



September 17, 2008

Rockport, ME
Boston, MA
Providence, RI
Hartford, CT
Charlottetown, PEI

Jean Guzzetti
RGGI Coordinator
Public Utilities Commission
18 State House Station
Augusta, ME 04333-0018

**Re: Maine Energy and Carbon Savings Trust:
Draft Emergency Major Substantive Rules for
Allocation of Money for Fossil Fuel Programs**

Dear Ms. Guzzetti:

Environment Northeast (ENE) is a nonprofit, nonpartisan organization incorporated in Maine that provides research, analysis and advocacy on environmental policies for the Northeast United States and Eastern Canada.

ENE appreciates this opportunity to comment on the Draft Emergency Rules circulated by the Energy and Carbon Savings Trust (the Trust), and commends the Trustees on the speed and seriousness with which they have tackled this job. ENE's specific comments are enumerated below.

Rule Title

ENE encourages you to emphasize the temporary nature of these rules by inserting the word "Interim" in the title of the rule.

§1 Purpose and §2 Initial Finding

It is important that the purpose and findings in the emergency rule more clearly recognize that the "emergency" this rule seeks to address is a function of both:

- (a) the current, temporary absence of any operating rules for the Trust given the Trust's very recent establishment and
- (b) the compelling opportunity that energy efficiency programs, consistent with the statutory mission of the Trust and *delivered in the run up to the winter*, could provide to Maine consumers but which, without rules in place, will be lost.

Because this concern is implicated by each of the references to “emergency” in the rule (e.g., Definition 3.A, program options 4.A, 4.B., 4.C, etc), we encourage the Trust to consider amending each such reference to “2008 Emergency” (thus “§4 - 2008 Emergency Fossil Fuel Programs”, or “§4.B Other Criteria for 2008 Emergency Fossil Fuel Programs,” etc.) or some similar indication of the temporal limitations of the emergency situation.

ENE is concerned that without a narrower characterization of the reason for this emergency rulemaking, it could set a precedent whereby future businesses or residents could place undue pressure on the Trust, shortly before declaring bankruptcy, claiming that their dire situation requires a departure from the established rules (processes, criteria). To make the nation’s first carbon cap and trade system a success, it will be helpful to insulate the Trust from this kind of pressure and to redirect it to a pre-established, objective process.

Additionally, it would be wise for the rule to recycle here some of the language contained in the RGGI statute provision (35A MRSA 10008(2), as to how the trust is established to “support the goals and implementation of” the cap and trade program and how the “trust fund may not be used for any other purpose...”, etc.

§4 Programs

In Subsection 4.A., ENE encourages the Trust to amend the draft rule consistent with our comments about using the term “emergency,” above.

In subsection 4.B., ENE suggests that the rule expressly clarify two elements of pre-requisites. First, the only type of program that will be considered from an applicant is one that employs or delivers energy efficiency measures. Second, as indicated above, these emergency rules will apply only to the “emergency” that is constituted by the approaching heating season and historic prices *and* the absence of existing permanent Trust rules. A simple way to achieve this limitation might be to insert the year – 2008 – into the phrase.

In the rush to deliver efficiency measures to Maine’s most needy fossil fuel consumers in the run up to the coming winter, the Trust emergency rules must find a way to remain consistent with the statute. Provisions in the statute (§1008(6)(B), (C) and (E)) that call for “highest benefit to cost ratio,” “as long as cost-effective opportunities are not lost,” “lowest cost in trust funds per unit of emissions” and “maximize fossil-fueled energy efficiency and conservation and associated greenhouse gas reductions,” should not be undercut.

This might be accomplished in one or more of the following ways. First, and preferably, the Trust might expressly acknowledge that the emergency rules apply only to programs awarded in 2008. Second, the Trust might decide that the emergency rules apply only to non-priority measures (which just happen to be starting prior to the priority programs). Third, the Trust might use the occasion of the 2008 emergency rule to decide, and expressly state, that programs will be evaluated and awarded by customer class. The Trust might further choose to refine what customer classes it would consider, including even the possibility of qualified low-income customer class. Support for this latter approach may be taken from the statute itself, where the legislature’s intent that energy efficiency programs in the state “must seek to address the needs of all customer classes” is made clear. 35-A MRSA 3211-A(2)(K).

§5 Cost-Effectiveness Tests

As a general comment, ENE urges the Trust to use cost-effectiveness tests that are as close as possible to what Efficiency Maine uses. Where Efficiency Maine's test is sufficient, it should prevail and the Trust should only depart from that test as necessary to fulfill its statutory mission. This approach will reduce administrative inefficiencies, it will be the easiest for applicants and application reviewers to understand, it will help the Trust, PUC, and Energy Conservation Board in future efforts to coordinate and/or integrate programs.

Specifically, ENE recommends avoiding the inclusion of benefits that cannot easily be quantified (in terms of financial savings) or verified. While such benefits as avoided pollution may be very real, if they are not easily converted to a verifiable, credible financial savings, they are not needed or helpful for the purposes of this temporary emergency rule.

Sunset

ENE encourages the Trust to provide somewhere in the rule a clear end date for the applicability of these emergency rules. The effective date of major substantive rules adopted through the normal process would be a logical choice.

Respectfully submitted,

/Michael D. Stoddard/

Michael D. Stoddard
Attorney