

July 20, 2016

MAINE PUBLIC UTILITIES COMMISSION  
Solicitation for Applications for  
Disbursement of RGGI Funds

Order Addressing Issues  
on RGGI Disbursements and  
Approval of Request for  
Applications

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VANNOY, Chairman; WILLIAMSON and MCLEAN, Commissioners

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## I. SUMMARY

Through this Order, the Commission approves the attached Request for Applications (RFA) from Affected Customers for disbursements from Maine's Regional Greenhouse Gas Initiative (RGGI) Trust Fund.

## II. BACKGROUND

During its 2016 session, the Maine Legislature enacted An Act To Reduce Electric Rates for Maine's Businesses (Act) P.L. 2015, ch. 498.<sup>1</sup> The Act, in relevant part, is codified at 35-A M.R.S. § 10109(3-A). Subsection 3-A directs the Efficiency Maine Trust (Trust) to transfer to the Commission \$3,000,000 from the RGGI Trust Fund per year for fiscal years 2016-17, 2017-18, and 2018-19 for the purpose of the Commission making disbursements to Affected Customers, as that term is defined in statute, in proportion to their retail purchase of electricity for the prior calendar year. 35-A M.R.S. § 10109(3-A). In addition to being eligible to receive a disbursement from the Commission, Affected Customers, under certain circumstances, are eligible to receive matching funds from the Trust. As to the matching funds, if an Affected Customer uses its disbursement toward an efficiency measure approved by the Trust, then that customer must receive \$1 of assistance from the Trust for every \$3 that is applied by the affected customer toward the cost of the approved efficiency measure. *Id.*

On May 17, 2016, the Commission issued a Notice of Inquiry (NOI) in Docket No. 2016-00081, seeking comments from interested parties on issues regarding implementation of the Act. The Commission received comments from the Trust, the Industrial Energy Consumer Group (IECG), Bath Iron Works (BIW), McCain Foods USA, Inc. (McCain), and the Natural Resources Council of Maine.

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<sup>1</sup> The Act enacted new subdivision 3-A of 35-A M.R.S. § 10109. Section 10109 is located within the Efficiency Maine Trust Act, 35-A M.R.S. §§ 10101 – 10123, and is a provision intended to lower greenhouse gas emissions.

### III. DISCUSSION AND DECISION

The Act requires the Commission to identify Affected Customers and direct disbursements to such customers by November 1 of each applicable fiscal year. Subsection 3-A provides that determining whether an entity is an Affected Customer requires a 3-part test. An “Affected Customer” means (1) a customer who is not primarily in the business of selling electricity, (2) is receiving service at a transmission or subtransmission voltage level within the transmission system of ISO New England, and (3) is an energy-intensive manufacturer, as defined in reports prepared by the U.S. Energy Information Administration (EIA). 35-A M.R.S. §10109(3-A). Subsection 3-A further provides that the Commission may exercise its discretion in determining that a manufacturer that does not meet the third prong’s EIA standard may nonetheless qualify as an Affected Customer if that manufacturer meets the other two requirements of the definition. *Id.* The RFA and Standard Form Application attached to this Order provide that if an applicant is not designated as an energy-intensive manufacturer by the EIA, the applicant shall provide additional documentation supporting their designation as an Affected Customer.

The second prong provides that to qualify as an Affected Customer, an entity must be within the system of ISO New England. The system of ISO New England covers the State of Maine, as well as the other New England states. Thus, the Commission must consider whether an entity that otherwise satisfies the 3-part test, but is located outside of the State of Maine, may qualify as an Affected Customer and receive a disbursement from the Commission and matching funds from the Trust pursuant to subsection 3-A. The Commission must also determine whether an entity that otherwise satisfies the 3-part test, but receives service from the transmission system administered by the Northern Maine Independent System Administrator (NMISA), and is not part of the ISO New England system, may qualify as an Affected Customer. In the NOI issued in Docket No. 2016-00081, the Commission requested comments from parties on these two questions, among others.

#### A. Out of State Entities

The Trust, IECG, and BIW all provided comments stating they believed that the Legislature intended that only Maine entities may qualify as “Affected Customers” under this program.

Subsection 3-A of the Act provides that an Affected Customer is one located within the system of ISO New England, and that an Affected Customer is eligible to receive not only a proportionate share of the \$3,000,000 million provided to the Commission, but also matching funds from the Trust. In accordance with the rules of statutory construction, these two provisions of subsection 3-A must be read together, as part of section 10109, and together as a whole within the Efficiency Maine Trust Act, the statute of which it is a part. *Central Maine Power, Co. v. Devereux*, 2013 ME 37, ¶ 8, 68 A.3d 1262, 1266 (stating statutory interpretation requires construing “the whole statutory

scheme of which the section at issue forms a part so that a harmonious result, presumably the intent of the Legislature, may be achieved”).

