

**EFFICIENCY MAINE TRUST**

**RE: Proposed Amendments to  
Chapter 380 and 480**

**COMMENTS OF THE OFFICE  
OF THE PUBLIC ADVOCATE**

**August 10, 2018**

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**I. Background**

On July 9, 2018, the Efficiency Maine Trust (Trust or EMT) issued a Notice of Rulemaking (“Notice”). Through its Notice, the Trust initiated a rulemaking to amend Chapter 380, Electric Efficiency and Conservation Programs and Chapter 480, Natural Gas Energy Conservation Programs. The Notice proposes amending the rules to reflect several changes made by the Legislature to 35-A M.R.S. §§ 10110 and 10111.

As part of its Notice, the Trust requested that interested persons file comments on the proposed rules by August 10, 2018. The Office of the Public Advocate (OPA) hereby provides its comments in response to the Notice.

**II. Comments on Proposed Amendments to Chapter 380**

**a. Section 2(D) Definitions:**

The Trust proposes to modify Section 2(D) of the rule to define a “Low-Income residential customer” as a customer of a transmission and distribution utility receiving benefits under the utility’s Low-Income Assistance Program. Because the term “Low-Income Assistance Program” (LIAP) refers specifically to certain specific low-income utility programs we suggest that the section use general language referring to those receiving benefits under a utility’s program for low-income assistance. This change will remove any ambiguity and capture all utility low-income programs, such as CMP’s Electricity Lifeline Program (ELP).

**b. Section 2(H) Small Business Customer**

The proposed amendment changes the definition of “small business customer” by using the utility rate class for the “small business customer class.” This proposed change would significantly reduce the number of businesses that are eligible to receive benefits

under the “small business” program. The Third Triennial Plan provided a curtailment in the Small Business Direct Install Program from 100KW to 25 KW for eligibility. The proposed amendment would further curtail the number of eligible small businesses. For example, for Central Maine Power Company, the class of small general service customers demand must be below 20 KW.

We did not support the initial reduction in the Third Triennial Plan and we do not support this further reduction in the rule. Limiting the number of businesses that are eligible unduly limits savings opportunities for the many small businesses that fall below the 20KW threshold.

**c. Section 3(A)(2)(d)**

The proposed modification begins with the word “notwithstanding” in reference to the preceding paragraphs of this section. The preceding paragraphs (a) and (b) set forth the statutory spending amounts for low-income and small business consumers and cannot be altered. We suggest that the word “notwithstanding” should be replaced with “subject to.”

**d. Section (4)(A)(3) Discount rate assumption**

Both the existing and proposed language of the rule provide that the cost effectiveness of energy efficiency programs will be determined by whether benefits exceed costs in net present value of the costs and benefits over the expected life of the measure. For measures or programs that will be funded by the utility procurement, the Proposed Rule changes the discount rate assumption from the current yield of long-term (10 years or longer) U.S. Treasury securities, adjusted for inflation to using a nominal rate of 8.50 percent adjusted for inflation. While we appreciate the Trust’s effort to incorporate the discount rate adopted by the Maine Public Utilities Commission in its Third Triennial Plan Order, and agree that the discount rate for programs and measures funded by utility procurement should be higher than the rate of 10 year U.S. Treasury securities, we suggest that the Trust adopt a more flexible method of arriving at this calculation rather than using the 8.5%.

Adopting the 8.5% discount rate in the rule locks the Trust into a figure that may or not be appropriate. It should be noted that the 8.5% figure adopted by the Commission for the Third Triennial Plan is different than the figures adopted by the Commission for the prior two triennial plans. Given these fluctuations in the Commission orders, it is unclear why the Trust proposes to adopt the 8.5% figure.

