

September 27, 2014

Senator John Cleveland, Co-Chair
Representative Barry Hobbins, Co-Chair
Joint Standing Committee on Energy, Utilities & Technology
100 State House Station
Augusta, ME 04330

Dear Chairmen Cleveland and Hobbins,

We are writing regarding the committee's very important duty to review and make recommendations regarding nominations to important public institutions, in this case the Board of Trustees for the Efficiency Maine Trust (the "Trust"). It is imperative that our public boards exemplify transparency, fairness and integrity, especially when a board has responsibility for making decisions about the allocation of public funds. For this reason we are writing to oppose the nomination of Donald Lewis to the Trust board because of conflict of interest concerns.

Our opposition has nothing to do with Mr. Lewis's character—most of the undersigned have no personal knowledge of Mr. Lewis. Rather, our concerns stem from a clear conflict resulting from the fact that Mr. Lewis runs a business that has a significant financial interest in decisions that he would make if he served as a board member of the Trust.

The Legislature created the Trust Board with specific conflict of interest language aimed at protecting the interests of ratepayers who provide revenue to support the Trust. The Trust's conflict of interest provision (attached) clearly states that Trustees "may not receive any direct personal benefit from activities of the trust".

Mr. Lewis is the President of Nyle Systems, a manufacturer and seller of a variety of high efficiency equipment for industrial, commercial and residential customers. For example, Nyle Systems sells a heat pump for hot water heating.¹ Efficiency Maine has an active program to promote high efficiency heat pump hot water heaters.² Mr. Lewis has expressed interest for Efficiency Maine to promote his products, writing to the Trust at one point, "it would be great if we could get Efficiency Maine to get behind this and really make it work. We are a Maine company and need all the help we can get to get this product out there."

Efficiency Maine does not currently include Nyle heat pump products on its list of eligible equipment in its Home Energy Savings Program, because the products do not meet the Trust's current technical requirements (e.g. Energy Star certification). Last May, one of Nyle's customers wrote to Efficiency Maine and Governor LePage asking for a "waiver" of the Trust's eligibility requirement.³ (Mr. Lewis has also challenged a decision by the U.S. Department of Energy to not certify the Nyle Systems heat pump as meeting Energy Star standards.⁴)

¹ <http://water.nyle.com/residential/>

² <http://www.energymaine.com/at-home/water-heating-solutions/heat-pump-water-heaters/>

³ NRCM FOAA, Sept 19, 2014.

⁴ http://www.energystar.gov/ia/partners/prod_development/revisions/downloads/comments_2011/Nyle%20Systems%20Comments.pdf

It is not inappropriate for a manufacturer to advocate that certain technology should benefit from Efficiency Maine rebates and incentives. (It demonstrates that manufactures benefit financially from such decisions.) Indeed, such requests and considerations are somewhat commonplace for the Trust, which must sort through competing technologies and products as it seeks to maximize reliable efficiency savings for ratepayers. Similarly, it is common for the Trust and its Board to make decisions about which program strategies to fund and at what levels. However, it would be inappropriate, based on this clear conflict of interest, for a Trustee to be involved in decisions which could affect his business in a direct way.

We do not believe that the trust should include individuals whose business could benefit directly and specifically from Trust decisions about which equipment is included in rebate programs, or which programs should be funded at what levels. Having trustees with obvious business interests in the workings of the Trust would erode public confidence in the management of the Trust's funds.

Since becoming an independent Trust several years ago, Efficiency Maine staff and trustees have taken great efforts to maintain and increase the organization's transparency, from intensifying third-party program evaluations to reforming its auditing controls for subcontractors, while maintaining a strong focus on the hard numbers of cost-effectiveness. The Trust's programs now span multiple fuels and the Trust must walk a fine line in promoting energy efficiency performance while not giving preference to some fuels over others. The appointment of Mr. Lewis would set a harmful precedent for the integrity of Efficiency Maine's programs, and could put the Trust on the path of including Board members with a variety of vested financial interests in decisions made by the Trust.

Regardless of his expertise or other personal characteristics, we urge you to vote against a motion to recommend that Mr. Lewis be confirmed by the Senate.

Sincerely,

Dylan Voorhees
Natural Resources Council of Maine

Fortunat Mueller
ReVision Energy

Bob Howe
Maine Association of Building Efficiency
Professionals

Richard Burbank
Evergreen Home Performance

Emily Figdor
Environment Maine

Ben Chin
Maine People's Alliance

Richard Davies
Public Policy Associates Inc;
former Maine Public Advocate

Steve Ward
Perkins Point Energy Consulting;
former Maine Public Advocate

Greg Cunningham
Conservation Law Foundation