

## 35-A §3211-A. Conservation programs

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## 35-A §3211-A. Conservation programs

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Administrative costs" means costs of the commission that are funded pursuant to and associated with the implementation of this section, including, but not limited to, costs of program planning and evaluation, costs of securing necessary expertise, costs associated with contract formation and administration and costs of monitoring and enforcing contractual obligations. [2001, c. 624, §4 (NEW).]

B. "Administration fund" means the conservation administration fund established by the commission pursuant to subsection 6. [2001, c. 624, §4 (NEW).]

C. [2007, c. 317, §3 (RP).]

D. "Conservation programs" means programs developed by the commission pursuant to this section designed to reduce inefficient electricity use. [2001, c. 624, §4 (NEW).]

E. "Prior conservation efforts" means programs to promote conservation undertaken at the direction or with the authorization of the commission prior to March 1, 2002. [2001, c. 624, §4 (NEW).]

F. "Program fund" means the conservation program fund established by the commission pursuant to subsection 5. [2001, c. 624, §4 (NEW).]

G. "Service provider" means a public or private provider of energy conservation services or an entity selected by the commission to contract with such providers or otherwise arrange the delivery of conservation programs. [2001, c. 624, §4 (NEW).]

H. [2007, c. 317, §4 (RP).]

I. "Trade association aggregator" means an entity that gathers individual members of a trade association together for the purpose of receiving electrical efficiency services or bidding on electrical efficiency contracts. [2007, c. 317, §5 (NEW).]

[2007, c. 317, §§3-5 (AMD).]

**2. Programs.** The commission shall develop and implement conservation programs to help reduce energy costs for electricity consumers in the State by the maximum amount possible. The commission shall establish and, on a schedule determined by the commission, revise objectives and an overall energy strategy for conservation programs. Conservation programs implemented by the commission must be consistent with the objectives and an overall energy strategy developed by the commission and be cost effective, as defined by the commission by rule or order. In defining "cost effective," the commission may consider the

extent to which a program promotes sustainable economic development or reduces environmental damage to the extent the commission can quantify or otherwise reasonably identify such effects. Consistent with the other requirements of this section, the commission, in adopting and implementing conservation programs, shall seek to encourage efficiency in electricity use, provide incentives for the development of new, energy-efficient business activity in the State and take into account the costs and benefits of energy efficiency and conservation to existing business activity in the State.

A. The commission shall consider, without limitation, conservation programs that:

- (1) Increase consumer awareness of cost-effective options for conserving energy;
- (2) Create more favorable market conditions for the increased use of efficient products and services;
- (3) Promote sustainable economic development and reduced environmental damage;
- (4) Reduce the price of electricity over time for all consumers by achieving reductions in demand for electricity during peak use periods; and
- (5) Reduce total energy costs for electricity consumers in the State by increasing the efficiency with which electricity is consumed. [2007, c. 317, §6 (AMD).]

B. The commission, with regard to the assessment imposed under subsection 4, shall:

- (1) Target at least 20% of funds to programs for low-income residential consumers, as defined by the commission by rule;
- (2) Target at least 20% of funds to programs for small business consumers, as defined by the commission by rule; and
- (3) To the greatest extent practicable, apportion remaining funds among customer groups and geographic areas in a manner that allows all other customers to have a reasonable opportunity to participate in one or more conservation programs. [2007, c. 317, §6 (AMD).]

C. The commission shall hold at least one public hearing and invite, accept, review and consider comments and suggestions from interested parties prior to adopting or substantially revising conservation programs or the objectives and overall strategy for conservation programs. [2001, c. 624, §4 (NEW).]

D. The commission shall monitor conservation planning and program development activities in the region and around the country. [2001, c. 624, §4 (NEW).]

E. The commission shall implement conservation programs by contracting with service providers in accordance with subsection 3. [2001, c. 624, §4 (NEW).]

F. The commission shall monitor and evaluate the delivery of conservation programs by service providers and assess the cost-effectiveness of programs in meeting the objectives and overall strategy established by the commission. [2001, c. 624, §4 (NEW).]

G. The commission, to the extent possible, shall coordinate its efforts with other agencies of the State with energy-related responsibilities. [2001, c. 624, §4 (NEW).]

H. The commission shall secure sufficient technical and administrative expertise to carry out its responsibilities pursuant to this section by:

- (1) Contracting with appropriate entities with relevant expertise and experience;
- (2) Establishing one or more advisory groups composed of persons with relevant expertise and experience; or
- (3) Any other reasonable means developed by the commission. [2001, c. 624, §4 (NEW).]

