

MAINE STATE LEGISLATURE

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MAINE OFFICE OF THE PUBLIC ADVOCATE

REPORT

Pursuant to Public Laws of 2007, Chapter 317

“An Act to Establish the Regional Greenhouse Gas Initiative Act of 2007”

Presented to the Joint Standing Committee on Utilities and Energy

January 15, 2008

I. INTRODUCTION

On June 18, 2007, Governor John E. Baldacci signed into law “An Act to Establish the Regional Greenhouse Gas Initiative Act of 2007”. Within this new law is Section 21, which directs the Office of the Public Advocate to study the feasibility of and report on options, with a recommended timeline, for integrating the programmatic responsibilities and organizational structure and functions with respect to energy efficiency and conservation within the Public Utilities Commission and the Energy and Carbon Savings Trust. In its study and recommendations for consolidation, the Office of the Public Advocate is directed to consider the responsibilities of the Maine Energy Conservation Board, established under the Maine Revised Statutes, Title 35-A, section 10007, in relation to the Public Utilities Commission and the Energy and Carbon Savings Trust. The Office of the Public Advocate is required to submit a report of its findings, including the identification of the administrative benefits and increases in effectiveness that will be realized by the consolidation of energy efficiency functions into a single entity, including any recommended legislation, by January 15, 2008 to the Joint Standing Committee on Utilities and Energy. This is the report called for in this new law.

II. PROCESS

In preparation for carrying out this study, the Public Advocate met with stakeholders individually and in small groups, including state regulators at the Public Utilities Commission and the Department of Environmental Protection, advocates for the new law, the House chair of the Natural Resources Committee who co-sponsored the original legislation (LD 1851), and contractors who currently deliver energy efficiency and conservation programs for the Efficiency Maine program; and reviewed the research literature for recent reports and studies on related issues.

In preparation for meeting with these stakeholders, I provided the expected attendees with the following questions for the purpose of stimulating discussion:

- Can the types of energy efficiency and energy conservation programs likely to be offered by the PUC’s Efficiency Maine program and the Energy and Carbon Savings Trust be compatibly administered and delivered from a single agency? If not, why?
- What are the characteristics of high quality energy efficiency and energy conservation programming? Good governance? Quality control? Evaluation of program effectiveness? Competition and bidding for delivery of programs? Capturing all available, cost-effective efficiencies? Establishing a hierarchy of needs? Other?
- Are there benefits that are more likely to be achieved by keeping Efficiency Maine and the Energy and Carbon Savings Trust as separate entities? If so, what might they be?

- Are there uncertainties, actions or decisions which need to occur or be played out prior to a final decision on whether to integrate the energy efficiency and conservation responsibilities and functions of Efficiency Maine and the Energy and Carbon Savings Trust?
- The RGGI law may be challenged in court. Should a decision on integration be held in abeyance pending the outcome of such a challenge?
- Does Efficiency Maine have outstanding contractual obligations with contractors who deliver programs which limit or complicate integration prior to their completion?
- Is there a need to integrate prior to the conduct of the first auction of RGGI allowances? If so, how far in advance of the auction should integration occur?
- What role should the Maine Energy Conservation Board play in the integration of planning for the state's energy efficiency and conservation efforts?

Based on the conversations held with stakeholders, and the review of the literature, we have divided the balance of this report into the following sections:

- **Feasibility:** Is it feasible to integrate the programmatic responsibilities and the organizational structure and functions of Efficiency Maine and the new Energy and Carbon Savings Trust with respect to energy efficiency and conservation? If it is feasible, is it also desirable?
- **Options:** If integration is feasible and desirable, what are the options for integration?
- **Timetable:** When should integration occur, immediately or over a period of time?

III. FEASIBILITY: Is it feasible to integrate the programmatic responsibilities and the organizational structure and functions of Efficiency Maine and the new Energy and Carbon Savings Trust with respect to energy efficiency and conservation? If it is feasible, is it also desirable?

The stakeholders with whom the Public Advocate spoke agreed that it is feasible to integrate the energy efficiency and conservation functions of the Public Utilities Commission's Efficiency Maine program with that of the Energy and Carbon Savings Trust (ECST). There were differing views on the best way to integrate their organizational structures. One view suggested merging the two programs into one organization – either under the Maine PUC or under ECST. A second view was that the two programs should be merged in an independent organization, not as part of a larger organization. The third view was that a merger should occur but be delayed for 2 to 3 years, and in the interim ECST should contract with Efficiency Maine to administer and deliver the energy efficiency and conservation programs funded with ECST resources.

Recommendation #1: Integration of the programmatic responsibilities and organizational structure and functions of Efficiency Maine and the Energy and Carbon Trust with respect to energy efficiency and conservation is feasible and desirable.

In my conversations with several of the stakeholders, the issue of the timing of integration came up - with particular reference made to existing contracts that Efficiency Maine has with entities which deliver programs for them. These three year contracts have approximately two years left to run (and the potential for 2 one-year extensions), and it was the strongly held view of the PUC Commissioners that, for contract management reasons, the integration ought to occur close to the time when those contracts are scheduled to expire. This would allow the integrated entity to negotiate new contracts and make other decisions related to the delivery of energy conservation and efficiency programs. Other stakeholders subsequently advised me that they either concurred with the PUC Commissioners' position or were not opposed to it.

