

**Report by the Public Utilities Commission to the
Utilities and Energy Committee
Regarding L.D. 1851,
“An Act to Establish the Regional Greenhouse Gas Initiative”**

October 9, 2008

I. BACKGROUND

During its First Regular Session, the 123rd Legislature enacted a law relating to the Regional Greenhouse Gas Initiative (RGGI) (P.L. 2007, Chapter 317). By a letter dated June 20, 2007, the Chairs of the Utilities and Energy Committee (Committee) requested that the Public Utilities Commission (Commission) provide a report to the Committee by August 15, 2008 relating to the following two topics:

- An update on the Energy and Carbon Savings Trust (Trust) rulemaking; and
- An outline of the Commission’s energy efficiency and conservation plan.

The Commission apologizes for not submitting this report by the August 15, 2008 deadline, but since that deadline there have been major developments in both areas about which we can now report. Each topic is addressed separately below.

II. ENERGY AND CARBON SAVINGS TRUST RULEMAKING

The June 20th letter requests that the Commission provide “[a]n update from the trustees of the Energy and Carbon Savings Trust on the rulemaking required under Title 35-A, section 10008.”

The Energy and Carbon Savings Trustees (Trustees) were formally appointed on July 31, 2008. To date, they have held three public meetings, on August 21, 2008, September 8, 2008 and October 1, 2008. At the first meeting, there was considerable stakeholder support for a request that the Trust disburse funds this fall for efficiency projects that will help to relieve the high cost of heating this winter. To do this, the Trust must adopt an emergency rule, and with assistance from the Commission, the Trustees have drafted a proposed emergency rule. Please see Appendix A for a copy of the draft emergency rule which was presented at the September 8, meeting. Comments were received on the proposed emergency rule at the September 8th meeting and subsequently in writing from eleven individuals and organizations, including the Industrial Energy Consumers Group, Environmental Northeast, the Natural Resources Council of Maine, and North Atlantic Energy Advisors. The Trustees reviewed the comments and at the October 1st meeting, the Trustees voted to adopt the emergency rule and make available \$750,000 for fossil fuel conservation for the low income residential sector. The final rule has not been released yet and will vary from the September 8th draft.

Concurrently, the Trustees recognized the need to move forward in drafting the Trust’s major substantive rules that must be submitted to the Committee by January 15, 2009. Because

of the tight time frame and unique skill set needed to draft these rules, the Trust is considering entering into a sole source contract with Steve Ward, the former Public Advocate, to draft the rules. The Trust invited comments from stakeholders on the concept of sole sourcing for the drafting of its major substantive rules and received no negative feedback. The Trust is currently working with the Commission, the Attorney General's Office and the Bureau of Purchasing to draft a contract between the Trust and Steve Ward. Although the major substantive rules are likely to be complex, the Trustees hope to meet the following timetable:

- October:** after receiving stakeholder input, draft first version of rules;
- November:** forward proposed rules to Secretary of State and hold public hearing;
- December:** receive written comments and draft final rules and supporting documents;
- January:** submit provisionally adopted rules to Secretary of State, Legislative Council and the Committee.

III. OUTLINE OF ENERGY EFFICIENCY AND CONSERVATION PLAN

The June 20th letter also requests “[a]n outline from the Commission of its energy efficiency and conservation plan for the remaining two years under existing service contracts” and further clarifies that, “[i]t is our intention that this outline may be based on information contained in the annual report of the Efficiency Maine program, required under 35-A MRSA section 3211-A, subsection 11; the outline should include any changes and updates to the plan since the publication of the annual report, as appropriate.”

There have been no substantial changes to the Commission's energy efficiency and conservation plan since the publication of Efficiency Maine's 2007 Annual Report. To prepare for future planning for its next contract period, Efficiency Maine is currently issuing a Notice of Proceeding (NOP) to review and revise, if necessary, its goals, objectives and strategies, as mandated in P.L. 2001, Chapter 624 (Conservation Act) enacted during the second session of the 120th Legislature.¹ The NOP is expected to be issued in October. Highlights from the draft NOP include:

- Efficiency Maine's proposed addition of one new goal to its programs, as directed by the Legislature through the enactment of Chapter 317, to “reduce total energy costs for electricity consumers in the State by increasing the efficiency with which electricity is consumed.” 35-A M.R.S.A. § 3211-A(2)(A)(5);
- Efficiency Maine's proposed new program objectives include:
 - To engage stakeholders in collaborative discussions and workgroups to explore the potential of energy efficiency programs in the State;
 - To continue to build awareness of conservation programs;
 - To increase the availability of energy efficiency products and services;
 - To save a pre-defined number of kilowatt hours by December 2011;

¹ In Chapter 380 of the Commission's Rules, the Commission determined it would review the conservation programs goals objectives and strategies “no less frequently than every three years.” Chapter 380, § 3(B)(3).

