



Memorandum

February 28, 2024

To: Board of Trustees
From: Michael Stoddard, Executive Director
Re: Adoption of Proposed Amendments to Chapter 3 – Electric Efficiency and Conservation Programs

I. Summary

This memorandum presents the factual and policy basis for the proposed amendments to Chapter 3 – the Rule for Electric Efficiency and Conservation Programs of the Efficiency Maine Trust (the Trust).

II. Background

In June 2023, the Legislature passed L.D. 1724, *An Act to Enact the Beneficial Electrification Policy Act* (PL 2023, c. 328, or the Act). The Act amends the statute governing the activities of the Trust, with principal changes appearing at 35-A M.R.S.A. § 10104 and § 10110. The Act directs the Trust to plan and implement programs to advance the policy of beneficial electrification. In furtherance of this goal, the Act requires the inclusion of certain cost-effective beneficial electrification measures in the determination of maximum achievable cost-effective (MACE) electric energy efficiency resources in the Trust's Triennial Plan. Proposed amendments to Chapter 3 of the Trust's rules reflect the changes to the statute and explain how the Trust will determine the extent to which cost-effective beneficial electrification measures should be included among the MACE electric energy efficiency resources to be factored into the Trust's Triennial Plan budgets.

In recent years, the Legislature has enacted other amendments to sections of 35-A M.R.S.A. § 10104 and § 10110 describing general objectives of the Trust's conservation programs. These enactments include the codification of certain goals of State's climate action plan as well as updates to criteria for the Trust's electric conservation programs. Proposed amendments to Chapter 3 also update the rule to reflect these amendments to the statute.

Over the past year, the Trust's staff (Staff) has researched and vetted approaches to implement the requirements of the Act. Staff has reviewed the regulation of funding for beneficial electrification measures in other jurisdictions with the assistance of third-party experts. Staff has discussed its proposed approach with relevant stakeholders in Maine, including the transmission and distribution utilities and the Public Utilities Commission staff. Staff provided updates to the Board on the Act and on activities to prepare amendments to Chapter 3 of the Trust's rule in meetings of the Board in August, October, November, and December of 2023 and in January of 2024.

Staff submitted an official rulemaking proposal package to the Secretary of State on November 21, 2023. The Public Notice of Rulemaking Proposal was first published online and in local newspapers on

November 29, 2023 and was emailed, with a link to a Trust webpage hosting the proposed rule text, to the contacts who receive notices of all official Board meetings and to other interested parties. A winter storm required the postponement of a public hearing scheduled for December 19, 2023. To provide notice of the rescheduled public hearing and of an extension in the deadline for parties to submit written comments, the Trust submitted an updated rulemaking proposal package to the Secretary of State on December 21, 2023. The updated Public Notice of Rulemaking Proposal was published online and in local newspapers on December 27, 2023, and was again emailed to contacts who receive notices of all Board hearings and to other interested parties. The Trust held a public hearing on January 16, 2024 and accepted written comments through January 26, 2024.¹

A written summary of the comments the Trust received is provided as an attachment to this statement of factual and policy basis.

III. Summary of Key Elements

A. Definitions

Section 2 of the proposed rule incorporates the definition of “Beneficial Electrification” provided in 35-A M.R.S.A. § 10102(3-A), as amended by the Act. The definition, applied to the rule directly from the statute, identifies the scope of activities that may be considered beneficial electrification. The proposed rule also adds to the term “beneficial electrification” the definition of “Triennial Plan” included in subsection I. This addition reflects the Act’s elevation of support for beneficial electrification as an organizing purpose for the Trust’s activities. A clarifying edit to “Maximum Achievable Cost-Effective Energy Conservation (MACE)” reflects the Act’s directive that, for beneficial electrification measures, the Trust shall account for all net energy costs including savings from avoided fuels displaced by the measure.²

B. Conservation Programs

Proposed amendments to Section 3 align the rule with recent revisions to the statute articulating general criteria and goals for Trust programs. Proposed changes to subsection A(1)(d) align the rule with 35-A M.R.S.A. § 10110(2)(A)(4), as amended by PL 2021, c. 298, *An Act to Advance Energy Storage in Maine*. New subsection A(1)(f) is proposed in accordance the addition to the statute of new part 35-A M.R.S.A. § 10104(2)(E). Proposed amendments to subsection B update the rule to reflect the current language in 35-A M.R.S.A. § 10110(F), as revised by PL 2021, c. 209, *An Act To Resolve Conflicts in and Make Other Changes to the Laws Governing the Efficiency Maine Trust*, and by PL 2021 c. 693, *An Act To Transition State and Local Motor Vehicle Fleets to Plug-in Hybrid Vehicles and Zero-emission Vehicles*.

¹ All comments filed in the rulemaking can be obtained from the Trust’s webpage, www.energymaine.com/rulemaking/.

