

95-648 EFFICIENCY MAINE TRUST

Chapter 3: ELECTRIC EFFICIENCY AND CONSERVATION PROGRAMS

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

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## § 1 PURPOSE

The purpose of this Chapter is to implement portions of the requirements of the State's electric energy efficiency and 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 Trust that are funded pursuant to and associated with the implementation of 35-A M.R.S.A. § 10110, 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 Trust pursuant to 35-A M.R.S.A. § 10110(8).

B-1. **Board.** "Board" means the Board of Trustees of the Efficiency Maine Trust.

~~B-2, B-2.~~ **Beneficial electrification.** "Beneficial electrification" means electrification of a technology or process that results in reduction in the use of a fossil fuel, including electrification of a technology or process that would otherwise require energy from a fossil fuel, and that provides a benefit to a utility, a ratepayer or the environment, without causing harm to utilities, ratepayers or the environment, by improving the efficiency of the electricity grid or reducing consumer costs or emissions, including carbon emissions.

**Commented [MS1]:** Definition updated per LD 1724 (2023), Sec. 2, amending 35-A MRSA Sec. 10102 sub 3-A.

B-3. **Commission.** "Commission" means the Maine Public Utilities Commission.

C. **Conservation programs.** "Conservation programs" means programs developed by the Trust pursuant to 35-A M.R.S.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 program to assist low-income customers, or a household that has 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. -

D-1. **Maximum Achievable Cost-Effective Energy Conservation (MACE).** "Maximum Achievable Cost-Effective Energy Conservation" or "MACE" means all cost-effective, reliable, and achievable energy conservation savings for purposes of 35-A M.R.S.A. §§ 10104(4) and 10110(4-A). In this Chapter, the term MACE applies to a quantity of ~~electricity~~energy savings and a budget for Trust programs that is reasonably likely to achieve that savings.

E. **Measure.** "Measure" means a device, 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 Trust pursuant to 35-A M.R.S.A. § 10110(7).
- H. **Small business consumer.** “Small business consumer” means a 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 small non-residential users, including where applicable the small general service and the medium general service customer classes. This excludes any commercial utility accounts designated for large customers, customers who take power at the transmission or sub-transmission voltage, 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, giving consideration to the average number of employees that the business employs annually.
- I. **Triennial Plan.** “Triennial Plan” means the detailed, triennial, energy efficiency, ~~beneficial electrification~~, 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.

**Commented [MS2]:** Per LD 1724 (2023), Sec. 1, enacting 35-A MRSA Sec 3803(2).

### § 3 CONSERVATION PROGRAMS

#### A. Criteria for Conservation Programs

1. The 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 reducing or shifting demand for electricity during peak use~~

~~periods; or balancing load, including by the implementation of beneficial electrification and energy storage systems;~~

**Commented [MS3]:** Amended in 2021 (PL 2021, c. 298, s. 4) at 35-A, Sec 10110(2)(A)(4).

- (e) Reduce total energy costs for electricity consumers in the State by increasing the efficiency with which electricity is consumed; ~~and~~

(f) Are planned and implemented to advance the policy of beneficial electrification as described in the Beneficial Electrification Policy Act at title 35-A of Maine Revised Statutes, chapter 38.

**Commented [MS4]:** This section added per LD 1724 (2023) s. 5 (enacting new provision at 35-A, 10104(2)(E)).

2. The Trust shall:

- (a) Target at least 10% of available program funds or \$2.6 million, whichever is greater, to programs for low-income residential consumers;
- (b) Target at least 10% of available program funds or \$2.6 million, whichever is greater, to programs for small business consumers;
- (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. Triennial Plan**

- 1. The staff shall develop and the Board shall vote to approve a detailed, triennial, energy efficiency, beneficial electrification, 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 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, including residential heating 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;~~
  - (b) For the period beginning January 1, 2020 and ending January 1, 2030, weatherizing 35,000 homes and businesses, with at least 10,000 of such weatherization projects completed in low-income households through the combined efforts of the trust and the Maine State Housing Authority;
  - (c) ~~Reducing peak-load demand for electricity through trust programs by 300 megawatts by 2020; by the maximum achievable cost-effective amount;~~
  - (d) ~~By 2020, achieving~~ Achieving the maximum achievable cost-effective electricity and natural gas program savings ~~of at least 20% and heating fuel savings of at least 20%;~~ as defined in and determined pursuant to the performance metrics approved by the commission under section 10120;
  - (e) ~~Creating stable private sector jobs providing alternative energy and energy efficiency products and services in the State by 2020; and;~~
  - (f) ~~Reducing~~ Contributing to the effort to reduce greenhouse gas emissions ~~from the heating and cooling of buildings~~ in the State by amounts consistent with the ~~State's goals~~ greenhouse gas emission levels established in Title 38, section 576-A and in a manner consistent with the State's climate action plan adopted and updated under Title 38, section 577;
  - (g) Promoting the purchase of high-efficiency heat pump systems to achieve by 2030 the goal of at least 115,000 households in the State wholly heated by heat pumps and an additional 130,000 households in the State partially heated by heat pumps; and
  - (h) Promoting the purchase of battery electric vehicles and plug-in hybrid electric vehicles to achieve by 2030 the goal of at least 220,000 such vehicles registered in the State.
5. The Trust staff shall develop the Triennial Plan with input from the Board, stakeholders, and the Legislature pursuant to the provisions of 35-A M.R.S.A. §10104(4). All interested persons will be invited to file written comments and

**Commented [MS5]:** Updated to reflect the new language in 35-A 10104(4)(F), nearly verbatim, per PL 2021, c. 693, s.7)

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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.

