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94-078 ENERGY AND CARBON SAVINGS TRUST

**Chapter 2: ADMINISTRATION OF TRUST, BUDGETING, PROJECT SELECTION
CRITERIA AND PROCEDURES, MONITORING AND EVALUATION
REQUIREMENTS**

SUMMARY: This Chapter establishes administrative and operational requirements for the activities of the Energy and Carbon Savings Trust and its grantees. It includes provisions governing the management of competitive bid processes undertaken by the Trust and of post-grant award evaluation and monitoring of programs and projects funded by the Trust.

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Sec. 1 PURPOSE

The purpose of this Chapter is to implement 35-A M.R.S.A. §10008 and P.L. 2007, C. 317, §18 by establishing the criteria to be used by the Trust in selecting grantees, the requirements for ensuring cost-effectiveness of programs and projects funded by the Trust and procedures for the evaluation of expenditures by an independent entity.

Sec. 2 DEFINITIONS

For the purposes of this Chapter, the following terms have the following meanings:

- A. Administrative Costs.** “Administrative Costs” means costs of the Trust and the Department that are incurred pursuant to 35-A M.R.S.A. §10008 including but not limited to costs of program planning and oversight, costs of securing necessary expertise, costs associated with contract formation and administration, costs of monitoring and costs of enforcing contractual obligations.
- B. Applicant.** “Applicant” means an individual, business, organization, agency or any other entity that submits an application for funding from the Trust Fund administered by the Trust in response to an RFP or PON.
- C. Bid.** “Bid” means a response to an RFP or PON issued by the Trust.
- D. Bidder.** “Bidder” means a person or entity that submits a bid.
- E. Carbon Dioxide Allowance.** “Carbon Dioxide Allowance” means a limited authorization by the Department for the emission of up to one ton of carbon dioxide.
- F. Carbon Dioxide Budget Unit.** “Carbon Dioxide Budget Unit” means a fossil fuel fired generating unit that serves a generator with a nameplate capacity equal to or greater than 25 megawatts.
- G. Collateral Efficiency Opportunity.** “Collateral Efficiency Opportunity” means one or more efficiency measures, in addition to a primary measure to be installed at a customer location or building site, that has a positive benefit-to-cost ratio pursuant to section 5 of this Chapter and that can reasonably be installed at the same time and at lower cost than would otherwise occur, provided there is a physical, mechanical or other substantial nexus between the primary measure and the collateral efficiency opportunity.
- H. Commission.** “Commission” means the Maine Public Utilities Commission.
- I. Cost Effectiveness Criteria.** “Cost Effectiveness Criteria” are tests employed by the Trust in determining whether a project or program expenditure is cost effective, pursuant to section 3(D) of this Chapter.
- J. Customer Class.** “Customer Class” means one of the categories of end-use customers of a transmission and distribution utility.
- K. Department.** “Department” means the Department of Environmental Protection, State of Maine.
- L. Efficiency Maine.** “Efficiency Maine” means electricity conservation programs as administered pursuant to 35-A M.R.S.A. §3211-A.
- M. Electricity Conservation Program.** “Electricity Conservation Program” means a set of services, measures and/or incentives funded by the Trust that reliably reduces the consumption of electricity in the State.
- N. Forward Capacity Market.** “Forward Capacity Market” means the program that presently is in effect that compensates providers of electrical capacity with payments for the availability or reduction of capacity requirements as determined by the regional transmission organization.
- O. Fossil Fuel.** “Fossil Fuel” means natural gas, petroleum, coal or any form of solid, liquid or gaseous material derived from such material.
- P. Fossil Fuel Conservation Program.** “Fossil Fuel Conservation Program” means a set of services, measures and/or incentives funded by the Trust that reliably reduces greenhouse gas

production by the combustion or distribution of fossil fuels through energy efficiency and conservation.

