileage reimbursements. Since he was using his own personal credit card to procure many goods and services MGEA needed, the reimbursements were sometimes substantial and in total he received \$37,734.08 in expense and mileage reimbursements for June – December 2010. The fact that MGEA's Office Manager assisted the Executive Director in preparing his expense reimbursement forms and that EMT carefully reviewed the MGEA invoices that contained these reimbursements provided some mitigation for this weak approval control. In reality, however, there were other weak controls that limited the effectiveness of those compensating measures.
- **Inadequate Separation of Duties over Bank Accounts and Payments.** The Executive Director had access to MGEA bank accounts and was responsible for paying MGEA's bills either through the checks he had in possession or via the electronic bill pay function which he had the passwords for. He was also the one who transferred money from the MGEA Money Market account to the checking account and performed the reconciliations of the bank statements. The bank statements and reconciliations were not reviewed by anyone else during this period which means that potential accounting errors or improper payments could have gone undetected.
- **Inadequate Supporting Documentation for Expenditures.** Mileage reimbursement forms lacked detail on the business purpose of the travel. Similarly, expense reimbursement forms often lacked sufficient detail of business purpose and/or itemized receipts to support the expenses listed. Invoices from some vendors also had insufficient detail to allow determination of exactly what work was being paid for.
- **Inadequate Time Reporting for Salaried Employees.** Only MGEA's five part-time, hourly paid employees were required to track and report actual hours worked. The other nine MGEA employees were salaried and were only required to track and report their leave time. Because of this, there was inadequate documentation to support wages paid to these employees as required by the federal regulations that are applicable to MGEA under this grant.

MGEA made some efforts to improve its accounting and financial control structure after receiving the first grant disbursement from EMT in August 2010. Bisson Financial Consulting Services was hired in September, at the suggestion of a Board member, to set up a QuickBooks system and document MGEA's internal control structure. MGEA also contacted Macdonald Page to get an understanding of the controls needed to have a clean federally required annual Single Audit. The Board reviewed internal controls in December 2010 and began to establish additional controls to address the separation of duties concerns. Unfortunately, this action was late in relation to when MGEA began receiving and spending grant funds. As a result of the weak financial controls, Macdonald Page has reported \$272,674 in questioned costs from its recent Single Audit of MGEA.

In addition to weak financial controls, MGEA was also operating with informal business practices and few formal written policies and procedures. Specifically we noted that:

- MGEA's hiring process lacked structure, was poorly documented, and inconsistently implemented. Some hiring decisions appear to have been made through a formalized process, although lack of documentation makes it difficult to determine which candidates were being considered in each round of hiring and how the successful candidates were selected. Other individuals were informally hired based on their associations with others involved with MGEA. There are other positions for which it is not possible to determine what hiring process was used.
- MGEA generally did not use a competitive process to procure services. There is also no evidence of MGEA seeking best price when procuring goods and equipment. MGEA sole sourced work to several vendors and consultants mainly because of their associations with persons involved with MGEA or the original MERC Task Force.

The weak financial controls and informal business practices created high risk for misuse of grant funds and/or non-compliance with grant requirements, related contract requirements, and applicable laws and regulations. Consequently, OPEGA examined in detail those transactions and arrangements at most risk. We did not identify any misconduct or inappropriate use of funds. We did note several instances of non-compliance with contract requirements, State laws and federal regulations that are discussed further below.

### ***MGEA Not Compliant with Some Federal Regulations and Contract Requirements***

As a non-profit organization receiving federal grant assistance, MGEA was subject to the federal regulations contained in 10 CFR 600 Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations. MGEA's weak controls, informal practices, inadequate documentation and general lack of established policies and procedures resulted in instances of non-compliance with some of these regulations, as well as some requirements in its contract with EMT.

10 CFR 600 Subpart B establishes uniform administrative requirements for grants and agreements awarded directly, or through subawards, to certain types of organizations including non-profit organizations. The regulation includes Post-Award requirements related to financial and program management, procurement standards and reports and records. From our review of MGEA's procurement policies and practices, expenditures and related documentation, and time reporting practices, it appears MGEA was not compliant, or potentially not compliant, with specific regulations requiring:

- A financial management system that provides for: records that adequately identify the application of funds for federally-sponsored activities; effective control over and accountability for all funds; adequate safeguarding of all funds to ensure they are used solely



for authorized purposes; and written procedures for determining the reasonableness, allocability and allowability of costs under the applicable grant. (10 CFR §§600.121-(b.) (2), (3) and (6).)

