

November 14, 2003

PUBLIC UTILITIES COMMISSION
Procedures for Conservation Program Planning

ORDER ADOPTING PLAN
FOR TRANSITION FROM
INTERIM TO ONGOING
PROGRAMS

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

We adopt a Staff recommendation for the transition of interim energy efficiency programs into “on-going” programs.

II. BACKGROUND

By the Conservation Act enacted in 2002 (P.L. 2002, ch. 624), the Commission was directed to implement “interim programs:”

In order to avoid a significant delay in the implementation of conservation programs pursuant to the Maine Revised Statutes Title 35-A, section 3211-A, the Public Utilities Commission may use funds from the conservation program fund established pursuant to Title 35-A, section 3211-A, subsection 5 to implement on a short-term basis conservation programs that the Commission finds to be cost effective. The commission is not required to satisfy the requirements of Title 35-A, section 3211-A before implementing such programs. Any programs implemented under this section must terminate no later than December 31, 2003. Funds in the conservation program fund not used for short-term programs under this section must be used in accordance with Title 35-A, section 3211-A.

We developed an interim program plan and implemented several interim programs. *See Order Establishing Interim Conservation Programs*, Docket No. 2002-161 (June 13, 2002). We designated the interim programs to comply with the statutory criteria to the greatest extent possible. Because interim programs must end by December 31, 2003, all of our agreements with service providers, whether contracts with private vendors or memoranda of understanding with other state agencies, have been negotiated to terminate on December 31, 2003.

We have now developed the “on-going” program plan contemplated by the Act. Many if not most of the on-going programs are designed to be a further development of the interim programs. When we deliberated and voted on the on-going plan, we

directed the Staff to develop a plan to ensure a smooth transition from the termination of the interim programs to the initiation of the related, on-going programs.

The Staff proposed a transition plan on November 3, 2003 and sought comments on the proposal from interested parties. Two parties, Combined Energies and the Maine School Management Association (MSMA) filed comments. Comments by both Combined Energies and MSMA advocated an extension of the Combined Energies contract greater than the six month extension recommended by the Staff. The comments of both parties describe the work Combined Energies is engaged in as the Program Technical Advisor to the High Performance School Program. The PTA has built a working relationship with the architects and engineers who will be designing and building new schools. The PTA has developed similar relationships with parties to the memorandum of understanding. Because design work on the new schools is only now beginning in earnest, both parties recommend a contract extension that is longer than the six months recommended by Staff.

III. DECISION

We adopt the following transition plan for each of the relevant on-going programs:

Low Income Refrigerator Replacement Program: We will operate a full scale program by modifying and extending our memorandum of understanding with the Maine State Housing Authority for an additional year. The Conservation Act specifically permits the Commission to contract for these services through the Community Action Agencies and the Maine State Housing Authority without first soliciting competitive proposals. Our experience in operating this program with MSHA and the CAPs thus far has been positive. We will extend the MOU with these agencies for an additional year.

ENERGY STAR Residential Lighting Program: The residential lighting program is similar to others being operated in New England. The program uses two independent contractors. For an interim program, Applied Proactive Technologies (APT) of Springfield MA provided program delivery services, and the Energy Federation Incorporated (EFI) of Westborough MA provided coupon processing. APT was selected to implement the program through a competitive bidding process. EFI was selected to run the program through a sole source contract because the Northeast Energy Efficiency Partnerships (NEEP), of which we are members, had recently selected EFI to perform the same function for a number of the partners through a competitive Request For Proposals (RFP). The contracts with both companies end on December 31, 2003. Staff has already issued RFPs and will conduct a competitive selection process for both services for the full-scale program.

High Performance Schools Program: We are persuaded by the comments of Combined Energies and MSMA. For this reason, we direct the Staff to negotiate a contract extension of up to one year for Combined Energies, the Program Technical Advisor (PTA) selected for the Interim program. Combined Energies of Augusta, Maine

was initially selected through a competitive bidding process. The Company's role is to develop materials that pre-specify measures that will be eligible to receive energy efficiency grants, and also to work with the architectural and engineering firms developing new school designs. Combined Energies has developed the materials and has established relationships with the firms that will be building schools. Design and review of the technical proposals has not yet commenced. Staff will negotiate a contract extension of up to one year with Combined Energies to let the Company work through the design stage for schools currently going through Maine Department of Education review. In the interim, Staff will conduct an RFP for a PTA to begin work at the conclusion of the contract with Combined Energies. This program operates in part pursuant to memoranda of understanding among the PUC, the Maine Department of Education, the Maine Bureau of General Services, and the Maine School Management Association. Staff is directed to negotiate extensions of these memoranda.

Traffic Signal Replacement Program: This program has concluded. All eligible traffic signals in Maine have been or will be retrofitted with LED technology.

Small Business Program: We direct the Staff to negotiate a six-month contract extension for the implementation contractor of this program. The contractor for this program, L.K. Goldfarb Associates, of Portland, Maine was initially selected through a competitive bidding process. The request for proposals for the program requested elements of program design in addition to the price for services rendered. The Goldfarb proposal included elements of market transformation, such as working with the product suppliers and engaging in upstream educational activities, along with elements of traditional resource acquisition programs. We extend of the contract for two reasons. First, the nature of the program itself requires a well-planned transition. Second, program implementation was delayed because our selection process was legally challenged and we do not have enough experience yet to determine whether we should make changes to this program the next time that it is bid out. During the six-month extension, Staff should determine what changes, if any, should be made to the current program. In addition, Staff should conduct an RFP process to select an implementation contractor.

Commercial and Industrial Program: We direct the Staff to negotiate a six-month contract extension for the implementation contractor of this program. The contractor for this program, Northeast by Northwest consultants of Alna, Maine was initially selected through a competitive bidding process. The C&I program was one of the last interim programs to be implemented because it was a "tier three" interim program. Contractor bids were received in July and the contract with Northeast by Northwest was not signed until August. Since then, the contractor has pre-screened eligible technologies for cost effectiveness, worked with the Staff to set incentive levels, and developed application forms, as well as the program terms and conditions. The program launched on October 31, 2003, and a series of program roll-out workshops are scheduled through November. The contract calls for the contractor to work with customers applying for incentives and to provide technical assistance in certain situations. During the six-month extension period, we direct the Staff to determine

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.