

2. Regulatory Framework

2.1 Purpose of Trust

The Efficiency Maine Trust Act (or “the statute”) states that the purposes of the Trust are to:

- Provide uniform, integrated planning, program design, and administration of programs;
- Reduce energy costs and improve security of the state and local economies;
- Administer cost-effective energy and energy efficiency programs to help individuals and businesses meet their energy needs at the lowest cost;
- Ensure that all expenditures of the trust are cost-effective in terms of avoided energy costs; and
- Actively promote investment in cost-effective energy and energy efficiency measures and systems that use energy resources that reduce overall energy costs for consumers in the State.¹

As noted previously, the statute further specifies that the Trust’s programs should help lower costs across all fuel types – electric, natural gas, and unregulated fuels – and should extend to weatherizing homes, reducing inefficient use of fossil fuels, enhancing affordable heating systems, increasing jobs and business development, improving consumer access to energy programs, and reducing greenhouse gases.²

2.2 Program Funds – Objectives, Funding, and Implementation Requirements

The Trust is the designated recipient and administrator of several funding streams. As described in more detail below, the Trust is directed by statute to use these funding streams to promote the more efficient and affordable use of energy and customer-sited alternative energy systems.

While some of the Trust’s funding streams are automatically recurring, the statute also contemplates that the Trust may access other funds. It may apply for grants from public or private sources, deposit the proceeds of bonds into program funds, collect revenue from the Forward Capacity Market (FCM) or other capacity payments, and accept funds from the energy infrastructure benefits fund as well as any “other funds received by or from any entity with which the Trust has an agreement or contract.”³

An important feature of the Trust is its fiduciary responsibility. The funds it receives from electric and natural gas ratepayers, and from the Regional Greenhouse Gas Initiative (RGGI), are required to be held in trust for the benefit of the energy consumers who pay for the funds.

¹ 35-A MRS §10103 (1).

² 35-A MRS §10103(1)(B).

³ 35-A MRS §10103(4).

2.2.1 Electric Efficiency and Conservation Fund

The Electric Efficiency and Conservation Fund is dedicated to programs designed to reduce inefficient use of electricity. The main goal of programs supported by this fund is to help reduce energy costs for electricity consumers. The objectives enumerated in statute for the use of this fund are to:

- Increase consumer awareness of cost-effective options for conserving energy
- Create favorable market conditions for increased use of energy efficiency;
- Promote sustainable economic development and reduce environmental damage;
- Reduce the price of electricity over time for all consumers by reducing demand during peak use periods; and
- Reduce total energy costs for electricity consumers.⁴

The amount of the Electric Efficiency Conservation Fund is determined by establishing the budgets necessary to capture the maximum achievable cost-effective (MACE) energy efficiency potential. MACE is synonymous with the standard, as articulated in the statute, of all the cost-effective energy efficiency that is achievable and reliable. The principal revenue stream for this fund comes from payments that the utilities make directly to the Trust for the procurement of cost-effective energy efficiency (the “Electric Efficiency Procurement”). The payments are deemed by statute to be a just and reasonable element of utility rates. The amount of the procurement payments may be reduced by netting out amounts committed by the Trust Board for this purpose from certain other funding streams, including settlements such as the Maine Power Reliability Program (MPRP), proceeds from the FCM, or payments from RGGI.

The Electric Efficiency Procurement is statutorily capped at 4% of total revenues from retail electricity supply sales and transmission and distribution sales.⁵ Maine’s largest electric customers, who take service at the transmission and sub-transmission (T&ST) level, do not contribute to and are ineligible for funding from the Electric Efficiency Procurement. They are, however, eligible for other components of the Electric Efficiency and Conservation Fund, including FCM and MPRP funds.

While pursuing the listed objectives, the Trust allocates budgets and deploys strategies for the Electric Efficiency and Conservation Fund to give all customers a reasonable opportunity to participate. The statute expressly directs the programs paid for through this fund to:

- Target at least 10% of the Electricity Efficiency Conservation Fund or \$2.6 million, whichever is greater, to low-income residential customers;
- Target at least 10% of the Electricity Efficiency Conservation Fund or \$2.6 million, whichever is greater, to small business customers; and

⁴ 35-A MRS §10110(2)(A).

