



Theroux Environmental

A JDMT, Inc. Company

July 30, 2009

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 09-OII-01
1516 Ninth Street
Sacramento, CA 95814-5512

DOCKET

09-OII-1

DATE July 30 2009

RECD. July 30 2009

2009-03-00

SUBJECT: Docket 09-OII-1

- ❖ **Energy Efficiency & Conservation Block Grant (EECBG)**
- ❖ **State Energy Program (SEP)**

The American Recovery & Reinvestment Act of 2009 (ARRA), Public Law 111-5, will provide \$787 billion nationally in economic investment to stimulate the economy and create jobs for Americans. The California Energy Commission (CEC) is administering two programs, the State Energy Program (SEP) for approximately \$226 million and the Energy Efficiency & Conservation Block Grant (EECBG) Program for approximately \$49.6 million.

The following comments are offered on CEC guidance and administration of these ARRA programs, specific to interaction with and support application by federally recognized Native American tribes and tribal entities (herein, "Tribe").¹

1. EECBG: "Direct" Formula Grants vs Formula Grants

Background: A Tribe that applies to the Department of Energy (DOE) and receives a direct formula EECBG grant can use those funds for completion and submission (within 120 days of the award) of the mandatory *Energy Efficiency & Conservation Strategy* (EECS), but may not re-apply to the DOE for additional direct formula EECBG funding.

A Tribal project initiated by DOE-review and acceptance of an EECS developed and submitted in proper utilization of direct-formula EECBG funds will need follow-on project activity funding, but is precluded from secondary EECBG application directly to the DOE. Both federal and state guidance are unclear as to whether application may be made for state EECBG follow-on project funding; it appears that issue is within the purview of California for clarification by *state policy*, within the federally-required state program Guidelines.

In the CEC Docket 09-OII-1 *Notice of Staff Workshop on the Energy Efficiency and Conservation Block Grant Program Funding - Final Proposed Guidelines for Small Cities and Counties* (scheduled for August 3, 2009), a 60% minimum "small cities" set-aside is described:

"At least 60 percent of EECBG funds (\$29.8 million) are designated for activities in small cities with populations less than 35,000 and counties with populations less than 200,000."

¹ See: Federal Register: April 4, 2008 (Volume 73, Number 66) [Page 18553-18557]. From the Federal Register Online via GPO Access [wais.access.gpo.gov][DOCID:fr04ap08-87]

The federal description related to the minimum 60% set-aside differs substantially. The DOE administers ARRA formula-based funding as grants *directly* to states, U.S. territories, units of local government, and Indian tribes under the EECBG Program. This “**direct**” support is separate from ARRA “formula grant” funds appropriated for State program support. Federal EECBG guidance states in part,²

“Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related OMB Guidance.” (pg 5)

“Each state that receives a grant under the program shall use not less than 60 percent of the amount received to provide subgrants to units of local government in the state that are **not eligible for direct formula grants** (*emphasis added*) ... States are required to develop a sub-granting process that expeditiously allocates funding, prevents fraudulent spending, generates robust reporting, and promotes the EECBG Program principles stated above.” (pg 9)

Question: Is a small-population Tribe that has applied for and received initial EECBG direct-formula funding eligible for subsequent “non-direct formula” EECBG grants administered by California, from the ARRA state allocations above the mandated 60% for subgrants noted in the federal Guidance language?

2. SEP: Proper Reference to Tribal Entities’ access to SEP Grant Funds

Comment & Clarification Request: The preliminary SEP Guidelines (CEC-150-2009-004-D, July 16, 2009) do not indicate whether a federally recognized Native American Tribe (“Tribe”, as defined previously) will be considered an eligible applicant for SEP funding. Each of the first round SEP programs is relevant to Tribe energy efficiency and conservation strategy implementation. As sovereign nations, Tribes need to be separately identified rather than being grouped as some form of special district or municipality. Please clarify in the final Guidance document.

I will speak to these issues and be available for questions at the August 3rd, 2009 workshop in Sacramento. Please call me at (530) 823-7300, if you have any questions.

Sincerely,

Theroux Environmental



Michael Theroux

Principal

Cc (email only):

Pat Perez, John Sugar

² Per “Funding Opportunity Number: DE-FOA-0000013 (per Amendment 000003, May 11, 2009, extending proposal submission deadlines until August 10, 2009).”

