

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2018-00140

July 10, 2018

MAINE PUBLIC UTILITIES COMMISSION
Solicitation for Applications for
Disbursement of 2018 RGGI Funds

ORDER APPROVING
REQUEST FOR
APPLICATIONS

VANNOY, Chairman; WILLIAMSON and DAVIS, Commissioners

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 (2016 Act) P.L. 2015, ch. 498 (codified in relevant part at 35-A M.R.S. § 10109(3-A)). The 2016 Act directed the Efficiency Maine Trust (Trust) to transfer money to the Commission from Maine's RGGI Trust Fund for fiscal years 2016-17, 2017-18, and 2018-19 for the purpose of the Commission making disbursements in accordance with the 2016 Act to affected customers, as defined by the 2016 Act. In October 2016, the Commission allocated funds to affected customers and directed the Trust to transfer money from the RGGI Trust Fund to the Commission for the purpose of disbursing the funds. *Maine Public Utilities Commission, Solicitation for Applications for Disbursement of RGGI Funds*, Docket No. 2016-00143, Order (October 21, 2016).

During its 2017 session, the Maine Legislature enacted An Act To Establish Energy Policy in Maine (2017 Act) P.L. 2017, ch. 282, which amended 35-A M.R.S. § 10109(3-A) in a series of ways. First, it adjusted a matching provision established under the 2016 Act such that affected customers must use an entire allocated disbursement toward an efficiency measure to qualify for matching assistance from the Trust, and affected customers may also apply additional customer funds toward an efficiency measure to receive matching funds. 35-A M.R.S. § 10109(3-A). Second, the 2017 Act provided affected customers an opportunity, prior to October 1, 2017, to elect not to receive a disbursement for the full period of fiscal years 2017-18 through 2019-20, and directed the Commission to reduce the total disbursement amount to reflect any affected customers electing to opt out.¹ *Id.* § 10109(3-A)(B). Finally, the 2017 Act

¹ The Commission provided for the statutory opt-out period, but no affected customer opted out. *Maine Public Utilities Commission, Solicitation for Applications for Disbursement of 2017 RGGI Funds*, Docket No. 2017-00145, Order at 8-9 (Sept. 27, 2017).

established that the total amount to be disbursed from the RGGI Trust Fund, to the extent those funds are available, must be \$2,500,000 in fiscal year 2017-18, \$2,500,000 in fiscal year 2018-19 and \$1,000,000 in fiscal year 2019-20.

Regarding this final amendment, in a June 21, 2017 Notice of Proceeding and Request for Comment in *Maine Public Utilities Commission, Solicitation for Applications for Disbursement of 2017 RGGI Funds*, Docket No. 2017-00145, Commission Staff requested comment on how the Commission should implement the transfer of funds in accordance with the 2017 Act. Under the 2016 Act, the Trust transferred funds to the Commission and the Commission disbursed funds to qualifying affected customers quarterly, following the receipt by the Trust of proceeds from the RGGI auctions, which occur in September, December, March, and June. *Maine Public Utilities Commission, Solicitation for Applications for Disbursement of RGGI Funds*, Docket No. 2016-00143, Order (October 21, 2016). As the 2017 Act requires funding to the extent available by reference to a total amount for the fiscal year, Staff requested comment on how to implement the transfer of funds from the Trust and disbursements in this docket given that RGGI auction amounts are only known on a quarterly basis. The Commission addressed this issue in its Order disbursing funds for fiscal year 2017-2018. *Maine Public Utilities Commission, Solicitation for Applications for Disbursement of 2017 RGGI Funds*, Docket No. 2017-00145, Order (Sept. 27, 2017).

In this prior 2017 Order, the Commission agreed with comments from the IECG and the Trust that there is no need to reach a conclusion on interpreting the “to the extent available” provision in the 2017 Act unless and until the RGGI quarterly auction results drop below a certain threshold. Thus, given the results of the September 2017 auction, which yielded proceeds to Maine of more than \$2.25 million, the Commission did not need to address the questions regarding priority of payment. The Commission directed the Trust, on a quarterly basis and assuming the RGGI proceeds from the applicable quarterly auction were equal to or greater than \$1.25 million, to transfer to the Commission 50% of the gross proceeds received from each RGGI quarterly auction during FY 2017-2018 until the total funds transferred to the Commission during the fiscal year reach \$2.5 million. The RGGI proceeds to Maine for fiscal year 2017-18 (July 2017 to June 2018) were \$9.5 million, and thus going forward, the Trust transferred 50% of the quarterly auction proceeds received from the RGGI auctions until the total transferred reached \$2.5 million. Because no quarterly auction resulted in an amount less than \$1.25 million, the Commission did not further address the treatment of the auction proceeds and allocation of the funds.