⁵ 35-A MRS §10110(4)(A).

- Apportion the remaining 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.⁶

2.2.2 Natural Gas Conservation Fund

The Natural Gas Conservation Fund is established in statute to promote the efficient use of natural gas. Objectives for the use of the fund are to:

- Increase consumer awareness of cost-effective options for conserving natural gas;
- Create more favorable market conditions for the increased use of efficient natural gas products and services; and
- Promote sustainable economic development and reduce environmental damage through the more efficient use of natural gas.⁷

Revenues to the Natural Gas Conservation Fund derive from assessments on natural gas utilities that are statutorily deemed to be just and reasonable costs to be included in rates (the “Natural Gas Efficiency Procurement”). The amount of the assessments is directed by statute to be the amount necessary to capture all cost-effective energy efficiency that is achievable and reliable.⁸ In past years, the law that limited application of the natural gas assessments to the largest gas utility in the state, Northern Utilities (doing business as Unitil). In 2013, the Legislature changed the law by expanding the Natural Gas Efficiency Procurement’s applicability to all local distribution companies (LDCs) providing natural gas in Maine, including Bangor Natural Gas, Maine Natural Gas, and Summit Natural Gas of Maine. Until recently, Maine’s largest natural gas customers, whose usage exceeded 1 million centum cubic feet (CCF) of natural gas annually, were exempt from contributing to the Natural Gas Efficiency Procurement; as such, they were not eligible for the Trust’s natural gas efficiency programs. In 2017, the Legislature amended the law once again, requiring these customers to pay the natural gas assessment on their first 1 million CCF of usage.⁹ This rendered them newly eligible for the Trust’s natural gas efficiency programs, beginning in FY2018.

Consistent with the statute, the Trust targets the funds of the Natural Gas Conservation Fund so that a reasonable percentage will go to low-income residential customers and to small business customers, and so that remaining funds allow “all other [natural gas utility] consumers to have a reasonable opportunity to participate” in the programs.¹⁰

2.2.3 Regional Greenhouse Gas Initiative Fund

RGGI is a nine-state regional program to limit carbon emissions from electricity generators. Maine joined RGGI in 2009 when the program was established. Under the program, large generators are required to purchase “carbon allowances” in an amount equal to their carbon emissions. Allowances are sold at

⁶ 35-A MRS §10110(2)(B).

⁷ 35-A MRS §10111(1).

⁸ 35-A MRS §10111(2).

⁹ 35-A MRS §10111(2).

¹⁰ 35-A MRS §10111(1)(B)(3).

quarterly auctions for this purpose. In Maine, proceeds from the auctions are transferred to the RGGI Trust Fund managed by the Trust.¹¹ The statute emphasizes that the Trustees have a fiduciary duty to the customers of the electric utilities and that the RGGI funds are to be held in trust for the purposes of benefiting those customers.

The RGGI Trust Fund is to be used for energy conservation programs that reliably reduce electricity consumption or greenhouse gas (GHG) emissions, giving priority to measures with the highest benefit-to-cost ratio. In the spring of 2016, the Legislature amended the Efficiency Maine Trust Act to provide new direction on the allocation of RGGI investments. Beginning in FY2017, the amended law required the Trust to allocate \$3 million annually to the Public Utilities Commission (the Commission) to be disbursed to a select group of energy-intensive manufacturers, known as “affected customers.” In accordance with the statutory directive, the Trust allocated 50% of the remaining funds to the residential sector and 50% to the commercial and industrial (C&I) sector. Later, in light of declining RGGI revenues over a period of several quarters, the Legislature instituted further amendments to the statute in the spring of 2017. First, it reduced the \$3 million annual affected customer transfer to \$2.5 million in FY2018 and \$2.5 million in FY2019, and added a \$1.0 million payment in FY2020. Second, it eliminated for the same period the requirement that the Trust split the remaining RGGI revenues evenly between residential and C&I programs.¹²

