STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2010-116

July 19, 2010

MAINE PUBLIC UTILITIES COMMISSION
Review of Efficiency Maine Trust
Triennial Plan

ORDER CONDITIONALLY
APPROVING TRIENNIAL PLAN

REISHUS, Chairman; VAFIADES and CASHMAN, Commissioners[1]

I. SUMMARY

In this Order, we conditionally approve the Triennial Plan of the Efficiency Maine Trust 2011-2013 (the Plan) submitted by the Efficiency Maine Trust on April 23, 2010.[2] As described in the body of this Order, our conditional approval includes a requirement for the Trust to provide a Supplemental Plan by October 1, 2010 in which additional information about the Trust's programs, budgets, evaluation plans and performance metrics will be provided.

II. REVIEW PROCESS

The Commission opened a non-adjudicatory proceeding on April 27, 2010 to conduct a review of the Plan. The Commission invited interested persons to file comments on the Plan by May 10. Comments were submitted by Environment Northeast (ENE); James LaBreque; Rep. Ken Fletcher; Maine Energy Education Program; Maine Equal Justice Partners; Maine Public Service Company; Natural Resources Council of Maine (NRCM); Northeast Energy Efficiency Partnerships (NEEP); Industrial Energy Consumer Group (IECG); and Unitil Service Corp. (Unitil).

A public meeting to hear comments on the Plan was held on May 16, 2010 at the Commission. Representatives of the following entities testified: Maine Math and Science Alliance; Gulf of Maine Research Institute; NEEP; Unitel, NRCM; Conservation Law Foundation and Efficiency Maine Trust. The following individuals testified: James LeBreque; Michael Petersen; Geoffrey LeBree; Richard Hill; Steve Ward and Dirk Faguy.

In addition, the Commission retained Navigant Consulting, Inc. (Navigant) to review and report on the Plan. Navigant is a specialized consulting firm with extensive experience in energy efficiency program planning, design, implementation, and evaluation. On June 8, 2010, the Commission issued the Navigant Report for public comment. Comments were

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[1] All three Commissioners decided this case. Prior to issuance of the order, Chairman Reishus resigned and Commissioner Cashman became Chairman.

[2] The Plan was supplemented with responses to data requests and the Trust's Response to the Review of the Efficiency Maine Trust Triennial Plan (2011-2013) prepared by Navigant Consulting (Navigant Report), filed on June 16, 2010.

received from the Efficiency Maine Trust, Maine Department of Environmental Protection, Public Advocate, IECG, James LaBreque, Michael Peterson, ENE, Maine Association of Building Efficiency Professionals, North Atlantic Energy Advisors, NEEP, CLF, and NRCM.

The Commission considered whether to approve the Plan at its public deliberative session on June 24, 2010.

III. STATUTORY REQUIREMENTS

A. Requirements of Efficiency Maine Trust

Beginning July 1, 2010, the Efficiency Maine Trust will administer and disburse funds and coordinate programs to provide energy efficiency and increased use of alternative energy resources. 35-A M.R.S.A. § 10104(1). Programs must meet the following principles of administration:

1. Be consumer-oriented;
2. Build and centralize expertise, address conflicts of interest, mitigate influence of politics, promote flexible, timely program management and be cost-effective;
3. Be planned, designed and overseen efficiently; and
4. Provide for sufficient checks and balances so programs sustainable in long run.

Id. § 10104(2).

Two-thirds of the Efficiency Maine Trust Board must approve a detailed, triennial energy efficiency, alternative energy resources and conservation plan that includes quantifiable measures of performance. The Trust determines the period to be covered by the Plan. The Plan must provide for all programs administered by the Trust:

1. Integrated planning;
2. Program design; and
3. Implementation strategies.

Id. § 10104(4)

Programs include, but are not limited to, those authorized under 35-A M.R.S.A. § 10110 (electric efficiency and conservation programs), § 10111 (natural gas efficiency and conservation programs) § 10109 (RGGI Greenhouse Gas initiative), and § 10119 (the Heating Fuels Efficiency and Weatherization Fund) and any other state or federal funds directed to the Trust. The Plan must also include provisions that support work force development consistent with the purposes of the Trust (§ 10104(4)).

The Plan must include:

Program budgets
Objectives
Targets
Measures of performance
Program design
Implementation strategies
Timelines

Id. § 10104(4)(C).