² Add

C. Cost Effectiveness

The proposed rule makes no change to the structure of the cost-effectiveness test for the Trust's Electric Efficiency and Conservation Programs. The revisions proposed to subsection 4(A)(1)(b) align the description of the determination of "benefits" associated with avoided transmission and distribution costs with the approach the Trust already employs. This approach is consistent with 35-A M.R.S.A. § 10110(4-A)(B), as amended by PL 2019, c. 313. This 2019 legislation had provided additional direction regarding the development and application of avoided costs in evaluations of electric MACE.

Pursuant to the requirements of Section 8 of the Act, the proposed rule amends the benefits that must be considered in assessments of the cost-effectiveness of beneficial electrification measures. The proposed revision to subsection 4(A)(1)(c) clarifies that, for the purposes of beneficial electrification measures only, determinations of measure cost-effectiveness shall account for all net energy costs, including savings associated with fuels displaced by the measure.³ This amendment applies language directly from Section 8 of the Act.⁴

D. Funding

Amendments to subsection 5 of Chapter 3 explain how the Trust will implement the Act's requirements for the inclusion of beneficial electrification measures in the determination of MACE electric energy efficiency resources. The proposed rule retitles subsection 5(B) and divides it into parts to improve clarity. The proposed amendment to subsection 5(B) reorders existing language from the rule to offer a consolidated description of the approach the Trust must take in preparing budgets in the development of Triennial Plans. These amendments do not change the operation of the existing rule. Proposed new subsection 5(C) amends the current rule to incorporate language from the Act describing the beneficial electrification measures that must be included in the determination of MACE resources.⁵ As articulated in proposed new subsection 5(C)(4), only those beneficial electrification measures that are cost-effective *and that reliability reduce electricity rates over the life of the measures* shall be included in determinations of MACE resources. Beneficial electrification measures that either fail to screen for cost-effectiveness or that fail to be determined to reliably reduce electricity rates cannot be included in budgets for MACE electric efficiency opportunity.

While subsection 3 of the Trust's rules already provides a structure for the assessment of cost-effectiveness of individual measures, a new methodology is required to assess whether a measure will reliably reduce electricity rates over the life of the measure. Proposed new subsection 5(D) outlines the Trust's approach to conducting this assessment. It also describes the specific steps by which a calculation will compare the net present value of those revenues and costs collected in transmission and distribution (T&D) rates that are attributable to a measure over that measure's useful life. The proposed rule identifies three categories of such revenues and costs:

³ 35-A M.R.S.A. § 10110(4-A)(D).

⁴ 35-A M.R.S.A. § 10110(4-A)(D).

⁵ 35-A M.R.S.A. § 10110(4-A)(D).

- Changes in utility revenue collected in T&D rates attributable to whether the measure results in the addition or removal of electricity load;
- Changes in utility costs resulting from the marginal impact of the measure on T&D system costs. This language is consistent with the proposed update to subsection 4(A)(1)(b), which describes how avoided transmission and distribution costs shall be considered for the purposes of the benefit-cost test; and,
- The Trust’s costs incurred to offer a financial incentive and to administer a program to offer that incentive, where those costs are included in the electric efficiency procurement collected from ratepayers.

Subsection 5(D)(2) clarifies that the measure life over which revenues and costs are compared will be drawn from the Trust’s Technical Reference Manuals.⁶ Only those beneficial electrification measures for which the net present value of the change in utility revenues exceeds the net present value of the change in utility costs over the life of those measures are included in the determination of MACE resources.

IV. FISCAL AND ECONOMIC EFFECTS

“Fiscal Impact” is defined in Maine statute as “the estimated cost to municipalities and counties for implementing or complying with the proposed rule.”⁷ Following guidance in Maine statute, Staff expects no fiscal impact on municipalities or counties and indicated this finding in the proposed rule.⁸

V. RULEMAKING PROCEDURES

Pursuant to 35-A MRSA § 10208, this rule is considered to be a “routine technical rule” as defined in Title 5, chapter 375, subchapter 2-A.

VI. PROPOSED MOTION

Accordingly, we move to approve the following decision and directions

1. That Chapter 3, Electric Efficiency and Conservation Programs, amended as described in this memorandum, is hereby adopted;
2. That the Executive Director shall submit the adopted rule and related materials to the Attorney General for review and authorization;
3. That the Executive Director shall notify the following of the adoption of the rule:
 - a. All transmission and distribution utilities in the State;

⁶ <https://www.energymaine.com/about/library/policies/>

⁷ 5 MRS §8063.

⁸ See, 5 MRS § 8057-A(1)(C),

- b. All persons who attended the public hearing and commented in this Rulemaking.

Dated at Augusta, Maine, February 28, 2024.

BY AFFIRMATIVE VOTE OF THE BOARD OF TRUSTEES

Michael D. Stoddard
Executive Director