



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

August 23, 2007

Mr. Michael J. Moody, Director
Office of Financial Management
Department of Management & Budget
Romney Building – Seventh Floor
111 S. Capitol, P.O. Box 30026
Lansing, Michigan 48909

Dear Mr. Moody:

Per State Administrative Guide to State Government, Section 1280.02, we are enclosing our response to comments made in the Office of the Auditor General's Performance Audit of the Utility Consumer Participation Board, Department of Labor and Economic Growth for the period October 1, 2002 through July 28, 2006.

If you have any questions regarding this report, please feel free to call me at 335-1953.

Sincerely,

Signature Redacted

Allen Williams, Director
Internal Audit Division

Enclosure

cc: Audit Distribution List
Keith W. Cooley
Rita Canady
Susan Corbin
Dr. Harry Trebing
Allan Pohl

OAG Audit Response Distribution List

DMB, Director	Lisa Webb Sharpe
DMB, State Budget Director	Robert Emerson
Executive Office	Coffiann Hawthorne
Office of the Auditor General	Michael Becker
Senate Fiscal Agency	Gary Olson
House Fiscal Agency	Mitchell E. Bean
Senate Appropriations Committee	Sen. Ron Jelinek
House Appropriations Committee	Rep. George Cushingberry Jr.
Senate Economic Development & Regulatory Reform Committee	Sen. Alan Sanborn
Senate Energy Policy & Public Utilities Committee	Sen. Bruce Patterson
Senate Senior Citizens & Veterans Affairs Committee	Sen. Jason Allen
House Energy & Technology Committee	Rep. Frank Accavitti, Jr.
House Labor Committee	Rep. Fred Miller
House Commerce Committee	Rep. Andy Meisner
House New Economy & Quality of Life Committee	Rep. Ed Clemente

FINAL AUDIT RESPONSE SUMMARY

Performance Audit of the Utility Consumers Participation Board (UCPB)
Department of Labor and Economic Growth
For the Period October 1, 2002 through July 28, 2006

I. Citations complied with:

1

2

II. Citations to be complied with:

3 - Expected date of compliance -- July 31, 2008

4 - Expected date of compliance -- June 30, 2009

III. Citations agency disagrees with:

None

Final Audit Response
Performance Audit of the Utility Consumers Participation Board (UCPB)
Department of Labor and Economic Growth (DLEG)
For the period October 1, 2002 through July 28, 2006

1. Awarding of Grants

Finding

The Board awarded a grant and disbursed funds to an applicant not statutorily qualified to receive funding. As a result, \$83,933 was not available to award to eligible nonprofit organizations and local units of government.

Recommendation

We recommend that the Board award grants and disburse funds only to applicants statutorily qualified to receive funding.

Agency Response

DLEG agrees in part. It should be noted that this finding does not address key issues associated with the grant awarded to PAYS America, Inc. to conduct a pilot project for introducing conservation practices into the natural gas industry. The initial proposal called for a cooperative effort between SEMCO (a natural gas utility) and PAYS America to conduct a conservation study. The UCPB Board performed its due diligence during the grant application process by considering the applicant's professional qualifications and legal standing. At the time that the initial grant was being considered, no claims were made during the period allotted for public comment that would have dissuaded the Board from its action. The question of standing appears to have emerged later, when SEMCO demonstrated an unwillingness to work cooperatively with PAYS America, resulting in an adversarial litigation posture. The administrative law judge's decision regarding PAYS America's standing was essentially an interim action awaiting final Michigan Public Service Commission action. In its decision in Case No. U-14718 (September 26, 2006), the Commission praised PAYS America's work in the area of conservation. It noted, "The Commission has looked favorably on the PAYS program in the past Proceedings before the Commission as described in Case No. U14701." However, the Commission stated that it was ". . . not persuaded that a GCR is the proper form for addressing the significant issues raised by PAYS in its petition to intervene".