The Plan must advance the following targets:

1. Weatherizing 100% of residence and 50% of businesses by 2030;

2. Reduce peak load electricity consumption by 100 MWs by 2020;

3. Reduces states consumption of fossil fuels by 30% by 2030;

4. By 2020, achieve electric and natural gas savings of at least 30% and heating fuel savings of 20%;

5. Capture cost effective energy efficiency resources available for electric and natural gas customers;

6. Save residential and commercial hearing customers not less than $3 for every $18 program costs inverted by 2020; and

7. Build stable jobs in electric energy and energy efficiency products and services by 2020 and reduce greenhouse emissions consistent with goals established by 38 M.R.S.A. § 576.

Id. § 10104(4)(F).

Finally, the Trust must develop quantifiable measures of performance for all programs. Such measures may include: reduced energy consumption; increased use of alternative energy resources; reduced capacity demand for natural gas; electricity and fossil fuels; reduced carbon dioxide emissions; program and overhead costs and cost effectiveness; number of new jobs created; and number of energy efficiency training or courses completed. *Id.* § 10104(3).

B. Role of Commission

The Commission must open a proceeding and issue an order either approving or rejecting the Plan. *Id.* § 10104(4)(D). The Commission must also approve changes to the Plan. *Id.* § 10104(6).

The Commission shall reject elements of the Plan that propose to use funds generated from § 10110 (electric), § 10111 (gas), or § 10119 (other heating fuels) if the Plan fails to explain how it would achieve objectives and implementation requirements of those sections or the performance measures described in § 10104(3). The Commission must approve the use of any funds generated under those sections. *Id.* § 10104(4)(D).

The Commission shall ratify the performance measures in the Plan if the measure satisfy the requirements of the entire Chapter (§§ 10101-10120), including the principles in § 10104(2) and are in the public interest.

IV. DESCRIPTION OF THE TRIENNIAL PLAN

The Plan covers the three-year period beginning July 1, 2010 through June 30, 2013. The Plan is built around 3 strategies: residential strategy (including 7 programs); business strategies (3 programs for non-residential consumers); and enabling strategies that cut across all sectors and programs (e.g., public awareness campaign, financing and labeling). The Plan includes a general description of each strategy area and program, as well as program budgets, expected energy savings and lifetime Benefit/Cost Ratios measured on a Total Resource Cost basis.

The "overarching metrics" of the Plan for this triennial period are to:

1. reduce more than 3 trillion BTUs of electric, natural gas and heating fuel energy consumption by Maine consumers (estimated over the life of the installed measures);

2. achieve a benefit to cost ratio of not less than 2:1 as measured using the Total Resource Cost test;

3. avoid of (sic) 500,000 tons of CO2 equivalent (lifetime) from three years of investments; and

4. expend from the base electric conservation assessment, at least 20% of for the benefit of low income customers and at least 20% for the benefit of small business customers.

Plan at 6.

The Plan as presented does not contain performance metrics (as required by 35-A M.R.S.A. § 10104(3)). However, the Plan notes that the Trust is committed to developing meaningful performance metrics, focused primarily on key goals such as net energy and carbon savings, and that it will incorporate such metrics into subsequent detailed program work plans and supplier contracts.

The overall Plan budget is $67.5 million in year 1, $61.5 million in year 2 and $62.8 million in year 3. The Plan takes the existing Efficiency Maine budgets and program plans as its starting point, which budgets include substantial one-time funding attained by Efficiency Maine through the American Reinvestment and Recovery Act of 2009 (ARRA)). The Plan recognizes that another round of ARRA funding is not likely available after year 1. Therefore in years 2 and 3, the system benefit charge on electric and gas customers would be increased and a new funding source associated with fuel oil would be required to support the overall budget levels in those years. Plan at 20.

V. SUMMARY OF THE NAVIGANT REPORT

As noted above, the Commission retained Navigant Consulting to provide a comprehensive review of the Plan. Navigant's review included: (1) an assessment of the Plan's conformance with applicable statutory requirements; (2) a review of the strategies and programs outlined in the Plan; (3) a review of cost-effectiveness analysis and results presented in the Plan and supporting materials; and (4) a benchmarking of the Plan and its programs relative to other jurisdictions.

Navigant identified 41 discrete statutory requirements applicable to the Plan. Navigant's assessment indicated that the Plan demonstrated compliance with 59% of the requirements, and either partial compliance or non-compliance with the others. For some requirements, Navigant found the Plan to be either demonstrably non-compliant or lacking sufficient specificity to support a finding of compliance; for others, the Plan indicated full or partial compliance. For most statutory requirements, as well as for the Plan overall, Navigant recommended that greater levels of specificity and detail be provided.