- Q. Grantee.** “Grantee” means the recipient of Trust funding by means of a grant from the Trust.
- R. Maine Energy Conservation Board.** “Maine Energy Conservation Board” means the board established pursuant to 35-A M.R.S.A. §10007 to assist in the development, coordination and integration of planning for the State’s energy conservation efforts and to provide advice and counsel to the Commission and the Trust on carbon dioxide reduction matters.
- S. Measure.** “Measure” means a device or application that is installed resulting in an improvement in the efficiency of energy consumption and/or a reduction in greenhouse gas emissions.
- T. Office of Energy Independence and Security.** “Office of Energy Independence and Security” means the office established pursuant to 2 M.R.S.A. §9.
- U. Program Administrator.** “Program Administrator” means the employee or other designee of the Trust designated to administer contracts between the Trust and service providers and other vendors and consultants.
- V. Program Opportunity Notice.** “Program Opportunity Notice” or “PON” means a document in which the Trust identifies a market sector, geographic area or technology type and solicits proposals from applicants for cost-effective electricity or fossil fuel conservation programs targeted at that sector, area or technology.
- W. Project.** “Project” means a proposal for achieving kilowatt-hour or emission reductions that is customized to achieve efficiencies at a single location or facility and that seeks Trust funds in excess of \$75,000 unless this limitation is waived by the trustees for good cause.
- X. Proposal.** “Proposal” has the same meaning herein as the term “bid”.
- Y. Regional Organization.** “Regional Organization” means the entity that manages the Regional Greenhouse Gas Initiative on a regional basis and with which the Department contracts for related service.
- Z. Regional Transmission Organization.** “Regional Transmission Organization” means the independent system operator that administers and oversees the wholesale electric markets in which the State participates.
- AA. Request for Proposal.** “Request for Proposal” or “RFP” means a document in which the Trust lists: the scope of work for a requested service, such as a program or a project; other requirements of the Trust; and the technical and bid evaluation criteria for selection of a grantee.
- BB. Service Provider.** “Service Provider” means a public or private provider of energy conservation services funded by the Trust or an entity selected by the Trust to contract with such providers or otherwise arrange for the delivery of electricity or fossil fuel conservation programs
- CC. Trade Association Aggregator.** “Trade Association Aggregator” means an entity that gathers individual members of a trade association together for the purpose of receiving electrical efficiency services or bidding on electrical efficiency contracts.
- DD. Transmission and Distribution Utility.** “Transmission and Distribution Utility” means a transmission and distribution utility as defined in 35-A M.R.S.A. §3201, §§ 6, 12 or 16.
- EE. Triennial Energy Efficiency Plan.** “Triennial Energy Efficiency Plan” or “Triennial Plan” means a plan adopted pursuant to 35-A M.R.S.A. §10007(6).
- FF. Trust.** “Trust” means the Energy and Carbon Savings Trust established pursuant to 35-A M.R.S.A. §10008.
- GG. Trust Fund.** “Trust Fund” means the fund established to implement the Trust.
- HH. Trustee.** “Trustee” means a trustee of the Trust.

Sec. 3 DEVELOPMENT OF PROGRAM BUDGETS

- A. Budget Planning.** The trustees shall establish a twelve-month budget for all Trust operational and administrative costs following consultations with the Department, the Commission, the Office of

Energy Independence and Security and the Maine Energy Conservation Board. The twelve-month period for a budget shall be determined by the trustees, need not correspond to the State fiscal year or a calendar year and shall to the extent possible, unless changed circumstances warrant otherwise, reflect the priorities established in the most recent Triennial Energy Efficiency and Conservation Plan adopted pursuant to 35-A M.R.S.A. §10007(6) and §10008(7). Any individual program areas targeted for funding in the budget period shall be identified.

