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NRCM Comments on Efficiency Maine Trust Draft Rule Changes: Chapter 3, Electric Conservation Programs & Chapter 4, Natural Gas Conservation Programs

Mr. Stoddard,

Thank you for the opportunity to provide comments on the draft rules. The Natural Resources Council of Maine (NRCM) supports the effort by the Efficiency Maine Trust (öTrustö) to update rules which it inherited from the Public Utilities Commission when administration of energy efficiency programs was transferred in 2009. As you know, the laws governing energy efficiency programs have evolved since the rules were last amended.

NRCM recognizes that the amendments are not meant to reflect substantial policy changes, and most of them simply incorporate relevant statutory criteria that are new since the rules were last amended. We believe the time is coming soon for a larger conversation about the definition of cost-effectiveness, and that conversation should include a broader set of stakeholders, including policymakers and regulators. That does not preclude the more minor clean-up proposed by the Trust at this time.

While NRCM supports the changes overall, there are several areas that could use clarification and a few draft changes to the rules that we strongly opposeö both of them are substantive changes that are not in line with the more technical changes the draft rules generally represent.

I. Electric Efficiency and Conservation Programs

Some of our comments and recommendations for Chapter 3 (formerly Chapter 380), below, are meant to help clarify the rule. However, NRCM strongly objects to two proposed changes of a more substantive nature that should not be made.

First, NRCM opposes the use of a single utility rate class as the definition of ösmall business consumer.ö This change would lock in a very narrow definition of small business that has negative implications for program design and maximizing energy savings, and eliminates the flexibility the Trust should retain for managing program eligibility.

To the extent a definition is needed to measure compliance with statutory funding allocations, it is unlikely that lawmakers intended for this kind of definition to be used. The definition would

exclude approximately 12,000 Maine businesses in the Medium General Service rate classes, many, if not most, of which would be considered small businesses by policymakers, business owners and the general public. Many, if not most, would be considered small businesses by the U.S. Small Business Administration, which uses a definition that is based on employment (i.e. less than 50 people) or gross revenue (varies by sector.)

Setting this more narrow definition makes it harder for the Trust to comply with the 10% funding requirement in law.

The proposed definition of small business would be at odds with eligibility for small business programs administered across New England and elsewhere. We are not aware of any jurisdiction where the cutoff for a small business program is less than 100 kilowatts. As NRCM will describe at greater lengths in comments on the next Triennial Plan, having an extremely narrow definition of small business makes it much harder to reach businesses that most would consider "small". It limits energy savings opportunities. Furthermore, having a narrow definition that is based on an esoteric factor such as electric rate class effectively excludes would-be allies from promoting energy efficiency programs designed for small business.

The Trust has not justified using a definition that a) makes statutory compliance harder; b) conflicts with more common definitions and probably legislative intent; and c) limits energy savings potential through broader access to small business programs. Even the contention that only very small businesses need "extra help" through a dedicated small business program has not been supported with evidence. And again, this should be established through program criteria, not in rule. For the Trust to set a definition in rule at this time would short-change the process of deliberation and public input that is ongoing with regard to the next Triennial Plan.

We would support the continued use of the U.S. Small Business Administration definition. We recognize that many jurisdictions use small business definition based on peak load (such as 100 or 200 KW). While NRCM would not oppose a more inclusive definition based on peak load, we reiterate that setting a narrow definition in rule limits the Trusts program flexibility. If the Trust wants to retain program design flexibility, it should use a higher threshold (100-200 KW) and state explicitly that the definition of small business in the rule is solely for the purpose of satisfying §3 A(2).

Second, NRCM opposes inclusion of an arbitrary discount rate in rule, especially one that is so high (8.5%) and out of step with regional best practices. Maine law on "Electric efficiency and conservation programs" requires 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." (35-A MRSA 10110, sub- 4-A).

Among other things, the proposed discount rate is inconsistent with regional best practices, which use a societal discount. U.S. Treasury rates are used in the regional Avoided Energy Supply Cost (AESC) analysis prepared every few years for program administrators across New England, including the Trust. Like past years, the 2018 AESC uses a societal discount rate based on U.S. Treasury rates plus inflation. (2018 AESC, p. 346.) (In 2018, they use a blend of 10-year and 30-year rates.)

