

July 6, 2016

EFFICIENCY MAINE TRUST
REQUEST FOR APPROVAL OF THIRD
TRIENNIAL PLAN

ORDER APPROVING
STIPULATION

VANNOY, Chairman; and MCLEAN and WILLIAMSON Commissioners

I. SUMMARY

In this Order, the Commission finds that the Stipulation filed on May 25, 2016 by the Efficiency Maine Trust (Trust or EMT) with regard to the Trust's Third Triennial Plan for fiscal years (FYs) 2017 through 2019 (Plan) satisfies the Commission's criteria for stipulations as set forth in the Commission's Rules of Practice and Procedure, and therefore we approve the Stipulation. MPUC Rules, ch. 110, § 8(D)(7). The Trust proposes the Stipulation as a means to expeditiously resolve a number of issues in the triennial plan approval process, and it reserves some issues for further litigation in Docket No. 2015-00175 and in a Phase II proceeding or proceedings.¹ The Stipulation enables the Trust to determine what energy efficiency measures the Commission approves as cost-effective, to identify the quantity of measures and associated savings that can be achieved during the 3-year period of the Plan, and to estimate the cost of procuring those savings with sufficient time to prepare for the first fiscal year of the Plan, which begins July 1, 2016.²

The Stipulation is signed by seven parties to this proceeding. It is signed by the Trust and several intervenors, namely the Office of Public Advocate (OPA), Central

¹ Under the Stipulation, two issues arising out of the Trust's natural gas conservation program require further litigation under the terms of the Stipulation. Those issues are set forth in section VI.A of the Stipulation. The Stipulation also carves out several additional issues, including, for example, an examination of incentive levels for LED lightbulbs, which require further litigation in a Phase II. Those issues are set forth in section VI.B of the Stipulation.

² The Commission must also determine whether the budget resulting from the Stipulation is in accordance with the Commission's regulatory cap on ratepayer funding for the Trust's electric efficiency energy spending. MPUC Rule, ch. 396; *Commission Establishment of Efficiency Maine Trust Procurement Funding Cap Pertaining to T&D Utilities*, Docket No. 2016-00041. Specifically, the Commission must consider whether the amount of ratepayer funding for the Trust's electric energy efficiency spending for the first FY of the Plan is within 4% of the total retail electricity and transmission and distribution (T&D) sales in the State, as required by Statute and rule. 35-A M.R.S. § 10110(4-A); MPUC Rule, ch. 396. Based upon the filings in Docket No. 2016-00041, it does not appear that the level of ratepayer funding for FY 2017 set forth in the Stipulation and as authorized by this Order exceeds the regulatory cap. The Commission anticipates taking up this additional regulatory issue as soon as reasonably practicable. As chapter 396 provides that the Commission will calculate the utility procurement cap for each FY of the Trust's triennial plans, the Commission anticipates re-calculating the cap in advance of FY 2018 and FY 2019 of the Plan. MPUC Rule, ch. 396, § 3(E).

Maine Power Company (CMP), Emera Maine (Emera), Northern Utilities, Inc. d/b/a Unutil (Northern), Summit Natural Gas of Maine (Summit), and the Natural Resources Council of Maine (NRCM) (collectively the Moving Parties). Maine Natural Gas (MNG) and Bangor Gas Company, LLC (BGC) did not sign the stipulation and do not oppose it; and BGC seeks clarification on certain issues reserved for litigation under the Stipulation. We address BGC's request for clarification in the discussion section below.

Two parties to this proceeding oppose the Stipulation. Industrial Energy Consumers Group (IECG) and the Conservation Law Foundation (CLF) filed opposition to the Stipulation, asserting the Stipulation is, in part, inconsistent with Title 35-A and thus fails to meet the Commission's regulatory standard for approving stipulations. For the reasons discussed below the Commission accepts the Stipulation because we conclude the issues raised by IECG and CLF do not find support in either the record or law.

II. LEGAL BACKGROUND

In 2009, the Legislature enacted the Efficiency Maine Trust Act, which established the Trust as an independent instrumentality of the State for the purposes of developing, planning, coordinating and implementing energy efficiency and alternative energy resources programs for the State. 35-A M.R.S. §§ 10103-10123; *see also* 5 M.R.S. § 12021(6)(C). Pursuant to the Efficiency Maine Trust Act, the Commission has an oversight role with regard to the Trust, and is directed to, among other things, review and approve the Trust's proposed triennial plans. 35-A M.R.S. §§ 10104(4)(D), 10120. The triennial plans set forth the Trust's programs, and within those programs energy efficiency measures, which are designed to achieve the energy efficiency and alternative energy resource goals set forth in the Efficiency Maine Trust Act. *Id.* § 10104(4). As triennial plans are, in part, funded with ratepayer funds, as a matter of public policy the Legislature has charged the Commission with ensuring all elements of triennial plans are, in its determination, cost-effective, reliable, and achievable. *Id.*

In 2010 and 2013, the Commission reviewed and approved the Trust's First and Second Triennial Plans. *Review of Efficiency Maine Trust Triennial Plan*, Docket No. 2010-00116, Order Conditionally Approving Triennial Plan (July 19, 2010); *Efficiency Maine Trust, Request for Approval of Second Triennial Plan*, Docket No. 2012-00449, Order (March 6, 2013). Following the Commission's review of the Second Triennial Plan, the Legislature enacted An Act to Reduce Energy Costs, Increase Energy Efficiency, Promote Electric System Reliability and Protect the Environment, P.L. 2013, ch. 369 (Omnibus Energy Act), which, among other things, generally expanded the role of the Commission with respect to overseeing the Trust.

