



State of New Jersey
BOARD OF PUBLIC UTILITIES
TWO GATEWAY CENTER
NEWARK, NEW JERSEY 07102



Jon S. Corzine
Governor

Jeanne M. Fox
President

**BPU Response Document to
Treasury Draft Audit of
The New Jersey Clean Energy Program
April 4, 2006**

Treasury Finding 1:

- a. Wachovia checking account was opened without assistance from OMB and not in compliance with Circular 00-12.

OCE had no reason to believe that OMB Circular 00-12 applied to the establishment of the OCE Clean Energy Fund. The BPU followed the competitive bidding procedures applied by the Board in the procurement of services less than \$25,000 consistent with the provisions of OMB Circular 00-13 Delegated Purchase Authority under \$25,000 in the procurement of trustee/fiscal agent services from a financial institution to maintain the Clean Energy Fund. Treasury was informed in October, 2004 that this process was similarly employed for the procurement of like services for the Universal Service Fund held by PNC Bank authorized by the Board in June, 2003 which is still in place with Treasury's approval.

As authorized by the Board of Public Utilities pursuant to Board Order dated September 11, 2003, Staff developed a scope of services which was provided to at least four banks. PNC, Wachovia, Fleet and Bank of New York received a Request for Services to provide trustee and fiscal agent services. The banks were asked to submit written quotes for the provision of these services. Only Wachovia Bank provided a written quote. The other Banks declined to respond. Wachovia Bank provided a reasonable bid. They were selected by staff to provide the service.

- b. Power to change agreement should be reserved for the BPU – not the OCE Director.

The Board in its Order of September 11, 2003 authorized the Office of Clean Energy to contract for the services of a fiscal agent to manage the Clean Energy Program funds and disburse them at the direction of the Office of Clean Energy consistent with policies and procedures of the Clean Energy Program. Policies and procedures were adopted by the Board on January 23, 2004 setting forth: (i) the Board process for review and approval of Clean Energy Program policies, goals, objectives, programs and budgets; (ii) procedures for transferring monies into the trust account; (iii) procedures for disbursement of moneys from the trust account; and (iv) accounting and reporting requirements including an independent audit of the Clean Energy Program. Though the Wachovia agreement establishes the Director of the OCE as the person authorized to direct changes to the agreement; the Director of OCE independently does not have the authority. The Board has authorized the Director through Board order January 27, 2004 and approved policies and procedures. In the event a change was required the Director would seek authorize from the Board to act accordingly.

Treasury's comment is not in context. The provision in the Wachovia agreement is in the Representations, Warranties and Covenants section whereby the Office of Clean Energy is representing to the Fiscal Agent that the persons designated for signatory authority have been duly appointed to act as a representative for the disbursement of money and then carves out an exception from the duly authorized persons, that only the Director, not the other signatories which includes program staff, can direct any changes to the agreement.

- c. Only 1 signature required to disburse a payment for up to \$100,000. Treasury recommends 2.

The policies and procedures adopted by the Board on January 23, 2004 and made a part of the agreement with Wachovia Bank provide that at a minimum two signatures are required for payment from the account; the OCE staff Program Administrator and the Director of the OCE. In addition to the requirements of the bank, the internal procedures to authorize payment require approval of the Director of OCE and the Chief of Staff prior to the submission to the Bank for payment. After all internal signoffs, the payment request is submitted to the bank for payment. At no time was there only one authorized signature required to disburse a payment up to \$100,000. The request for payment requires authorization from the Program Administrator and the Director and also includes a review and signoff by the Contract Administrator.

- d. The cost to maintain the account is high relative to the balance. \$1,000 per month, \$10 per wire transfer.

The cost to provide service was established through a competitive bidding process and believed to be reasonable as confirmed through discussions with Vermont that procured like services and was paying more for them. The program anticipated that 100 transactions a month would be processed in addition to the monthly reporting, collection of funds from the utilities etc. At \$1,000/month the Board could never replicate the level of service required with an internal resource at that cost (i.e. \$10.00/transaction). Relative to the State coffers, it is not surprising that Treasury can achieve better pricing than the BPU. Pricing is reflective of the volume of business/deposits available to the bank. Treasury has considerably more purchasing power than the BPU. The \$10.00 per wire transfer is the fee assessed for monthly transactions in excess of the 100. This is consistent with the monthly fee.

- e. OCE Director only receives copies of the bank statements, not originals from the bank.

The OCE Director received and has on file all original bank statements from Wachovia Bank. Copies of the statements have been distributed regularly to the BPU Board, Clean Energy Council members and Mike Ambrosio, Contract Administrator.

- f. Compliance with OMB Circular Letter 00-12 is required immediately.

The BPU procurement of a fiscal agent was in compliance with OMB Circular 00-13 and the account was maintained consistent with Board requirements. OMB Circular Letter 00-12 was not considered by the BPU as the Clean Energy Fund was not considered by the BPU to be a State held account. Since working with Treasury, the Clean Energy Fund was brought into the State's financial reporting system as a Special Fund in compliance with OMB Circular Letter 00-12. Having put the account under Treasury's purview, the BPU has lost the direct accountability of Wachovia to the BPU. Wachovia had been providing the OCE with detailed monthly statements of the account. Since Treasury's control, OCE receives quarterly statements (not timely) from Treasury. These statements do not provide the detailed information previously provided to readily reconcile the account and significant time is required to annotate the information provided by Treasury.

Treasury Finding 2:

- a. OCE is investing funds, not the NJ Division of Investment.