- Maintenance of supporting source documentation for all disbursements made from the bank account such as canceled checks, paid bills, receipts, payroll, etc. when the organization does not have a compliant financial management system. (10 CFR §§600.121-(f))
- Maintenance of written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. (10 CFR §600.142)
- Conduct of all procurement transactions in a manner to provide, to the maximum extent possible, open and free competition. (10 CFR §600.143)
- Establishment of written procurement procedures that, at a minimum, include certain specified provisions. (10 CFR §600.144 (a))
- Some form of cost or price analysis to be made and documented in the procurement files in connection with every procurement action. (10 CFR §600.145)
- Procurement records and files for purchases in excess of the small purchase threshold (currently \$100,000) that include, at a minimum, the basis for contractor selection, justification for lack of competition when competitive bids or offers are not obtained, and the basis for award cost or price. (10 CFR §600.146)
- Certain provisions to be included in all contracts and subcontracts. (10 CFR §600.148)

In the terms of its contract with EMT, MGEA was put on notice of some elements of the applicable federal laws and regulations. For example, Section 33 of Rider B of the contract between EMT and MGEA states that the Provider (MGEA) must, to the maximum extent possible, award any subcontracts as fixed-priced contracts through the use of competitive processes. Section 39 of Rider B references the need to comply with 10 CFR 600.236, but the language is unclear as to whether all provisions of 600.236 are applicable or only provisions that are specifically described in the contract. However, it does not appear that EMT made MGEA specifically aware of the need to comply with the individual requirements in 10 CFR 600 Subpart B. Also, according to MGEA and EMT, EMT never provided MGEA with any technical assistance or guidance on any federal regulations, nor assessed whether MGEA was compliant.

Section 35 in Rider B of MGEA's agreement with Efficiency Maine Trust also required MGEA to post any jobs it created or sought to fill under the agreement to the Career Center's web site which is administered by the Maine Department of Labor. After signing the contract with EMT, MGEA created 11 positions that were paid for with grant funds. The position of Office Manager does not appear to have been posted on the website. In addition, it does not appear that the positions for one Field Organizer and two Process Facilitators that were filled in August 2010 were posted on the Career Center website. Those employees were hired on August 20th and 24th. The first posting of a MGEA job to the Career Center website occurred August 23rd. There are also emails between Mr. Federle and these job candidates during the time period preceding their dates of hire. MGEA posted job openings on Craigslist and the MGEA website, but it is unclear whether these particular positions were advertised anywhere.

Lastly, section 9 in Rider B requires compliance with Equal Employment Opportunity, Americans with Disabilities Act and other employment laws. As previously noted, MGEA did not have organized documentation of its recruitment and selection process for filling MGEA positions. The lack of sufficient documentation makes it difficult to determine whether MGEA was in compliance with these contract requirements and exposes MGEA to claims of violations by job applicants.

## ***MGEA Board Ineffective and Not Compliant with State Law for Public Benefit Corporations***

The MGEA Board was ineffective in providing oversight, establishing policy and direction, and approving MGEA's commitments during the start-up phase of this organization. The ineffectiveness is attributed both to the Board's low level of engagement through formal Board meetings and to the make up of the Board membership which was, in fact, not compliant with State statute governing boards of public benefit corporations during the period June 1 – September 9, 2010.

MGEA incorporated as a non-profit in the State of Maine in November 2009 for the purpose of applying for the federal Retrofit Ramp-up grant and implementing the program if grant funding was received. The incorporation filing was done by Federle Mahoney, LLC with Mr. Federle listed as Registered Agent and his paralegal listed as incorporator. The Articles of Incorporation also say that there were to be three to six Board members, but the names of those members are not specified. According to Mr. Federle, MGEA did not have a defined Board until June 2010.

The Board never held an official meeting until September 9, 2010 despite the fact that MGEA began incurring financial liabilities in June 2010 that grant funds were expected to be used for. MGEA did not receive its first disbursement of grant funds from EMT until August 17, 2010. Liabilities incurred prior to the receipt of funding included:

- Rent and utilities for MGEA office space at 75 Market Street, Portland. Federle Mahoney, LLC covered these costs and was ultimately reimbursed \$4,217.10.
- Salary for the Executive Director who assumed his position on June 6, 2010 and worked unpaid until shortly after grant funds were available. He subsequently received gross back wages of \$18,461.54.
- Fees for services rendered by Mr. Federle who did not bill MGEA until after grant funds were available. He ultimately billed MGEA \$22,500 for services provided June – August 2010, after the Board's September 9<sup>th</sup> approval of his services agreement.
- Fees for services rendered by Kimberly Madore and William Beyreuther in assisting with getting MGEA established. These individuals ultimately billed MGEA an estimated total of \$3,079 for services incurred during this time period.
- Obligation for repayment of a \$15,000 no interest loan made by the Executive Director to MGEA. The Executive Director made this loan on June 19, 2010 to cover the payment of salaries for the one other MGEA employee on staff during the period June – August 2010. The loan was repaid on September 29, 2010 after repayment was approved by the Board.

In addition to incurring financial obligations, MGEA was also negotiating its subrecipient contract with EMT which was finally signed by EMT and MGEA's Executive Director on August 3, 2010. This contract committed MGEA to a work plan with ambitious performance goals and targets and an obligation to comply with certain procedures, laws and regulations in administering the grant funds.