Prior to the Omnibus Energy Act, the Commission reviewed and approved the Trust's electric efficiency and conservation budget for triennial plans, but the Commission's approval of the plan budget was subject to legislative approval. 35-A M.R.S.A. § 10110(5) (2010) (requiring legislative approval of Trust's budget following Commission review), *repealed by* Omnibus Energy Act, § 21 (emergency, effective June 26, 2013). Changes made by the Omnibus Energy Act now direct the

Commission to set the budgets required to fund the level of energy efficiency that the Commission determines to be the maximum achievable cost-effective energy efficiency (MACE), or in the words of Title 35-A, the cost-effective, reliable, and achievable electricity elements of the Trust's proposed triennial plans.³ 35-A M.R.S. § 10110(4-A)(effective January 1, 2015). These budgets are not subject to legislative approval, but rather, subject only to a 4% regulatory utility procurement cap overseen by the Commission. *Id.* Title 35-A directs the Commission to ensure that the transmission and distribution utilities procure in rates sufficient funds from ratepayers to fund electric MACE. *Id.*

As to natural gas efficiency, prior to the Omnibus Energy Act, the budget for the natural gas conservation program was set by statute, subject to the Commission authorizing a higher assessment to fund MACE as part of the triennial plan review. 35-A M.R.S.A § 10111(2) (2010), *amended by* Omnibus Energy Act, § A-25 (emergency, effective June 26, 2013). The Omnibus Energy Act amended the Efficiency Maine Trust Act such that there is no statutorily set budget for the natural gas conservation program, and, as for the electricity conservation program budget, the Commission is now charged with setting the budget for the natural gas conservation program to achieve MACE, i.e., all cost-effective, reliable, and achievable energy efficiency savings without legislative approval. 35-A M.R.S. § 10111(2).

The Omnibus Energy Act also made changes with regard to scope and process, stating that the Commission's oversight of the Trust was to be ongoing, indicating the oversight role was not limited to the periodic review and approval of the triennial plans. Omnibus Energy Act, § A-26, codified at 35-A M.R.S. § 10120(3). The Legislature also required the Commission to establish an oversight and evaluation fund to be used to defray the cost of overseeing the Trust. Omnibus Energy Act, § A-26, codified at 35-A M.R.S. § 10120(3)⁴. Finally, as to process, the Legislature directed the Commission to review the Trust's triennial plans in an adjudicatory proceeding, which is formalized with technical conferences, pre-filed testimony, a hearing, post-hearing briefing, and an examiner's report. Omnibus Energy Act, § A-12, codified at 35-A M.R.S. § 10104(4)(D).

³ In the Commission's dockets relating to the Trust, it has become colloquial to refer to the acronym MACE, which arises from how the Trust's studies have evaluated all cost-effective potential for energy efficiency savings. These studies refer to maximum achievable cost-effective energy efficiency, or MACE. Title 35-A directs the Commission to approve all cost-effective, reliable, and achievable energy efficiency savings. 35-A M.R.S. § 10104(4). The Commission treats and refers to MACE as synonymous with the standard set by Title 35-A. *Efficiency Maine Trust, Request for Approval of Second Triennial Plan*, Docket No. 2012-00449, Order at 12 (March 6, 2013).

⁴ This section of the Efficiency Maine Trust Act also provides that the Commission may use funds from the oversight and evaluation fund "to contract with expert 3rd-party resources to provide technical assistance or impartial evaluation of the performance of energy efficiency programs administered" by the Trust. 35-A M.R.S. § 10120(3). In accordance with this provision, the Commission hired three consultants to assist the Commission in its review of the Plan. The work of the consultants is discussed in the factual and procedural background section below.

III. FACTUAL AND PROCEDURAL BACKGROUND

A. The Trust's Proposed Plan

On December 17, 2015 and pursuant to 35-A M.R.S. §10104(4), the Trust filed its Petition for Approval (Petition), covering all three years of the Plan. As proposed, the Plan described eight programs to provide information, incentives, and quality assurance related to customer-sited energy upgrades. It also described three strategic initiatives that support the programs.

The Trust proposed a total budget of \$216.5 million over the 3-year period, which broke down by program as follows. For its electric conservation program, the Trust proposed \$49.2 million in FY 2017, \$50.1 million in FY 2018, and \$56.1 million in FY 2019. For its natural gas conservation program, the Trust proposed \$3.59 million in FY 2017, \$3.88 million in FY 2018, and \$4.27 million in FY 2019. Finally, the Trust proposed a budget for its all-fuels conservation program of \$14.8 million for FY 2017, \$15.9 million in FY 2018, and \$18.5 million in FY 2019.

For the 3-year period of the Plan, the Trust identified as cost-effective, reliable and achievable energy savings totaling more than 850,000 MWh of electricity, 373,000 MMBtu of natural gas, and 1 million MMBtu of unregulated fuels. The Trust determined these energy savings to be cost-effective by applying certain assumptions for avoided costs, discount rates, net-to-gross impacts, the amount of electricity lost in transmission and distribution (i.e., line losses), and loads. The Trust's Petition requested that the Commission approve the Plan and incorporate into natural gas and electric transmission and distribution utility rates sufficient revenue to provide for the procurement of cost-effective electricity and natural gas efficiency resources identified within the Plan, that is, electric MACE and natural gas MACE.

B. Docket No. 2015-00175

On December 22, 2015, the Hearing Examiner issued a Notice of Proceeding, providing an opportunity to intervene in this adjudication of the Plan. The OPA, CMP, Emera, BGC, MNG, Northern, Summit, Calpine Corporation⁵, NRCM, CLF, and IECG filed petitions to intervene, all of which the Hearing Examiner granted.