The price per ton of carbon allowance, and the total number of tons of carbon allowances sold, has varied considerably over the last eight years. Early on, annual auction revenues to Maine’s RGGI Trust Fund were more than \$11 million per year. In the period around FY2012, the combination of reduced electricity consumption during the economic recession and a major switch by generators from oil to natural gas led to a drop in carbon emissions and a glut of carbon allowances. During that time, revenues from RGGI auctions fell to approximately \$4 million per year. Upon adjusting the regional carbon emissions cap, the market rebounded; annual revenues between FY2014 and FY2016 ranged from \$12 million to \$14 million. Then, as alluded to above, the revenues began to decline rapidly in FY2017, falling to \$7 million for that year. This was largely due to uncertainty regarding the future of RGGI, as participating states had not come to an agreement regarding whether to continue the arrangement beyond 2020. When the states officially decided to extend RGGI to 2030, market confidence returned, causing an uptick in market confidence and a subsequent increase in revenues. Annual revenues in FY2018 were \$9.4 million, and the Trust expects \$9.7 million for FY2019. In the period governed by this Triennial Plan, the Trust is projecting revenues to the RGGI Fund at approximately \$10.7 million for FY2020, \$11.8 million for FY2021, and \$13 million for FY2022. The Trust assumes there will be less market volatility during this time period; the new program rule governing RGGI from 2020 to 2030 includes an automatic emissions cap readjustment mechanism to avoid the oversupply of allowances when actual emissions fall below the established threshold.

2.2.4 Energy Efficiency and Renewable Resource Fund

The Renewable Resource Fund was originally established to support research and development (R&D) and demonstration projects for renewable energy.¹³ In 2011, the law was modified to further authorize

¹¹ 35-A MRS §10109.

¹² 35-A MRS §10109

¹³ 35-A MRS §10121 and §3210(9)(B).

the fund to be used to provide rebates for customer-sited, commercialized renewable energy equipment, meeting a cost-effectiveness test. In 2012, a bill from the Governor modified the law again, allowing voluntary contributions made to the fund to be used for energy efficiency projects (in addition to renewable energy projects) and changing the name of the fund to the Energy Efficiency and Renewable Resource Fund.

During the period covered by Triennial Plans I, II, and III, this fund periodically received revenues from the following sources: voluntary contributions made by electricity ratepayers; alternative compliance payments made by electricity suppliers (to comply with their requirements to supply renewable energy); federal grants; and a dedicated system benefit charge (SBC). This charge amounted to 0.005 cents/kWh for every unit of electricity consumed in Maine. In 2010, statutory authorization for this dedicated SBC expired and was not reauthorized, ending this source of funds. In recent years, all funds carried forward from federal grants and the SBC were fully expended. Also, revenues to the fund from alternative compliance payments dropped to zero, and revenues from voluntary ratepayer contributions fell to approximately \$50,000 per year. For the Triennial Plan IV period, the Trust assumes that revenues for this fund will be limited to voluntary contributions at a level of \$50,000 per year.

2.2.5 Federal and Miscellaneous Funds

The statute provides that the Trust shall oversee and administer:

- A. The U.S. Department of Energy (DOE) State Energy Program; and
- B. Other federally funded programs and projects related to Trust programs.¹⁴

During the first Triennial Plan period, the Trust administered programs funded by six separate federal grants totaling more than \$93 million. Nearly all of this amount came through one-time grants from the American Recovery and Reinvestment Act of 2009 (ARRA), which, except for certain revolving loan funds, was not available for programs during the period of Triennial Plans II or III. A notable exception was revenues received from the recurring State Energy Program formula grant, which in recent years occasionally provided between \$20,000 and \$50,000 per year for the Trust to invest in energy programs. The Trust intends to apply for federal grants through competitive requests for proposals (RFPs) when they present a good fit with the Trust's mission and Triennial Plan. However, at this time and for purposes of budgeting and planning, the Trust is not forecasting receipt of any federal grants during Triennial Plan IV.

