

(Transferred by P.L. 2009 Ch. 372 (eff. June 12, 2009) to 95-648, Efficiency Maine Trust)

~~695-407648~~ ——— ~~PUBLIC UTILITIES COMMISSION~~ EFFICIENCY MAINE TRUST

Chapter 380: ELECTRIC ~~ENERGY~~ EFFICIENCY AND CONSERVATION PROGRAMS

SUMMARY: This Chapter implements portions of the requirements of the State’s electric ~~energy~~ efficiency and conservation program administered by the Efficiency Maine Trust.

TABLE OF CONTENTS

§ 1	PURPOSE.....	3
§ 2	DEFINITIONS	3
	A. Administrative costs	3
	B. Administrative fund	3
	<u>B-1. Board.....</u>	<u>3</u>
	<u>B-2. Commission.</u>	<u>3</u>
	C. Conservation programs	3
	D. Low-income residential consumer.....	3
	<u>D-1. Maximum Achievable Cost-Effective Energy Efficiency.....</u>	<u>3</u>
	E. Measure.....	3
	F. Participant	3
	G. Program fund	3
	H. Small business consumer	3
	<u>I. Triennial Plan.....</u>	<u>3</u>
	<u>J. Utility Procurement Order... ..</u>	<u>3</u>
§ 3	CONSERVATION PROGRAMS.....	4
	A. Criteria for Conservation Programs	4
	B. Goals, Objectives, and Strategies <u>Triennial Plan</u>	4

	C.	Conservation Program Portfolio Requirements	5
§ 4		COST EFFECTIVENESS TESTS	5
	A.	Modified Societal Test	5
		1. Program benefits	5
		2. Program costs.....	6
		3. Discount rate assumption.....	6
		4. Net present value	6
		5. Post-program effects	6
		6. Incentive Level Limitation.....	6
	B.	Non-Quantifiable Cost Effectiveness Test.....	6
§ 5		FUNDING LEVEL	7
	A.	Assessment Amount <u>Funds held in trust</u>	7
	B.	Assessments Procedures <u>Procurement of all cost-effective energy efficiency resources</u>	7
	C.	Conservation Program Fund	7
	D.	Conservation Administration Fund.....	8
§ 6		WAIVER OR EXEMPTION	8

§ 1 PURPOSE

The purpose of this Chapter is to implement portions of the requirements of the State's electric energy conservation program administered by the Efficiency Maine Trust (the Trust). The Chapter establishes the definition of low-income customer, the definition of small business customer, and the definition of cost effectiveness.

§ 2 DEFINITIONS

- A. **Administrative costs.** "Administrative costs" means costs of the ~~Commission-Trust~~ that are funded pursuant to and associated with the implementation of 35-A M.R.S.A. § ~~3211-A10110~~, including, but not limited to, costs of program planning and evaluation, costs of securing necessary administrative expertise, costs associated with contract formation and administration and costs of monitoring and enforcing contractual obligations.
- B. **Administrative fund.** "Administration fund" means the conservation administration fund established by the ~~Commission-Trust~~ pursuant to 35-A M.R.S.A. § ~~10110(8)3211-A(6)~~.
- B-1. **Board.** "Board" means the Board of Trustees of the Efficiency Maine Trust.
- B-2. **Commission.** "Commission" means the Maine Public Utilities Commission.
- C. **Conservation programs.** "Conservation programs" means programs developed by the ~~Commission-Trust~~ pursuant to 35-A M.R.S.A. § ~~3211-A-10110~~ and this Chapter designed to reduce inefficient electricity use.
- D. **Low-income residential consumer.** "Low-income residential consumer" means a customer of a transmission and distribution utility receiving benefits under the utility's Low-Income Assistance Program, or a household that would have qualified at any time in the prior 12 month period to receive assistance through any state or federal program in which low income and/or limited assets are criteria for eligibility. ~~the Low Income Home Energy Assistance Program (LIHEAP), as those qualifications are established in Rule by Maine State Housing Authority from time to time. If a customer has not applied for authorization to receive LIHEAP benefits but conforms to the criteria established by Maine State Housing Authority, he or she shall be considered a low income consumer for the purpose of this Chapter.~~
- D-1. **Maximum Achievable Cost-Effective Energy Efficiency (MACE).** "Maximum Achievable Cost-Effective Energy Efficiency" or "MACE" means all cost-effective, reliable, and achievable energy efficiency savings for purposes of 35-A M.R.S.A. §§ 10104(4) and 10110(4-A). The term MACE applies to a quantity of electricity savings and a budget for Trust programs that is reasonably likely to achieve that savings.
- E. **Measure.** "Measure" means a device, ~~or an~~ application, operation, or any combination thereof, that is installed or implemented and that improves energy efficiency.
- F. **Participant.** "Participant" means a customer who directly takes part in a Conservation Program.