We suggest that the Trust be given the discretion to develop the rate. One methodology relied upon in various jurisdictions is that of the White House Office of Management and Budget (OMB) guidance for federal agencies engaging in regulatory analyses, Circular A-94 Guidelines And Discount Rates For Benefit-Cost Analysis of Federal Programs. This circular provides reference to calculations of discount rates for the cost of capital to the private sector (weighted among all consumers) and could be instructive. Circular A-94 states that a real discount rate of 7% should be used in benefit-cost analysis—as an estimate of the average before-tax rate of return to private capital in the U.S. economy. This rate is an approximation of the opportunity cost of capital. The rate is annually evaluated.

35-A M.R.S. §10110(4-A) requires that calculations of avoided energy costs and the budget identified by the trust should be based on sound evidence and use the “best practice” across the region. Although guidelines for federal programs are not “regional best practices” the methodology employed by the circular in the calculation of the discount rate may be instructive to the Trust in developing a methodology to set the rate.

**e. General Comment Regarding Non-Transmission and Non-wires alternatives**

In sections 3(A)(2)(d) and 5(C)(4) of the proposed amendments, the language provides that the Trust may use funds from “agreements” or “applicable grants” to develop non-transmission or non-distribution alternatives (hereinafter “non-wires alternatives” or “NWAs”). However, the proposed amendments do not provide for a specific cost benefit test for evaluation of NWAs. Pursuant to 35-A § 3132(A) an NTA analysis must compare the total projected cost of a transmission line as well as the total projected costs of an alternative to determine whether the alternative should be implemented.

Although Section 4(A)(1)(b) of the proposed rule generally provides for calculating the benefits from avoided transmission and distribution costs, the proposed rule does not provide for how to take these benefits into account in a NWA analysis where the calculation required is whether the cost of the NWA is less than the wires alternative.

Additional benefits specifically related to NWAs should also be included in order to make the calculation reflect all NWA benefits. For example, the proposed amendments focus on geo-targeted alternative resources. Valuation of these alternatives could include location specific values in calculating avoided T & D cost.

### **III. Comments on Proposed Amendments to Chapter 480**

#### **a. Section 2(C) Definition of Low-income residential customer**

Under 35-A M.R.S. 4706-B, gas utilities are only required to offer low-income assistance programs if they serve 5,000 or more customers. Because not all Maine gas utilities have reached this benchmark, it is possible that some low-income natural gas customers do not have any special utility rates or programs available to them, and therefore may not qualify as a “low-income residential customer” as defined by Section 2(C) of Chapter 480. To avoid this result, we recommend that section 2(C) be revised to ensure that residential customers can qualify as low-income regardless of the size of their gas utility and the programs available to them.

#### **b. Section 3(A)(2)(a) and (b) Low- Income and Small Business Program Targets**

The proposed amendment changes the target for low-income residential consumers from “at least 10%” to “a reasonable percentage.” The rule does not offer any guidance on what a “reasonable percentage” might be. Although we recognize that the Trust has had challenges in meeting the 10% target level currently in the rule, the proposal to eliminate this target may only serve to allow further decline in program development and offerings to low-income customers. Thirty-two percent of households in Maine are low-income. These households also have a greater energy burden with total annual gas, electric and heating fuel spending as a percentage of annual gross household

income- than other demographics. These consumers face unique barriers to accessing energy efficiency programs. We suggest that the rule maintain the current 10% target. The 10% target is a reasonable one and provides a meaningful goal for continued efforts in meeting some of the challenges in developing and implementing low-income programs.

We also suggest that the 10% target be maintained for small business consumers. As with the low-income target – defining a goal will help maintain continuing progress toward development of programs for small business customers.

#### **IV. Comment on Waiver and Exemption Provision Chapter 3 §6 and Chapter 4 §8**

Both proposed amendments provide that the Trust “upon request” or “upon its own motion” may waive any of the requirements of the rule that are not required by statute. It is unclear how and when the Trust might use this provision. The waiver provides a degree of uncertainty and accordingly some concern for those who rely on the rule and its specific provisions. Persons affected by the rule provisions may not be afforded an opportunity to comment on a decision to waive requirements of the rule or how that waiver would affect existing rule requirements. Unless there is clear guidance on what the provision is intended to achieve we suggest that it be removed.

Respectfully submitted,



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