In the June 21, 2017 Notice of Proceeding and Request for Comment, *Maine Public Utilities Commission, Solicitation for Applications for Disbursement of 2017 RGGI Funds*, Docket No. 2017-00145, Commission Staff also requested comment on the definition of affected customer, noting pursuant to 35-A M.R.S. § 10109(3-A), an “affected customer” must be “receiving service at a transmission or subtransmission voltage level as defined in section 10110, subsection 6” Section 10110, subsection 6, defines transmission voltage service as service at 44 kilovolts of more, and subtransmission voltage service is defined as service at 34.5 kilovolts of more.

Staff sought comment on whether the definition of subtransmission service should be interpreted to include customers that receive primary distribution service at 34.5 kilovolts (or more). While some comments indicated there are indeed customers receiving service at primary distribution voltage of 34.5 kV, the Commission agreed with other comments, asserting only those customers taking service at a minimum voltage level of 34.5 kV and taking service from a utility's subtransmission system may qualify as affected customers. Notably, the Trust indicated customers taking service at a primary distribution level are not exempt from electric efficiency procurement, and the Trust prohibits customers taking service at transmission and subtransmission levels from receiving procurement funds. Section 1.3 of the 2017 RFA specified the required service voltage level, as required by 35-A M.R.S. § 10109(3-A). *Maine Public Utilities Commission, Solicitation for Applications for Disbursement of 2017 RGGI Funds*, Docket No. 2017-00145, Order Approving Request for Applications (July 14, 2017).

Finally, regarding the matching fund provision from the 2017 legislative session, as previously explained by the Commission with regard to the 2017 RFA, an affected customer is eligible to receive two benefits: a proportionate disbursement from the Commission and matching funds from the Trust. As to the matching funds, if an affected customer uses its entire disbursement toward an efficiency measure approved by the Trust, as well as any additional customer funds, 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 per year disbursement amount is allocated among affected customers in proportion to their retail purchase of electricity (in kWh) during the prior calendar year. Disbursements are made quarterly on a schedule that aligns with the RGGI auction calendar. While the Commission disburses the specified funds per year to affected customers, the process of matching funds is administered by the Trust. The Commission provides 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. *Maine Public Utilities Commission, Solicitation for Applications for Disbursement of 2017 RGGI Funds*, Docket No. 2017-00145, Order Approving Request for Applications at 3 (July 14, 2017).

III. DISCUSSION AND DECISION

The 2017 Act requires the Commission to identify affected customers and direct disbursements to such customers quarterly during fiscal years 2017-18, 2018-19, and 2019-20 at specified levels and to the extent those funds are available.

The 2017 Act 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 *Maine Public Utilities Commission, Solicitation for Applications for Disbursement of RGGI Funds*, Docket No. 2016-00143, Order (October 21, 2016), the Commission addressed these two issues with regard to the second prong, concluding that only applicants located within the state of Maine may qualify as affected customers, and that manufacturers receiving transmission service through NMISA cannot be considered affected customers and thus are ineligible to apply for disbursements through the RGGI program.

The Commission incorporates its prior findings and conclusions, explained in detail in Section II above, regarding the treatment of the auction proceeds and allocation of the funds; required service voltage level, as required by 35-A M.R.S. § 10109(3-A); and administration of the matching fund provision².

IV. CONCLUSION

Accordingly, for the reasons described herein, the Commission

ORDERS

1. That the attached Request for Applications, Standard Form Application and Affidavit are approved;
2. That Maine transmission and distribution utilities located within the ISO New

² With regard to the treatment of RGGI auction proceeds and allocation of the funds, the Commission also incorporates into this Order its prior decision that there is no need to reach a conclusion on interpreting the “to the extent available” provision in the 2017 Act unless and until the RGGI quarterly auction results drop below a certain threshold. The Commission will further address the treatment of the auction proceeds and allocation of the funds as needed.

England shall provide this Order and attached Request for Applications to their transmission and subtransmission customers, taking service from the utilities' subtransmission system, no later than July 20, 2018; and

3. Delegates to the Director of Electric and Natural Gas Industries authority to make minor modifications to the attached Request for Applications, Standard Form Application and Affidavit to correct any administrative inconsistencies.

Dated at Hallowell, Maine, this 10th day of July 2018.

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear

Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Vannoy
 Williamson
 Davis

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)-(3) 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.