I. The commission may coordinate its efforts under this section with similar efforts in other states in the northeast region and enter into agreements with public agencies or other entities in or outside of the State for joint or cooperative conservation planning or conservation program delivery, if the commission finds

that such coordination or agreements would provide demonstrable benefits to citizens of the State and be consistent with this section, the conservation programs and the objectives and overall strategy for the conservation programs. [2001, c. 624, §4 (NEW).]

J. The commission shall encourage school facility managers to complete an energy efficiency training and certification program established and conducted by the commission under this section. To the extent the commission determines necessary and appropriate to meet the goals of this paragraph, the commission may, in accordance with the requirements of this section, establish incentive mechanisms to encourage participation in this program. For purposes of this paragraph, "school facility managers" means persons employed by school administrative units in this State who are responsible for the design or operation of school administrative unit facilities or the heating, ventilation or air conditioning systems or equipment used in such facilities. [2005, c. 569, §2 (NEW).]

K. The commission, in conjunction with the trustees of the Energy and Carbon Savings Trust, shall develop a triennial energy efficiency and conservation plan in accordance with section 10007, subsection 6. The plan must seek to address the needs of all customer classes of the transmission and distribution utilities in the public interest. [2007, c. 317, §6 (NEW).]

[2007, c. 317, §6 (AMD).]

**3. Implementation.** The commission shall seek to implement the delivery of conservation programs in all regions of the State on an equitable basis and to citizens at all income levels. The commission may arrange the delivery of conservation programs by contracting with service providers. The commission shall select service providers in accordance with this subsection.

A. The commission shall select service providers through a competitive bidding process. [2001, c. 624, §4 (NEW).]

B. To the extent practicable, the commission shall encourage the development of resources, infrastructure and skills within the State by giving preference to in-state service providers. [2001, c. 624, §4 (NEW).]

C. Notwithstanding paragraph A:

(1) The commission may select a service provider for one or more conservation programs without employing a competitive bidding process if the commission finds that the selection of the service provider will promote the efficient and effective delivery of conservation programs and is consistent with the objectives and overall strategy of the conservation programs; and

(2) For the delivery of conservation programs to low-income residential consumers, the commission, without employing a competitive bidding process, may utilize the delivery system for the Weatherization Assistance for Low-income Persons Program administered through the United States Department of Energy and the network of for-profit and not-for-profit entities who have held contracts with transmission and distribution utilities to deliver conservation services to low-income and residential customers. [2001, c. 624, §4 (NEW).]

Notwithstanding Title 5, section 1831, the commission is not subject to rules adopted by the State Purchasing Agent in selecting service providers pursuant to this subsection. The commission shall adopt rules establishing procedures governing the selection of service providers under this subsection. The commission shall consult with the State Purchasing Agent in developing the rules.

A trade association aggregator is eligible to participate in competitive bid processes under this subsection.

[2007, c. 317, §7 (AMD).]

**4. Funding level; base assessment.** The commission shall assess transmission and distribution utilities to collect funds for conservation programs and administrative costs in accordance with this subsection and shall make other assessments in accordance with subsection 4-A. The amount of all assessments by the commission under this subsection plus expenditures of a transmission and distribution utility associated with

prior conservation efforts must result in conservation expenditures by each transmission and distribution utility, not including expenditures on assessments under subsection 4-A, that are fixed at a rate of 0.145 cent per kilowatt-hour.

- A. [2007, c. 317, §8 (RP).]
- B. [2007, c. 317, §8 (RP).]
- C. [2007, c. 317, §8 (RP).]
- D. [2007, c. 317, §8 (RP).]

[ 2007, c. 317, §8 (AMD) .]

**4-A. Other assessments on transmission and distribution utilities.** The commission shall assess each transmission and distribution utility based on the utility's gross operating revenue as necessary to realize all available energy efficiency and demand reduction resources in this State that are cost-effective, reliable and feasible after consideration of the following:

- A. The amount of assessments pursuant to subsection 4 and their payment schedule; [2007, c. 317, §9 (NEW).]
- B. The funding for conservation programs provided by the Energy and Carbon Savings Trust pursuant to section 10008; [2007, c. 317, §9 (NEW).]
- C. The amount of payments received from a forward capacity market, as defined in section 10008, subsection 1, paragraph B, as a result of conservation programs funded under this chapter and under section 10008; and [2007, c. 317, §9 (NEW).]
- D. Any other predictable sources of funding for or investment in energy conservation and efficiency programs. [2007, c. 317, §9 (NEW).]