- B. Budget Components.** Each twelve-month budget shall include but is not limited to the following components:
1. Expected total amount of funding in the Trust Fund from all sources, including any revenue generated by Trust-funded programs pursuant to subsection G of this section;
 2. Costs of administering the Trust, and for the State's share of expenses of the Regional Organization's management of carbon dioxide allowance auctions during the budget period, provided that such costs may not exceed the ceiling on administrative funds established at 35-A M.R.S.A. §10008((6)(G));
 3. Amount of funding expected to be available for programs or projects selected through an RFP, PON or other authorized process and awarded to grantees;
 4. Amount of funding required by the Department to fund research for development of new categories of carbon dioxide emission offset projects pursuant to 35-A M.R.S.A. §10008(6);
 5. Amount of funding expected to be provided to the Maine Energy Conservation Board pursuant to 35-A M.R.S.A. §10008(6)(K);
 6. Amount of funding to be held in reserve in the current budget year, for use in a future twelve-month period or to be rebated to customers of transmission and distribution utilities pursuant to 35-A M.R.S.A. §10008(5); and
 7. Any other amount of funding that the Trust intends to disburse in the budget year.
- C. Sector Participation.** To the extent practicable, the trustees will seek to ensure opportunity for members of all customer classes of transmission and distribution utilities and all economic sectors of the State to apply for funding from the Trust and to achieve balance in the award of contracts for projects and programs among such classes and sectors. In seeking to achieve such balance, the trustees may consider whether and to what extent it may be achieved through reliance on other sources of public funding available to a customer class.
- D. Funding Criteria.** Except when otherwise allowed by sections 4(B) and 4(C) of this Chapter, priority for funding under section 7 of this Chapter shall be given to programs and projects that:
1. Reliably reduce greenhouse gas production by fossil fuel combustion in the State at a cost in Trust Funds per unit of emissions that is lower than other bids or proposals; or
 2. Reliably reduce the consumption of electricity in the State at a cost in Trust Funds per kilowatt-hour saved that is lower than other bids or proposals provided that the Trust may calculate reductions in greenhouse gas emissions and reductions in consumption of electricity on a basis other than simply reductions from current levels when the Trust determines it is appropriate to calculate reductions from the level of greenhouse gas emissions or consumption of electricity that would exist if alternative, less efficient technologies were used for the program or project instead of the technologies proposed by the applicant.
- E. Trustee Discretion; Targeting of Funds.** The trustees may target programs or individual projects to a particular geographic area of the State, to a particular customer class or a particular subset of a customer class, and to a particular sector of the State's economy, provided that any such program or project must satisfy the threshold test for screening and evaluation that is set out in section 5 of this Chapter. For purposes of this subsection, the determination as to whether the cost effectiveness test set out in subsection D of this section has been satisfied will be made in relationship to other

programs or projects in the same customer class or subset of a customer class, in the same sector of the economy or in the same geographic area.

- F. Fossil Fuel Expenditure Cap.** In any budget year, the trustees may not allocate a larger amount of the actual and projected Trust Fund dollars to fossil fuel conservation programs than is allowed by 35-A M.R.S.A. §10008(6)(B).
- G. Revenue Generated by a Trust-funded Project or Program.** In the case of a project or program that receives revenue from a Forward Capacity Market, from a Regional Transmission Organization or any other entity, that would not have been received in the absence of Trust funding, such revenue belongs to the Trust on the basis of Trust funding pro rata to the project's or program's total costs.

Sec. 4 GENERAL DESIGN CRITERIA

- A. Design Criteria for Projects and Programs.** Subject to the provisions of sections 6 and 7 of this Chapter, the trustees shall only consider for funding electricity and fossil fuel conservation projects and programs that have net present value benefit-to-cost ratios greater than 1.0 pursuant to section 5 of this Chapter and, among proposals that fulfill that screening criterion, shall make final selections of grantees based on section 7(C) of this Chapter.
- B. Collateral Efficiency Opportunities for Programs.** In the case of programs that involve collateral efficiency opportunities as defined in section 2(G) of this Chapter, applications for funding such programs must supply the information required in section 6(D) of this Chapter. If the program would satisfy the cost-effectiveness test in section 3(D) of this Chapter without the collateral efficiency opportunities, the trustees may fund the program with one or more of the collateral efficiency opportunities included, even if section 3(D) would not be satisfied with the inclusion of the collateral efficiency opportunities. In making this decision, the trustees may consider whether the collateral efficiency opportunities would likely be lost if not funded in connection with the program.
- C. Collateral Efficiency Opportunities for Projects.** In the case of applicants seeking funding for projects as defined in section 2(W) of this Chapter, the trustees shall allow project applicants proactively to identify possible collateral efficiency opportunities, along with one or more separate requests for Trust funding of such opportunities. The trustees may propose to the applicant the inclusion of one or more such opportunities, along with sufficient additional funding to cover the costs of pursuing those opportunities.
- D. Coordination with Triennial Energy Efficiency Plan or Interim Plan.** Subject to the provisions of section 10 of this Chapter, the trustees shall seek to fulfill the purposes and goals of any Interim or Triennial Energy Efficiency Plan that is adopted for a budget year or a three-year budget cycle, as it pertains to Trust-funded programs.
- E. Reliance on Other Competitive Bid Processes.** In selecting a service provider or grantee, the trustees may, in their discretion, rely upon the outcome of a competitive bid process undertaken for selection of service providers or grantees for Efficiency Maine programs.