As mentioned above, the statute authorizes the trust to accept "other funds received by or from any entity with which the Trust has an agreement or contract...."¹⁵ The Board of Trustees must vote to accept funds and may do so where the receipt of those funds is consistent with the purposes laid out for the Trust in the statute.¹⁶ As of the writing of this Triennial Plan, the Trust has only one such funding source that will be active during FY2020 and FY2021: the Volkswagen (VW) settlement funds. In 2016 and 2017, VW agreed to settle allegations that it violated the federal Clean Air Act by installing "defeat devices" on certain diesel vehicles. Under consent decrees reflecting the settlement agreement, Maine (through the Maine Department of Transportation) received settlement funds from VW through a Memorandum of Understanding contracted with the Trust to administer approximately \$3.15 million to

¹⁴ 35-A MRS §10115(1).

¹⁵ 35-A MRS §10103(4).

¹⁶ 35-A MRS §10103(4).

promote electric vehicle (EV) charging infrastructure to help reduce greenhouse gases and improve the energy efficiency of transportation in Maine. The Trust Board voted unanimously in December 2017 to accept the funds for this purpose.

As with any outside grants or funding streams, the allowable uses are typically set by the granting entity and memorialized in contract terms.

2.3 Long-Term Targets

The Maine statute provides that an objective of the Trust's Triennial Plan is to design, coordinate, and integrate programs that advance six long-term goals.¹⁷ These goals, as revised through the Omnibus Energy Bill in 2013, are listed below. (Appendix K details historical results as they relate to the Trust's progress in advancing these goals.)

1. Reducing energy costs, including residential heating costs;
2. Weatherizing substantially all homes whose owners or occupants are willing to participate in and share the costs of cost-effective home weatherization by 2030;
3. Reducing peak-load demand for electricity by 300 MW by 2020;
4. By 2020, achieving electricity and natural gas program savings of at least 20% and heating fuel savings of at least 20%;
5. Creating stable private sector jobs providing alternative energy and energy efficiency products and services in the State by 2020; and
6. Reducing greenhouse gas emissions from the heating and cooling of buildings in the State by 10% below 1990 levels by January 1, 2020.¹⁸

2.4 Principles of Administration

Leading up to the legislative decision to shift responsibility for administering programs to the new, independent Trust, there was robust policy debate about what principles should guide the implementation of programs. A consensus emerged to increase the focus on customers' energy needs; promote independent and objective planning and decision-making; enhance nimbleness and flexibility in program management in order to adjust quickly to changes in energy prices and the emergence of new technologies or program strategies; and promote efficient administration, transparency, and accountability.

These industry best practices were later codified in the Efficiency Maine Trust Act, which directs the Trust to ensure that program design and implementation conform to enumerated "Principles of Administration," in order to be:

- **Consumer-Oriented.** Programs are consumer-oriented such that the processes for participation and program design are targeted to serve the multiple needs of energy consumers in this State;

¹⁷ 35-A MRS §10104(4)(F).

¹⁸ 38 MRS §576.

- **Independent, Objective, Nimble.** The effectiveness of programs is maximized by building up and centralizing expertise, addressing conflicts of interest, mitigating the influence of politics, promoting flexible, timely program management and providing a champion for funding cost-effective energy and energy efficiency programs;
- **Efficient.** The efficiency with which programs are planned, designed, overseen and delivered is maximized; and
- **Sustainable.** Sufficient checks and balances are provided to ensure consistency with public policy and accountability so that energy efficiency programs in the State are sustainable for the long term.¹⁹

The model of using an independent, third-party administrator such as the Trust to help achieve these principles in the administration of efficiency programs and alternative energy programs is becoming more common across the United States. This model is also employed in Delaware, the District of Columbia, Hawaii, New Jersey, New York, Oregon, Wisconsin, and Vermont.