For the purposes of this subsection, "gross operating revenue" means revenue derived from filed rates, except from sales for resale. The commission may correct any errors in the assessments under this subsection by means of a credit or debit to the following year's assessment rather than reassessing all utilities in the current year. The commission shall determine the assessments under this subsection annually prior to May 1st and assess each utility for its pro rata share for expenditure, including funds for energy conservation programs, during the fiscal year beginning July 1st. The commission may not charge any assessment under this subsection until the Legislature has approved the commission's budget in accordance with section 116. The commission shall separately identify any recommended assessment under this subsection in its presentation of budget recommendations contained in any current services budget legislation and any supplemental budget legislation to the joint standing committee of the Legislature having jurisdiction over public utilities matters pursuant to section 116. Each utility shall pay the assessment charged to that utility under this subsection on the same schedule that payment of assessments under subsection 4 is required.

[ 2007, c. 317, §9 (NEW) .]

**4-B. Transmission and subtransmission voltage level.** After July 1, 2007, electricity customers receiving service at transmission and subtransmission voltage levels are not eligible for new conservation programs undertaken under this section, and those customers are not required to pay in rates any amount associated with the assessment imposed on transmission and distribution utilities under subsection 4 or subsection 4-A. To remove the amount of the assessment under subsection 4, the commission shall reduce the rates of such customers that are in effect on July 1, 2007 by 0.145 cent per kilowatt-hour at the time of the first rate adjustment following the effective date of this subsection. For the purposes of this section, "transmission voltage levels" means 44 kilovolts or more, and "subtransmission voltage levels" means 34.5 kilovolts.

[ 2007, c. 317, §10 (NEW) .]

**5. Conservation program fund.** The commission shall establish a conservation program fund to be used solely for conservation programs.

A. The commission shall deposit all assessments collected pursuant to this section, other than funds deposited in the administration fund, into the program fund. [2001, c. 624, §4 (NEW).]

B. Any interest earned on funds in the program fund must be credited to the program fund. [2001, c. 624, §4 (NEW).]

C. Funds not spent in any fiscal year remain in the program fund to be used for conservation programs. [2001, c. 624, §4 (NEW).]

D. The commission may apply for and receive grants from state, federal and private sources for deposit in the program fund and also may deposit in the program fund any grants or other funds received by or from any entity with which the commission has an agreement or contract pursuant to this section if the commission determines that receipt of those funds would be consistent with the purposes of this section. If the commission receives any funds pursuant to this paragraph, it shall establish a separate account within the program fund to receive the funds and shall keep those funds and any interest earned on those funds segregated from other funds in the program fund. [2001, c. 624, §4 (NEW).]

[ 2001, c. 624, §4 (NEW) .]

**5-A. Support for Energy Resources Council.** Notwithstanding any other provision of this section:

A. The Energy Resources Council established under Title 5, section 3327 may apply to the commission for funding from the program fund to support projects and activities of the council related to energy conservation; and [2003, c. 487, §3 (NEW).]

B. The commission may provide up to \$200,000 in any fiscal year to the Energy Resources Council established under Title 5, section 3327 from the program fund if the funds are needed for particular projects or activities directed by the Legislature to be undertaken by the council, or the commission finds the projects or activities are generally consistent with the overall purposes of this section. [2003, c. 487, §3 (NEW).]

[ 2003, c. 487, §3 (NEW) .]

**5-B. Support for Maine Energy Conservation Board.** Notwithstanding any other provision of this section, the Maine Energy Conservation Board established under section 10007 may apply to the commission for funding from the program fund for staff support for the board; and, upon application of the board, the commission may provide up to 1% of the total amount in the program fund to the board for that purpose.

[ 2007, c. 317, §11 (NEW) .]

**6. Conservation administration fund.** The commission shall establish a conservation administration fund to be used solely to defray administrative costs. The commission annually may deposit funds collected pursuant to this section into the administration fund up to a maximum in any fiscal year of \$1,300,000. Any interest on funds in the administration fund must be credited to the administration fund and any funds unspent in any fiscal year must either remain in the administration fund to be used to defray administrative costs or be transferred to the program fund.

[ 2001, c. 624, §4 (NEW) .]

**7. Prior conservation efforts.** Except as otherwise directed by the commission, transmission and distribution utilities shall continue to administer contracts associated with prior conservation efforts. Such contracts may not be renewed, extended or otherwise modified by transmission and distribution utilities in a manner that results in any increased expenditures associated with those contracts.

[ 2001, c. 624, §4 (NEW) .]

**7-A. Funds held in trust.** All funds collected from electricity consumers pursuant to this section are collected under the authority and for the purposes of this section and are deemed to be held in trust for the purposes of benefiting electricity consumers. In the event funds are not expended or contracted for expenditure within 2 years of being collected from consumers, the commission shall return the value of those funds to consumers by appropriate reductions in the assessment collected pursuant to subsection 4.

[ 2007, c. 317, §12 (AMD) .]

**8. Resolution of disputes.** Upon receipt of an appropriate filing by a party to a contract relating to prior conservation efforts, the commission shall adjudicate a dispute relating to the interpretation or administration of the contract by the transmission and distribution utility.

