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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

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OPEGA is an independent staff unit overseen by the bipartisan joint legislative Government Oversight Committee (GOC). OPEGA's reviews are performed at the direction of the GOC. Independence, sufficient resources and the authorities granted to OPEGA and the GOC by the enacting statute are critical to OPEGA's ability to fully evaluate the efficiency and effectiveness of Maine government.

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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.

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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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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.

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.