The subsequent complexity of this case could not have been fully anticipated at the time the initial grant was made; thus, the Board did not act capriciously in awarding the grant.

Corrective Action

DLEG has implemented corrective action to bring it into compliance with this finding. In April 2006, the Board modified its application requirements for Act 304 grants to include detailed

identification information from the applicant, including all information necessary to determine grant eligibility. An administrative assistant was hired in July 2006 to thoroughly review applications during each grant cycle and to advise the Board of any potential issues related to the applicants or applications prior to the awarding of grants.

2. Coordination of Representation Efforts

Finding

The Board did not coordinate the representation efforts of its grantees with the representation efforts of the Department of Attorney General at residential energy proceedings before the Michigan Public Service Commission. As a result, duplication of representation efforts existed between grantees and the Department of Attorney General.

Recommendation

We recommend that the Board coordinate the representation efforts of its grantees with the representation efforts of the Department of Attorney General at residential energy proceedings before the Michigan Public Service Commission.

Agency Response

DLEG agrees in part. It is important to note that (the controlling statute) MCL 460.6m(18)(c) provides: "The Board shall coordinate the funded activities of grant recipients with those of the attorney general to avoid duplication of effort, to promote supplementation of effort, and to maximize the number of hearings and proceedings with intervenor participation." It must be emphasized that both the Attorney General (AG) and the Board's grant programs focus on the need to protect residential and small business customers. The AG and the grant recipients hire different attorneys and different expert witnesses. A typical case involves a wide range of issues so there is ample opportunity for specialization by intervenors. The Board is fully aware of the need to address potential duplication between its grantees and the AG's activities. Duplication is addressed in the grant proposal review and approval process. This point is further discussed in on-going review and monitoring of UCRF funded activities.

Attention must also be directed to a special problem associated with any effort to require a grant applicant to set forth with great specificity how that applicant will pursue a strategy in a proceeding before the Commission or before a court. If this detail were set forth in an open meeting, then other parties involved in a pending proceeding would have an excellent insight into what the intervenor intends to accomplish. It would also give these parties a motive to deny making data available on the grounds that it was non-existent or that it would violate proprietary considerations, while in reality it would be a strategy to destroy the effectiveness of the grantee's participation in the proceedings. Further, the Board would have great difficulty coordinating this type of information with the strategies that the AG's office would plan in a forthcoming case. It is important to keep in mind that issues involved in Act 304 planning and reconciliation cases are

so broad that they can only benefit from concurrent involvement by different parties seeking to protect residential and small business customers. The need for this protection is evident when there are few, if any, competitive entrants willing to serve residential energy markets.

Corrective Action

DLEG has implemented corrective action with respect to this finding. In April 2006, the Board modified its application requirements for Act 304 grants by requiring applicants to provide a specific work plan for coordinating representation efforts with the Special Litigation Division of the Attorney General. It further requires applicants to provide more detailed work plan information and budget detail. In July 2006 an administrative assistant was hired to thoroughly review applications during each grant cycle and to advise the Board of any potential issues of duplication related to the applicants or applications prior to the awarding of grants. In October 2006, the Board implemented bi-monthly case status reporting requirements for grantees and the attorney general's office to monitor and review case action and to determine any actual or potential areas of duplication.

3. Validation of Annual Report Cost Savings

Finding

The Board did not validate the annual cost savings to Michigan's residential energy utility customers reported in its annual reports. As a result, the Board overstated calendar year 2004 and 2003 annual cost savings by \$77,620,783 and \$76,529,000, respectively.

Recommendation

We recommend that the Board validate the annual cost savings to Michigan's residential energy utility customers reported in its annual reports.