The Clean Energy Fund was a trust account held by a fiscal agent, not unlike when the State has a bond issue and the Trustee holds all the funds. The NJ Division of Investment does not invest the funds in a bond transaction; they were not consulted when the BPU established the Clean Energy Fund. The

bank was vested with the responsibilities to invest the proceeds after consultation with the OCE Director.

- b. The moneys are invested in a tax-exempt money market account.
After discussions on risk tolerance and the need for liquidity, Wachovia recommended that the moneys be invested in an interest bearing money market account. Given the concern to not put ratepayers money at risk this did not seem unreasonable. We agree that investing in a municipal tax-exempt fund did not provide the highest yield for the program. The fund should have been invested in a non tax-exempt investment. Since February, 05 the moneys are invested at Treasury's direction.
- c. The bank does not detail how interest is calculated for the account.
Interest was posted monthly. In reviewing the interest postings attention was focused on receiving the interest and preserving the capital entrusted to the BPU by the ratepayers and not how interest was calculated. The Board by Order dated January 27, 2004 adopted policies and procedures that require an annual audit by an independent auditing firm of the Clean Energy Program and the Fiscal Agent. During the audit process if the interest was not calculated properly it was anticipated that it would be revealed in the audit and recovered from the bank if necessary.

Treasury Finding 3:

- a. Renewable Energy Grants were not awarded consistent with Treasury Circular letters.
In the development of the solicitation, OCE contacted Treasury as well as other State agencies, to gather information, guidance, rules and procedures. Treasury was not able to provide any written materials. BPU issued its grant solicitation consistent with practices followed by other State agencies including DEP and the Commission on Science and Technology as well as the Federal government. Similar to the Commission on Science and Technology and the Federal government, the Clean Energy Program issued a solicitation or call for proposals to award grants for renewable energy projects. This solicitation established the criteria for submission, review and selection of grant recipients. Proposals were received by a date certain. Proposals received after the deadline were not considered for funding. An evaluation committee was established consisting of staff from DEP and OCE. The evaluation also drew upon the technical resources of experts in the renewable energy field to assist in the technical feasibility of these one of kind innovative technologies. Proposals that met the solicitation criteria, promoted renewable energy and stimulated job creation were considered for funding by the evaluation committee. The evaluation committee had a limited source of funding available to award to the projects that met the criteria. Several projects received less than the amounts requested in their proposal.

- b. No standard Treasury forms were used for grant contracts, ownership disclosures etc.

The Board's legal staff with the Attorney General's office developed the grant agreements and required documentation to award the grants. The same requirements were met by all grantees. OCE modeled the standard contract after the grant agreements developed by the DEP and EDA. There was no reason for the BPU to think that the documents developed for similarly run State programs would be inconsistent with State practice.

Treasury Finding 4:

- a. Improper handling of Renewable Energy grant proposals, date stamping was inconsistent and the envelopes for the proposals were not available.
Yes, Treasury did find 3 proposals that did not have a date stamped on the envelope or proposal acknowledging receipt. These administrative errors should not have led to a conclusion that there was improper handling of the grant proposals. There were no proposals received or considered after the stated deadline. Staff did not think through the inherent challenges to the process when the solicitation designated that proposals be sent to the Clean Energy Program with no person designated to the 300 person BPU Newark office, processed in the Newark mail room and then delivered to the Trenton office. Instructions were not provided to each of the mail processors which led to a couple of proposals that were not date stamped. All proposals should have been logged consistently. The BPU self corrected this process in its next solicitation as it required proposals to be sent to a designated person in the Trenton office.
- b. Proper handling requires proposals to be opened together and time stamped within minutes of each.
The processing of proposals was proper. This solicitation was not a competitive sealed bid to be awarded to the lowest responsible bidder. Accordingly, it did not necessitate a one time public opening. The process required that all proposals be received by a fixed date and time and that an independent evaluation of all grant requests based on the merits of the projects not the dollars requested would be performed. The process employed by the Clean Energy Program was consistent with the approved procedures to review the grant proposals and not unlike those employed by DEP and the Commission on Science and Technology.

Treasury Finding 5:

- a. OCE does not have/use an accountant for their \$100 million program. Adequate accounting resources should be acquired to properly maintain financial records for the Clean Energy Program.

OCE posted with the intent to hire a Contract Administrator with budget, accounting and State procurement experience to provide the financial support to the OCE, as the program transitioned from the Utilities to a contracted service for a Program Coordinator and a Contract Manager. OCE was unsuccessful in identifying a qualified candidate to fill the position. In the interim, the BPU issued a Direct Purchase Agreement and hired Ambrosio Associates to provide the financial support the program required until the RFP for the Program Coordinator and Contract Manager was issued. At this time,

OCE continues to operate without an “accountant” as the RFP for the program Coordinator and Contract Manager have yet to be issued by Treasury.

Treasury Finding 6:

- a. OCE has no database with all of its payment and contract information onsite.
During the Fall '03, the OCE developed its own financial management tool to track the status of all proposals, payment and status of all grants, rebates and other contract information. OCE can readily identify project status, receipts and disbursements for all program funding. The BPU agrees that there should be better data management systems for the Clean Energy Program. The database requirement is a provision in the RFP for the Program Coordinator. OCE began the procurement process with Treasury in January, 2004. Treasury's own inefficiencies have delayed this RFP such that to date we still have not begun the procurement process. As a result we have had to continue with a fragmented process that has not permitted the OCE to put in place the systems that had always been intended and are recommendations in the Audit Report.

- b. OCE's accounting system is composed of various fragmented financial schedules that are not integrated.
OCE does not have an accounting system. We agree that the fragmented reporting needs to be improved. The hiring of the Program Coordinator would significantly improve the financial reporting for the program.