- To implement new programs and review and revise current programs to help reduce energy costs by the maximum amount possible; and
- To review program administrative structure to work most effectively with the Trust and the Energy Conservation Board;
- Efficiency Maine's strategies fall into six categories:
 - Market assessment;
 - Program design and implementation;
 - Monitoring and evaluation;
 - Funding;
 - Organizational structure; and
 - Communication, coordination and reporting.

The Commission will send a copy of the NOP to the Committee as soon as the document is formally issued.

Additionally, Efficiency Maine created an executive summary of its programs result for FY 2008 and that report is attached to this document. Highlights include:

- 38 schools participating in the High Performance Schools Program will realize more than \$5 million in savings over the lifetime of the energy efficiency measures;
- 8,400 energy efficient fixtures were purchased and installed in Maine homes as part of its Residential Program;
- Efficiency Maine partnered with 29 service agencies to assist 2,902 households and through multiple efforts, saved \$2.6 million in economic value due to reduced kilowatt hours used;
- 244 professionals attended advanced energy efficiency classes as part of the Education and Training Program;
- As part of the State Energy Program, loans helped purchase 22 auxiliary power units for truckers, which combined, save approximately \$264,000 in fuel costs annually; and
- 398 rebates for solar projects were approved as part of the Solar Incentives Program.

Efficiency Maine will keep the Committee informed of any substantial changes to its programs or procedures. The Committee will also be invited to any stakeholder meetings the Commission hosts to discuss its conservation programs.

**Appendix A:
Draft Trust Emergency Rule Issued for Public Comment September 8, 2008**

MAINE ENERGY AND CARBON SAVINGS TRUST

**DRAFT EMERGENCY MAJOR SUBSTANTIVE RULES FOR ALLOCATION OF
MONEY FOR FOSSIL FUEL PROGRAMS**

SUMMARY: This draft emergency rule proposes the criteria under which the Maine Energy and Carbon Savings Trust (“Trust”) may fund programs that implement fossil fuel conservation and efficiency measures with money derived from the sale of carbon dioxide allowances in auctions held in September and December 2008 pursuant to the Regional Greenhouse Gas Initiative Act of 2007 (“RGGI”).

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§ 1 PURPOSE

The purpose of this Chapter is to address the immediate need for programs that will help Mainers who use fossil fuel for energy purposes cope with high fuel costs by implementing conservation and energy efficiency measures with funding from the Trust. This proposed emergency rulemaking would authorize persons to apply for funding from the first two RGGI auctions, would establish criteria to be met to qualify for funding and would establish a method of determining whether an efficiency program is cost-effective.

§ 2 INITIAL FINDING

Following public comment and consultation with various stakeholders and interested parties, the Trust finds that high fossil fuel costs create a potentially insurmountable burden for some Maine users of fossil fuels for energy purposes. More specifically, the Trust finds *[insert input from stakeholders]*. Based on the foregoing, the Trust concludes that, because the threat from high fossil fuel prices to the public health, safety, and general welfare is greatest during the winter and because a major substantive rule cannot be in place in time to address that threat, it is necessary for the Trust to adopt an emergency rule allowing it to expend funds from the first two RGGI auctions.

§ 3 DEFINITIONS

- A. **Emergency fossil fuel programs.** "Emergency fossil fuel programs" mean programs selected by the Trust using the criteria set forth in Sections 4 through 6 below.
- B. **Measure.** "Measure" means a device or an application that is installed or implemented and that is designed to conserve and/or make efficient use of fossil fuels used for energy purposes.
- C. **Participant.** "Participant" means an individual who is the recipient of monies disbursed from an emergency fossil fuel program funded the Trust.

§ 4 EMERGENCY FOSSIL FUEL PROGRAMS**A. Applying for funding from the trust**

Following the adoption of this rule, and upon solicitation by the Trust, persons may submit proposals to the Trust for funding for an emergency fossil fuel program. Applications must fully describe how the funds will be used and must demonstrate that the program will meet the criteria set forth in this section. The Trust may establish a termination date for receiving applications.

B. Prerequisite to qualifying as an "emergency fossil fuel program"

Being a necessary prerequisite to being considered by the Trust as an "emergency fossil fuel program," an applicant for funding under paragraph A of this section

must first demonstrate that the program to be funded would address the immediate threat to public health, safety, or general welfare that is presented by high fossil fuel prices.