Discovery on the Trust's draft Plan began in January 2016. On January 14 and 15, 2016, EMT filed supporting documents requested by Commission Staff, including the Excel spreadsheet models used to calculate the MACE energy savings potential for electricity and natural gas reflected in the EMT Petition. On January 19 and 20, 2016, the Hearing Examiner convened initial technical conferences on the Plan and supporting documents, and thereafter EMT provided responses to oral data requests (ODRs).

⁵ On May 11, 2016, Calpine Corporation filed, and on May 26, 2016 the Hearing Examiner granted, a request to withdraw as an intervenor in this proceeding.

On February 17, 2016, CMP, MNG, BGC, and Northern filed testimony and NRCM and CLF filed joint testimony. CMP's testimony focused on recommendations for how energy efficiency can help make electricity affordable to low-income customers. MNG's testimony expressed concern about the prospect of increasing the natural gas assessments and advocated for the Plan funding natural gas conversions as a means to reduce greenhouse gas emissions. In its testimony, BGC similarly asserted the Plan should fund conversions from heating oil to natural gas as it is a cleaner burning fuel, reducing greenhouse gas emissions. BGC also requested that the Commission revisit whether Summit should be exempt from paying the residential natural gas assessment.⁶ Northern's testimony centered on the fair allocation of efficiency benefits and a concern that the Trust's Plan relied on unrealistic growth forecasts for the natural gas budgets. NRCM and CLF filed testimony generally concluding the Trust's MACE estimates were too low and encouraging the Commission to approve a higher level of funding for the Plan.

On February 24, 2016, the Commission Staff filed a bench analysis and supporting documentation in which it estimated electricity and natural gas MACE during the Plan period using a methodology and set of assumptions that differed from those used by EMT in several respects. These differences included the use of different and more current assumptions for avoided costs, a different discount rate, different net-to-gross ratios in some cases, adjustments related to the decline in the paper industry loads, LED lightbulb pricing, and determining benefit-cost ratios by screening measures on a net basis and at the measure level, rather than on a gross basis and at the overall program level, as EMT had done.

Filed with the bench analysis were the work products of three consultants, whom the Commission had retained to assist in the review of the Plan. The bench analysis relied, in part, on June 2015 New England electric energy and capacity, natural gas, and oil forecasts developed for the Commission by its consultant, London Economics International (LEI).⁷ The bench analysis was also accompanied by reports prepared by

⁶ As part of its Rate Plan approved in 2013, *Summit Natural Gas of Maine, Inc., Petition for Authority to Provide Natural Gas Utility Service Pursuant to 35-A M.R.S.A Sections 2102, 2104 and 2105*, Docket No. 2012-00258, Order Approving Stipulation at 12-14 (Jan. 29, 2014)(approving a rate plan that authorizes recovery of rebate costs), Summit offers its own conversion rebate program to residential customers. In *Efficiency Maine Trust, Request for Approval of Second Triennial Plan*, Docket No. 2012-00449, Order on Trust's proposed addendum to its natural gas conservation program at 12-13 (July 13, 2015), the Commission addressed, in view of Summit's own rebate program, whether Summit should be assessed for EMT programs and, if so, at what level. Because Summit's rebate program is not available to commercial and industrial customers, the Commission set a proportional assessment rate for Summit. Issues regarding Summit's operation of its own rebate program, as well as the issue of funding natural gas conversions, are the issues the Moving Parties have identified for litigation in this docket. Stipulation at V.I.A.

⁷ The Commission initially retained LEI in the *Investigation of Parameters for Exercising Authority Pursuant to the Maine Energy Cost Reduction Act, 35-A M.R.S. § 1901*, Docket No. 2014-00071 (ECRC docket) to undertake a cost-benefit analysis of natural gas pipeline proposals submitted in that docket. Because the Commission treats recently developed forecast data as confidential, Commission Staff initially filed the portions of the LEI Forecasts relied upon by the Staff in the bench analysis under

two additional consultants to the Commission: Energy Futures Group, Cx Associates and Wirtshafter Associates (collectively EFG), *Review of Efficiency Maine Trust's 2017-2019 Third Triennial Plan*, February 24, 2016; and Johnson Consulting Group and Mesa Point Energy (collectively Johnson Group), *Technical Review, Analysis, and Recommendations Regarding Efficiency Maine Trust's Technical Reference Manuals*, February 23, 2016.⁸

On March 2, 2016, the Hearing Examiner convened a technical conference on the Staff's bench analysis⁹ and the intervenor testimony. Parties were provided an opportunity to ask ODRs, and Commission Staff granted the request of NRCM and CLF for an opportunity to submit a series of data requests in writing following the technical conference. At the technical conference, parties also had an opportunity to ask questions of the Commission's consultants, EFG, Johnson Group, and LEI.

On March 16, 2016, the Trust filed rebuttal testimony, and, as it did with their testimony, CLF and NRCM filed joint rebuttal testimony. On March 24, 2016, the Trust filed supplemental rebuttal testimony, which included re-modeling of the estimates of cost-effective savings potential for electricity and natural gas measures during the period of the Plan. The re-modeled estimates resulted from the assumptions and methodology used by the Staff in the bench analysis for avoided costs, discount rates and net-to-gross impacts, and EMT-modified assumptions, including assumptions regarding line losses. The re-modeled estimates also incorporated certain program design and budgeting adjustments related to LED light bulbs and certain groupings of commercial and industrial measures, referred to as "measure bundles."