Funding for efficiency measures through the Trust is authorized pursuant to the Efficiency Maine Trust Act. 35-A M.R.S. §§ 10101 – 10123. The purposes of the Efficiency Maine Trust Act include implementing “energy efficiency and alternative energy resources programs *in the State*,” 35-A M.R.S. § 10103(1)(emphasis added), and reducing energy costs and improving the security “of the *state and local economies*.” *Id.* § 10103(1)(B)(emphasis added). The Trust’s triennial plans contain the authorized energy efficiency and weatherization programs “*in the State*,” and the triennial plans, as approved by the Trust’s board and the Commission, are premised on evaluating and securing all cost-effective energy savings “*in the State*.” *Id.* § 10104(4)(A)(emphasis added).

To give effect to legislative intent, the Commission must construe statutory sections in a way that reaches a harmonious result and avoids interpretations that create unreasonable and inconsistent results. If entities outside of the State of Maine are included under the definition of an “Affected Customer,” then an inconsistency within the Efficiency Maine Trust Act arises. The Trust is not authorized to fund efficiency measures for entities outside of the State, and thus the deliverance of matching funds from the Trust to out of state entities would not be consistent with the Efficiency Maine Trust Act.

Additionally, the Regional Greenhouse Gas Initiative Act of 2007, 38 M.R.S. §§ 580-580-C (RGGI Act) is also relevant for the purpose of placing subsection 3-A in legislative context. The RGGI Act establishes the operation of the CO<sub>2</sub> cap and trade program within the State of Maine. As a cooperative effort among the participating states, RGGI has no regulatory or enforcement authority. All such sovereign authority is reserved within the states. Regional Greenhouse Gas Initiative, Inc. (RGGI, Inc.), the 501(c)(3) non-profit corporation created to support development and implementation of the RGGI cap and trade program, establishes and allocates a regional carbon budget to each state. In turn, each RGGI state then adopts its own annual carbon budget, including Maine, through the RGGI Act, 38 M.R.S. § 580-B(3). By its operation, the RGGI program contains a proportionate allocation of auction proceeds among the participating states, including all of the states located within ISO New England. It would be illogical that the Legislature would reallocate a portion of its budget back to out-of-state entities, which are presumably eligible for proceeds in their home states from their respective auctions of CO<sub>2</sub> allowances. A reading of the entire statute as a whole, and in the larger context of Title 38 and the way in which RGGI, Inc. allocates carbon dioxide allowances, indicates a narrower definition, which would allow all Affected Customers, i.e. qualifying customers within the State, to receive a disbursement and matching funds.

Therefore, the Commission finds that only applicants located within the state of Maine may qualify as Affected Customers.

### B. Northern Maine

The Trust, IECG and BIW all state that entities in northern Maine cannot qualify as “Affected Customers” because they are not part of ISO New England and do not contribute to the RGGI fund. In its comments submitted to the Commission, McCain asserts that although an entity may be located within NMISA, and not that of ISO New England, it nonetheless could qualify as an Affected Customer under the Commission’s discretion in interpreting the third prong of the test.

However, contrary to McCain’s assertion, the requirement that an entity be located within the system of ISO New England is a criterion independent from the Commission’s discretion in interpreting the third prong of the test. The discretion afforded to the Commission is the ability to determine that a manufacturer not defined as an energy-intensive manufacturer in reports prepared by the EIA is an “Affected Customer,” provided that the manufacturer meets the other requirements of an “Affected Customer” as defined in Act. Those other requirements are that a customer not be in the business of selling electricity and receive service at a voltage level equal to or greater than 34.5 kV within ISO New England. An entity’s location in ISO New England is a requirement and cannot be waived. Thus, the Commission finds that manufacturers that receive transmission service through NMISA cannot be considered “Affected Customers,” and are ineligible to apply for disbursements through this program.

### C. Disbursement and Matching funds by EMT

An Affected Customer is eligible to receive two benefits: a proportionate disbursement from the Commission of the \$3,000,000, and matching funds from the Trust. As to the matching funds, if an Affected Customer uses its disbursement toward an efficiency measure approved by the Trust, then that customer must receive \$1 of assistance from the Trust for every \$3 that is applied by the Affected Customer toward the cost of the approved efficiency measure. 35-A M.R.S. § 10109(3-A).

The \$3,000,000 per year disbursement amount will be allocated among Affected Customers in proportion to their retail purchase of electricity (in kWh) during the prior calendar year. Disbursements will be made quarterly on a schedule that aligns with the RGGI auction calendar.

While the Commission will disburse the \$3,000,000 per year to Affected Customers, the process of matching funds shall be administered by the Trust. The Commission shall provide information to the Trust regarding the amount of the disbursement to each recipient so that the Trust may apply the statutory provision of the funding match.



## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 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 11(D) 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. Any petition not granted within **20** days from the date of filing is denied.
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. § 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. § 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.