With respect to the strategies and programs outlined in the Plan, Navigant provided strengths and weaknesses of each. Navigant observed that the residential programs contained a number of features consistent with "best practices", which according to Navigant boded well for program success. However, Navigant noted that the lack of specific detail in the Plan limited its ability to critically assess the question. Navigant provided several specific recommendations including that: (1) more detailed program design, implementation and budget information be provided; (2) key market barriers and performance metrics be addressed and; (3) particular programs be closely monitored to ensure benefit-cost ratios remain above 1.0. Finally, as noted above, Navigant recommended more detailed information about the residential strategies and programs be provided as a general matter.

With respect to the business strategies, Navigant again noted that the presence of many features consistent with "best practices" indicated good potential for success. Navigant found the Plan's approach of building from mature ongoing programs to be reasonable, as well as the relative budgets across programs and years. Concerns noted by Navigant about the business strategy included: (1) programs appear to be relatively high cost and low saving; (2) insufficient program and budget detail is provided; (3) market barriers and performance metrics are not addressed.

For the enabling strategies, Navigant was supportive of the measures outlined in the Plan, as well as the overall approach to employ cross-cutting actions to increase knowledge, awareness and participation in energy efficiency. Navigant found its ability to fully critique the enabling strategies to be limited by the lack of specificity in the Plan, and noted concerns in the following areas: (1) inadequate emphasis on and detail regarding evaluation; (2) insufficient emphasis on codes and standards; and (3) lack of detail in several areas, including budgets by fuel type.

Navigant also conducted a benchmarking analysis of the Plan's electricity and natural gas programs against other similar programs in the Northeast region and nationwide. Navigant found that overall energy savings increase over the Plan period relative to current levels, but are slightly below current levels in the business sector particularly in the early Plan period. With respect to program costs, benchmarking analysis for the residential strategy was not possible due to the lack of fuel-specific budgets. For the business strategy, Navigant found that the electric programs were higher cost than business sector programs in other regions.

With respect to the benefit-cost analysis, Navigant conducted a limited review of the Plan and supporting materials. Navigant found the approached used in the Plan to be generally reasonable, although it provided several specific recommendations to be considered. Most notably, Navigant cited the lack of "measure-level" analysis and assumptions as preventing an assessment of the efficiency and cost-effectiveness of particular ratepayer-funded programs.

Finally, Navigant also compared the level of detail in the Plan with efficiency plans in other jurisdictions. The review noted plans vary depending on the circumstances in each state. The Plan was consistent with high level plans produced in Vermont and Oregon, while Massachusetts's plan is much more detailed.

VI. ADDITIONAL COMMITMENTS FROM THE TRUST

In its June 16 comments responsive to the Navigant Report, the Trust agreed with certain observations and to take certain actions. These include commitments to:

1. include in future Triennial Plans and Annual Reports more performance indicators, strategies and milestones. Responsive Comments at 2.

2. incorporate by Reference Year 1 strategies, budgets and milestones of existing Efficiency Maine programs and ARRA grants. *Id.* at 3.

3. develop and track program budgets by fuel types. *Id.* at 4.

4. stipulate to target through future development and implementation of the Triennial Plan, budgets equaling at least 20% of the funds collected pursuant to 35-A M.R.S.A. § 10110(4) for programs benefitting low-income residential customers and 20% for programs serving small business consumers. *Id.* at 6-7.

5. distribute RGGI funds predominately on the basis of a competitive bid process. *Id.* at 8.

6. spend less than $800,000 annually to administer funds from RGGI.

Id. at 9.

7. prepare detailed administrative budget and a new system to allocate staff costs to programs and administration. *Id.*

8. develop an Evaluation Plan in Summer 2010 and design and issue an RFP to secure ongoing program evaluations. *Id.* at 11-12.

VII. DISCUSSION AND DECISION

The Commission's review of the Triennial Plan is prescribed by statute. Pursuant to statute, the Commission must approve or reject the Plan, with stated reasons for any rejection. With respect to elements of the Plan that would use funds generated by 35-A M.R.S.A.§§10110; 10111; 10119, the statute further requires the Commission to reject the Plan if it fails to reasonably explain how programs would meet the applicable statutory objectives, and implementation and performance measurement requirements.. The Trust may not expend any funds generated by the above statutory provisions unless the associated plan elements have been approved by the Commission. Id. §10104(D) Finally, substantial changes to the Plan are also subject to Commission approval.