The Commission convened adjudicatory hearings on March 30, 2016 and April 8, 2016. The Commission and parties had an opportunity to cross-examine the Trust at the March 30th hearing date, and the parties had an opportunity to question Commission

protective order, which protected the proprietary interest of LEI in the forecasts. Thereafter, on March 1, 2016, Commission Staff additionally filed in Docket No. 2015-00175 the publically available assumptions and methodology underlying the LEI forecasts, which appears as Appendix A to LEI's report captioned *Maine Energy Cost Reduction Act: Cost Benefits Analysis of ECRC Proposals*, dated June 20, 2015, and to LEI's report captioned *Maine Energy Cost Reduction Act: Cost Benefits Analysis of ECRC Proposals in the context of a regional or multi-state gas pipeline expansion effort*, dated February 22, 2016. On March 3, 2016, following LEI's agreement to release the LEI forecasts, Staff made the LEI forecasts publically available in Docket No. 2015-00175.

⁸ The report prepared by EFG assessed the Trust's programs, provided comment on the Trust's practice of authorizing a single contractor to act in dual capacities, reviewed the Trust's method of assessing adoption rates, and provided comment on how the Trust conducts evaluations of its programs. The report prepared by the Johnson Group focused on a review of the Trust's technical resource manuals, which provide a means of measuring the energy savings attributable to the Trust's programs.

⁹ Staff issued two procedural orders, updating the February 24, 2016 bench analysis. On March 1, 2016, Staff corrected an error in the budget comparison table as it had originally appeared in the bench analysis, and supplemented the bench analysis with an additional budget comparison table showing the Staff's low avoided cost scenario. On March 3, 2016, Staff corrected errors in six exhibits to the bench analysis, and provided a supplemental exhibit associated with the supplemental low avoided cost scenario table that had been provided on March 1, 2016.

Staff and the Commission's consultants at the April 8th hearing date. The Commission's consultants appeared in person at hearing for questioning, except for LEI, who by agreement of the parties appeared by telephone. CLF was the only party who exercised the opportunity to cross examine LEI on its forecasts.

By way of procedural orders, Commission Staff convened a series of seven settlement conferences in Docket No. 2015-00175, and parties and Staff communicated by email to further discuss the terms of the proposed Stipulation. The first conference took place on March 11, 2016, and Staff convened subsequent settlement conferences on March 17, April, 4, April 13, April 14, April 20, and May 3, 2016.

On May 25, 2016, the Trust filed the Stipulation on behalf of the Moving Parties, seeking a Commission order that approves, accepts, and adopts the Stipulation and approves the Trust's proposed Plan, as modified by the adjustments and agreements enumerated in the Stipulation. The Moving Parties attached to the Stipulation as Exhibit A the performance metrics and budgets resulting from the terms of the agreed-upon Stipulation.

On May 26, 2016, Commission Staff provided notice to the parties of the Stipulation, and provided non-signatory parties with an opportunity to submit in writing any opposition to the Stipulation. On May 31, 2016, BGC filed a request for clarification as to the scope of certain issues reserved for litigation. IECG and CLF filed in partial opposition to the Stipulation, stating, respectively, that to the extent the Stipulation relies on evidence that was not subject to discovery and cross examination, and to the extent that it is inconsistent with the requirements of Title 35-A, the Stipulation is not acceptable. IECG and CLF requested an opportunity to be heard on their opposition. On June 6, 2016, the Trust, the OPA, Summit, and Northern filed responses to the filings of BGC, IECG, and CLF. The Hearing Examiner granted the requests of IECG and CLF, and on June 9, 2016, the Commission held oral argument on the Stipulation. MPUC Rules, ch. 110, § 8(D)(6)(a) ("The Commission may require that [a] contested stipulation be accepted only following notice to the parties and/or a hearing on the stipulation.").

IV. DESCRIPTION OF STIPULATION AND PARTIES' POSITIONS

The Moving Parties summarize the major provisions settled by the Stipulation as pertaining to: (1) the description of energy efficiency programs to be included in the Plan; (2) the approach to the Plan's Strategic Initiatives; (3) the methodology and assumptions for determining the measures and amounts of energy efficiency that constitute MACE through electricity conservation programs and natural gas conservation programs, and the performance metrics and budget impacts associated with these MACE levels; (4) a process to periodically review and update the Plan, pursuant to 35-A M.R.S. § 10104(6); and (5) enumeration of issues that are not resolved by this Stipulation, to be litigated and resolved by the Commission in this docket, and issues that will be the subject of continued review and future determination in a Phase II proceeding or proceedings.

The Moving Parties recommend approval of the Stipulation as it is in the public interest, and meets the criteria for approval set forth in the Commission's Rules of Practice and Procedure. MPUC Rules, ch. 110, § 8(D)(7). The Moving Parties state they represent a broad spectrum of interests, including most active parties in Docket No. 2015-00175. The process that led to the Stipulation was fair and open to all parties because Commission Staff noticed and convened multiple settlement conferences, made the Commission's telebridge available for the convenience of the parties, and every settlement conference was well attended. Supporting documentation for settlement discussions was also made available to all parties, and all parties were allowed full participation at each discussion. The Moving Parties further explain that Commission Staff has been engaged actively in this proceeding and in the development of this Stipulation. For all of these reasons the Moving Parties state the stipulated result is reasonable, supported by the record in this proceeding, not contrary to legislative mandates, and in the public interest.

BGC does not object to the Stipulation, but seeks clarification regarding the issues reserved for litigation. The Stipulation provides that "litigation in this proceeding is limited to the issues of (i) whether it is appropriate to use natural gas assessments collected pursuant to 35-A M.R.S. § 10111 to promote conversions from other fuels to natural gas and (ii) whether the funding for financial rebates offered by Summit to its residential customers for efficiency measures should be remitted to and administered by EMT, and whether the Summit rates should be adjusted accordingly." Stipulation at 20. BGC seeks clarification that included within these two issues is (a) whether natural gas assessments from ratepayers as well as other EMT revenue streams may be utilized to fund conversions to natural gas, and (b) whether Summit is entitled as a matter of law to an exemption from the natural gas assessment in view of its financial rebate offerings. In response to BGC, the Trust states that the Stipulation intentionally omitted a reference to other revenue streams and thus this issue has not been preserved for litigation. The Trust takes no position on the question regarding Summit's rebate program.