In the case of a dispute filed after the effective date of this subsection, the commission shall refer the dispute to commercial arbitration in accordance with this paragraph. Each party to the contract shall select an arbitrator who is not a current employee of the party. The selected arbitrators shall then select a 3rd arbitrator. If the arbitrators can not agree on the 3rd arbitrator, each party shall submit to the commission a list of at least 3 arbitrators who have no previous or current interest in the contract and, to the extent practicable, have special competence and experience with respect to the subject matter involved in the dispute. The commission shall choose the 3rd arbitrator from among the persons on the lists provided by the parties. After their selection, the arbitrators shall promptly hear and determine the controversy pursuant to the rules of the American Arbitration Association for the conduct of commercial arbitration proceedings, except that if such rules conflict with any procedural rules established by the commission or applicable provisions of the laws of this State relating to arbitration, the applicable commission rules or provisions of state law govern the arbitration. The arbitrators shall submit their decision to the commission.

A. The commission shall accept or reject the decision within 30 days of its submission, unless the commission requires additional time, in which case it may extend its review for another 30 days.

[ 2001, c. 624, §4 (NEW) .]

B. If the commission does not reject the decision within 30 days or, if it extends its review period an additional 30 days, within 60 days, the decision is deemed accepted. [ 2001, c. 624, §4 (NEW) .]

C. If the commission rejects the decision, the commission shall adjudicate the dispute. [ 2001, c. 624, §4 (NEW) .]

A decision by the commission under this subsection, including a decision by the arbitrators that is deemed accepted by the commission pursuant to paragraph B, is enforceable in a court of law.

[ 2001, c. 624, §4 (NEW) .]

**9. Ratemaking and cost recovery.** The assessments charged to utilities under this section are just and reasonable costs for rate-making purposes and must be reflected in the rates of transmission and distribution utilities.

[ 2007, c. 317, §13 (RPR) .]

**10. Rules.** The commission shall adopt rules necessary to implement this section. Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[ 2001, c. 624, §4 (NEW) .]

**11. Report.** The commission shall report by December 1st of each year to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters. The report must include:

A. A description of actions taken by the commission pursuant to this section, including descriptions of all conservation programs implemented during the prior 12 months and all conservation programs that the commission plans to implement during the next 12 months, a description of how the commission

determines the cost effectiveness of each conservation program and its assessment of the cost effectiveness of programs implemented during the prior 12 months; [2001, c. 624, §4 (NEW).]

B. An accounting of:

- (1) Assessments made on each transmission and distribution utility pursuant to this section during the prior 12 months and projected assessments during the next 12 months;
- (2) Total deposits into and expenditures from the program fund during the prior 12 months and projected deposits into and expenditures from the program fund during the next 12 months;
- (3) The amount and source of any grants or funds deposited in the program fund pursuant to subsection 5, paragraph D during the previous 12 months and the projected amount and source of any such funds during the next 12 months; and
- (4) Total deposits into and expenditures from the administration fund during the prior 12 months and projected deposits into and expenditures from the administration fund during the next 12 months; [2005, c. 569, §3 (AMD).]

C. Any recommendations for changes to law relating to energy conservation; and [2005, c. 569, §4 (AMD).]

D. The status of the progress towards meeting the goals of subsection 2, paragraph J and the strategies that have been implemented to meet those goals. The report also must include an accounting, to the extent available, of the energy savings that have been achieved by school administrative units after their school facility managers have been certified pursuant to subsection 2, paragraph J. A school administrative unit is not required to incur additional costs in order to supply information to the commission for its report. [2005, c. 569, §5 (NEW).]

[2005, c. 569, §§3-5 (AMD).]

**12. Independent analysis of programs.** The commission shall arrange for an independent evaluation of each major program implemented under this section. Each major program must be evaluated at least once every 5 years. The evaluation must include an accounting audit of the program and an evaluation of the program's effectiveness in meeting the goals of this section. The evaluations must be conducted by a competent professional with expertise in energy efficiency matters, including the management of cost-effective energy efficiency programs. The commission shall include the results of all evaluations conducted under this subsection in the annual report submitted pursuant to subsection 11. For purposes of this subsection, "major program" means a program with an annual budget of more than \$500,000.

[2005, c. 569, §6 (NEW).]

#### SECTION HISTORY

2001, c. 624, §4 (NEW). 2003, c. 217, §1 (AMD). 2003, c. 219, §1 (AMD). 2003, c. 275, §§1,2 (AMD). 2003, c. 487, §§2,3 (AMD). 2005, c. 459, §1 (AMD). 2005, c. 569, §§1-6 (AMD). 2007, c. 317, §§3-13 (AMD).