Treasury Finding 7:

- a. Improper accounting of Utility receipts for the basic payment of \$60 million.
OCE performs a monthly reconciliation of the basic payments and utility expenses through its consultant, Mike Ambrosio. The Board by Order dated January 27, 2004 adopted policies and procedures that require an annual audit

by an independent auditing firm of the Clean Energy Program and the Fiscal Agent. The scope of the audit would have included a reconciliation of all payments and deposits required to be made into the fund by the utilities. If there were any improprieties they would have been identified through the audit. In addition, there will be an examination of the Societal Benefit Charge as part of any rate proceeding for the utility. This is another mechanism to insure the proper receipts from the utilities.

- b. Accounting control was lost by letting the utilities net out their expenses. *We agree that there would have been improved financial accountability if we had received all moneys and then remitted back to the utilities their documented expenses. At the time doing so would not have been practical. The expenses*

incurred by the Utilities are not only related to their administrative costs. The Utilities maintain the programmatic responsibilities for Energy Efficiency program which represent 75% of the Clean Energy Programs. In directing the net expense approach, OCE was focused on the priority of having the Utilities continue to process the 1,000 monthly energy efficiency rebates and delivering rebate checks in a timely way. The net expense approach was determined to be the most efficient way to address the challenge and continues to this date with Treasury's concurrence.

Treasury Finding 8:

- a. OCE payment report reconciliation through June 30, 2004 for the Wachovia account was off by \$100,000. *The Audit Report does not specify which month did not reconcile. OCE staff records reconciled each month to the Wachovia statement with no discrepancies.*
- b. Payment report reconciliation contained \$1.5 million in cost that did not belong to the account as it was paid directly by the utilities. *It is unclear from the draft audit report what costs are being referred to. We do not believe our records are inaccurate. There was a transition period prior to the establishment of the Wachovia account where the utilities were directed by OCE to make program payments.*

Treasury Finding 9:

- a. Review of the OCE Director's contract schedule revealed incorrect information on total awarded to date and included contracts never signed and projects under review. *The contract scheduled served multiple purposes for the OCE Director and was all inclusive of information on project status, proposals approved, under*

consideration, disbursements etc. There was no incorrect information on the Director's report and served the purposes intended by the OCE.

Treasury Finding 10:

- a. Wire transfers are authorized with no proper controls.
All payments, whether by check or wire transfer, from the Wachovia account follow the procedures adopted by the Board. The method of payment to the vendor is indicated on the requisition submitted to Wachovia and does not require a separate authorization.

Treasury Finding 11:

- a. The current program manager identified that the departing program manager (Cassandra Kling) had all OCE files on a laptop and that laptop was returned to the BPU IT Division upon her leaving. The current program manager stated that she left no files or written policies and procedures.
All procedures approved by the Board are documented and maintained in hard copy and disk. There were a number of files from the laptop used by Ms. Kling that were deleted. They were not recoverable so we do not know if the files were personal or OCE related.

Treasury Finding 12:

- a. There are few written policies and procedures maintained over accounting functions.
Agreed. This will be rectified when the Program Coordinator is hired.
- b. No written policies and procedures are maintained for programs such as CORE, REED.
There are extensive policies and procedures maintained and approved for the CORE program which were made available to the Treasury reviewer. The REED program is a collaborative lending/grant program with the NJ Economic Development Authority, as its administrator, that follows the recoverable grant procedures of the NJEDA.

Treasury Finding 13:

- a. OCE does not have PAR/PES forms for their employees.
Correct, this situation is being rectified.

Treasury Finding 14:

- a. Key Rutgers contract was treated as sole source which is questionable since they subcontracted the work to two MA consulting firms.

OCE followed the procedures in OMB Circular 05-14 for the Purchase of Goods or Services from State Colleges and Universities. As provided in this circular "There is an expressed preference for the use of other Agencies, such as the state colleges and universities to provide professional services rather than outside private vendors." Rutgers is extremely qualified to provide the services contracted and where appropriate they brought in expertise to supplement their qualifications. Rutgers independently procured subcontractors, in a timely manner, consistent with University bidding procedures, with the critical expertise necessary to provide the scope of work. The subcontractors employed are national leaders in the field. They are the same firms who would have bid, had the OCE bid these services separately. There is no entity that has resident within its organization all of the expertise required to fill the requirements of the referenced contract.

Treasury Finding 15:

- a. Former BPU employees received 5 separate requests for consulting service for \$25,000.
Consistent with OMB Circular 00-13, the BPU issued 5 separate DPA requests for consulting services for 5 distinct scopes of work. This information was shared with a broad network of people in the industry to encourage bidding for the contracts.
- b. The requests did not specify the number of hours to be worked or the rate of pay.
The agreements with each of the consultants specify the hourly rate of pay, projected hours and the tasks required to complete the engagement.
- c. Competition was limited to 4 potential bidders.
The process was in conformance with OMB Circular 00-13, which at the time only required 3 bidders be contacted.
- d. Each contract was awarded to a former BPU employee.
The recipients of the contracts were the most qualified respondents to the DPA. It came as no surprise that former BPU employees would have the expertise required to bid on BPU related work.

Treasury Finding 16:

- a. Questionable criterion was used to eliminate competition in the award of REED grants.

We do not believe the criteria were questionable. Ten criteria were cited in the solicitation. The solicitation also stated that in addition more detailed criteria may be used during the evaluation process. This is where OCE received the assistance of technical experts to evaluate the viability of the proposed technologies.

- b. The major reason cited for non-responsiveness was co-funding which was not stated as a condition in the solicitation.
The solicitation was a competitive call for proposals. Leveraging the programs resources is a prudent approach when dollars are limited. The solicitation clearly specified that cost sharing would be given additional weight in proposal evaluation.