From June 1 – September 9, 2010, the Board was also not compliant with 13-B MRSA §713-A which states that *“no more than 49% of the individuals serving on the board of a non-profit corporation may be financially interested persons.”* Two of MGEA’s three Board members during that time, or 66% of the Board, met the definition of financially interested persons. Mr. Federle

13-B MRSA §713-A defines a financially interested person as *“an individual who has received or is entitled to receive compensation from a public benefit corporation for personal services rendered by that individual within the previous 12 months.”*

had been providing lobbying, legal and project development services to MGEA since at least January 2010. Even though Casella Waste was actually covering Mr. Federle’s fees for these services from January – May 2010, Mr. Federle’s invoices and the Lobbyist Disclosure forms filed with the Maine Ethics Commission state MGEA was his client. Mr. Murray was a financially interested person by virtue of his employment with MGEA. Consequently, even if the Board had met prior to September 9, 2010, it would have been ineffective in overseeing and reviewing decisions and transactions entered into by MGEA from an independent perspective. We note that 13-B MRSA §713-A specifies that failure to comply with this statute does not affect the validity or enforceability of any transaction entered into by a corporation and does not specify any penalties for non-compliance.

The Board came into compliance with 13-B MRSA §713-A as of the September 9, 2010 meeting when Mr. Murray resigned from the Board and two other individuals joined the Board. The Board then had a total of four members, only one of which – Mr. Federle – was still a financially interested person. However, OPEGA questions the actual effectiveness of the Board from September - December 2010 as well. The Board did formally approve both the Executive Director’s employment, and an engagement letter for legal and other services to be provided by Mr. Federle, at its September 9, 2010 meeting. Given that both Mr. Murray and Mr. Federle had already been fully engaged in the start-up of MGEA for several months, however, it seems these approvals were more of a rubber stamp of arrangements that had already been established. We also noted that while the Executive Director gave the Board an overview presentation of MGEA’s contract with EMT, there is no record of the Board having formally approved it. Finally, although MGEA was in many ways still just getting itself organized and was having difficulty meeting its performance goals, the Board did not meet again for three months.

### ***MGEA’s Engagement with Its Legal Firm Represented Apparent Conflict of Interest***

MGEA engaged the firm of Federle Mahoney, and in particular Thomas Federle, to provide professional services while Mr. Federle served as a Board member and, subsequently, as Secretary of the Board. The engagement letter between MGEA and Federle Mahoney is for legal and project development services. It was approved by the MGEA Board at its first Board meeting on September 9, 2010 and covered the period June 1 – December 31, 2010. Mr. Federle did not participate in the Board’s discussion or vote to approve MGEA’s contract with Federle Mahoney, nor was the Board technically in violation of 13-B MRSA §718 in approving the transaction. Nonetheless, the arrangement represented an apparent conflict of interest.

Mr. Federle had played, and was continuing to play, a key role in the establishment of MGEA. Mr. Federle initiated the incorporation of MGEA, was the point person on MGEA’s federal grant application, selected the Board’s initial members and hired MGEA’s Executive Director. He served as a member of MGEA’s Board from June – December 2010 and then became non-voting Secretary of the Board. For the period of time Mr. Federle was a MGEA Board member, he was also overseeing the performance of the Executive Director, who in turn, was responsible for monitoring Mr. Federle’s performance as a contractor. In June – August 2010, he was also assisting the Executive Director in

negotiating MGEA's contract with EMT, which included a budget line item of \$105,000 for legal services.

By the time the Board approved MGEA's contract with Federle Mahoney in September 2010, Mr. Federle had already put in many unpaid hours on MGEA business for June – August 2010. He subsequently billed MGEA a flat rate of \$7,500 per month for services provided June – November 2010 and \$2,500 for the month of December. We noted that the services provided were really more as a consultant and co-director of MGEA than as an attorney. Mr. Federle was spending most of his time working with municipalities to facilitate the passing of PACE ordinances and to engage them in partnering with MGEA to promote energy efficiency in their communities. He also was assisting the Executive Director with interviewing applicants for MGEA's positions and other managerial tasks.

Because of these conflicts, OPEGA requested and reviewed documentary evidence of Mr. Federle's work for MGEA which included numerous documents drafted by Mr. Federle, lists of events and meetings attended and/or organized by Mr. Federle, and numerous emails. Based on this, and descriptions of his efforts from several sources, we find the \$47,500 paid to Mr. Federle for services June - December 2010 to be reasonable given the volume of work and amount of time spent.

### ***Some Costs Incurred Could Have Been Avoided or Reduced with Better Planning***

OPEGA's detailed review of MGEA's expenditures did not identify any inappropriate uses of grant funds. However, there were several expenses that might have been avoided or reduced with better planning on MGEA's part and, therefore, in hindsight could be considered an unnecessary use of funds. These expenses totaled \$10,990.

Opportunity Maine was paid \$4,990 more for its canvassing efforts than the contracted rate for each door knocked. The extra payment was to compensate Opportunity Maine for costs it incurred due to frequent changes in plans required by MGEA. In one instance, Opportunity Maine ramped up for canvassing efforts that MGEA ended up cancelling when it became clear that MGEA had not yet established a sufficient foundation in the targeted town.

