

**§10110. Electric efficiency and conservation programs****(CONFLICT)****(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)**

**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 trust 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. [PL 2009, c. 372, Pt. B, §3 (NEW).]

B. "Administration fund" means the conservation administration fund established by the trust pursuant to subsection 8. [PL 2009, c. 372, Pt. B, §3 (NEW).]

C. **(CONFLICT: Text as amended by PL 2019, c. 306, §4)** "Conservation programs" means programs developed by the trust pursuant to this section designed to increase the efficiency of electricity use. [PL 2019, c. 306, §4 (AMD).]

C. **(CONFLICT: Text as amended by PL 2019, c. 365, §2)** "Conservation programs" means programs developed by the trust pursuant to this section designed to reduce inefficient electricity use or to increase the efficiency with which electricity is used. [PL 2019, c. 365, §2 (AMD).]

D. "Prior conservation efforts" means programs to promote conservation undertaken at the direction or with the authorization of the commission prior to March 1, 2002. [PL 2009, c. 372, Pt. B, §3 (NEW).]

E. "Program fund" means the conservation program fund established by the trust pursuant to subsection 7. [PL 2009, c. 372, Pt. B, §3 (NEW).]

F. "Service provider" means a public or private provider of energy conservation services or an entity selected by the trust to contract with such providers or otherwise arrange the delivery of conservation programs. [PL 2009, c. 372, Pt. B, §3 (NEW).]

G. "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. [PL 2009, c. 372, Pt. B, §3 (NEW).]

[PL 2019, c. 306, §4 (AMD); PL 2019, c. 365, §2 (AMD).]

**2. Programs.** The trust shall develop and implement conservation programs to help reduce energy costs for electricity consumers in the State by the maximum amount possible. The trust shall establish and, on a schedule determined by the trust, revise objectives and an overall energy strategy for conservation programs. Conservation programs implemented by the trust must be consistent with the objectives and an overall energy strategy developed by the trust and approved by the commission and be cost-effective, as defined by the board by rule. In defining "cost-effective," the board may consider the extent to which a program promotes sustainable economic development or reduces environmental damage to the extent the board can quantify or otherwise reasonably identify such effects. Consistent with the other requirements of this section, the trust, 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 trust 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 energy-efficient products and services;
  - (3) Promote sustainable economic development and reduce environmental damage;
  - (4) Reduce the price of electricity over time for all consumers by achieving reductions in demand for electricity during peak use periods, including by the implementation of beneficial electrification; and
  - (5) Reduce total energy costs for electricity consumers in the State by increasing the efficiency with which electricity is consumed. [PL 2019, c. 365, §3 (AMD).]
- B. The trust, with regard to funds available to the trust under this section, shall:
- (1) Target at least 10% of funds for electricity conservation collected under former subsection 4 or subsection 4-A or \$2,600,000, whichever is greater, to programs for low-income residential consumers, as defined by the board by rule;
  - (2) Target at least 10% of funds for electricity conservation collected under former subsection 4 or subsection 4-A or \$2,600,000, whichever is greater, to programs for small business consumers, as defined by the board 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. [PL 2015, c. 494, Pt. A, §39 (AMD).]
- C. The trust 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. [PL 2009, c. 372, Pt. B, §3 (NEW).]
- D. The trust shall monitor conservation planning and program development activities in the region and around the country. [PL 2009, c. 372, Pt. B, §3 (NEW).]
- E. The trust shall implement conservation programs by contracting with service providers in accordance with subsection 3. [PL 2009, c. 372, Pt. B, §3 (NEW).]
- F. The trust 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 trust. [PL 2009, c. 372, Pt. B, §3 (NEW).]
- G. The trust, to the extent possible, shall coordinate its efforts with other agencies of the State with energy-related responsibilities. [PL 2009, c. 372, Pt. B, §3 (NEW).]
- H. The trust 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 trust. [PL 2009, c. 372, Pt. B, §3 (NEW).]
- I. The trust 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 trust 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. [PL 2009, c. 372, Pt. B, §3 (NEW).]

J. The trust shall encourage school facility managers to complete an energy efficiency training and certification program established and conducted by the trust under this section. To the extent the trust determines necessary and appropriate to meet the goals of this paragraph, the trust 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. [PL 2009, c. 372, Pt. B, §3 (NEW).]