Sec. 5 THRESHOLD CRITERIA FOR PROPOSAL SCREENING

- A. Programs or Projects Designed to Reduce Electricity Consumption**

- 1. Modified Societal Test.** Eligibility to be considered for funding pursuant to section 4(A) of this Chapter for a program or project designed to reduce kilowatt-hour consumption shall be determined by means of this subsection. Electricity conservation programs that are reasonably likely to have a positive net present value will be deemed to have passed the threshold test for eligibility to compete for funding by the Trust. Costs and benefits will be considered regardless of whether they are paid or experienced by the participant, the Trust or any other individual, business, government agency or other entity.
- 2. Program Benefits.** The test that is applicable for screening applications for Trust funding is a modified societal test under which program benefits include, without limitation, the following:

 - a. Electric generation costs** that will not be incurred as a result of the program or project. These include 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. Transmission and distribution costs** that will not be incurred as a result of the program or project, using estimates of transmission and distribution utility marginal transmission and distribution costs. These estimates may be differentiated by time periods that influence costs;
 - c. Fossil fuel costs** that will not be incurred as a result of the program or project, 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; and
 - e. Non-resource benefits** such as reduced operations and maintenance costs, job training opportunities and workforce development, general economic development and environmental benefits, to the extent that such benefits can be accurately and reasonably quantified and attributed to the program or project.
- 3. Program Costs.** Program costs will include the following:

 - a. Direct program costs**, including program design, administration, implementation, marketing, evaluation and other reasonably identifiable costs associated with the program or project;
 - b. Measure costs**, such as the incremental costs of an energy efficiency measure, including installation, over an equivalent baseline measurement, in the case of new construction or replacement programs. In the case of retrofit programs, measure costs are the full costs of the energy efficiency measure, including installation, less any salvage value for the replaced measure; and
 - c. Ongoing customer costs**, including costs such as increased operation and maintenance costs and lost economic development opportunities, to the extent that such costs can be accurately and reasonably quantified and attributed to the program or project.
- 4. Net Present Value.** Satisfaction of the modified societal test shall be determined based on the net present value of the costs and benefits over the expected life of each measure. The discount rate used for present value calculations shall be the current yield of long-term U.S. Treasury securities (ten years or more), adjusted for inflation.
- 5. Post-program effects.** For those programs or projects that are expected to influence the development of self-sustaining markets, calculations under this section will be for a reasonable additional period after the program is terminated in order to capture post-program market effects.

B. Programs or Projects Designed to Reduce Greenhouse Gas Emissions

1. **Modified Societal Test.** Eligibility to be considered for funding pursuant to section 4(A) of this Chapter for fossil fuel conservation programs shall be determined by this subsection. Fossil fuel conservation programs and projects that are reasonably likely to have a positive net present value will be deemed to have passed the threshold test for eligibility to compete for funding by the Trust. Costs and benefits will be considered regardless of whether they are paid or experienced by the participant, the Trust or any other individual, business, government agency or other entity.
2. **Program Benefits.** The test that is applicable for screening applications for Trust funding is a modified societal test under which program benefits include, without limitation, the following:
 - a. **Reduced greenhouse gas emissions** measured in reductions by ton in loading of carbon dioxide or other greenhouse gases in the atmosphere from locations in the State;
 - b. **Fossil fuel costs that will not be incurred** as a result of the program or project, using estimated savings in oil, gas or other fossil fuel use, at estimated fossil fuel prices;
 - c. **Other resource benefits**, such as the value of reduced water and sewer costs and reduced electrical consumption; and
 - d. **Non-resource benefits**, such as reduced operations and maintenance costs, job training opportunities and workforce development, general economic development and environmental benefits, to the extent that such benefits can be accurately and reasonably quantified and attributed to the program or project.
3. **Program Costs.** Program costs will be the same as identified in subsection (A)(3) of this section.
4. **Net Present Value.** Satisfaction of the modified societal test shall be determined in a manner identical to subsection (A)(4) of this section.
5. **Post-Program Effects.** Post-program effects will be determined in a manner identical to subsection (A)(5) of this section.