First, we commend the Trust and its staff for the development of a comprehensive Plan that builds on the successful Efficiency Maine programs. We also acknowledge the Trust's positive response (Section VI above) to many of the comments and recommendations in the Navigant Report. The majority of commenters agreed that the Plan meets the basic statutory requirements and puts the Trust on the right path to meeting the Legislature's aggressive efficiency goals. In addition, we found the Triennial Plan review process to be positive and productive, and appreciate the input provided by commenters, as well as the supplemental information and responsive comments provided by the Trust.

Based on the comments received and our own review as informed by the Navigant Report, we find that the intent of the Trust as set forth in the Plan and supplemented and clarified as described above appears generally consistent with overall statutory goals. However, the Plan document is lacking detail in certain areas, making it difficult to determine on the basis of the document itself specific statutory compliance in all respects., As described above, the Trust has subsequently clarified its intent with respect to certain issues; these issues should be included in the supplemental filing described below, accompanied by a level of detail sufficient to determine statutory compliance. Supplemental information is required in other areas as well. We discuss these below and make the filing of a Supplemental Plan by October 1, 2010 a condition of our approval.

A. Fund Allocation

Measure-level budgets are needed to ensure funds (most notably, electricity, natural gas, heating oil and RGGI funds) are allocated as required by statute.[3] This includes overall fund allocation by measure type or measure category, e.g. dollars of electricity fund budgeted to measure-type/measure-category within each program in each year, as well as distributional allocation for each fund, e.g. low income; small business. Use of RGGI funds in

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[3] Measure-level detail should be specific enough to determine fund allocation by fuel type, but need not differentiate among measures that are substantially similar, e.g. electricity-using appliances could be a single "measure".

terms of priority for most cost-effective measures and pursuant to competitively-bid long-term contracts (as required by statute) should also be detailed, including treatment of medium/large business customer in this regard. Allocation of enabling strategy budgets and other items not directly allocable to programs or fuel-types should also be provided, including support for the allocation methodology used. Finally, given potential uncertainty about and changes in funding over the triennial period, a strategy to accommodate such uncertainty and changes should be outlined.

B. Benefit Cost Assessment

Benefit-cost analyses by measure category and/or fuel type are needed to assess individual fund categories, e.g., electricity system benefit charge fund, in terms of cost effective use of the funds.

For programs with benefit-cost ratios that approach 1.0, there should be further detail on how program performance will be monitored to ensure programs continue to maintain acceptable benefit-cost ratios, as well as detail on how programs would be modified if benefit-cost ratios degrade. With respect to the business programs, the factors driving relatively lower benefit-cost ratios should be identified, particularly for medium/large business sector programs.

C. Program Details

For certain programs, greater detail on measures and implementation mechanisms should be provided.[4] In particular, this detail should be provided for programs involving MSHA, including how the Trust and MSHA will interact during the Plan period. For programs targeted at the medium and large business sectors, additional details should be provided on the programs and their implementation, including the factors underlying the relatively high program costs identified in the Navigant Report.

D. Evaluation

The Trust should provide further detail describing its intent with respect to evaluation during the Plan period, including a schedule for program evaluations and associated budgets. Because evaluation planning typically coincides with program planning at the outset, it is important to consider the issue now rather than defer it to the next Triennial Plan.

E. Performance Metrics

As contemplated by statute, the Trust should establish and provide supporting detail regarding performance measures and quantification protocols for all programs. Measures can include energy savings, emissions reductions, job creation, the performance

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[4] We assume the Trust will be required to develop such detail over the next few months in any event, in order to continue to participate in the ISO New England Forward Capacity markets. The ISO requirements are specific and rigorous in this regard.

results of particular programs such as number of training courses completed, or other measurable items. As noted above, pursuant to 35-A M.R.S.A. § 10104(3) the Commission must determine that programs or program elements are consistent with the established performance metrics/

F. Advisory Groups

Finally, the Trust should provide greater detail with respect to its planned use of advisory groups to asses programs and issues during this Triennial period, as well as to provide input to successor program plans. For example, in the context of programs that incent the use of biomass heating systems, an advisory group could provide input to the Trust on biomass supply impacts and potential implications for Maine's wood fiber industry.

VIII. CONCLUSION

We find that we can approve the Plan, conditioned on the Trust filing by October 1, 2010, the supplemental material described in this Order. We recognize the short amount of time the Trust had to develop the Plan and the fact that most of its staff was hired after submission of the Plan. We are willing to approve the Plan conditionally, in part, because virtually all of the programs in FY 2011 are programs that were already be operated by Efficiency Maine. The supplemental filing in October should correct the statutory deficiencies found in this Order.

Dated at Hallowell, Maine, this 19th day of July, 2010.

BY ORDER OF THE COMMISSION

Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Reishus
Vafiades
Cashman

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.