- G. **Program fund.** “Program fund” means the conservation program fund established by the ~~Commission-Trust~~ pursuant to 35-A M.R.S.A. § ~~3211-A~~10110(57).
- H. **Small business consumer.** “Small business consumer” means a ~~business-non-residential~~ customer of a transmission and distribution utility that is designated in the utility’s distribution rates, based on the customer’s energy usage at a specific location or on a specific account, to receive general service through the customer class reserved for the smallest non-residential users. This excludes any commercial utility accounts designated for street or area lighting only, space or water heating only, municipal water pumping, agricultural produce storage, or snow making. If the utility does not make such designations in its accounts or billing, then the Trust may extend the definition to a business customer that employs 50 or fewer full-time equivalent employees across all locations in Maine. -A company with multiple locations shall be considered one company, and employees at all its locations shall be counted when determining whether the company is a small business. If the number of employees of a company varies over a calendar year, the number of employees at the time when the company participates in a program shall apply. When determining whether a customer is a “small business consumer,” the Commission may giving consideration to the average number of employees that the business employs annually.
- I. **Triennial Plan.** “Triennial Plan” means the detailed, triennial, energy efficiency, alternative energy resources and conservation plan developed by staff of the Trust, approved by the Board, and then approved by the Commission consistent with the provisions of 35-A M.R.S.A. §10104 subsections (4) and (6).
- J. **Utility procurement order.** “Utility procurement order” means the procurement amount to be paid by each transmission and distribution utility to the Trust each fiscal year of the Triennial Plan period, per the order of the Commission after approving the MACE budget and netting out other funding streams allocated to the MACE budget by the Board in the Trust’s Triennial Plan.

§ 3 CONSERVATION PROGRAMS

- A. **Criteria for Conservation Programs**
1. The ~~Commission-Trust~~ shall consider, without limitation, conservation programs that:
 - (a) Increase consumer awareness of cost-effective options for conserving energy;
 - (b) Create more favorable market conditions for the increased use of energy-efficient products and services; and
 - (c) Promote sustainable economic development and reduced environmental damage.

- (d) Reduce the price of electricity over time for all consumers by achieving reductions in demand for electricity during peak use periods; and
- (e) Reduce total energy costs for electricity consumers in the State by increasing the efficiency with which electricity is consumed.

2. The ~~Commission Trust~~ shall:

- (a) Target at least ~~2010~~2010% of available program funds or \$2.6 million, whichever is greater, to programs for low-income residential consumers, ~~as defined by the Commission Trust by rule;~~
- (b) Target at least ~~2010~~2010% of available program funds or \$2.6 million, whichever is greater, to programs for small business consumers, ~~as defined by the Commission Trust by rule; and~~
- (c) To the greatest extent practicable, apportion remaining available funds among customer groups and geographic areas in a manner that allows all other customers to have a reasonable opportunity to participate in one or more conservation programs;
- (d) Notwithstanding the foregoing provisions of this sub-section, the Trust may target funds received in the electric conservation program fund pursuant to §5(C)(4) of this chapter, including any funds aimed at developing non-transmission or non-distribution alternatives, to a particular geographical location, customer class, or specific conservation opportunity so long as it is otherwise consistent with this Chapter and with the terms of the applicable grants or agreements.