Sec. 6 CONTRACT APPLICATION PROCESS

- A. **Applications for Contracts with the Trust.** The trustees shall periodically conduct a competitive bid process by means of a RFP or PON that solicits bids for contract awards pursuant to section 7 of this Chapter. To the extent practicable, the Trust will accept bids electronically. The Program Administrator will accept and retain custody of all timely bids under this section. For each bid, the Program Administrator shall keep a written record of the bidder's name, the date and time that the bid was received, the cost and/or price of the bid, any amount of customer funding or non-Trust matching funds and the bidder's contact person. The bids received in response to an RFP or a PON shall be treated as confidential and not subject to public disclosure until the date of a final contract award in that competition. Upon a showing by a bidder that legal grounds exist to maintain the confidentiality of identified information beyond the contract award date, the Trust shall continue to treat that information as confidential after that date, to the extent permitted by law.
- B. **Rejection of Noncompliant or Untimely Bids; Rejection of All Bids.** The Trust may reject all bids that do not comply with the requirements of this Chapter or of the RFP competition or PON process, or that are not submitted before the deadline for submitting bids established pursuant to section 7 of this Chapter. The Trust may reject all bids if it finds that the bids are unreasonably high in cost or that acceptance of any bid will not be in the public interest.

- C. Notice of RFP and PON.** The Program Administrator will maintain a service list of persons who are to be notified whenever the Trust issues an RFP or PON. The Trust will reasonably advertise each RFP or PON and arrange its posting on any website established for the Trust.
- D. Treatment of Opportunities for Collateral Efficiency.** Each bid for a program must supply the necessary information for the cost effectiveness criteria set out in section 3(D) of this Chapter to be applied both to the program standing alone, and for an expanded program that includes significant collateral efficiency opportunities at the same customer location or site. In evaluating bids and proposals in a competitive bid process or a PON when the benefits of two such bids or proposals are relatively equivalent, the trustees may give preference to applications that secure efficiency improvements or emission reductions from both primary measures and from collateral efficiency opportunities.

Sec. 7 CONTRACT SELECTION PROCESS

(Note: this section is now addressed by 95-648 Ch. 1, effective October 4, 2010)

- A. ~~Development of RFP or PON.~~** ~~When the Trust is to select a service provider by competitive bid, it shall develop and issue an RFP or PON.~~
- ~~1. Each RFP will contain sufficient information to permit bidders to develop responsive proposals. This information shall include at a minimum:

 - ~~a. a general description of the size of the final grant award or grant awards;~~
 - ~~b. the required content and format of bids;~~
 - ~~c. a list of the bid evaluation criteria and scoring weights to be applied;~~
 - ~~d. the date, time and place that the proposal or bid is due; and~~
 - ~~e. the name, address and contact information for the Program Administrator.~~~~In each RFP the Trust will establish reasonable timeframes for the submission of bids, the evaluation of bids and the selection of grantees.~~~~
 - ~~2. Each PON will be a formal request for programs or projects that require responders to detail their own approach for maximizing emission or electricity reductions at the lowest cost in Trust Funds invested provided that other cost effective collateral efficiency opportunities are addressed to the extent required by sections 4(B) and 4(C) of this Chapter. The responder to a PON is responsible for providing a detailed statement of work and must provide an exact amount of customer contribution or non Trust matching funds that will be committed to the program or project.~~
- B. ~~Other Types of Solicitations.~~** ~~The Trust may select a service provider for one or more electricity conservation or fossil fuel conservation programs, or for its own management of Trust programs, without employing a competitive bid process if the trustees find that the selection by another solicitation process will promote the efficient and effective delivery of the Trust's program and is consistent with the Trust's authorizing legislation and the public interest. Any decision to use sole source procurement for a contract valued at \$10,000 or more must be made by a majority vote of the trustees. The trustees may delegate to the Program Administrator authority to use sole source procurement for a contract whose value is less than \$10,000.~~