Recommendation #2: Integration should be put on a timetable that will bring it about approximately six months prior to the scheduled expiration of existing Efficiency Maine contracts for delivery of energy conservation and efficiency programs to allow the integrated entity to negotiate new contracts and make other decisions related to delivery of these programs going forward.

Because RGGI will begin implementation prior to the time period I have recommended when integration should take place, and there are likely to be funds available from the first auction of RGGI allowances, an interim method may be needed to allow the available funds to be invested in efficiency measures intended to

reduce Maine's greenhouse gas output. It is my belief that the earlier such investments are made, the easier it will be for Maine to achieve the CO₂ reductions called for in Maine's RGGI law.

Recommendation #3: If funds are available from the auction of RGGI allowances prior to the integration of Efficiency Maine and the Energy and Carbon Savings Trust, the Trust should be authorized and encouraged to contract with Efficiency Maine to deliver such programs as the Trust chooses to implement to reduce CO₂ emissions. This will allow the Trust to quickly begin carrying out their mission without the need to immediately attract and train an administrative staff.

IV. OPTIONS: If integration is feasible and desirable, what are the options for integration?

When asked, the interviewed stakeholders offered three models for implementing integration:

- a. Merge the Energy and Carbon Savings Trust into Efficiency Maine as a separate and distinct program but utilizing the existing administrative structure (as modified to accommodate this addition) to achieve administrative efficiencies.
- b. Merge Efficiency Maine into the Energy and Carbon Savings Trust as a separate and distinct set of programs, and utilize the Efficiency Maine administrative structure to manage both sets of programs efficiently.
- c. Merge the two entities into a new Maine Energy Authority, and have the Legislature consider whether there are other existing energy programs or activities, such as the Standard Offer bidding and contracting, that might also be placed in this new agency.

Each of these options has pros and cons:

- Merging the Trust into Efficiency Maine provides a proven management team and an operational administrative structure that will enable the Trustees to focus totally on getting their RGGI-funded efficiency and conservation programs identified and implemented, likely bringing them into operation sooner than might be the case if they also have to develop their own administrative structure, hire and train new staff, and otherwise bring a new agency into existence. Of particular concern to me is the limited number of people available nationally who have the ability and experience to manage the programs the Trust will develop and run. This shortage could slow and complicate the start-up, and result in Maine being unable to attract the quality managers we will need to maximize the benefits we achieve through the Trust. A few stakeholders expressed a belief that

Efficiency Maine is becoming more aggressive in implementing energy efficiency following the review conducted by the PUC and hope that this aggressiveness will also benefit the mission of the Trust.

- Merging Efficiency Maine into the Trust appeals to those who are concerned that Efficiency Maine has not reached its full potential and who believe it needs new, more aggressive leadership. These stakeholders believe the persons to be named to be Trustees will have substantial experience in running efficiency programs, and this experience will enable the Trust to become operational more quickly and develop an aggressive array of efficiency programs. They also see these Trustees as being able to construct a rational marketing plan that will be well-integrated with the efficiency programs they offer. Other stakeholders are less sanguine about finding Trustees or program managers with the high level of experience needed to launch this effort effectively. They fear that precious time and resources will have to be devoted to start-up efforts and development of a management structure, with some sacrifice in how quickly the Trust can put good programs on the street.
- Merging the two entities into a new and separate agency (Maine Energy Authority or other), and moving from other state agencies any energy activities and programs that might more appropriately be located in this new agency, may be a useful option for the long term as a way to rationalize our management and delivery of energy-related activities, but may be premature. I believe the integration of Efficiency Maine and the Trust should be completed and allowed to operate for a year or two before the Legislature considers whether there would be value in spinning off this integrated entity as a separate agency.

Recommendation #4: In order to assure a quick and smooth integration of Efficiency Maine and the Energy and Carbon Savings Trust, merging the Trust into Efficiency Maine and utilizing the existing management structure of the PUC makes sense.

V. TIMING: When should integration occur, immediately or over a period of time?

In Recommendation #2, I recommended that integration of Efficiency Maine and the Energy and Carbon Savings Trust be put on a timetable to bring it about approximately six months prior to the scheduled expiration of existing Efficiency Maine contracts for delivery of energy conservation and efficiency programs in order to allow the integrated entity time to negotiate new contracts (or extensions on the existing contracts) and make other decisions related to delivery of these programs going forward.

A concern raised by one stakeholder related to the possibility that having Efficiency Maine and the Trust operate separately for a period of time, especially early in the life of the Trust, might result in the two entities developing different “cultures” which might make their integration more complicated or make more difficult for the integrated entity’s two parts to work together. While I believe the risk of such a development is small, steps can be taken to further reduce this risk.

Recommendation #5: In order to assure a smooth integration and a close working relationship between the Trust and Efficiency Maine, I recommend that the Energy Conservation Board, the PUC and the Trust be sensitive to the need to have a collaborative process for bringing about the integration of Efficiency Maine and the Trust.

Conclusion

I believe that if these five recommendations are followed, the integration of the programmatic responsibilities and organizational structure and functions with respect to energy efficiency and conservation within the Public Utilities Commission and the Energy and Carbon Savings Trust can and will result in administrative benefits and increases in effectiveness.

If the Joint Standing Committee on Utilities and Energy accepts all these recommendations, or any portion of them, I will be pleased to work with the committee Analyst to draft any legislation needed to implement the accepted recommendations.