3. Programs shall be cost effective. Cost effectiveness tests are established in Section 4.

B. **Goals, Objectives, and Strategies Triennial Plan**

- 1. The staff shall develop and the Board shall vote to approve a detailed, triennial, energy efficiency, alternative energy resources and conservation plan and shall file the plan with the Commission in accordance with 35-A M.R.S.A. §10104(4). The Triennial Plan shall guide and authorize program activity for the three-year period beginning on July 1, 2019 and a new plan shall be developed and filed to authorize program activity for every subsequent three-year period.
- 2. The Trust may request transmission and distribution utilities to furnish data to the Trust to develop and implement the Triennial Plan or to conduct the evaluation of all cost-effective potential for electrical conservation savings subject to such confidential treatment as appropriate pursuant to 35-A M.R.S.A. §10106 and to applicable protective orders issued by the Commission.

3. The Triennial Plan shall include, but is not limited to, budget allocations, objectives, targets, performance metrics, program designs, program implementation strategies, timelines and other information relevant to the electric conservation program. It must reasonably explain how the program would achieve the objectives, implementation requirements, and performance metrics of the program.
4. The Commission shall establish goals, objectives, and strategies by order before the Commission adopts its first conservation programs pursuant to this subsection. The electric conservation program described in the Triennial Plan shall reflect the purposes, goals and objectives established in 35-A M.R.S.A. §§ 10103, 10104 and 10110. The goals that the Triennial Plan is expected to advance are:
- (a) Reducing energy costs;
 - (b) Weatherizing substantially all homes whose owners or occupants are willing to participate in and share the costs of cost-effective home weatherization to a minimum standard of weatherization, as defined by the trust, by 2030;
 - (c) Reducing peak-load demand for electricity through trust programs by 300 megawatts by 2020;
 - (d) By 2020, achieving electricity and natural gas program savings of at least 20% and heating fuel savings of at least 20%;
 - (e) Creating stable private sector jobs providing alternative energy and energy efficiency products and services in the State by 2020; and
 - (f) Reducing greenhouse gas emissions from the heating and cooling of buildings in the State by amounts consistent with the State's goals established in Title 38, section 576.
25. The Commission shall open a docket and issue a Proposed Order establishing goals, objectives, and strategies. All interested persons will be invited to file written comments and suggestions pertaining to the Commission's Proposed Order. The Commission also will hold a public hearing for the purpose of receiving comments and suggestions. After reviewing the written and oral comments and suggestions, the Commission will adopt goals, objectives and strategies for conservation programs.
- The Trust staff shall develop the Triennial Plan with input from the Board, stakeholders, and the Legislature pursuant to the provisions of 35-A MRS §10104(4). All interested persons will be invited to file written comments and suggestions pertaining to the Trust's proposed Triennial Plan. The Trust also will hold a public hearing for the purpose of receiving comments and suggestions. After reviewing the written and oral comments and suggestions, the Trust will adopt a Triennial Plan for conservation programs that will be submitted to the Commission for review and approval in an adjudicatory proceeding.
3. No less frequently than every three years, the Commission will review and, if necessary, revise the goals, objectives, and strategies. For each review and revision, the Commission will follow the process described in section 3(B)(2).

- C. **Conservation Program Portfolio Requirements.** The ~~Commission-Trust~~ shall develop and implement a portfolio of conservation programs that is consistent with the goals, objectives and strategies described in subsection 3(B), meets the cost effectiveness requirements established in section 4, and is deliverable within the funding level established pursuant to section 5. When developing its portfolio of conservation programs, the ~~Commission-Trust~~ shall consider develop budgets to assist the Commission in analyzing the likely impact of the programs on utilities' rates.

§ 4 COST EFFECTIVENESS TESTS

The following tests will be used to determine whether a program administered pursuant to this Chapter is cost effective.

- A. ~~Modified Societal~~Cost effectiveness test-Test. Programs that are reasonably likely to satisfy ~~the Modified Societal Test~~the test described in this section are cost effective. The ~~Modified Societal Test~~cost effectiveness test is satisfied when the program benefits exceed the program costs. Costs and benefits shall be considered ~~in the Modified Societal Test~~ regardless of whether they are paid or experienced by the participant, the Conservation Program Fund, or any other individual, business, or government agency.