MGEA also spent \$6,000 to purchase a license for SmartVAN. The intent was that Community Organizers and Process Facilitators would use it to generate leads and track subsequent follow up contacts with interested homeowners all the way through the weatherization retrofit process. MGEA made the purchase in August 2010 and by September had determined that the application was not sufficient for the work the Process Facilitators were doing. MGEA purchased the Salesforce application for them to use instead. In November it became apparent that using two different data systems was inefficient and the Community Organizers were also migrated to Salesforce. While the Executive Director did take steps to avoid the final \$3,000 payment due on the SmartVAN license, it seems that with more forethought and testing he may have chosen Sales Force rather than SmartVAN in the first place.

We also note in general that MGEA may have been able to purchase some goods and services more economically if it had procured them on a more competitive basis. For example, office supply companies might have been asked to bid on a list of equipment, furniture and supplies MGEA needed rather than these items being purchased ad hoc from a variety of vendors.

### ***Lobbyist Disclosure Forms Filed by Federle Mahoney, LLC for Services Rendered to MGEA Did Not Include Original Source of Payments***

Maine Statute Title 3 Chapter 15 contains requirements for disclosure of the activities, expenditures and identities of professional lobbyists. Mr. Federle was registered as a lobbyist for MGEA in 2010 working on LD 1717, a bill to enable PACE (Property Assessed Clean Energy) ordinances in Maine. A PACE loan program was a major component of EMT's proposal for the US DOE grant. LD 1717 as amended was enacted in late March 2010 and signed by the Governor on April 1, 2010.

The Statute requires a lobbyist to file a Lobbyist Registration and to file monthly Lobbyist Disclosure reports to disclose the total amount of compensation received for lobbying activities in the previous month. Those forms are filed with the Maine Ethics Commission. According to Mr. Federle's monthly Disclosure reports for MGEA, Federle Mahoney, LLC was compensated \$3,000 for lobbying LD 1717 in January, \$3,000 in February and \$2,500 in March 2010.

Fees for Mr. Federle's services to MGEA between January and May 2010 totaled \$35,478. Those invoices were addressed to: Maine Green Energy Alliance, Attn: Jim Bohlig, President, 25 Greens Hill Lane, Rutland, VT. Mr. Bohlig is the Senior Vice President and Chief Operating Officer of Casella Waste Systems and was a member of the MERC Task Force. According to Mr. Federle, Casella Waste Systems was paying him on behalf of MGEA for his MGEA work from January to May 2010, including the \$8,500 for lobbying on LD 1717.

A person or a company contributing \$1,000 or more in a lobbying year to an employer of a lobbyist, such as MGEA, for lobbying services is considered an original source under 3 MRSA §312-A. Lobbyists are required to report on all original sources and the dollar amounts contributed or paid by them. Mr. Federle's monthly Lobbyist Disclosure forms for MGEA and the PACE legislation for January – March 2010 name Mr. Bohlig as the contact person for MGEA. His Casella Waste physical and email addresses are given as his contact information, but the corporation's name is not contained in the physical address and the Disclosure forms do not specify Casella Waste Systems as an original source. Consequently, it is not clear on the Disclosure forms that Casella Waste was the original source of payment for Mr. Federle's lobbying activities on LD 1717.

We note that the Lobbyist Disclosure forms filed by Federle Mahoney, LLC do not appear to be fully compliant with statute. This matter is somewhat outside the scope of OPEGA's review and we would defer further review and determination of compliance to the Maine Ethics Commission.

## Recommendations

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### ***State or Quasi-State Agencies Administering Grants Should Ensure Subrecipients have Adequate Capacity and Proper Controls Prior to Disbursing Grant Funds***

As the prime recipient of the grant from US DOE, EMT had certain oversight responsibilities for program performance, and compliance with laws and financial and accounting practices. EMT performed strong oversight of MGEA's programmatic performance, but did not take an active role in assuring MGEA had established adequate financial controls or accounting systems.

The EMT staff and Board recognized MGEA's effort as a pilot project that might not prove successful in delivering a high number of home weatherizations. Accordingly, MGEA's contract included specific and ambitious performance measures, and EMT regularly monitored MGEA's progress toward the performance targets through formal reports and meetings. The fact that MGEA was falling far short of the contracted performance goals prompted EMT's Board, with the agreement of the MGEA Board, to discontinue the contract in early 2011, seven months before the end of the contract period. This decision turned out to be fortunate for EMT as it ultimately limited the financial exposure it now faces due to MGEA's weak financial controls and informal business practices.

As a subrecipient of federal grant funds, MGEA was required to have an annual independent financial and compliance audit known as the Single Audit. The firm of Macdonald Page & Co., LLC has recently completed that audit, which was performed sooner than it would have been because MGEA was discontinuing operations. Macdonald Page's audit report identifies \$272,674 in questioned costs, 53% of the total \$513,567 spent by MGEA under the grant, due to weak controls. Had this audit been performed later in the contract period, the questioned costs would likely have been higher. MGEA began addressing the inadequate separation of duties in December 2010, but other weak controls, like the lack of time sheets for salaried employees and inadequate supporting documentation for other expenditures, would likely have continued.

US DOE conducted a monitoring visit of EMT in June 2011. According to US DOE they generally found that EMT was properly administering the grant and had taken appropriate action to discontinue with MGEA when performance was not as expected. EMT is responsible, however, for paying back federal grant funds related to the questioned costs identified by Macdonald Page should US DOE require it.