- C. Bid Award and Selection Criteria.** The criteria for selecting grantees and awarding contracts shall be set forth in each RFP or PON and shall be consistent at all times with the provisions of section 3(D) of this Chapter. Criteria may include:
1. Cost in Trust Funds committed, supplemented whenever possible with customer funding or non Trust matching funds;
 2. Expected amount of kilowatt hour reductions, reductions in peak electrical demand and/or expected amount of reduced greenhouse gas emissions;
 3. Specification as to the approach to be used by a program applicant to capture collateral opportunities if so required pursuant to sections 4(B) and 6(D) of this Chapter;
 4. The experience, financial viability and qualifications of the bidder or applicant;
 5. The extent to which the proposal promotes the development of resources, job training, infrastructure and a skilled workforce within the State;
 6. The extent to which the proposal addresses components or priorities in the Interim Plan or the Triennial Plan under section 10 of this Chapter;
 7. Responsiveness to the terms of the RFP or PON; and
 8. Other factors as the trustees may determine.
- D. Proposal Review Team.** Bids or responses to each RFP or PON will be reviewed and evaluated by a Proposal Review Team to be comprised of no fewer than three persons. The chairperson of each Proposal Review Team shall be the Chairman of the Trust or his/her designee. The Chairman of the Trust or his/her designee will select the other members of the team, which may, but is not required to, include representatives or employees of the Maine Energy Conservation Board, the Trust or Efficiency Maine. All members of the Proposal Review Team must be persons who have training and experience relevant to the electricity or fossil fuel conservation programs for which the RFP or PON solicited bids. The Proposal Review Team will document the scoring and the substantive information that supports the scoring, and recommend one or more winning bidders or proposals for final selection by the trustees.
- E. Review Process.** The Proposal Review Team may take any of the following steps in its evaluation of one or more of the bids received:
1. Consult with prior clients or other informed individuals on the performance of firms or particular persons proposed for contract work;
 2. Schedule presentations or interviews with representatives of the firms or persons proposed for contract work;
 3. Conduct a review of past performance, including a review of reports, analyses or other materials that could reflect on the bidder's or applicant's performance;
 4. Request additional data or material to assist in the evaluation of a bid; and
 5. Conduct limited discussions with all bidders or a subset of bidders that have been determined to have superior bids and enter into negotiations for a "best and final" offer with selected bidders prior to a final contract award.
- F. Contract Notification.** The Program Administrator shall provide written and electronic notice to all bidders in a competitive bid process identifying the successful bidder or bidders a minimum of 14 days prior to the date of contract effectiveness. The Program Administrator shall provide notice to the public at the same time as notice is provided to applicants and bidders under this subsection.
- G. Contract Terms.** The Trust may develop and use a Standard Contract for funding projects and programs. Any such contract may include the following provisions and contract terms:
1. A liquidated damages provision to be paid by the grantee in the event of non performance of the contract;

- ~~2. A *Force Majeure* clause that establishes the types of events that may excuse non-performance on the part of the Trust or the grantee;~~
- ~~3. A re-opener provision that establishes the rights of either party to reopen negotiation of contract terms, including pricing and payment, in the event of a material change in circumstances or the unavailability of funds;~~
- ~~4. Reporting provisions; and~~
- ~~5. The grantee's consent to monitoring and evaluation activities undertaken by the Trust pursuant to sections 8 and 9 of this Chapter.~~

H. Appeals of Contract Award Decisions.

- ~~1. **Request for Reconsideration.** An aggrieved bidder may request reconsideration of a contract award decision by filing a written petition with the Program Administrator within 14 days of the notification of contract award. The Trust shall not execute any contract award until the time for filing a petition for reconsideration has expired.~~
- ~~2. **Petition.** Each request for reconsideration must contain the award decision being appealed, the name of the aggrieved person and the reason that the contract award decision should be reversed.~~
- ~~3. **Review of Petition; Burden.** The trustees will review and decide all petitions requesting reconsideration, provided that they may designate a third party or parties to substitute for an individual trustee in the event of scheduling conflicts or extenuating circumstances. A petition to reconsider will be denied unless the petitioner persuades the Trust that in making the contract award decision, the Proposal Review Team:

 - ~~a. Committed a material violation of statutory law;~~
 - ~~b. Committed irregularities resulting in fundamental unfairness;~~
 - ~~c. Acted in an arbitrary or capricious manner; or~~
 - ~~d. Made factual errors that affected the evaluation of the Petitioner's bid.~~
 The petitioner has the burden of demonstrating that reconsideration should be granted.~~
- ~~4. **Final Action.** A denial by the Trust of a petition to reconsider a contract award decision constitutes final action by the Trust.~~
- ~~5. **Reversal.** If the trustees and/or any designee of a trustee find by a majority vote that the petitioner has made the demonstration required by paragraph 3 of this subsection, the trustees, including any designees, may either:

 - ~~a. Reverse the contract award decision and alternatively:

 - ~~i. Remand the matter to the original or a newly constituted Proposal Review Team to review the original bids and award a contract consistent with the Trust's reconsideration decision;~~
 - ~~ii. Undertake a new RFP or PON; or~~
 - ~~iii. Decide not to proceed with the program or project; or~~~~
 - ~~b. Grant the award being sought by the aggrieved bidder~~~~
- ~~6. **Stay.** The trustees are not required to stay the execution of contracts pending the resolution of a request for reconsideration if they determine that the execution of the contracts will not prejudice the rights of the petitioner, should it prevail in its reconsideration request.~~

Sec. 8 GRANTEE REPORTING AND MONITORING

- A. Reporting.** Each grantee who has received a contract award from the Trust is responsible for submission of reports in writing to the Program Administrator, on a schedule for reporting determined by the Trust, with the following information and such other information as the Program Administrator may prescribe:

1. Total amount of estimated reductions of greenhouse gas emissions as a result of Trust-funded programs or projects; and
 2. Total amount of actual reductions in consumption of electricity in kilowatt-hours and, when known, reductions in kilowatts of peak electrical demand as a result of Trust-funded programs or projects.
- B. Additional Reporting Requirements for Programs.** Each grantee who has received a contract award for a program must also provide the following additional information to the Trust's Program Administrator and such other information as the Program Administrator may prescribe:
1. In the case of programs affecting carbon dioxide budget units or other sources emitting greenhouse gasses, specification of all improvements in carbon dioxide emissions and/or energy efficiency;
 2. The possibility of maximizing savings resulting from the methodology of a particular grantee if that methodology were to be applied in a systematic manner to suitable locations throughout the State; and
 3. The extent to which the grantee has served customers in more than one customer class of a transmission and distribution utility or more than one sector of the State's economy.
- C. Monitoring.** Each grantee will accommodate periodic visits by Trust employees or contractors for the purpose of verifying the accuracy of quarterly reports and the cost-effectiveness of programs and projects paid for by the Trust.

Sec. 9 INDEPENDENT PROGRAM EVALUATION

A. Periodic Evaluation of Trust-funded Programs and Projects.

The Trust shall arrange for the performance of periodic and comprehensive evaluations of the cost-effectiveness of all programs and projects that it has funded pursuant to this Chapter. These evaluations shall be undertaken by means of contracts with one or more independent program evaluators establishing the criteria for evaluation of grantees, areas of particular scrutiny and levels of sampling for verification of estimates and required deliverables in the contractor's final report to the Trust. Each evaluation must include an audit of the program or project and an evaluation of its effectiveness in meeting the goals of this Chapter.

B. Periodic Competitive Bid Processes. The Trust will select one or more independent program evaluators in a manner consistent with section 7 of this Chapter. No current employee of the Trust, the Commission, the Department, the Office of Energy Independence and Security or Efficiency Maine is eligible to participate as part of a bid submitted in a competitive bid process under this section.

C. Scheduling of Independent Program Evaluation. The trustees may establish any schedule for conducting an Independent Program Evaluation of major programs and projects as long as the Independent Program Evaluation is completed prior to the commencement of the second or subsequent Triennial Plan under section 10 of this Chapter. For the purposes of this section, "major programs and projects" means activities funded with an annual budget of \$500,000 or more.

