



142 High Street, Suite 422
Portland, ME 04101
(207) 761-4566
www.env-ne.org

December 15, 2008

Stephen L. Diamond, Chair
Energy and Carbon Savings Trust
242 State St.,
18 State House Sta.
Augusta, ME 04333-0018

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

Re: 94-078 Energy and Carbon Savings Trust, Ch. 2, Rules for the Administration of Trust, Budgeting, Project Selection Criteria and Procedures, Monitoring and Evaluation Requirements (Final Draft)

Dear Chairman Diamond:

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. We appreciate this opportunity to comment on the Final Draft of the Permanent Rule. As a starting point, we wish to reiterate our sincere gratitude for the hard work the Trust has put into bringing these draft rules forward with such speed and openness to input, and to commend the Trust for delivering rules that on the whole will enable the RGGI program to bring cost-savings to Maine energy consumers as quickly and responsibly as possible. Our detailed comments are attached. At the highest level, we ask the Trust to consider these points:

1. Given the broad interest among stakeholders and policymakers in consolidating the planning, administration and oversight of energy efficiency programs in Maine, leave enough flexibility in these rules so that resulting programs and administrative matters can be easily re-directed.
2. The “collateral opportunities” provisions must be addressed as an equal statutory obligation for the design or screening of programs. The rules should provide sufficient discretion to the Trust and/or program administrators to balance the objective of maximizing the capture of such opportunities with the objective of administrative efficiency (i.e., reduced bureaucracy). ENE’s view is that this balance can best be achieved if the rules surrounding application of “collateral opportunities” are separated for individual project proposals versus for broader programs, and if some waiver authority is retained for showings of good cause.
3. We commend the Trust for drafting rules to establish an Interim Plan and the Triennial Plan and encourage you to clarify that a completed draft of both plans will be presented to the Energy Conservation Board for review and a report back before finalization.

Respectfully submitted,
/Michael D. Stoddard/

Michael D. Stoddard
Attorney

Detailed Comments of ENE (Environment Northeast)
on
94-078 Energy and Carbon Savings Trust,
Ch. 2, Rules for the Administration of Trust, Budgeting, Project Selection Criteria and
Procedures, Monitoring and Evaluation Requirements (Final Draft)

Section 2.A – Administrative Costs

First, ENE believes that the Department of Environmental Protection has and will continue to incur costs associated with the regional administration of RGGI, including the auction and market monitoring process. If such costs are not contemplated elsewhere in the Final Draft of the rule, then it may be appropriate to expressly mention such costs in the definition of Administrative Cost.

Second, ENE suggests deleting in this section the reference to “evaluation” and replacing it with “oversight.” ENE was impressed by the report of an expert administrator from the Energy Trust in Oregon who, on a recent conference call for Maine efficiency stakeholders organized by ENE, indicated that in Oregon nearly all costs associated with programs are considered to be program costs and not accounted for as “administrative costs,” even if they are incurred by the program administrator. This approach would help the Trustees and other stakeholders more accurately compare the performance and cost-effectiveness of programs, and would conserve the very limited administrative budget for overhead and general staffing or operations. While evaluation is a legitimate activity of the Trust, it need not be considered an administrative cost.

Section 2.H. – Collateral Opportunities

We encourage the Trust to revise its definition in this sub-section as indicated by edits indicated using redline in the paragraph below, and to address the proper operation of the collateral opportunities requirements in sections 4 and 6, but not in the definitions:

Collateral Efficiency Opportunity. “Collateral Efficiency Opportunity” means one or more efficiency measures, in addition to a primary measure to be installed at a customer location or building site, that has a positive benefit-to-cost ratio pursuant to Section 5 of these rules and that can be installed at the same time and at lower cost than would otherwise occur.

Deleted: , provided there is a physical, mechanical or other nexus between the primary measure and the collateral efficiency opportunity

Section 2.P. – Efficiency Maine

In the event the Efficiency Maine brand and/or the conservation programs it administers are moved out of the PUC, the rule’s definition of Efficiency Maine could avoid becoming obsolete if it simply referred to the conservation programs funded by the statute you reference, as indicated below in redline.

Efficiency Maine. “Efficiency Maine” means the conservation programs and administrator of those programs authorized pursuant to 35-A M.R.S.A. §3211-A.