IECG and CLF argue the Stipulation's reliance on the LEI forecasts is contrary law. IECG asserts the LEI forecasts contain serious flaws, that the forecasts were not subject to discovery and cross examination in this proceeding, and thus to the extent the Stipulation relies on the LEI forecasts the Stipulation cannot be said to be reasonable, and consistent with the public interest and applicable law. CLF argues the Stipulation is inconsistent with Title 35-A because the avoided costs underlying the stipulated result rely on the LEI forecasts, which it asserts are not acceptable as the LEI forecasts do not constitute a regional best practice. 35-A M.R.S. § 10110(4-A)(B)(directing Commission to "[e]nsure that calculations of avoided energy costs and the budgets identified by the trust . . . are reasonable, based on sound evidence and make use of best practices across the region") CLF argues the Commission should rely on the avoided cost study submitted by the Trust with its Plan, the Avoided Energy Supply Costs in New England: 2015 Report (March 27, 2015, as revised April 3, 2015) (AESC).

The OPA and the Trust filed responses to the claims regarding the LEI forecasts.

In its responsive comments, the OPA points out that, contrary to IECG's assertion, the LEI forecasts were subject to discovery and the authors were subject to cross examination at hearing. In response to the objections regarding avoided costs, the Trust explains that, while it relied on the AESC as it was the product of a regional process, the Stipulation's reliance on the LEI forecasts to project avoided costs is not unreasonable.¹⁰ The Trust also notes that the Stipulation provides for a robust and clarified process for reviewing significant changes to the Plan, and this update process would be applicable to periodic updates if or when new avoided costs information becomes available. 35-A M.R.S. § 10104(6) (requiring Commission approval of significant changes to approved triennial plans). The OPA and the Trust state reliance on the LEI forecasts is reasonable given that the LEI forecasts reflect recent material changes to energy prices that are not reflected in the older AESC.

CLF makes several additional arguments as to why the Stipulation is unreasonable and contrary to applicable law. Similar to its argument with regard to avoided costs, it asserts the Stipulation also fails to accord with regional best practices because it relies on an improper discount rate and because it screens for savings on a net basis at the measure level, thus failing to determine MACE on a gross basis. 35-A M.R.S. § 10110(4-A). With specific regard to natural gas savings, CLF claims the stipulated result falls substantially below the MACE potential and segregates LDC funds by service territory in violation of the law.¹¹ Finally, CLF argues that a Phase II proceeding, that will examine and possibly adjust the LED lightbulb incentive levels, as well as other assumptions used by the Trust to value bundle measures, constitutes a degree of micro-management not supported by the evidence and is therefore contrary to the public interest.

The OPA, Trust, and Northern responded to the legal issues raised by CLF with regard to the calculation of MACE. As to the discount rate¹², the OPA and Trust each

¹⁰ The AESC was sponsored by a group of New England electric utilities, gas utilities, and other efficiency program administrators. The sponsors, along with non-utility entities and consultants, oversaw the design and execution of the AESC, which was produced by a consulting team of authors. AESC at 1-2 – 1-3. The AESC was designed, executed, and produced all outside of Docket No. 2015-00175, and no party to Docket No. 2015-00175 produced any author of the AESC at either technical conference or hearing. Thus, the AESC was not made subject to discovery or cross examination in the Commission's proceeding.

¹¹ In *Efficiency Maine Trust, Request for Approval of Second Triennial Plan*, Docket No. 2012-00449, Order on Natural Gas Conservation Program at 4-5 (October 9, 2014), the Commission approved, on a temporary basis and subject to reconsideration, the Trust's request to limit the use of each LDC's assessments to the customers of that LDC. For administrative reasons, the Trust retains a single natural gas fund, but the funds are accounted for such that, out of considerations of equity, the amount paid in incentives to the customers of a particular LDC does not exceed that LDC's financial contribution to the fund. The Trust has continued to segregate funds in the instant Plan before the Commission.

¹² The discount rate is used to determine the net present value of energy efficiency measures. As explained by the Commission in its order on the Second Triennial Plan:

The cost-effectiveness of energy efficiency (and most other) investments is typically considered on a net present value (NPV) basis. This ensures that the "time value of money" related to costs and benefits is appropriately captured. The discount rate used to calculate the net present value

note that the discount rates utilized by the Stipulation are in accordance with the Trust's rules for Electric Energy Conservation Programs. 95-648 C.M.R. ch. 380, § 4(A)(3). The OPA further points out that the record in this proceeding shows there is no so-called regional best practice for discount rates as discount rates vary across the region, with each state using a discount rate that best reflects its state policy. As to screening measures on a net basis, the OPA cites to the requirement of Title 35-A that the Commission consider both net and gross efficiency savings¹³, and the OPA and Trust each note that screening for cost-effectiveness at the measure level, as opposed to the higher program level, is not inconsistent with the Efficiency Maine Trust Act. 35-A M.R.S. § 10110(4-A).

The Trust, OPA, and Northern responded to the more specific legal issues raised by CLF with regard to the natural gas conservation program. Northern responds that the record in this proceeding establishes a range of potential budgets, and that the budget reflected in the Stipulation is a reasonable compromise between what the Trust requested and what Commission Staff calculated in the Bench Analysis. The Trust and OPA state that the lower natural gas budget is reasonably explained by the newer and lower price forecasts reflected in the LEI forecasts and the lower rate of load growth forecasted for the LDCs. Northern also explains that Title 35-A does not contemplate any specific method of accounting for natural gas assessments, and that the segregation of LDC funds by service territory is therefore lawful and subject to the discretion of the Commission. The Trust and OPA agree that the segregation of LDC funds will not prevent the Trust from achieving MACE.