Treasury Finding 17:

- a. REED grants function as venture capital yet there are no profits that accrue to the benefit of the Clean Energy Program.
The Clean Energy Program fosters the development of technology to support the advancement of renewable energy. It is not the Program's intent to be a venture capitalist. As such the provision of grants is to foster the development of a nascent industry that suffers from a lack of capital. At the time, the program was not structured to derive a monetary return on investment. More appropriately it was looking to foster the growth and development of an industry in New Jersey. BPU has approached the Clean Energy Program as a market maker and dynamic responder able to steer market development where there are voids and to foster growth in target markets. As opportunities present themselves, the Clean Energy Program with the assistance of EDA will look for opportunities to share in the upside potential of the businesses that the Clean Energy Program assists.

Treasury Finding 18:

- a. The date on the first REED grant solicitation was January 9, 2002 and should have been 2003 possibly causing confusion to potential bidders.
It is not uncommon at the change of a new year to mistakenly use the wrong year. Thirty three proposals were received by the program. We agree that a typographical error occurred. We disagree that it had a negative impact on the solicitation.

Treasury Finding 19:

- a. Evaluation committee documentation was requested but never supplied.

Files were not kept in the most orderly way. When requested several files could not be located. Subsequent to the request all files were located and made available to Treasury.

- b. Critical procurement records were shredded by Cassandra Kling.
We have no reason to believe that Cassandra Kling destroyed any program records. If staff observed documents being shredded they were most likely duplicate papers.

Treasury Finding 20:

- a. \$83 million in carryover funds from the utilities are paying for current expenses.
Correct, the \$83 million in carryover was uncommitted funding. The moneys were available to pay project and operational expenses. No OCE administrative costs were paid from the carryover.
- b. Lack of records to account for encumbrances against the carryover funds.
OCE did not have an encumbrance system to use. Utilities were required to submit Program compliance filings that documented all rebate expenditures and commitments.

Treasury Finding 21:

- a. Clean Energy Report submitted on June 3, 2004 for the period ended December 31, 2003 showed actual and commitments over budget by \$40 million.
The Clean Energy Program was not over budget. The commitments reflected in the Report include project amounts to be funded over multiple years. By Board Order dated December 23, 2004 a four year program budget was approved. The balance of the commitment would carryover into the subsequent year. OCE has improved its reporting to reflect commitments over the multiple year program budget approved by the Board.
- b. The report did not report open contract balances.
OCE does maintain reports that reflect the open balances on commitments made.
- c. Report reflected payments to EDA for \$203,000, but did not reflect an expense. OCE did not reimburse EDA for the payment.
During the transition from the program being utility run to the utilities providing the funding to the BPU, EDA advanced Madison moneys from the BPU business loan fund on account with the EDA. EDA did not request reimbursement of those moneys.
- d. Report noted that utilities forwarded EDA \$19 million during 2003, though only \$5.7 million was received.

The BPU commitment was to provide EDA with \$19 million for energy efficiency related loans. Each utility was directed to make payment to the EDA for a total of \$19 million as reflected in the report. The timing of receipt of the payments varied. EDA did receive all of the funding.

Treasury Finding 22:

- a. Board Order's were not used in all cases to direct utility payments, creating a lack of an audit trail and possible duplicate payments.
OCE Director's authority was derived through Board Order dated September, 2003. There is an audit trail in place to confirm this.
- b. Sending confirmations to utilities for payments made was considered problematic because OCE consultant Ambrosio has a long term relationship with the utilities.
This comment is without merit. The auditing process under any set of circumstances is transparent to relationships. There was no impediment to Treasury's sending confirmations to the utilities. Treasury chose not to issue confirmations based upon its misperception.

Treasury Finding 23:

- a. Payments from the Wachovia checking account were authorized by unauthorized signatories to the account. Ex. Ron Jackson - \$25,019.55 to World Water on June 1, 2004.
This payment was authorized by Ron Jackson an authorized signatory.
- b. OCE secretary could not provide authorized signatory cards for the account. Ron Jackson and Scott Hunter are authorizing payments.
Amended Schedule E to the Fiscal Agent Agreement was submitted to the bank and documents Scott Hunter and Ron Jackson as authorized signatories. These documents are on file in the OCE and with Wachovia Bank and were available to the audit staff.

Treasury Finding 24:

- a. Prior to the Wachovia checking account, the OCE Director had the authority to instruct utilities to make all payments. This authority level was too high and only required one signature.
Through Board Order dated September 10, 2003, OCE staff was directed to assume the role of administrator of the Clean Energy Programs previously run by the utilities. OCE was authorized to contract for program management services and to perform all necessary administrative duties to transition and implement the programs. This included directing the utilities to make payments for the rebate programs that they continue to control. The utility payments were authorized by the OCE Director after review by up to seven independent

Clean Energy program managers. Upon completion of the transition and the establishment of the Wachovia account, the Board adopted policies and procedures for the authorization and disbursement of funds. The Director's authority to make payments was limited to \$100,000 or less and requires a second signature.

Treasury Finding 25:

- a. The use of signature stamps for CORE payments should be discontinued to strengthen the internal controls.
BPU agrees that original signatures are an improved form of internal controls when processing payments. As the Report indicated, in those instances where a stamp was used there was also an original signature of the Chief of Staff; thereby not compromising internal controls.