Sec. 10 TRIENNIAL ENERGY EFFICIENCY AND CONSERVATION PLAN

- A. Plan Preparation.** The trustees shall participate in the preparation and adoption of a periodic Triennial Energy Efficiency and Conservation Plan. An initial draft of the components of a Plan to be funded by the Trust shall be undertaken in conjunction with the Maine Energy Conservation Board, pursuant to 35-A M.R.S.A. §§10007(6) and 10008(7) and the final Plan shall be presented to the Board for its review.
- B. Plan Adoption.** The trustees may designate employees, staff or contractors of the Trust to participate in the preparation of a Triennial Plan or to substitute for one or more trustees in the Plan's preparation, provided that the vote required of each trustee in the final adoption of a Triennial Plan must be made by that trustee.
- C. Interim Plan.** Prior to the adoption of the first Triennial Energy Efficiency and Conservation Plan pursuant to this Chapter, the trustees shall cooperate with the Maine Energy Conservation Board in consultation with the Department, the Office of Energy Independence and Security and the Commission to create an Interim Plan establishing general program areas in which individual bid competitions, RFP's, PON's and sole source contract arrangements may be undertaken with service providers during the budget year. In designating program areas in an Interim Plan, the trustees may consider the following:
- 1. Potential to develop capacity** for the delivery of cost-effective programs in the future in a more economical and efficient manner by funding programs that demonstrate program feasibility and are likely to reduce delivery and oversight costs in the future;
 - 2. Promotion of job training,** workforce development and general economic development in the State where practicable, consistent with the Trust's legislative authority pursuant to 35-A M.R.S.A. §10008;
 - 3. Consistency with delivery models** in other states participating in the Regional Greenhouse Gas Initiative in order to permit service providers to offer programs or projects benefiting from increased economies of scale; and
 - 4. Record of program successes,** in this State or elsewhere; that increase the likelihood of more rapid implementation, increased cost effectiveness or the capture of collateral efficiency opportunities if a specific program, project or service receives Trust funding.
- D. Public Comment.** Prior to adopting the components of the Interim Plan or of a Triennial Plan, the trustees will solicit and accept comment from the public.

Sec. 11 PROCEDURES FOR REBATES TO CONSUMERS

- A. Department Notice.** At such time as the Trust receives notice from the Department that carbon dioxide allowances have traded in an auction conducted by the Regional Organization at a level in excess of the statutory emission allowance value established pursuant to 35-A M.R.S.A. §10008(5), the trustees shall request that the Department quantify in writing the total amount of revenue for which the State is eligible in that auction that corresponds to proceeds above that level.
- B. Trust Transfer.** The trustees shall cooperate with the Commission in arranging for the transfer to the Commission of the amount identified in the preceding subsection.

Sec. 12 WAIVER OR EXEMPTION

Upon the request of any person subject to the provisions of this Chapter or on its own motion, the Trust may waive any of the requirements of this Chapter that are not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or 35-A M.R.S.A. §10008. Where good cause exists, the Trust or its designee may grant the requested waiver.

CONCISE SUMMARY / BASIS STATEMENT

This rule establishes administrative and operational requirements for the activities of the Energy and Carbon Savings Trust and its grantees. It includes provisions governing the management of competitive bid processes for awarding contracts and grants funded by the Trust and requirements for post-grant award monitoring and evaluation of programs and projects that receive Trust funding.

STATUTORY AUTHORITY: 35-A M.R.S.A. §10008 *et seq.*

EFFECTIVE DATE:

This rule was approved as to form and legality by the Attorney General on January 12, 2009. It was filed with the Executive Director of the Legislative Council as a Major and Substantive Rule and was provisionally adopted by the Energy and Carbon Savings Trust on December 31, 2008. Following enactment of legislation approving the rule as filed with one amendment at section 3(D), the final amended rule was filed with the Secretary of State on May 29, 2009 (filing 2009-209) for effectiveness on June 28, 2009.

HISTORY NOTES FROM THE SECRETARY OF STATE:**PROPOSAL:**

Published November 12, 2008 as 2008-P315 (major substantive)
Deadline for comments: December 15, 2008

PROVISIONAL ADOPTION (MAJOR SUBSTANTIVE):

Filed January 12, 2009 as LR-2009-4

FINAL ADOPTION (MAJOR SUBSTANTIVE):

Accepted for filing May 6, 2009 as 2009-185, to be effective June 5, 2009
Corrected filing accepted May 29, 2009 as 2009-209, effective June 28, 2009

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