K. The trust shall provide programs developed in partnership with energy providers, such as transmission and distribution utilities, to provide consumers with information on energy options to promote energy efficiency and increased use of alternative energy resources in the State. [PL 2011, c. 637, §6 (NEW).]

L. **(TEXT EFFECTIVE UNTIL 9/30/22) (TEXT REPEALED 9/30/22)** Pursuant to section 3214, subsection 2-A, the trust shall work with investor-owned transmission and distribution utilities, consumer-owned transmission and distribution utilities that elect to participate in an arrearage management program pursuant to section 3214, subsection 2-A and other stakeholders to provide access to a complementary low-income energy efficiency program for participants in the arrearage management programs in order to help reduce participants' energy consumption.

This paragraph is repealed September 30, 2022. [PL 2019, c. 608, §2 (AMD).]  
[PL 2019, c. 608, §2 (AMD).]

**3. Implementation.** The trust 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 trust may arrange the delivery of conservation programs by contracting with service providers. The trust shall select service providers in accordance with this subsection.

A. The trust shall select service providers through a competitive bidding process. [PL 2009, c. 372, Pt. B, §3 (NEW).]

B. To the extent practicable, the trust shall encourage the development of resources, infrastructure and skills within the State by giving preference to in-state service providers. [PL 2009, c. 372, Pt. B, §3 (NEW).]

C. Notwithstanding paragraph A:

(1) The trust may select a service provider for one or more conservation programs without employing a competitive bidding process if the trust 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 use 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. [PL 2009, c. 372, Pt. B, §3 (NEW).]

In accordance with section 10105, the trust is not subject to rules adopted by the State Purchasing Agent in selecting service providers pursuant to this subsection. The board shall adopt rules establishing procedures governing the selection of service providers under this subsection. The board 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.

[PL 2009, c. 372, Pt. B, §3 (NEW).]

**4. Funding level; base assessment.**

[PL 2013, c. 369, Pt. A, §19 (RP); PL 2013, c. 369, Pt. A, §30 (AFF).]

**4-A. Procurement of cost-effective energy efficiency and conservation resources.** The commission shall ensure that transmission and distribution utilities on behalf of their ratepayers procure through the trust the maximum achievable cost-effective electric energy efficiency and conservation resources pursuant to section 10104, subsection 4, except that the commission may not require the inclusion in rates under this subsection of a total amount that exceeds 4% of total retail electricity and transmission and distribution sales in the State as determined by the commission by rule. The cost of procurement of cost-effective electric energy efficiency and conservation resources is a just and reasonable element of rates. The commission may issue any appropriate orders to transmission and distribution utilities necessary to achieve the goals of this subsection. When determining the maximum achievable cost-effective energy efficiency resources, the commission shall:

A. **(CONFLICT: Text as amended by PL 2019, c. 306, §5)** Consider electric energy efficiency resources that are reasonably foreseeable to be acquired by the trust using the Regional Greenhouse Gas Initiative Trust Fund under section 10109, federal or state grants or settlement funds designated by the board for programs implemented under this section, except that forward capacity market payments deposited in the Heating Fuels Efficiency and Weatherization Fund established in section 10119 may not be considered; [PL 2019, c. 306, §5 (AMD).]

A. **(CONFLICT: Text as amended by PL 2019, c. 313, §8)** Consider energy efficiency resources that are reasonably foreseeable to be acquired by the trust using all other sources of revenue, including, but not limited to, the Regional Greenhouse Gas Initiative Trust Fund under section 10109; [PL 2019, c. 313, §8 (AMD).]

B. Apply the discount rate adopted by the trust and ensure that the calculations of avoided energy costs are consistent with rules adopted by the trust and are supported by evidence in the record. Avoided energy costs must include but are not limited to the following elements:

- (1) Retail value of electricity supply including a wholesale risk premium;
- (2) Statewide average value of avoided marginal transmission and distribution costs;
- (3) Statewide average for line losses; and
- (4) Demand reduction induced price effects.

The trust shall use, and the commission shall give deference to, values for each element of avoided energy cost from a regional avoided energy supply cost study as long as the analysis has been developed through a transparent process, with input from state agencies, public advocates, utilities or energy efficiency administrators from at least 3 other states in New England and the analysis has been published not more than 24 months prior to the trust's filing of the plan. When values specific to the State are not available in the regional study, the trust may use, and the commission shall give deference to, regional values provided in that regional study or values determined from other sources when supported by evidence in the record; and [PL 2019, c. 313, §8 (AMD).]