MGEA has no other funds with which to pay back EMT. However, MGEA's Executive Director and Board Treasurer, with EMT's assistance, have established a plan of corrective action in order to cure or mitigate the amount of questioned costs. OPEGA has also done a more extensive review of MGEA's expenses than Macdonald Page and did not find any inappropriate uses or any significant unallowable uses of grant funds. Our results will hopefully aid EMT in convincing

US DOE that a return of grant funds is not necessary. Whatever the final result, this is not a situation that EMT and MGEA should have found themselves in and it could have been avoided.

EMT reviewed MGEA's invoices when they were submitted and took steps to ensure there was some documentation to support them prior to releasing funds to cover them. From OPEGA's perspective, however, EMT was not sufficiently diligent in assuring MGEA had the capacity, controls and structure in place to properly administer and account for grant funds before the initial grant disbursement. Extra efforts to mitigate the financial and compliance risks associated with MGEA would have been prudent given that:

- MGEA was not an established entity when the grant was awarded;
- MGEA had no source of funding other than the federal grant funds;
- the performance targets in the contract were ambitious; and
- EMT was ultimately responsible for assuring the allowable use of grant funds.

#### **Recommended Management Action:**

EMT should establish a policy and practice for assuring that subrecipients have the capacity, controls and structure in place to properly administer and account for public funds before disbursing them. For example, EMT may require subrecipients to get an assurance letter from a qualified external auditor attesting to its capacity to manage funds responsibly, and its ability to adequately protect any public funds awarded through an acceptable financial management system.

#### **Suggested Legislative Action:**

The Legislature should consider establishing a statutory requirement for State agencies and quasi-independent State agencies to ensure subrecipients have the capacity, controls and structure in place to properly administer and account for public funds before disbursing them.



### ***Criteria Should Be Established for Determining When Non-State Entities Can Be Designated as Subrecipients on Grants to State or Quasi-State Agencies***

MGEA was a non-profit organization in name only when its proposed project, and the associated \$6.5 million budget, was included in a State level application for a federal grant. MGEA's original project may have been an idea US DOE was interested in because it involved a private corporation supporting residential energy efficiency efforts. Nonetheless, a large part of MGEA's original project was only tangentially related to the proposed efforts the PUC and MSHA were putting into the grant application. A significant portion of MGEA's proposed budget was for construction and renovation of Casella Waste facilities. The intent being to both solve the ongoing complaints about Casella's MERC facility in Biddeford, and put Casella in a position to promote energy efficiency in its host communities by offering discounted electrical power to those making energy efficiency improvements.

At the end of April 2010, PUC's Energy Programs Division was proposing to US DOE what efforts would still go forward with a grant award of only \$30 million. This was also the point at which the primary recipient of the grant was being transferred to Efficiency Maine Trust, which officially assumed management of efficiency programs in the State on July 1, 2010. The de-scoped agreement included \$3 million for MGEA to conduct intensive community outreach efforts in select towns – an approach that US DOE supported. MGEA was named a subrecipient despite the fact that it was still an organization in name only.

OPEGA questions the decision by the PUC's Energy Programs Division to continue with MGEA as the subrecipient on the de-scoped award. With the Casella Waste portion of the proposal eliminated, MGEA was left with conducting community outreach, education and process facilitation efforts that were only a small portion of its original project.

Although the MGEA group was purportedly still enthusiastic about wanting to make a difference at the community level and developed a plan to do so, the reality is that the organization had no capacity to immediately begin pursuing these efforts. Consequently, EMT inherited, and felt bound to retain, both a pilot program that was already high risk for ineffective use of funds and a subrecipient that would need to use grant funds to cover start-up costs for a brand new entity.

**Recommended Management Action:**

EMT should consider amending its internal policy and procedures to specify the criteria and process through which subrecipients are selected for inclusion in grant applications or awards. Such policy could require any non-State entities to have been selected via a competitive process unless there is acceptable, documented justification for sole source selection. It should further consider requiring that the selection of any major subrecipients be approved by the EMT Board.

**Suggested Legislative Action:**

The Legislature should consider establishing statutory criteria by which non-State entities can be acceptably designated as subrecipients in grant applications submitted by State or quasi-independent State agencies. Such criteria could require those non-State entities to have been selected via a competitive process unless there is acceptable, documented justification for sole source selection. Similar criteria should apply to any non-State entities selected to be subrecipients or contractors after the grant is awarded. The statutory criteria could allow for waivers of these requirements in appropriate situations, i.e. time sensitive.



## Agency Response

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OPEGA discussed the preceding issues and recommendations with the management of both the Efficiency Maine Trust and Maine Green Energy Alliance in advance. Although the MGEA has now ceased operations, both MGEA and EMT report they are taking actions to address concerns raised by OPEGA and Macdonald Page.