1. **Program benefits.** Program benefits will include the following:

- a) Avoided electric generation costs including energy and capacity costs, using estimates of market prices and adjusting for line losses. These estimates may be differentiated by time periods that influence market prices, including but not limited to peak and off-peak periods and summer and winter periods;
- b) Avoided transmission and distribution costs, using estimates of transmission and distribution utility marginal transmission and distribution costs. These estimates may be differentiated by time periods that influence costs;
- c) Avoided fossil fuel costs, using estimated savings in oil, gas or other fossil fuel use, at estimated fossil fuel prices;
- d) Other resource benefits, such as reduced water and sewer costs;
- e) Non-resource benefits, including customer benefits such as reduced operation and maintenance costs, deferred replacement costs, productivity improvements, economic development benefits and environmental benefits, to the extent such benefits can be reasonably quantified and valued.

2. **Program costs.** Program costs will include the following:

- a) Direct program costs, including program design, administration, implementation, marketing, evaluation and other reasonably identifiable costs directly associated with the program.
 - b) Measure costs. For lost opportunity measures, including new construction or replace-~~on-burnoutment programs~~measures, measure costs are the incremental costs of the energy efficiency measure, ~~including installation,~~ over an equivalent baseline measure. For retrofit ~~programs~~measures, measure costs are the full cost of the energy efficiency measure, including installation, less any salvage for the replaced measure.
 - c) Ongoing customer costs, including costs such as increased operation and maintenance costs, reduced productivity, and lost economic development opportunities, to the extent such costs can be reasonably quantified and valued.
3. **Discount rate assumption.** The discount rate used for present value calculations shall be the current yield of long-term (10 years or longer) U.S. Treasury securities, adjusted for inflation provided, however, that to the extent a measure or program will be funded by the utility procurement order or revenues from a rate-based contract with the transmission and distribution utilities, the Trust shall apply a nominal discount rate of 8.50 percent, adjusted for inflation. The Commission may consider an alternative discount rate when characteristics of a program are inconsistent with use of long term U.S. Treasury securities.
 4. **Net present value.** Cost effectiveness of an energy efficiency measure will be calculated based on the net present value of the costs and benefits over the expected life of the measure.
 5. **Post-program effects.** For those programs that are expected to influence the development of self-sustaining markets, program cost effectiveness will be calculated for a reasonable additional period after the program is terminated in order to capture post-program market effects.
 6. **Incentive Level Limitation.** When developing a program that satisfies the ~~Modified Societal~~cost effectiveness Ttest, the ~~Commission-Trust~~ shall, when setting incentive levels, consider the value of the program savings associated with electrical production and delivery.
- B. **Non-Quantifiable Cost-Effectiveness Test.** The ~~Commission-Trust~~ may implement a program without satisfying the ~~Modified Societal Test~~cost effectiveness test if:
1. Program benefits are known to exist but cannot be quantified with sufficient accuracy to conclude that the program benefits exceed the program costs;
 2. The program satisfies some other statutory criterion or a goal or objective established by the ~~Commission-Legislature or the Trust~~ in implementing the ~~Conservation-Efficiency Maine Trust~~ Act; and

3. The entire portfolio of conservation programs produces quantifiable benefits that substantially exceed total portfolio program costs.

§ 5 FUNDING LEVEL

The Triennial Plan must identify potential MACE savings and related programs that could be implemented pursuant to 35-A M.R.S.A. §10110, the costs and benefits of such programs and the basis and support for such identified costs and benefits. The trust shall conduct an evaluation of the MACE potential for electrical energy efficiency savings in the State at least once every five years.

The ~~Commission Trust~~ shall propose the utility procurement order to be assessed on transmission and distribution utilities ~~to collect funds~~ necessary to pay for the Trust's ~~Commission's~~ portfolio of conservation programs and administrative costs associated with implementing the conservation programs to achieve the MACE savings in the Trust's Triennial Plan.

A. **Funds held in trust.** All funds collected from electricity consumers pursuant to 35-A MRSA §10110 are collected under the authority and for the purposes of this section and are deemed to be held in trust for the purposes of benefiting electricity consumers.

B. **Procurement of MACE resources.** The Trust's Triennial Plan shall propose programs and an associated budget that is sufficient to procure MACE resources on behalf of electric utility ratepayers, except that the Trust shall not propose the inclusion in rates under this subsection of a total amount that exceeds 4% of total retail electricity and transmission and distribution sales in the State as determined by the Commission.