Treasury Finding 26:

- a. Identifies irregularities with E3 Energy Services LLC:
 - E3 has no contract with OCE
E3 was a subcontractor to Demme for the provision of technical expertise on issues such as net metering, interconnection and renewable portfolio standards. Demme Mechanical as part of its contract was required to provide support in these technical areas. Demme was not able to address these areas directly. E3 was identified as a national expert in these areas. The OCE found E3 to be a suitable subcontractor and authorized Demme to proceed with its subcontract as part of the provision of services contained in the Demme contract.
 - E3 paid through Demme Mechanical Inspections contract
As Demme's subcontract it is appropriate that Demme pay E3.
 - Demme could not explain the services rendered for the expenses billed in his invoice
Demme's response is unacceptable to the BPU and should be further pursued.

Treasury Finding 27:

- a. Mr. Demme was forced to hire two people who work at OCE.
Mr. Demme has never been forced to hire anyone on behalf of the OCE. While Mr. Demme was employed as a contracted service to the OCE there were two temporary hourly clerical assistants working for the OCE. Mr. Demme indicated that he needed to hire some help in order to perform services required under his contract. The OCE had indicated that they had positive work experience with these two hourlies, they were already trained in the Clean Energy programs and Mr. Demme should consider hiring them. It was a

recommendation based on OCE experience with the candidates, not a directive. It was Mr. Demme's choice to hire them.

Treasury Finding 28 – 36:

These findings were incorrectly attributed to the Renewable Energy Economic Development program. The projects referred to in these findings are related to the Market Development and Infrastructure grant program; which later was retooled and called the Renewable Energy Economic Development program. There are several Treasury comments identifying a change in the amount requested in the proposal and the grant awarded. OCE was entitled to award grants in amounts less than that requested by the applicant. In the cited projects that is what occurred.

1. Budget to actual cost reports were not available for all grants.
This was a program oversight that has since been corrected.
2. Project status reports were not consistently available.
Status reports are submitted monthly by the grant recipients.
3. No evidence of critical reviews on status and financial reports received from grantees.
Reports received from grantees are reviewed by Staff on a regular basis. In the event there is an issue the matter is immediately brought to the grantees attention to be addressed.
4. Files were unorganized and contained duplicate copies.
Maintaining files in an organized fashion was not always afforded the highest priority in the program. Constant improvements are being made in the administration of the program. Filing has improved significantly since the draft Audit Report was performed in 2004.
5. 50% of the grants were paid out at signing, the remainder on a quarterly basis.
The Market Infrastructure Development grant program was created in response to the need to make high risk capital available to stimulate the development of innovative technology focused on energy efficiency and renewable energy. These projects are often viewed by the capital markets as higher risk. Capital and therefore cash flow are not readily available for these projects. In order to jumpstart projects and to account for the delay in OCE's ability to make disbursements, OCE established that it would provide 50% of its funding at grant execution to stimulate the advancement of the project. The balance was remitted quarterly over the remaining term of the grant.
6. Files did not contain State forms: NJ-REG, standard terms and conditions, ownership disclosure, AA compliance etc.
As previously noted, the projects were not procured through Treasury and therefore did not contain the State forms. The Board's legal staff with the Attorney General's office developed the grant agreements and

required documentation to award the grants. The same requirements were met by all grantees. OCE modeled the standard contract after the grant agreements developed by the DEP and EDA. Grant Agreement provisions established all terms and conditions.

7. Grants did not require an audit. There is no certainty that the grantees spent all of the grant money on the actual projects.
Each grant recipient is required to annually submit audited financial statements. The Board by Order dated January 27, 2004 adopted policies and procedures that require an annual audit by an independent auditing firm of the Clean Energy Program and the Fiscal Agent. OCE preserved its rights to audit all grants at its discretion. There was no requirement to specifically audit a grant once fully disbursed. The Board by Order dated January 27, 2004 adopted policies and procedures that require an annual audit by an independent auditing firm of the Clean Energy Program and the Fiscal Agent. A random sample of grants would fall under the scope of this review.
8. Rubber stamp approvals should be discontinued to strengthen internal controls.
Agreed
9. No travel expense reports were filed for employee field visits to projects.
When available a State vehicle is used for project visits. In those instances there will be no travel expense reports. Employees are informed that it is their responsibility to file the appropriate expense reimbursement forms when they use their personal vehicles. If an employee fails to submit for reimbursement, it is at their expense.
10. Field trip summaries were undocumented.
Site visits and inspections are required for all installation projects. These are documented.

Treasury Finding 28:

- a. Ocean Power Technologies, Inc. partnered with Rutgers University for the grant.
The State of New Jersey has encouraged all forms of partnerships with its State Universities. It would be favorable for any project to partner with any State College or University with demonstrated experience and expertise in renewable energy and energy efficiency. Rutgers University, through its Coastal Marine Science Program has direct experience and expertise in coastal and ocean technology.
- b. At June 30, 2004 Ocean Power was paid \$332,989 and only spent \$29,920. OCE pays grants on the basis of time past, not project completed.
As previously noted the grant disbursements were not based upon reimbursement of moneys spent. At closing 50% of the grant was disbursed to

provide cash flow for the projects. That was the procedure at the time of this review. It has since been changed to include project completion milestones.

- c. OCE grant is provided for what was contained in a Navy funded contract, is the OCE grant necessary?

Technical experts from USDOE, nonprofit entities such as Clean Energy Alliance, Northeast Biomass Center, etc. lent their time and expertise to review the proposal submitted by Ocean Power and established that the grant proposal was meritorious of funding. The work funded in the Naval contract was the precursor to the work funded by the OCE. There was no duplication as the environmental conditions for testing of the prototype in New Jersey are significantly different to the Pacific Ocean where the Navy grant work occurred.