2.5 Other Statutory Directives

2.5.1 PACE Act

The Property Assessed Clean Energy (PACE) Act was enacted in Maine in 2010 to facilitate financing of energy saving improvements in Maine buildings.²⁰ The PACE Act establishes underwriting standards for small loans (up to \$15,000) and authorizes the Trust to administer a program of marketing, financing, and servicing loans for energy upgrades.

2.5.2 Capacity Resource Adequacy

In recent years, the Maine Legislature enacted a provision authorizing the Commission to approve long-term contracts for capacity and energy under specific circumstances.²¹ The purposes of this provision include:

- To reduce electric prices and price volatility for the State's electricity consumers and to reduce GHG emissions from the electricity generation sector; and
- To develop new capacity resources to reduce demand or increase capacity so as to mitigate the effects of any regional or federal capacity resource mandates.²²

Among other things, the Commission may contract with the Trust to deliver energy efficiency capacity resources and the available energy that is associated with such resources.²³

¹⁹ 35-A MRS §10104(2).

²⁰ 35-A MRS §10151 et seq.

²¹ 35-A MRS §3210(C).

²² 35-A MRS §3210(C)(2)(B) and (2)(C).

²³ 35-A MRS §3210-C(6)(A).

2.5.3 Potential Energy Infrastructure Revenues

In 2009, the Maine Legislature established a process for permitting electricity transmission lines or gas pipelines to use the existing rights-of-way along certain state-owned corridors: I-95, I-295, and the Searsport-Loring pipeline easement. The law provides that until July 31, 2017, for a transmission line or pipeline that was permitted to use one of these corridors, a portion of the payments from the project due to the state would be deposited in the Energy Infrastructure Benefits Fund managed by the Trust.²⁴ The statute further directs that the Trust is to use any such proceeds from the Energy Infrastructure Benefits Fund for grants, loans, programs and incentives “[t]o improve the State’s economy by pursuing lower energy costs for people, communities and businesses in a manner that will enhance the environment of the State in accordance with the triennial plan.”²⁵ To date, no payments have been made to the Fund, and no qualifying projects have been permitted that would require payments to the Fund.

2.6 Program Guidelines

The regulatory framework in which the Trust operates starts with the statutory provisions outlined above. This framework is detailed in a series of rules that the Trust has adopted and through program guidelines. The Trust’s rules, codified at Section 95-648 of the Code of Maine Rules, and individual program guidelines are all available on the Efficiency Maine website at www.energymaine.com.

2.7 Oversight from the Public Utilities Commission

The Commission has oversight of the Trust’s program planning and administration,²⁶ and must approve the Triennial Plan. The Commission will approve the Plan if it reasonably explains how the programs will achieve the requirements of the statute and the performance metrics contained in the Plan.

The Commission’s oversight includes evaluating performance of the programs and ratifying the performance metrics if the metrics conform with the statute’s principles of program administration and are in the public interest. The Commission may open an investigation and issue appropriate orders to address concerns of non-compliance. The Commission is empowered to establish a fund to cover the costs of its oversight responsibilities.

2.8 Legislature

The Trust’s committee of jurisdiction in the Maine Legislature is the Energy, Utilities and Technology (EUT) Committee. On December 1 of each year, the Trust presents to the EUT Committee the annual report of the prior year’s activities, results, and financials. On January 30 and July 30 of each year, the Trust also submits to the EUT Committee year-to-date financial updates and the operating budget. By practice, the Trust typically also provides a briefing on the annual report and plans for the year ahead to the EUT Committee early in the year for each legislative session. Periodically throughout a session, the Trust provides briefings, written information, analysis, and testimony about energy issues. Occasionally, when relevant, the Trust offers similar input in other legislative committees, such as the Environment and Natural Resources Committee or the Appropriations Committee. When a Triennial Plan is under

²⁴ 35-A MRS §122(6-A) and (6-B); see also, 5 MRS §282(9).

²⁵ 35-A MRS §10103(4-A).

²⁶ See, generally, 35-A MRS §10104(4) and §10120.

development, the Trust provides an opportunity for the members of the EUT Committee to ask questions and give input.

DRAFT