Attached to our comments is expert testimony prepared for the Public Utilities Commission's (the Commission) review of the previous Triennial Plan in 2015-2016. In that proceeding the Trust proposed a societal discount rate based on the AESC and therefore U.S. Treasury rates plus inflation. The testimony was prepared by Tim Woolf, a former public utilities commission chairman and a highly regarded expert in energy efficiency regulation. Mr. Woolf testified in support of the Trust's proposed discount rate, which he found was reasonable, based on sound evidence and in line with best practices. (See page 13.) The precedent established by the Trust in previous Triennial Plan filings was consistent with Chapter 380, and the proposed change would be a significant departure.

NRCM understands that the discount rate proposed in the draft rule may have its origins in settlement agreement approved by the Commission. The Commission and most parties recognize that settlement agreements do not and should not constitute regulatory precedent and, as such, is an inappropriate basis for Trust rules.

We recommend that the rule remain more or less as it was written under the Commission, with the long-term U.S. Treasury rate plus inflation as the presumptive discount rate for programs under this rule. (Alternatively the rule could refer to most recent AESC report, which is likely to be the same thing unless the region as a whole identifies a different, more appropriate approach.)

Additional areas for clarification include:

- On page 7, paragraph C, the new language is unclear; in particular which budgets are referred to. Furthermore there is no longer any language in the Efficiency Maine Trust Act (35-A MRSA, Chapter 97), including but not limited to the section on Commission oversight, that in any way directs the Commission to analyze the likely impact of programs on utilities' rates. We recommend deleting the last sentence.
- On page 9, §5, it is unclear why a potential study would be conducted once every five years, given the need for the Trust to submit a plan to the Commission every three years. If this is not changed to three years at least it should be changed to six years to apply to every other plan.
- On page 11, §6, the waiver or exemption language is inappropriately broad and vague. While we understand that this authority has and/or is intended to be used rarely, it should be narrower to ensure transparency and good governance. At a minimum, proposals to waive aspects of the rule should be made in writing and be approved by the board. This would increase accountability and transparency. *This applies to §8 in Chapter 4 as well.*

II. Natural Gas Conservation Programs

Many of our comments and recommendations with regard to the electric efficiency and conservation rule apply equally or similarly to the natural gas conservation rules. This includes the use of an inappropriate discount rate. The Trust should use a societal discount rate plus inflation in Chapter 4 as well, and we're not aware of any policy reason for a difference between the rules.

With regard to the definition of small business, a volumetric definition is slightly less problematic than a demand or rate class; at least many customers might have an easier time understanding a "total volume" criteria. However we recommend again that the definition be broad enough that it not limit program eligibility choices or make compliance with any funding allocation more onerous for the Trust.

We encourage the Trust to retain the 10% minimum funding levels for small business and low-income households. Requiring by rule that "reasonable percentages" should be allocated for these consumers serves little purpose, regardless of the fact that the legislature has provided such a vague directive. The 10% amounts were meant to be minimum guideposts and they have seemed workable for both electric and gas conservation in the past.

In particular we encourage the Trust to retain a 10% low-income minimum. The fact that low-income single-family, owner-occupied homes consume much less than 10% of the gas in Maine does not seem especially relevant. It is likely that much more natural gas is consumed by low-income households in multifamily buildings with cost-effective savings potential, and those buildings need *more* support and emphasis from Efficiency Maine, not less. The particular program approaches for single-family and multi-family buildings is, of course, a matter of program design. However the Trust should NOT take any step in the rule, such as reducing or eliminating a minimum funding level, that reduces the mandate to conserve natural gas in low-income households of all types.

Finally, as an additional area of minor clarification, the definition of MACE used in Chapter 3 should be included in Chapter 4 as well. The substance of the definition appears in §5, but for clarity and consistency, the rules should use parallel construction and definitions whenever possible.

Thank you,

Dylan Voorhees
Clean Energy Director