Treasury Finding 29:

- a. Energy Photovoltaics, Inc. received \$436,500 on June 30, 2004 when the company had only spent \$228,845. OCE should disburse money based on the percentage of completion, not time.

As previously noted the grant disbursements were not based upon reimbursement of moneys spent. At closing 50% of the grant was disbursed to provide cash flow for the projects. That was the procedure at the time of this review. It has since been changed to include project completion milestones.

Treasury Finding 30:

- a. Sun Farm Ventures received a second chance after the solicitation deadline to revise its proposal for a reduced grant amount from \$449,600 to \$50,000.
Sun Farm Ventures was not provided a second chance. Upon review of the grant proposal submitted, the evaluation committee established that there was merit to the proposal. It had met the submission requirements but not at the funding level requested. OCE took its recommendation to the Board for approval at a reduced funding level. When informing the company of the Board's decision, staff requested that the company submit revised documentation to acknowledge this action. This project was approved for a \$50,000 grant.
- b. Grant payment was made in one payment at contract signing.
The process to award the grant took much longer than anticipated. Twelve months after the project commenced, staff believed it in the interest of the project to make payment in a lump sum of \$50,000.

Treasury Finding 31:

- a. Resource Control Corp. requested a grant in the amount \$484,549 and was given \$225,000. There was no explanation in the file for the difference.
Upon review of the grant proposal submitted the evaluation committee established that there was merit to the proposal. It had met the submission requirements but not at the funding level requested. OCE took its recommendation to the Board for approval at a reduced funding level. When informing the company of the Board's decision, staff requested that the company submit revised documentation to acknowledge this action.
- b. Differences between grant requests and actual awards should be documented in the file. All significant items should be documented.
The actual award of the grants was approved by the Board Order dated August 7, 2003. As a matter of course all significant items are documented.
- c. Grantee individuals and companies involved with this grant were neighbors of Cassandra Kling, OCE grant manager.
While true this had no bearing on the grant award. The evaluation committee consisted of four evaluators who independently reviewed each proposal. In addition, experts in the field provided an independent review of the technical aspects of each proposal. This procedure is not unlike that employed by the NJEDA that uses the Commission of Science and Technology and an advisory committee to provide technical review to their high tech loans. The industry being small and developing it would not be uncommon for the BPU employees to know the individuals and companies in New Jersey that are working in this field. Cassandra could have recused herself to remove the perception that might have been created.

Treasury Finding 32:

- a. Reaction Sciences requested a grant in the amount \$297,600. Grantee individuals and companies involved with this grant were neighbors of Cassandra Kling, OCE grant manager.
While true this had no bearing on the grant award. The evaluation committee consisted of four evaluators who independently reviewed each proposal. In addition, experts in the field provided an independent review of the technical aspects of each proposal. This procedure is not unlike that employed by the NJEDA that uses the Commission of Science and Technology and an advisory committee to provide technical review to their high tech loans. The industry being small and developing it would not be uncommon for the BPU employees to know the individuals and companies in New Jersey that are working in this field. Cassandra could have recused herself to remove the perception that might have been created.

- b. Reaction Sciences grant proposal identified that it would look to partner with ORNL, Nanotechnology, Rutgers University, FIRST, Inc. or others for commercialization.

Wherever appropriate it is encouraged for businesses to partner with others to share the risk in the development of new technologies. The entities cited are State, Federal and business experts in the renewable energy area.

Treasury Finding 33:

- a. Advanced Power was awarded a grant in the amount \$119,000. Grantee individuals and companies involved with this grant were neighbors of Cassandra Kling, OCE grant manager.

While true this had no bearing on the grant award. The evaluation committee consisted of four evaluators who independently reviewed each proposal. In addition, experts in the field provided an independent review of the technical aspects of each proposal. This procedure is not unlike that employed by the NJEDA that used the Commission of Science and Technology and an advisory committee to provide technical review to their high tech loans. The industry being small and developing it would not be uncommon for the BPU employees to know the individuals and companies in New Jersey that are working in this field. Cassandra could have recused herself to remove the perception that might have been created.

Treasury Finding 34:

- a. Madison Energy Consultants was awarded a grant for \$270,354. Their proposal included a subcontractor that would be working with a California based company. The California company benefited most from the grant.

The project team was disclosed in the grant proposal. The solar industry is a developing market in New Jersey and most prolific in California and Europe. It is not uncommon to partner with leaders from the industry wherever they are located.

- b. Cassandra Kling's neighbor was to attend a November 13, 2003 training meeting. ***This training was offered by Madison Energy Consultants and made available to solar panel installers, HVAC contractors and those involved in the renewable energy field. Lyle Rawlings is a solar panel installer. It was appropriate that he attend this training.***

- c. Cassandra Kling attended the September, 2003 kick off meeting and provided Madison Energy Consultants with 28 referrals of individuals interested in solar installation training.

Cassandra Kling was the Program Manager for the OCE. In that capacity, it was appropriate for her to attend the training as it provided a forum of interested parties for her to present and explain the State's rebate programs.

Given that one of the many roles of the OCE was to promote and stimulate the development of the solar industry, it was reasonable for her to identify and partner potential solar installers with an opportunity to have training and learn best practices.

- d. The proposal indicated that Rutgers' EcoComplex would be used as a training facility.

This Cook College facility, at the former Burlington County Landfill, is a green building powered by solar energy. It is one of the State's finest examples of energy and environmental planning. It is appropriate to be using the State University's EcoComplex to be promoting the use of solar energy.