Deleted: department within the Public Utilities Commission that is

Section 2.T – Fossil Fuel

ENE is concerned that the Trust may want the ability to fund fossil programs developed by some entity other than the Trust, and recommends revising the definition in §2.T. as shown in redline here:

Fossil Fuel Conservation Program. “Fossil Fuel Conservation Program” means a program ~~funded by the Trust that reliably reduces greenhouse gas production by the combustion or distribution of fossil fuels through energy efficiency and conservation.~~

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Deleted: ing

Section 2.BB – Project

It is not appropriate to use Trust funds to help regulated units under RGGI to meet their compliance obligations. It would be a waste of publicly directed funds, unless we plan to start subsidizing every other regulated entity in the state that desires help complying with regulatory obligations. The Final Rule should clarify the point as noted in redline, below. Having exempted themselves from paying into Efficiency Maine programs in large part because the cap of \$100,000 was too low to be of use to the large industrial consumers, we do not favor of defining a “Project” in such a way that it will add confusion and significant overlap with existing Efficiency Maine initiatives in its Business Program (e.g., the large custom project initiative). However, we recognize that certainly having exempted themselves, some of the transmission level and sub-transmission level consumers now find themselves wanting to do projects that cost less than \$100,000 with no other access to financial incentives. To minimize potential overlap and confusion, we recommend that the definition set a cost minimum of \$50,000 only for transmission and sub-transmission level customers, but for all others (who can otherwise get funding from Efficiency Maine) the minimum should be \$100,000.

BB. Project. “Project” means a proposal for achieving kilowatt-hour or emission reductions that is customized to achieve efficiencies at a single location or facility, including but not limited to an Integrated Manufacturing Facility or a Combined Heat and Power Unit ~~that is not a budget unit, and that seeks Trust funds in excess of \$50,000 for any projects at the facilities of transmission and sub-transmission level electric customers, or in excess of \$100,000 for all other customers,~~ unless that limitation is waived by the trustees for good cause.

Section 3.A. Budget Planning

ENE strongly supports the section of the Final Draft directing the Trust to establish a 12-month budget.

Section 3.C. Sector Participation

ENE supports the language of the Final Draft as it is.

Section 4 and 6 – Collateral Opportunities

ENE reiterates that the criteria for benefit-to-cost ratio and collateral opportunities are of equal weight in the statute. Section 4.A. of the Final Rule should not highlight one at the expense of the other. Rather, the statutory directive should simply be restated here.

The way to address the challenge of applying the Collateral Opportunities provision, in our view, is to revise the language in Sections 4.B. and 6.D. to treat projects and programs separately. In the case of individual project proposals, we think the rule should be that the Trust (or a program administrator) must seek to maximize all cost-effective collateral opportunities at the facility. Since these projects will be large in size, by definition, we assume a staff person or contractor will visit the site and be able to determine what collateral opportunities would be cost effective. We would be satisfied to rely on the staff/contractors to negotiate the most collateral opportunities possible with the customer. The Trust rules should maintain sufficient discretion that the staff/contractors can walk away if they are not satisfied with the customer’s willingness to invest in collateral opportunities, or to waive such collateral

opportunities. In the latter case, these should be reported in writing to the Trust and the Energy Conservation Board.

In the case of programs, the language of the Rule should be significantly re-worked to reflect the reality that any program PON or RFP that is issued by the Trust will, as it must, indicate that the funds are intended to capture the maximum amount of cost-effective collateral efficiency opportunities practicable. Whether in the terms of the PON, or in the bids that are returned, we would expect to see a prescribed list of measures and the projected benefit-to-cost ratio. If such list is in the PON itself, the Trust then has the simple task of comparing the bid prices. (Also, if the prescribed list is extremely narrow, such as for a program targeting the promotion of certain kinds of high-efficiency appliances through trade allies, then the collateral opportunities criteria would seem inapplicable, or not practicable.) If however the bids come back with varying suggestions of the measures and the collateral opportunities, then the statutory provisions will be satisfied so long as the Trust feels it can show it achieved the maximum practicable level of collateral efficiency capture.

Section 10

ENE commends the Trust’s desire to seek broad input in its planning process. This will make a stronger plan and enhance buy-in to energy efficiency programming generally. Because the Department and OEIS both hold seats on the Energy Conservation Board, it seems redundant to list them as required participants in the planning process, and also may lead to questions of whether they have disproportionate influence. At a minimum, we encourage you to change the word “conjunction” to “consultation.” That said, we also encourage the Trust to clarify that it will, after collaborating with the Board to help design the program, submit a final draft to the Board so that it can meet its statutory obligations of reviewing, voting and reporting on said plans. We have reflected these suggestions in redline, below, and would recommend they be duplicated for the Rule provision on the Interim Plan in the same way.

A. Plan Preparation. The trustees will participate in the preparation and adoption of periodic Triennial Energy Efficiency and Conservation Plans, An initial draft of the components of the plan to be funded by the Trust shall be undertaken in consultation with the Maine Energy Conservation Board, and the commission and the final plan shall be presented to the Board for its vote, pursuant to 35-A M.R.S.A. §10007(6) and §10008(7).

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Again, thank you for the opportunity to share these comments.