Agency Response

DLEG agrees. It is important to note that prior to the hiring of a (part-time) special assistant in 2006, the Board had no staff assistance with expertise in the field of public utility regulation. As a result, estimates of cost savings were largely dependant upon the collaborative effort between DLEG personnel and grant recipients. Board members did review each year's findings. However, measuring net cost savings was not an easy task because benefit and cost estimates often cut across industry lines and time periods. This does not mean that past efforts in measuring net cost savings were erroneous or deliberately distorted. In fact, the Board's broad overview of past performance strongly suggests that residential consumers did receive benefits in excess of the cost associated with the grant programs.

The Board expects to introduce standard reporting requirements for measuring future cost savings that can be applied to grantees funded by the Board. It also hopes that the creation of a new set of standards will provide a better insight into net savings associated with grantee

intervention, Commission staff intervention, and AG intervention. The Board is committed to working with the AG's office in achieving a coordination of efforts.

Corrective Action

DLEG is in the process of implementing corrective action that will bring it into compliance with this finding. In July 2006 an administrative assistant was hired to assist with the collection of information and preparation of the UCRF annual report to the legislature. The 2005 annual report largely relied on past information and format. However, a new section was added to the report specifying all open grants, year authorized and their current status. The detailed results section in the 2006 annual report was closely compared to 2005 and discrepancies resolved. Also, information on the MPSC eDocket electronic filing system and specific MPSC case numbers associated with each grant were included in the report for purposes of independent research and validation by any interested reader. The standardized annual reporting format will be fully implemented with the 2007 Annual Report. The estimated completion date is July 31, 2008.

4. Bimonthly Meetings and Public Service Announcements

Finding

The Board needs to improve its compliance with its enabling legislation regarding bimonthly meetings and public service announcements.

- a. The Board did not hold bimonthly meetings in accordance with statutory provisions.
- b. The Board did not produce and air public service announcements that informed residential utility customers, nonprofit organizations, and local units of government of the availability and purpose of the Utility Consumer Representation Fund (UCRF).

Recommendation

We recommend that the Board comply with its enabling legislation regarding bimonthly meetings and public service announcements.

Agency Response

DLEG agrees. It should be noted that the Board voted on its own initiative to hold bimonthly meetings. Accordingly, this finding has already been implemented. Nevertheless, it is still important to note that the Board's annual schedule must focus primarily on the grant cycle. There are typically a series of meetings when grants are awarded for the upcoming cycle. Afterwards, Board members are kept informed by progress reports required of each grant recipient. In addition, the Board will meet in a special session when a problem arises that requires Board action. This may involve questions pertaining to the transfer of funds between accounts for a grant recipient arising from a change in the Commission's agenda, or from an appeal of cases to the courts. These special problems are handled on an ad hoc basis.

It should be noted that some members of the Board have been strong proponents of enlisting the participation of local units of government in the grants program. This would promote active participation on the part of local governments in Commission proceedings. It would also tend to attract a greater number of consultants into this field and improve the Board's options for making grants. In the past, the Board formed an ad hoc committee to study the problem of recruiting local government participation, but only had limited success. In 2006, DLEG and the Board collaborated to make a large mailing to local units of government describing the UCPB grants program. The limited response indicated the need for a more targeted announcement and follow-up workshop for interested parties.

Corrective Action

DLEG has implemented some corrective action and is in the process of implementing additional measures that will bring it into compliance with this finding. On October 2, 2006 the Board adopted a bimonthly meeting schedule for the remainder of calendar year 2006 and calendar year 2007 of the first Monday of even numbered months. Meetings have already been held on December 4, 2006, February 5, 2007, April 2, 2007 and June 4, 2007. The meeting schedule is posted on the DLEG web site.

With respect to public service announcements, the Department expanded the amount of UCPB and the UCRF grant program information posted on its web site. The 2008 grant application announcement was distributed via regular mail and email to Michigan attorneys practicing in the field of energy and consumer affairs. The 2008 announcement and application are also posted on the DLEG website for access by the general public. The Board will consider further action to effectively meet the public service announcement provisions of its enabling statutes and implement recommended actions. The estimated date of full compliance is June 30, 2009.