Treasury Finding 35:

- a. World Water Corporation hired Cassandra Kling in September, 2004.
Ms. Kling came to the BPU in September, 2002. The grant evaluations and awards were completed in 2003. In February, 2004 she resigned from her position with two weeks notice. Until the BPU could identify a qualified candidate to fill her position, it was determined to issue a DPA for \$25,000 or less to fill this immediate need. Cassandra returned to the OCE as a consultant for a limited duration. It was several months from when she left the State that she went to work for World Water.
- b. World Water received a REED grant while Cassandra Kling was the program manager. It would be an ethics violation if she worked on this grant as an employee of the company.
As a State employee, Cassandra was responsible to know her ethics obligations. All BPU employees receive a copy of the BPU's Code of Ethics. The BPU has no knowledge that she violated the State's ethics requirements. If she did the State should pursue whatever remedies are appropriate.
- c. World Water's proposal will pay Rutgers up to \$20,000 for use of their NJ farm.
World Water's proposal was for a solar device to run pumps for irrigation systems. Partnering with the State's University to utilize their farms to tests World Water's prototype would have been encouraged.

Treasury Finding 36:

- a. Partner's for Environmental Quality, Inc. received a \$235,895 grant of which \$204,795 was to spent on salaries; only \$31,100 for system installations.

Partner's for Environmental Quality is a non-profit that promotes the use of solar, renewable and energy efficiency throughout the Lutheran ministry and other religious institutions. They perform energy audits and provide market development services. The OCE approved this proposal for its market development, outreach and education work which is driven mostly by personnel, not product.

- b. Rev. Fletcher Harper is the project manager for this grant and a member of the Clean Energy Council.
The Grant Agreement requires that each award recipient designate a project manager. Rev. Harper is a principal in the nonprofit firm. He donates his time to provide the Clean Energy Council with his expertise.
- c. BPU should establish a conflict of interest/recusal policy to make sure that any OCE employee, Clean Energy Council members, consultants recuse themselves when appropriate. All recusals should be documented in writing.
To the best of our knowledge, in those instances where there may be a conflict of interest the individuals have recused themselves. No Clean Energy Council members, including Rev. Harper, are members of the evaluation committee.

Treasury Finding 37:

- a. Solicitation for the second round of Renewable Energy Economic Development (REED) Program dated February 4, 2004 did not list a due date for the proposals.
Describing the REED program as a solicitation did not accurately reflect how the program was being implemented. Piloting the Market Development and Infrastructure Program identified program improvements that could be addressed through a restructuring of the program. The REED program was changed from a grant program to a loan program. The new program REED was developed partnering with the NJ Economic Development Authority. BPU entered into an MOA with the EDA to develop a recoverable grant/loan program to be administered by the EDA. All reviews and approvals of projects went through the EDA loan review and credit analysis process. OCE reviewed projects for consistency with the use and intent of the funding provided to EDA. The posting of the REED program on the OCE website was informational to notify the industry of the details of the revised program and would not have had a due date as the program was transformed from a solicitation to a rolling application process.
- b. Solicitation could not be traced to a BPU Order. It appears that the OCE issued the solicitation without Board approval.
There was no solicitation for there to be a Board approval. The retooling of the program was presented to the Board at the November 13, 2003 meeting whereat

the Board by Order dated December 22, 2003 approved the budget for the 2004 REED program.

Treasury Finding 38:

- a. Contract schedule provided to OMB by the OCE Director listed Advance Power Associates as under review by EDA and OCE.
This is correct as the project submitted an application for a REED recoverable grant/loan that was under review by the EDA and OCE.
- b. The program manager stated that the proposal was not evaluated and there was no contract for Advance Power.
This is correct as the project submitted an application for a REED recoverable grant/loan that was under review by the EDA and OCE.
- c. The proposal was not date stamped and did not contain a schedule to show how the funds are to be repaid.
Unlike the Market Development Infrastructure solicitation, REED is a recoverable grant/loan program administered by EDA. Applications were filed on a rolling basis and considered individually. Any deficiencies in the application process would have been required to be cured by the EDA.

Treasury Finding 39:

- a. Contract schedule provided to OMB by the OCE Director listed Green Mountain Energy's contract as work under way balance \$200,000. Files reflect grant was for \$500,000 and the agreement was not signed. There was no explanation in the file for the difference.
Upon review of the grant proposal submitted the evaluation committee established that there was merit to the proposal, it had met the submission requirements but not at the funding level requested. OCE took its recommendation to the Board for approval at a reduced funding level. The original project grant agreement had not been executed by the company. OCE could not authorize a change in the project after the fact. The company never executed the grant agreement. Green Mountain submitted a request to change the Scope of Work prior to executing. The request was denied and no grant was ever issued. Green Mountain did not proceed with the project as described in its Market Development and Infrastructure grant proposal.
- b. The grant proposal was not time/date stamped. Unknown when proposal was received.
The revised project was submitted as a supplement to the original submission. It would not have been date stamped.

- c. Grant proposal was submitted by John Holtz for Green Mountain. John Holtz serves on one of the OCE's committees.
The renewable energy market was just developing in the State. The OCE asked experts in the field to provide advice in the development of the State's programs. It was not unexpected that this small community of experts who lent their time and expertise to the OCE would also apply for grants. John Holtz was not a member of the evaluation committee.

Treasury Finding 40:

- a. AeroVironment's \$500,000 proposal was rejected for not meeting the current REED program standards. OCE informed the company their proposal would be held for the next solicitation of grants as the program requirements were being revised.
While the OCE originally indicated that they would hold AeroVironment's proposal, doing so was not correct and the company was notified that they would be required to submit a new application for REED funding as the program had changed. The company never reapplied to the program, nor did they receive REED funding.
- b. The proposal identified Rutgers and Rowan Universities as potential technology partners. Rutgers EcoComplex expressed interest in being considered as a host for one of its grant projects.
As previously stated projects were encouraged to partner with the State's Universities and Colleges.