MGEA, with the assistance of EMT, has established and is executing a Corrective Action Plan to address the questioned costs raised in the Macdonald Page audit report. The Corrective Actions will include, but are not limited to, having:

- the Executive Director's expenses double checked and officially authorized by MGEA's Treasurer;
- MGEA staff certify business purposes to any travel and meal expenses;
- MGEA salaried employees certify to the number of hours worked and purposes of such work for any hours not reflected on time cards; and
- MGEA supervisors certify to the number of hours worked and purposes of such for any of the salaried employees they supervised.

In addition, last year EMT worked with US DOE to put in place the EMT Monitoring and Compliance Plan that guides EMT (and its subrecipients) in its monitoring of recipients of ARRA funds. In light of the lessons of the MGEA experience, EMT staff has prepared an amendment to the Monitoring and Compliance Plan whereby riskier subrecipients of federal grants will be identified at the beginning of a grant and more scrutiny and assurances will be required until the subrecipient has demonstrated its ability to comply with appropriate laws, regulations, financial and accounting procedures. The amendment is scheduled for adoption at EMT September, 2011 board meeting.

In accordance with 3 MRSA §996, OPEGA also provided the Efficiency Maine Trust and Maine Green Energy Alliance opportunities to submit additional comments on the final draft of this report. Their response letters can be found at the end of this report.

## Acknowledgements

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OPEGA would like to thank the management and staff of the Maine Green Energy Alliance and Efficiency Maine Trust for their cooperation during this review. We would additionally like to thank the staff of the following agencies for taking the time to assist us in this review:

- the United States Department of Energy;
- the Maine Ethics Commission;
- the Maine Attorney General's Office;
- the Maine Department of Labor's Career Center;
- the Legislative Office of Information Technology;
- the Legislative Office of Policy and Legal Analysis;
- the Maine State Housing Authority;
- Federle Mahoney, LLC; and
- Macdonald Page & Co., LLC.

Their perspectives and expertise contributed to a more timely and thorough report.

## Appendix A. Scope and Methods

OPEGA's work to address the sets of questions posed in this review included:

- conducting interviews as needed with:
  - Executive Director of the Maine Green Energy Alliance (MGEA);
  - Board Secretary of MGEA (also one of MGEA's contracted consultants);
  - Executive Director and staff of Efficiency Maine Trust (EMT);
  - Former Director of the Public Utilities Commission's Energy Programs Division;
  - Executive Director and staff of the Maine State Housing Authority;
  - Staff at the US Department of Energy (US DOE);
  - Executive Director of the Maine Commission on Governmental Ethics and Elections Practice;
  - Staff in the Maine Attorney General's Office;
  - Director of Macdonald Page & Co., LLC; and
  - Staff at Opportunity Maine.
- reviewing documentation provided by MGEA or EMT including but not limited to:
  - all documents that MGEA had submitted to the Legislature's Joint Standing Committee on Energy, Utilities and Technology;
  - all documents associated with the US DOE Retrofit Ramp-up Grant Application and Award;
  - the minutes of MGEA Board of Directors' meetings;
  - MGEA's written policies and procedures;
  - MGEA's bank records and account reconciliations;
  - a sample of MGEA invoices and performance reports submitted to EMT, and other records related to EMT's monitoring of MGEA performance and expenditures;
  - documentation associated with the recruitment and hiring of MGEA employees;
  - MGEA's contract with EMT and MGEA's agreements with its vendors;
  - MGEA's employee time reports and internal employee activity and progress reports; and
  - MGEA marketing and education materials.
- researching the history of the Maine Energy Recovery Company Task Force;
- reviewing documents related to MGEA's incorporation as a non-profit entity;
- obtaining, verifying and analyzing a data file of MGEA's expenditures;
- reviewing documentation supporting the MGEA Executive Director's expense and mileage reimbursements;
- selecting a sample of MGEA's expense transactions with highest risk for misuse of funds and conducting detailed review of supporting documentation associated with those transactions;
- comparing deliverables received by MGEA to those outlined in contracts with selected vendors;
- researching Federal or State laws applicable to federal grant recipients, non-profit organizations, and lobbying activity;
- reviewing documents and conducting other research related to establishment and activities of Healthy Homes Maine, LLC including tax filings for 2010; and
- reviewing the results of the federally-required independent Single Audit of MGEA conducted by Macdonald Page & Co., LLC.



August 12, 2011

Beth Ashcroft  
Office of Program Evaluation and Government Accountability  
82 State House Station  
Augusta, Maine 04333-0082

Dear Beth:

I appreciate the opportunity to comment on the Office of Program Evaluation and Government Accountability's report on the Maine Green Energy Alliance (MGEA). I believe that you and your team sorted through a multi-layered narrative, one that has been further complicated by broad allegations, hyperbolic rhetoric and exaggerated media coverage. I believe that you fairly point out our many missteps, and, equally fairly, conclude that they resulted from "MGEA pursuing its performance goals [as a start-up entity] before having its administrative house in order, rather than from any unethical or illegal intentions." You conclude further that MGEA was "engaged in a substantial and earnest effort to make a difference in residential energy efficiency at a community level." I appreciate that you dug deep into the records and documentation of the organization and interviewed several sources to conclude that there were no inappropriate uses of the funds, no missing or unaccounted for funds, no misconduct, and no overpayment for services rendered.