C. Other criteria for emergency fossil fuel programs

1. In addition to meeting the criterion set forth under Section 4(B) above, the applicant must show that the proposed emergency fossil fuel program:
 - (a) Would conserve and/or make more efficient use of fossil fuels for energy purposes and thereby reduce greenhouse gas emission.
 - (b) Is capable, either because it is well established or otherwise, of deploying the requested funds in a manner that will effectively address conservation or efficiency needs during the winter of 2008-2009;
 - (c) Does not have reasonably available funds from other sources, including but not limited to government programs, with which to fully implement the proposed emergency fossil fuel program during the winter of 2008-2009;
 - (d) Has adequate procedures to verify and measure the savings in fossil fuel consumption that each program achieves;
 - (e) Any other standard or criterion that the Trust deems appropriate and necessary to the administration of an emergency fossil fuel program.
2. Emergency fossil fuel programs must also meet a minimum threshold of cost-effectiveness as set forth under Section 5 below.

D. Awarding of Funds

Whether and how much funding to award to an applicant will be made by the Trust based upon the cost effectiveness of the proposed program, the degree to which it addresses an immediate threat to public safety, health, or general welfare as a result of high fossil fuel prices, the amount of funding available, and any other factors the Trust determines to be relevant. How much of the proceeds from the September and December 2008 RGGI auctions will be spent on emergency fossil fuel programs shall rest solely with the discretion of the Trust, and nothing in this rule is intended to create any entitlement to any person or entity to funding from the Trust.

§ 5 COST-EFFECTIVENESS TESTS

The following tests will be used to determine whether an emergency fossil fuel program is cost effective.

- A. **Modified Societal Test.** Emergency fossil fuel programs that are reasonably likely to satisfy the Modified Societal Test are cost effective. The Modified Societal Test is satisfied when the program's benefits exceed its costs. Costs and benefits shall be considered in the Modified Societal Test regardless of whether they are paid or experienced by the participant, the Trust, or any other individual, business, or government agency.
1. **Program benefits.** Program benefits will include, without limitation, the following:
 - a) Avoided fossil fuel costs, using estimated savings in oil, gas or other fossil fuel use, at estimated fossil fuel prices;
 - b) Other resource benefits, such as reduced water usage, reduced electrical consumption, or reduced greenhouse gases emitted.
 - c) Non-resource benefits, including customer benefits such as reduced operation and maintenance costs, deferred replacement costs, productivity improvements, economic development benefits and environmental benefits, to the extent such benefits can be reasonably quantified and valued.
 2. **Program costs.** Program costs will include the following:
 - a) Direct program costs, including program design, administration, implementation, marketing, evaluation and other reasonably identifiable costs directly associated with the program.
 - b) Measure costs. For new construction or replacement programs, measure costs are the incremental costs of the emergency fossil fuel program, including installation, over an equivalent baseline measure. For retrofit programs, measure costs are the full cost of the emergency fossil fuel program, including installation, less any salvage for the replaced measure.
 - c) Ongoing customer costs, including costs such as increased operation and maintenance costs, reduced productivity, and lost economic development opportunities, to the extent such costs can be reasonably quantified and valued.

3. **Discount rate assumption.** The discount rate used for present value calculations shall be the current yield of long-term (10 years or longer) U.S. Treasury securities, adjusted for inflation. The Trust may consider an alternative discount rate when characteristics of a program are inconsistent with use of long-term U.S. Treasury securities.
 4. **Net present value.** Cost effectiveness of a proposed fossil fuel program will be calculated based on the net present value of the costs and benefits over the expected life of the measure.
 5. **Post-program effects.** For those programs that are expected to influence the development of self-sustaining markets, program cost effectiveness will be calculated for a reasonable additional period after the program is terminated in order to capture post-program market effects.
- B. **Non-Quantifiable Cost Effectiveness Test.** The Trust may fund a program that does not satisfy the Modified Societal Test if:
1. Program benefits are known to exist but cannot be quantified with sufficient accuracy to conclude that the program benefits exceed the program costs; and
 2. The entire portfolio of emergency fossil fuel programs produces quantifiable benefits that substantially exceed total portfolio program costs.

§ 6 WAIVER OR EXEMPTION

Upon the request of any person subject to the provisions of this Chapter or upon its own motion, the Carbon Trust may waive any of the requirements of this Chapter that are not required by statute. Where good cause exists, the Carbon Trust or its designee may grant the requested waiver, provided that the granting of the waiver would not be inconsistent with any other provisions governing the Carbon Trust.