C. Maximize total electricity savings for all ratepayers. [PL 2013, c. 369, Pt. A, §20 (NEW); PL 2013, c. 369, Pt. A, §30 (AFF).]

The commission shall consider gross efficiency savings for the purpose of determining savings that are cost-effective, reliable and achievable. The commission shall consider whether the trust is taking reasonable steps to achieve high net and gross efficiency savings, including but not limited to the use of national standard practices as identified by the trust by rule.

Rules adopted under this subsection are routine technical rules under Title 5, chapter 375, subchapter 2-A.

[PL 2019, c. 306, §5 (AMD); PL 2019, c. 313, §8 (AMD).]

**5. Other assessments on transmission and distribution utilities.**

[PL 2013, c. 369, Pt. A, §21 (RP).]

**6. Transmission and subtransmission voltage level.** After July 1, 2007, electricity customers receiving service at transmission and subtransmission voltage levels are not eligible for conservation programs undertaken under this section, and those customers are not required to pay in rates any amount associated with any procurement of energy efficiency resources by transmission and distribution utilities ordered under subsection 4-A. For the purposes of this section, "transmission voltage levels" means 44 kilovolts or more, and "subtransmission voltage levels" means 34.5 kilovolts.

[PL 2015, c. 494, Pt. A, §40 (AMD).]

**7. Conservation program fund.** The trust 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. [PL 2009, c. 372, Pt. B, §3 (NEW).]

B. Any interest earned on funds in the program fund must be credited to the program fund. [PL 2009, c. 372, Pt. B, §3 (NEW).]

C. Funds not spent in any fiscal year remain in the program fund to be used for conservation programs. [PL 2009, c. 372, Pt. B, §3 (NEW).]

D. The commission or the trust 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 or trust has an agreement or contract pursuant to this section if the commission receives prior written consent from the trust that receipt of those funds would be consistent with the purposes of this section. If the commission or trust 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. [PL 2009, c. 372, Pt. B, §3 (NEW).]

[PL 2009, c. 372, Pt. B, §3 (NEW).]

**8. Administration fund.** The trust may transfer up to 9% of funds collected pursuant to this section to its administration fund to be used solely to defray administrative costs. 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.

[PL 2013, c. 369, Pt. A, §23 (AMD).]

**9. 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.

[PL 2009, c. 372, Pt. B, §3 (NEW).]

**10. 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 ensure that the value of those funds is returned to consumers.

[PL 2013, c. 369, Pt. A, §24 (AMD).]

**11. 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 April 5, 2002, 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 cannot 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. [PL 2009, c. 372, Pt. B, §3 (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. [PL 2009, c. 372, Pt. B, §3 (NEW).]

C. If the commission rejects the decision, the commission shall adjudicate the dispute. [PL 2009, c. 372, Pt. B, §3 (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. [PL 2009, c. 372, Pt. B, §3 (NEW).]

**12. Ratemaking and cost recovery.** The assessments charged to transmission and distribution 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. [PL 2009, c. 372, Pt. B, §3 (NEW).]

**13. Rules.** The trust 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 2-A. [PL 2009, c. 372, Pt. B, §3 (NEW).]

**14. Effective date.** This section takes effect July 1, 2010. [PL 2009, c. 372, Pt. B, §3 (NEW).]

#### SECTION HISTORY

PL 2009, c. 372, Pt. B, §3 (NEW). PL 2009, c. 518, §10 (AMD). PL 2011, c. 637, §6 (AMD). PL 2013, c. 369, Pt. A, §§18-24 (AMD). PL 2013, c. 369, Pt. A, §30 (AFF). PL 2013, c. 556, §2 (AMD). PL 2015, c. 255, §1 (AMD). PL 2015, c. 494, Pt. A, §§39, 40 (AMD). PL 2017, c. 414, §2 (AMD). PL 2019, c. 306, §§4, 5 (AMD). PL 2019, c. 313, §8 (AMD). PL 2019, c. 365, §§2, 3 (AMD). PL 2019, c. 608, §2 (AMD).

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