Although MGEA was operating in its partner communities for an average of only four months (and four months is an inadequate timeframe in which to measure the performance of any start-up), I would like to note MGEA's actual performance. In the short period that MGEA was operating, homeowners in MGEA's partner communities were **three times** as likely to start the home energy efficiency improvement process by conducting an energy audit of their homes as compared to the average Maine homeowner.

It has repeatedly and inaccurately been reported that MGEA only "signed up" 50 homes. In fact, MGEA "signed up" over a thousand homeowners. Of these homeowners, MGEA helped over 200 of them complete home energy audits. By the time that MGEA wound down its program, 50 of these homeowners had already finished a complete retrofit of their homes' energy efficiency, with another 120 homeowners still deciding whether to move forward with the retrofit.

As the direct result of MGEA's efforts, approximately \$500,000 was spent in the Maine economy hiring local auditors and contractors in order to make Mainers' homes more energy efficient. These energy efficiency improvements are projected to save each homeowner tens of thousands of dollars over the coming years. Overall economic activity and future energy savings generated by MGEA's activities significantly exceed the expense of the MGEA pilot effort.

Your report helps the MGEA team understand that strict adherence to formality and establishment of oversight and controls must precede even the best-intentioned efforts to hit the ground running. I am hopeful that your report also helps others understand that MGEA was an organization of hard working, earnest individuals who were doing something they truly believed in: helping Mainers increase the energy efficiency of their homes.

Thank you,

Seth Murray  
Executive Director  
The Maine Green Energy Alliance

August 11, 2011

Beth Ashcroft  
Director  
Office of Program Evaluation and Government Accountability  
State of Maine Legislature  
82 State House Station  
Augusta, ME 04333-0082

Re: Comments on the Draft Report of OPEGA's Review on Maine Green  
Energy Alliance (Report No. RR-MGEA-11)

Dear Beth,

Thank you for the opportunity to comment on the Draft Report on the Maine Green Energy Alliance (the Alliance). Below and attached please find the Efficiency Maine Trust comments for inclusion in your final report.

The Trust has an oversight responsibility for the sub-grant awarded to the Alliance by the US Department of Energy (DOE) because the federal grant funds were passed through the Trust. In that role, the Trust must make determinations about the allowability of costs incurred by the Alliance. As you know, we have been in the process of conducting a parallel review to make those determinations at the same time as OPEGA has been conducting its own review.

The OPEGA report correctly notes that the Trust's Board of Trustees voted to accept the termination of this project in January, 2011 after only six months into a three-year grant. This decision was based on a mutual determination by both the Alliance and the Trust that Alliance's results were falling far short of the metrics set out in the contract while the Trust's other home weatherization initiatives were achieving significantly better results. We appreciated that your report referenced the DOE findings from a recent site visit that the Trust had taken appropriate action to discontinue the Alliance's pilot project. Since January, the Trust has been overseeing the Alliance's efforts to wind down its affairs.

Your report notes weaknesses in financial controls at the Alliance. This finding corresponds closely with the draft audit performed by an independent external auditor during the wind down of the Alliance, which raises questions about certain costs. The Alliance set about implementing a suite of corrective actions to address these questions after it shared the audit results with the Trust. The Trust retains an oversight responsibility for the progress of those corrective actions and resolution of outstanding questions. We are pleased that the Alliance's corrective actions efforts are making good progress and are bringing us closer to the point at which we can make final determinations and submit a complete report to the DOE on this sub-grant. We also grateful to OPEGA for the extensive research and analysis contained in its report, which complements and enhances the Trust's review. This will help us in making final determinations about the of allowability of the Alliance's costs in our final reports to the DOE.

The OPEGA report appropriately places an emphasis on the fact that the Alliance was a "start-up" organization that was using federal funds for the first time. As such, there was risk of potential shortcomings in establishing written procedures, proper expense documentation review and authorization, and in developing the capacity to comply with these requirements and the applicable federal laws and regulations. The Trust was careful to include reference to the numerous federal requirements in its contract with the Alliance, and placed significant reliance on the professional experience of principals at the Alliance and the budget it had to secure whatever services would be necessary. Nonetheless, the Trust did not fully appreciate the degree to which the Alliance might have difficulty understanding or implementing these requirements during the early stages of the grant. We agree with the report's findings that it would have been prudent for the Trust to make "extra efforts to mitigate the financial and compliance risks associated with MGEA from the outset" of the grant.

To better address this risk, OPEGA's report recommends that in future sub-grants, agencies should "assure that subrecipients have adequate and proper controls prior to disbursing grant funds" and should establish criteria to use when designating entities to partner in grant applications. We welcome these two recommendations and have already taken steps to incorporate them in our operating standards for grant applications and administration.

As noted in the report, the Trust has an extensive written Monitoring and Compliance Plan that it uses in connection with grants of federal funds. We have recently amended this Plan to incorporate OPEGA's recommendations, including a procedure for Trust staff to identify the relative risk of subrecipients related to financial controls and accounting, requiring the

organization to complete a comprehensive checklist indicating preparedness to execute necessary policies, procedures, and financial controls, and enhancing oversight for higher risk situations. The amended language we have added to implement OPEGA's recommendation is attached to our comments as Appendix A, and is scheduled to be ratified by a vote of the Board of Trustees at its next Board meeting.