Finally, as to the Stipulation providing for additional review of the Trust's provision of consumer incentives for LED lightbulbs, the Trust responds that, while it is confident in its methodology for developing the LED lightbulb incentive, it does not

can be a major driver of B/C Ratios because of the very different time periods involved for costs vs. benefits. Typically, energy efficiency program costs are incurred up front, while the energy savings and associated benefits accrue over a future period of time corresponding to the lives of the measures. Thus, all else equal, using a lower discount rate will create less of a reduction in benefits and result in a higher B/C Ratio than if a higher discount rate is used.

Efficiency Maine Trust, Request for Approval of Second Triennial Plan, Docket No. 2012-00449, Order at 38 (March 6, 2013).

¹³ As explained by the Commission in its order on the Second Triennial Plan:

The net-to-gross ratio is used to measure what portion of efficiency savings are a result of the program. The net savings amount eliminates savings from so-called 'naturally occurring efficiency,' including, but not limited to, factors [such as] 'free-riders,' so that savings that would have occurred anyway are netted out, as are any associated participant costs. Net-to-gross ratios can also reflect additional or 'spillover' savings that result indirectly from the program.

Efficiency Maine Trust, Request for Approval of Second Triennial Plan, Docket No. 2012-00449, Order at 41 (March 6, 2013). "Free-riders" are people that would have incorporated or adopted the efficiency measure anyway, regardless of energy efficiency programs or incentives. *Id.* n.34. And "spillover" is when a customer implements more efficiency measures than those measures that EMT is promoting, but that, nonetheless, result in an efficiency gain. *Id.* n.35.

believe that further review in a Phase II proceeding is contrary to the public interest.

V. DECISION

The Moving Parties have asked the Commission to approve their proposed Stipulation as in accordance with the Commission's criteria for approving stipulations. Additionally, BGC requests that the Commission clarify the scope of the issues that the Stipulation has set aside and reserved for litigation. We address all of these issues below.

A. Standard of Review

In deciding whether a stipulation is reasonable, fair and consistent with the public interest, the entire stipulation must be considered as a package. Whether the Commission disagrees with a particular provision of a stipulation, or would have come up with a different result were it to decide the case after litigation, is not the question. Rather, the question is whether the stipulation when viewed as a whole is fair, reasonable and consistent with the public interest. *Central Maine Power Company, Request for New Alternative Rate Plan ("ARP 2014")*, Docket No. 2013-00168, Order Approving Stipulation at 11 (Aug. 25, 2104). In reviewing and approving stipulations, the Commission's Rules of Practice and Procedure, Chapter 110, require the Commission to consider the following criteria:

- 1) Whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
- 2) Whether the process that led to the stipulation was fair to all parties;
- 3) Whether the stipulated result is reasonable and is not contrary to legislative mandate; and
- 4) Whether the overall stipulated result is in the public interest.

MPUC Rules, ch. 110, § 8(D)(7). For the reasons discussed below, the Commission concludes that all of the criteria for approval have been satisfied in this instance.

B. Whether the Parties to the Stipulation Represent a Sufficiently Broad Spectrum of Interests

With regard to reviewing the Stipulation to ensure a sufficiently broad spectrum of interests supports the stipulated result, the Commission first addresses IECG's opposition to the Stipulation. In its opposition, IECG states that it does not object to the results of the Stipulation, but rather that it objects to the Stipulation's reliance on the LEI forecasts in reaching the stipulated result because the LEI forecasts were not subject to discovery, cross examination, and rebuttal. Opposition of the Industrial Energy Consumer Group to the Stipulation at 5 (May 31, 2015), Docket No. 2015-00175. It states it would not object to the results of the Stipulation if the Commission were to

expunge all references to the LEI forecasts. *Id.* IECG asserts that the Commission should not approve a stipulation that relies on the LEI forecasts because the LEI forecasts are at issue in another adjudicatory docket, namely the ECRC docket in which IECG is a party.

Thus, IECG's opposition is not grounded in a concern that the substance of the Trust's programs and budgets approved under the Stipulation are flawed, but rather that the evidence upon which Stipulation relies is flawed due to lack of process. Even if this were true, IECG's concern that the approval of the instant Stipulation would effectively decide a factual or legal issue in the ECRC docket is unfounded. Orders approving stipulations approved by the Commission have no precedential value as they address only whether a stipulated result is in accordance with the criteria set forth in the Commission's rules for approving stipulations. For the reasons discussed below with regard to our conclusion that the Stipulation is reasonable, in the public interest, and consistent with legislative mandates, we are not persuaded that the Stipulation should be rejected on the basis that process on the LEI forecasts was inadequate because, as addressed below, the record demonstrates otherwise. Because the basis for IECG's objection to the Stipulation is not supported by the record or by law, the Commission concludes that approval of the Stipulation over IECG's objection does not lead to its disenfranchisement.

Next, the Commission notes that CLF has not signed the Stipulation. CLF describes itself as a not-for-profit corporation working on behalf of its Maine members to increase opportunities for the efficient use of energy. *Petition to Intervene of Conservation Law Foundation* (Dec. 24, 2015), Docket No. 2015-00175. On behalf of its members, CLF jointly filed its testimony and rebuttal testimony in this docket with NRCM, also a not-for-profit corporation that similarly describes itself as working extensively on behalf of Maine residents to integrate energy efficiency into Maine's energy policy and regulations. *Petition to Intervene of Natural Resources Council of Maine* (Dec. 29, 2015), Docket No. 2015-00175. NRCM has signed and supports the Stipulation on behalf of its members. Given NRCM's joining of the Stipulation, the Commission concludes the approval of the Stipulation over CLF's opposition does not lead to a disenfranchisement of the similarly-represented interests of CLF and NRCM.