When determining the amount of cost-effective electric energy efficiency resources to be procured under this subsection, the Trust shall:

1. Consider electric energy efficiency resources that are reasonably foreseeable to be acquired by the Trust using all other sources of revenue, including, but not limited to, the Regional Greenhouse Gas Initiative Trust Fund under section 10109;
2. Ensure that calculations of avoided energy costs and the budget identified by the trust in its Triennial Plan as needed to capture all cost-effective electric energy efficiency resources are reasonable, based on sound evidence and make use of best practices across the region; and
3. Maximize total electricity savings for all ratepayers.

In preparing the Triennial Plan for submission to the Commission, the Trust shall consider gross efficiency savings for the purpose of determining savings that are cost-effective, reliable and achievable and shall consider both net and gross efficiency savings for the purpose of determining the appropriateness of the amount identified by the Trust in its Triennial Plan as needed to capture all cost-effective electric energy efficiency resources.

A. **Assessment Amount.** The amount of all assessments for conservation programs and administrative costs must result in total conservation expenditures by each transmission and distribution utility that:

- ~~1. are based on the relevant characteristics of the transmission and distribution utility's service territory, including the needs of customers;~~
- ~~2. do not exceed 0.15 cents per kilowatt hour;~~
- ~~3. are no less than 0.5% of the total transmission and distribution revenue of the transmission and distribution utility; and~~
- ~~4. are proportionally equivalent to the total conservation expenditures of other transmission and distribution utilities, unless the Commission finds that a different amount is justified; however, any increase in the assessment of a transmission and distribution utility must be based on reasons other than to achieve proportional equivalence.~~

~~B. **Assessment Procedures.** The Commission shall periodically assess transmission and distribution utilities based on forecasted sales or revenues, forecasted utility expenditures on conservation programs approved by the Commission, and forecasted prior conservation efforts. The Commission shall periodically adjust the assessment to account for any differences between actual and forecasted sales or revenues, utility expenditures, and prior conservation efforts.~~

C. **Conservation Program Fund.** The Commission shall establish a conservation program fund to be used solely for conservation programs.

1. The ~~Commission-Trust~~ shall deposit the funds from the utility procurement order, net of amounts allocated to all assessments collected pursuant to this Chapter, other than funds deposited in the administration fund pursuant to 35-A M.R.S.A. 10103(5), into the electric conservation program fund.
2. Any interest earned on funds in the program fund must be credited to the program fund.
3. Funds not spent in any fiscal year remain in the program fund to be used for conservation programs. In the event funds are not expended or contracted for expenditure within 2 years of being collected from consumers, the value of those funds shall be returned to consumers.
4. The ~~Commission-Trust~~ may apply for and receive grants from state, federal and private sources for deposit in the program fund and also may deposit in the program fund any grants or other funds received by or from any entity with which the ~~Commission-Trust~~ has an agreement or contract pursuant to this section if the ~~Commission-Trust~~ determines that receipt of those funds would be consistent with the purposes of this section. This paragraph also applies to funds received from agreements to develop geotargeted alternative resources to transmission or distribution system needs. If the ~~Commission-Trust~~ receives any funds pursuant to this paragraph, it shall establish a separate account within the program fund to receive the funds and shall keep those funds and any interest earned on those funds segregated from other funds in the program fund.

~~D. — **Conservation Administration Fund.** The Commission shall establish a conservation administration fund to be used solely to defray administrative costs. The Commission annually may deposit funds collected pursuant to this section into the administration fund up to a maximum in any fiscal year of \$1,300,000. Any interest on funds in the administration fund must be credited to the administration fund and any funds unspent in any fiscal year must either remain in the administration fund to be used to defray administrative costs or be transferred to the program fund.~~

§ 6 WAIVER OR EXEMPTION

Upon the request of any person subject to the provisions of this Chapter or upon its own motion, the ~~Commission Trust~~ may waive any of the requirements of this Chapter that are not required by statute. Where good cause exists, the ~~Commission Trust~~ or its designee may grant the requested waiver, provided that the granting of the waiver would not be inconsistent with the purposes of this Chapter of Title 35-A.