OPEGA's rapid and thorough review of this matter has added a level of analysis that significantly advances the our oversight of the wind down of the Alliance and will save us time and resources in making final determinations. Also, your recommendations for mitigating the risk of weak financial controls or misuse of funds are very helpful and we are already starting to implement them. Thank you for this opportunity to submit comments on the report.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Stoddard". The signature is stylized and cursive.

Michael Stoddard  
Executive Director

Attachment



APPENDIX A

EXCERPT OF THE MONITORING AND COMPLIANCE PLAN  
OF THE EFFICIENCY MAINE TRUST  
PURSUANT TO RECOMMENDATIONS OF OPEGA

Grant Application and Administration

A. Grant Application: The Trust may apply for available federal grants in one of several capacities:

- 1) as a direct recipient of the grant with no other entities included in the funding opportunity application;
- 2) as a sub-recipient of State Energy Program grants where OEIS is the prime recipient;
- 3) as either a direct recipient or a subrecipient in collaboration with one or more other entities to be named subrecipient on the grant application, and where all, or a portion, of the grant funds would be passed through to the subrecipient(s).

Where the Trust submits a application in collaboration with another entity that would be a named sub-recipient, the Trust will exercise due diligence during and after the grant application and award process to determine if the named sub-recipient could pose to potential risk to the Trust, the administration of the grant and/or the success of the program(s) funded by the grant. The potential risk that a sub-recipient could pose will be assessed by the completion and evaluation of the *Checklist for all Potential Grant Recipients* found in Exhibit F. In addition to the use of the checklist, the Trust may also require a written certification from the sub-recipient's external auditor that the sub-recipient's financial management system and internal controls are appropriate and in conformance with the standards contained 10 CFR 600, the appropriate OMB Circular. The mere potential of a risk will not necessarily stop another entity from participating as a sub-recipient although the magnitude of the risk and the amount of effort required to mitigate the risk could be sufficient to require collaboration with another entity.

The level of oversight review will be contingent upon factors involving both the grant and the level of financial support and the nature and type of the entity or individual. The factors concerning the entity or individual includes: new or startup organization versus a long standing entity that is subject to OMB A-133 audit requirements; the administrative and financial management structure of the entity and its ability to effectively manage and report activity consistent with federal requirements; the size of the pass through award; and/or prior contracting or experience with the Trusts' programs or federal grants. The Trust will also assure that as part of the contract process the sub-recipient receives copies of 10 CFR 600 *Federal Financial Assistance Regulations* the appropriate OMB Cost Principles Circular for the type of entity — A-21 *Educational Institutions*, A-87 *State, Local and Indian Tribal Governments*, A-122 *Non-Profit Organizations*; and OMB Circular A-133 *Audits of State, Local Governments and Non-Profit Organizations*, and 48 CFR *Federal Acquisition Regulations Systems*, Parts 31 and 931 *For-Profit Organizations*.

B. Contract Development: Following the grant award the Trust will include within the contract with the sub- recipient requirements that will mitigate the risk During the contract and grant administration period, the Trust will monitor the sub-recipient both in terms of performance but also to identify risk factors to assure that these factors are controlled and the potential risks are reduced and/or eliminated. Should the sub-recipient demonstrate the need for technical assistance, the Trust will direct the sub-recipient to resources hat can provide

the assistance needed or may provide such assistance. If necessary will assist with the sub-recipient in its development, implementation and monitoring of a corrective action plan. The technical assistance required may include steps to mitigate risk factors identified through the checklist review.

If the sub-recipient fails to take the necessary corrective actions the Trust may take all necessary steps and actions available to it to assure the success of the program and protect the resources made available under the grant. In evaluating the need for technical assistance and/or a corrective action plan, the Contract Administrator will work with the Program Manager, but will have primary responsibility for the assistance and plan monitoring if the deficiencies are primarily or exclusively administrative and financial in nature as compared to programmatic. Where deficiencies are primarily or exclusively programmatic the Program Manager will have primary responsibility for the assistance and plan monitoring in conjunction with the Contract Administrator.

**C. Contract Management:** During the grant management period, the Trust may purchase services through contractors and other vendors or award sub-grant funding to other public, non-profit or for-profit entities. The Trust will follow its established procurement procedures in awarding any resulting contracts whether those awards are for the purchase of goods or services or as sub-grant funding. The Trust will take into account any potential risk factors, and where the recipient of sub-grant funding has risk factors of concern, the Trust will take steps to mitigate and/or eliminate the risk. As part of its award process for contractors and vendors, the Trust will address concerns which could cause a disruption in the performance of the contract. Whether a contractor, vendor or recipient of sub-grant funding, the Trust will follow its monitoring protocols to assure the protection of resources, the delivery of the required goods and services and the successful completion of the grant program. As issues of concern are raised whether by the Program Manager or the Contract Administrator, the two will work together to determine the risk to the program and the contract and will take necessary steps including referring the matter to their respective directors for direction.