And, importantly with regard to the opposition of IECG and CLF, the Stipulation has garnered other, broad-based support. The Trust itself has signed the Stipulation, as well as the OPA on behalf of the broad interests of the general public. Maine's two largest investor-owned electric utilities, CMP and Emera Maine, have also signed and support the Stipulation. Two of Maine's natural gas local distribution companies (LDCs), Summit and Northern, have signed and support the Stipulation, and the remaining two, MNG and BGC, do not oppose it. For all of these reasons, the record shows the parties joining the Stipulation represent a sufficiently broad spectrum of interests and there is no appearance or reality of disenfranchisement.

C. Whether the Process that Led to the Stipulation was Fair to All Parties

The Commission's Rules provide that all parties shall be given an opportunity to

participate in stipulation discussions. MPUC Rules Ch. 110 § 8(D)(1). As described in the cover letter to the Stipulation, all parties to the case were provided with notice and opportunity to fully participate in the settlement discussions that led to the Stipulation. The parties consistently participated in the settlement process, which involved 7 settlement conferences and the electronic exchange of multiple written drafts of the Stipulation. There has been no suggestion from the parties who are not signatories to Stipulation that the process that led up to the Stipulation was not fair. The Commission, therefore, concludes that the second criterion for approval has also been satisfied.

D. Whether the Stipulation is Reasonable, In the Public Interest, and Consistent with Legislative Mandates

The two parties opposing the Stipulation raise a series of issues with respect to whether the Stipulation is reasonable, in the public interest, and consistent with Title 35-A, and we address those arguments below.

IECG opposes the Stipulation primarily on the ground that the Commission should not have calculated avoided costs by relying on the LEI forecasts, which it asserts were not subject to discovery and cross examination. As pointed out by the OPA, however, the record does not support this claim. All parties were provided an opportunity for discovery and cross examination on the LEI forecasts, but only CLF chose to avail itself of that opportunity.¹⁴ Accordingly, the Commission finds IECG's opposition to the Stipulation unpersuasive.

With regard to CLF's argument regarding avoided costs, forecasting energy prices, particularly on a long-term basis, is oftentimes a contentious issue. Energy market conditions change regularly and can be volatile, and prices are difficult to predict with accuracy. For these reasons, it is important to consider the most current and available forecasts, particularly in times of rapid change in markets. CLF argues that the Commission is bound to use the AESC. In CLF's view, the AESC represents a regional best practice, which Title 35-A directs the Commission to consider in calculating avoided costs. No single report, however, can claim the title of regional best practice under statute, and the Commission's decision is more reasonably informed by a variety of market information set forth in the record, including, for example the more current LEI forecasts. Further, as the OPA states, reliance on the AESC would ignore recent material changes in energy prices and would overstate the benefits associated with energy efficient investments. For these reasons, the Commission rejects the argument that the Stipulation is legally flawed for its reliance on, among other things, the LEI forecasts for the purpose of calculating avoided costs.

Turning to discount rates, the Stipulation uses a blended discount rate, which seeks to accommodate the differences among the funding sources. For funds that are

¹⁴ Moreover, IECG failed to make any contemporaneous objection to the LEI forecasts at either technical conference or hearing. Thus, even if the Stipulation's reliance on the LEI forecasts had been flawed, which for the reasons set forth in this Order the Commission concludes it was not, IECG failed to provide the Commission and parties with an opportunity to correct any perceived error with regard to admission of the LEI forecasts into the record.

directly received from ratepayers, the Stipulation applies a discount rate of 8.5%, which is consistent with the Commission's findings and conclusions regarding discount rates in the order approving the Second Triennial Plan. *Efficiency Maine Trust, Request for Approval of Second Triennial Plan*, Docket No. 2012-00449, Order at 38-40 (March 6, 2013). For funds received from the Regional Greenhouse Gas Initiative (RGGI), the forward capacity market (FCM), and other sources a lower rate of 4.36% is applied. The Stipulation uses a blended rate based of the relative amounts of funding from each source.

CLF argues the blended rate is contrary to statute because it does not adopt the discount rate set forth in the AESC, which CLF asserts is the only acceptable regional best practice available to the Commission. But as stated by the OPA, CLF has not provided any support for why the discount rate developed for the AESC constitutes a regional best practice. While not determinative, a look at the discount rates utilized by various New England states shows that the states take a varied approach, and the blended rate used by the Stipulation falls within the varied range of discount rates utilized in the New England region. A fully litigated case may have landed on different discount rates, but the overall result here is reasonable, in keeping with the Commission's prior findings and conclusions regarding appropriate discount rates in application to ratepayer funds, and otherwise consistent with 35-A M.R.S. § 10110(4-A).

With respect to screening on a net basis, CLF's arguments cite to the Efficiency Maine Trust Act's reference to gross savings, but CLF fails to capture the statutory paragraph in its entirety. The Act provides, in relevant part:

The commission shall consider gross efficiency savings for the purpose of determining savings that are cost-effective, reliable and achievable and *shall consider both net and gross efficiency savings* for the purpose of determining the appropriateness of the amount identified by the trust in its triennial plan as needed to capture all cost-effective electric energy efficiency resources.