Treasury Finding 41:

- a. There is a potential conflict of interest with Rutgers as facilitator to the Clean Energy Council, the Clean Energy Council advising the OCE, Rutgers being on the Clean Energy Council through Scott Weiner and Rutgers having a \$3.6 million contract with OCE.
There is no conflict of interest between the OCE and Rutgers University. CEEEP provides analysis and recommendations, OCE staff and the Board make all decisions related to the Program. As facilitator to the Clean Energy Council, CEEEP (Scott Weiner) provides staff support to the development of the policies and procedures for the programs of the OCE. Mr. Weiner does not serve as a member of the Clean Energy Council. CEEEP is also not in conflict as the recipient of the program evaluation contract. CEEEP embodies the resources and independence necessary to perform the market assessment and make programmatic recommendations for the Clean Energy Program to respond to the dynamics in this growing industry.
- The \$3.6 million refers to the budgeted amount previously spent by the utilities when they were managing these programs. Under the BPU, these services are***

being provided by Rutgers for \$1.6 million, a 56% reduction in cost and a marked improvement in the quality of service.

- b. Rutgers has the potential to control all aspects of the Clean Energy Program through these relationships.
Rutgers has no ability to control any aspect of the Clean Energy Program. They are a contracted service. Their counsel has been sought given their expertise in the energy area. Their recommendations are just that, recommendations. Staff and the Board control all aspects of the Clean Energy Program.
- c. BPU's Ethics Liaison Officer should seek assistance from the Executive Commission on Ethical Standards.
The BPU Ethics Liaison seeks the guidance of the Executive Commission when necessary.

Treasury Finding 42:

- a. Ambrosio Associates received two consulting contracts for \$25,000 each from OCE which were exhausted quickly. OCE Director had Rutgers put Mr. Ambrosio on its \$3.6 million contract as a subcontractor.
The two Ambrosio Associates consulting contracts were for a fixed price for specific tasks and scope of work. The services required were completed pursuant to the contract. Mr. Ambrosio's relationship with Rutgers was unrelated and independent of the services provided under the two consulting contracts that he had with OCE. Rutgers made an independent decision to hire Mr. Ambrosio for his expertise in the evaluation of market assessment.
- b. Quarterly reports were not prepared or submitted timely by Ambrosio Associates.
The 80 plus page Quarterly Report submitted by Mr. Ambrosio relies on other parties (the utilities, OCE and EDA) to provide information. When OCE or the utilities did not provide the information in a timely manner, Mr. Ambrosio could not complete his reports on time.
- c. Mr. Ambrosio provides verification and approval of utility billings for OCE and verification of rebates being processed by the utilities. Mr. Ambrosio has limited resources to perform these functions.
OCE has experienced no issues with Mr. Ambrosio's ability to fulfill his responsibilities under his contract.
- d. Mr. Ambrosio represented Highland Park Borough regarding a grant before OCE while working for OCE.

Mr. Ambrosio lives in Highland Park Borough and donated his time and expertise to assist the Borough in energy related matters. Based on BPU discussions with Mr. Ambrosio he did not believe it presented a conflict.

- e. Potential conflicts of interest exist due to the overlapping interactions, roles and functions of Mr. Ambrosio. Executive Commission on Ethical Standards should review this matter.

The BPU d not believe a conflict existed. If called upon by the Commission, the BPU believes that Mr. Ambrosio will provide whatever information they request.

Treasury Finding 43:

- a. Cassandra Kling emailed employees of the BPU that she was working for World Water, a company that previously received a REED grant while she was program manager at OCE. She expressed a hope to be able to work with everyone and to keep in touch.

It is not uncommon for former employees to notify their co-workers of their new place of employment and to keep in touch.

- b. Ms. Kling was instrumental in the development of the Clean Energy Program, because of her knowledge of OCE's systems and procedures she should be prevented from dealing with OCE to prevent the public perception of the revolving door syndrome.

There currently exist requirements for State employees to honor the State's ethics requirements. Ms. Kling is aware of those requirements. We are not aware of any ethics violations. Should the State find her not to be in compliance they should pursue the appropriate remedies.

Treasury Finding 44:

- a. Fiscal Office files inconsistently receive copies of the Ethics Liaison's Officer's approval for travel requests.

The BPU travel authorization procedure requires that all travel requests receive Ethics Liaison review and approval. All spending authorizations for travel are sent to the Fiscal Office with a copy of the Ethics Liaison approval.

- b. Fiscal Office should maintain custody of the travel request packages for both State paid and non-State sponsored events.

The Ethics Liaison maintains custody of all travel requests approved in accordance with the travel policies of the BPU.

- c. Fiscal Office should maintain a tickler file for travel requests without Ethics Liaison Officer approval.

BPU procedures require that travel requests filed with the Fiscal Office must first have Ethics Liaison officer approval.

Treasury Finding 45:

- a. Mike Winka has attended a number of trips which should have required him to get the BPU's Ethics Liaison Officer's approval.
Mr. Winka's attendances at meetings were at the direction of the BPU President to substitute for her when her schedule was changed. In some instances Ethics approval was sought after the fact as his attendance was not known until the last minute.
- b. These forms were not provided by the Ethics Liaison Officer as she stated she would have to get the Chief of Staff's approval. Records were not provided.
The forms were available. The reviewer did not follow up on his request.
- c. The Executive Commission on Ethical Standards was contacted regarding Mr. Winka's approved attendance forms for 2004.
If called upon by the Commission, Mr. Winka will provide whatever information they request.