- C. **Conservation Program Portfolio Requirements.** The 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 Trust shall 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. **Cost-effectiveness test.** Programs that are reasonably likely to satisfy the test described in this section are cost effective. The cost-effectiveness test is satisfied when the program benefits exceed the program costs. Costs and benefits shall be considered 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~~ the marginal ~~impact on~~ transmission and distribution costs. These estimates may be differentiated by time periods that influence costs; and shall account for generic system-level avoidable transmission and distribution costs;
    - c) Avoided fossil fuel costs, using estimated savings in oil, gas or other fossil fuel use, at estimated fossil fuel prices; For beneficial electrification measures, all net energy costs shall be accounted for, including savings from avoided heating, transportation or industrial process fuels displaced by the measure;
    - 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,

**Commented [MS6]:** From: LD 1724, Section 8, amending 35-A Sec 10110 sub4-A, Para. D.

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-burnout measures, measure costs are the incremental costs of the energy efficiency measure over an equivalent baseline measure. For retrofit 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 10 year U.S. Treasury securities, plus two hundred basis points, adjusted for inflation.
  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 cost effectiveness test, the 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 Trust may implement a program without satisfying the 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 in Maine statute in implementing the Efficiency Maine Trust Act; and
  3. The entire portfolio of conservation programs produces quantifiable benefits that substantially exceed total portfolio program costs.



## § 5 FUNDING

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 and beneficial electrification in the State at least once every three years.

The Trust shall propose the utility procurement order to be assessed on transmission and distribution utilities necessary to pay for the Trust's portfolio of conservation and beneficial electrification 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 M.R.S.A. §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**Budgets for procurement of MACE resources; cap on procurement amount. 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. 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.

C. **Inclusion of procurement budgets in rates.** When determining the amount of cost-effective electric energy efficiency resources, including beneficial electrification, to be procured under this subsection and included in electric utility rates, 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

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~~in its Triennial Plan as needed to capture all cost-effective electric energy efficiency resources.~~

4. Include all beneficial electrification measures that are cost-effective and reliably reduce electricity rates over the life of the measures.

**Commented [MS8]:** This section added per LD 1724 (2023).

**D. Determining reliable reduction of electricity rates.**

1. In order for a cost-effective, beneficial electrification measure to be included in MACE resources, it must also be determined to reliably reduce utility electricity rates over the estimated useful life of the measure.
2. The estimated useful life of a measure reflects the period of time it will operate once installed. The value for a measure's estimated useful life is determined by the Trust based on manufacturer specifications and field studies, where available, and is recorded in the Trust's Technical Reference Manual.
3. The determination of whether a measure will reliably reduce utility electricity rates shall be made by subtracting the net present value of the projected change in utility costs from the net present value of the projected change in utility revenue, where these changes in revenues and costs are attributable to the operation of a measure over its estimated useful life. If the resulting value is greater than zero, it shall be found to reliably reduce utility electricity rates and be included as a component of MACE resources. The calculation shall compare the net present value of only those revenues and costs collected through transmission and distribution rates, which shall include:
  - a) Changes in utility revenue from incremental electricity sales attributable to the measure;
  - b) Changes in utility costs from the marginal impact on transmission and distribution system costs, which may be differentiated by time periods that influence costs and shall account for generic system-level avoidable transmission and distribution costs;
  - c) Costs of the financial incentive offered by the Trust in promoting adoption of the measure and costs of the Trust to run the incentive program.

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

1. The Trust shall deposit the funds from the utility procurement order, net of amounts allocated to 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.

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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 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 Trust has an agreement or contract pursuant to this section if the 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 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.

## § 6 WAIVER OR EXEMPTION

Upon the request of any person subject to the provisions of this Chapter or upon its own motion, the Trust may waive any of the requirements of this Chapter that are not required by statute. Where good cause exists, the Trust or its designee may grant the requested waiver, provided that the request has been made in writing and approved by the Board, and provided further that granting of the waiver would not be inconsistent with the purposes of Chapter 97 of Title 35-A.

## § 7 FISCAL IMPACT NOTE

There is no cost to municipalities or counties for implementing or complying with this rule.

## STATUTORY AUTHORITY

35-A M.R.S.A. §§10102, 10103, 10104, 10105, 10106, 10109, 10110

## EFFECTIVE DATE

This rule was approved as to form and legality by the Attorney General on [Month, Day, Year].  
It was filed with the Secretary of State on \_\_\_\_\_ and became effective on \_\_\_\_\_.

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