35-A M.R.S. § 10110(4-A)(emphasis added). The Stipulation comports with this section of the statute, which directs the Commission to not only consider gross savings, but also to consider net savings to account for the effects of free-ridership and spillover.¹⁵

With respect to natural gas MACE, CLF refers to a dated gas potential study from 2014. This study is not current and would overstate potential savings due to changes in both price and load growth expectations since 2014. The approach the Stipulation takes is reasonable, and is likely to more accurately reflect LDC growth,

¹⁵ Section 10110(4-A) was enacted by the Omnibus Energy Act, § A-20 (effective January 1, 2015) and effectively codifies how, in its order approving the Second Triennial Plan, the Commission treated the question of whether to screen for cost-effectiveness on a net or gross basis. *Efficiency Maine Trust, Request for Approval of Second Triennial Plan*, Docket No. 2012-00449, Order at 41-44 (March 6, 2013) (screening measures to be funded with ratepayer dollars on a net basis).

which has been affected by the relatively low oil prices.

Finally, the Commission notes that the Stipulation results in an overall funding level that is robust. As set forth in Attachment A to the Stipulation, overall funding in FY 2017 is projected to be \$57.8 million, to increase in FY 2018 to \$59.8 million, and to increase again in FY 2019 to \$67.7 million. These budget numbers will result in a diverse portfolio of efficiency programs made available to a range of customer groups and geographic areas, and thus, for all of the reasons set forth above, the Commission concludes that the stipulated result is reasonable, not contrary to legislative mandate, and that the result is consistent with the public interest.¹⁶

E. BGC's Request for Clarification

BGC has expressed concerns regarding the scope of two items reserved in the Stipulation for litigation in Docket No.2015-00175. The language of the Stipulation addresses what items are reserved for litigation, and any real or perceived ambiguity with respect to these issues can be resolved by the Hearing Examiner at the outset of the contemplated litigation. The Commission, thus, does not disturb the existing Stipulation language.

VI. ORDER

The Stipulation together with its Attachment A are attached to this Order.

For the foregoing reasons, the Commission

ORDERS

1. That the Stipulation signed and filed by the Trust on May 25, 2016, and as signed by the Moving Parties, is hereby approved together with its Attachment A;
2. That for each fiscal year of the Plan, each T&D utility shall file in *Commission Initiated Procurement of Electric Resources and Assessment for Natural Gas Resources Third Triennial Plan FY 2017-2019 Pertaining to Efficiency Maine Trust*, Docket No. 2016-00112, no later than June 1 of each year, a report setting forth its total retail T&D sales in kWh, net of sales for transmission and subtransmission voltage customers, see 35-A M.R.S. § 10110(6), as billed for calendar years 2015, 2016, and 2017;
3. That for FYs 2018 & 2019, the Trust is directed to file its request for electric procurement and natural gas assessment by May 1, 2017 and May 1, 2018

¹⁶ Under the Stipulation, the amount of ratepayer funding for electric energy efficiency programs increases from that approved for the Second Triennial Plan. For example, for FY 2016, the final year of the Second Triennial Plan, the Commission approved ratepayer funding at a level of \$18.5 million. *Efficiency Maine Trust, Request for Approval of Second Triennial Plan*, Docket No. 2012-00449, Order on Trust's Request for Procurement Order for FY 2016 at 2 (April 27, 2015). For FY 2017, the first year of the Plan, the Commission approves, under the terms of the Stipulation, ratepayer funding at a level of \$32.3 million. Stipulation, Attachment A at 1.

respectively. These requests are to be filed in the *Commission Initiated Procurement of Electric Resources and Assessment for Natural Gas Resources Third Triennial Plan FY 2017-2019 Pertaining to Efficiency Maine Trust*, Docket No. 2016-00112. At the time of reviewing and approving the Trust's budget requests, the Commission will consider whether the MPUC Chapter 396 cap is exceeded;

4. That it delegates to the Administrative Director the authority to calculate, based upon the reports submitted by the T&D utilities pursuant to these ordering paragraphs, the procurement amount to be paid by each T&D utility each fiscal year of the Plan period, and directs the Administrative Director to notify the T&D utilities of their respective calculated procurement amounts and the quarterly dates by which the payments shall be made directly to the Trust;
5. That for each fiscal year of the Plan, each natural gas local distribution company (LDC) shall in *Commission Initiated Procurement of Electric Resources and Assessment for Natural Gas Resources Third Triennial Plan FY 2017-2019 Pertaining to Efficiency Maine Trust*, Docket No. 2016-00112, no later than June 1 of each year a report setting forth (i) its total billed sales (in ccf or therms) for the prior calendar year by customer class (residential, commercial, and industrial), (ii) total billed sales for the prior calendar year by customer class net of large volume customers, P.L. 2015, ch. 425, Sec.3, and wholesale electricity-generating facilities that have a nameplate capacity of 3 megawatts or greater, 35-A M.R.S. § 10111(2-A), and (iii) the identity of each large volume customer and wholesale electricity-generating facility netted pursuant to (ii) and the basis for the exclusion;
6. That it delegates to the Administrative Director the authority to calculate, based upon the reports submitted by the LDCs pursuant to these ordering paragraphs, the assessment amount to be paid by each LDC for each fiscal year of the Plan period, including the proportional assessment for Summit, and directs the Administrative Director to notify the LDCs of their respective calculated amounts and the quarterly dates by which the payments shall be made to the Commission. The calculation of the proportional assessment for Summit is contingent upon the Commission's consideration of the issues reserved at section VI.A of the Stipulation for litigation in this docket;
7. That MNG, BGC, Northern, and Summit shall submit quarterly assessment payments to the Commission in accordance with these ordering paragraphs;
8. That Commission Staff convene a case conference as soon as reasonably practicable to set a litigation schedule for the issues reserved for litigation at section VI.A of the Stipulation; and
9. That Commission Staff open a docket or dockets for a Phase II to address those issues set forth at section VI.B of the Stipulation as soon as reasonably practicable, giving priority to section VI.B.8 as contemplated by the Stipulation.

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.