

DE 03-169

**GRANITE STATE ELECTRIC COMPANY, NEW HAMPSHIRE ELECTRIC
COOPERATIVE, PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE and
UNITIL ENERGY SYSTEMS**

**Joint Petition for Approval of
"Core" Energy Efficiency Programs for 2004**

Order Approving Settlement Agreement

O R D E R N O. 24,248

December 15, 2003

APPEARANCES: Laura S. Olton, Esq. and Gallagher, Callahan & Gartrell, P.A. by Seth L. Shortlidge, Esq. for Granite State Electric Company; Leboeuf, Lamb, Greene & MacRae, L.L.P. by Meabh Purcell, Esq. for Unitil Energy Systems, Inc.; Robert A. Bersak, Esq. for Public Service Company of New Hampshire; Devine, Millimet & Branch, P.A. by Robert E. Dunn, Jr., Esq. for New Hampshire Electric Cooperative, Inc.; Joanne Morin for the New Hampshire Department of Environmental Services; Jack K. Ruderman, Esq. for the New Hampshire Office of State Planning and Energy Programs; New Hampshire Legal Assistance by Alan Linder, Esq. for the Save Our Homes Organization; Dana Nute for the New Hampshire Community Action Association; Jane Doherty for the Environmental Responsibility Committee of the Episcopal Diocese of New Hampshire; Office of Consumer Advocate by Michael W. Holmes, Esq. on behalf of residential ratepayers; and Donald M. Kreis, Esq. of the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On September 30, 2003, the New Hampshire Public Utilities Commission (Commission) received a joint petition from Granite State Electric Company (GSEC), the New Hampshire Electric Cooperative (NHEC), Public Service Company of New Hampshire (PSNH) and Unitil Energy Systems (Unitil) (collectively, the Electric Utilities) seeking approval of their

ratepayer-funded "Core" energy efficiency programs for 2004.¹ The Core Energy Efficiency Programs, first implemented in 2002, are designed to be "available to electric customers throughout the state, regardless of service territory," and funded via the System Benefits Charge (SBC) authorized by RSA 374-F:VI. See *Concord Electric Co.*, Order No. 23,982 (May 31, 2002), slip op. at 2 (approving Core programs for 2002-03). The concept arose out of the 1999 report of the New Hampshire Energy Efficiency Working Group, approved with certain modifications by the Commission in *Electric Utility Restructuring - Energy Efficiency Programs*, 85 NH PUC 684 (2000).

The Commission entered an Order of Notice on October 2, 2003, waiving the 14-day notification requirement of Puc 203.01(a), scheduling a Pre-Hearing Conference for October 14, 2003 and establishing a deadline of October 9, 2003 for intervention petitions. The Office of Consumer Advocate (OCA) entered an appearance on behalf of residential ratepayers and the Commission received intervention petitions from the Environmental Responsibility Committee of the Episcopal Diocese of New Hampshire, the New Hampshire Office of Energy and

¹ The Electric Utilities made this filing pursuant to a deadline set by the Commission in a secretarial letter issued on August 4, 2003 in Docket No. DE 01-057. A fifth electric utility that presently participates in the Core Programs, Connecticut Valley Electric Company (CVEC), is not a petitioner because it is scheduled to transfer its utility franchise to PSNH as of January 1, 2004. *See Connecticut Valley Electric Co.*, Order No. 24,176 (May 23, 2003), *as clarified by* Order No. 24,184 (June 19, 2003), *aff'd on rehearing*, Order No. 24,189 (July 3, 2003).

Planning (OEP), the Save Our Homes Organization (SOHO), the New Hampshire Department of Environmental Services (DES) and the New Hampshire Community Action Association (NHCAA).

The Pre-Hearing Conference took place as scheduled. Without objection, the Commission granted all pending intervention requests. Following the Pre-Hearing Conference, the parties and Commission Staff conducted a technical session. Staff thereafter filed a report of the session, (1) noting that there was agreement, with certain minor modifications, of the procedural schedule outlined in the Order of Notice and (2) transmitting the parties' request for a determination that consideration of issues related to the pilot Pay-As-You-Save (PAYS) energy efficiency program being conducted by PSNH and the NHEC be deferred to a subsequent docket. By Order No. 24,232 (November 3, 2003), the Commission approved the revised procedural schedule suggested by the parties and Staff. The Commission further determined that it would not take up any issues related to PAYS in this docket and, instead, would open a new docket in 2004 "to review the current PAYS pilots, whether PAYS should be added to the menu of Core programs offered by each utility, and/or whether the PAYS model should replace the traditional paradigm of rebates and subsidies in either the near or long term." *Id.*, slip op. at 12.

On October 30, 2003, the Commission received an intervention petition from Alexander P. Lee, who identified himself as an individual with an interest in energy efficiency matters. The Commission by secretarial letter dated November 13, 2003 noted that Mr. Lee had not alleged or demonstrate any "rights, duties, privileges, immunities, or other substantial interests" that may be affected by the proceeding, as required for intervenor status pursuant to RSA 541-A:32 I(b). However, the Commission placed Mr. Lee on its limited service list, causing him to receive all Commission issuances in the proceeding.

Discovery, technical sessions and settlement discussions ensued pursuant to the procedural schedule. SOHO submitted pre-filed direct testimony on November 3, 2003. On December 2, 2003, PSNH filed a Settlement Agreement entered into among all parties and Staff. The Commission conducted a merits hearing to consider the Electric Utilities' petition, as modified and conditioned by the Settlement Agreement, on December 4, 2003.

II. POSITIONS OF THE PARTIES AND STAFF

A. Electric Utilities' Petition

In their original petition, the Electric Utilities proposed the continuation of all Core programs presently operating. For residential customers, these programs consist of

Energy Star Homes (designed to provide incentives to build homes that are energy efficient), Home Energy Solutions (providing assistance to homeowners desiring to improve the energy efficiency of their residences), Energy Star Lighting (a rebate and catalog program relating to energy efficient lighting), the Energy Star Appliance Program (providing rebates and education in connection with energy efficient appliances) and the Home Energy Assistance Program (providing energy efficiency measures to low-income customers). For commercial and industrial (C&I) customers, the programs are the New Equipment and Construction Program (providing rebates for efficiency measures purchased by certain large customers in connection with new construction or major projects), the Large C&I Retrofit Program (similar, for retrofit projects), Small Business Energy Solutions (turnkey energy efficiency services for customers with less than 100 kilowatts of monthly demand) and certain educational programs (Energy Code training, seminars, customer education and energy education for students).

The Electric Utilities also requested approval for certain utility-specific energy efficiency programs, i.e., programs that are not offered on a statewide basis. These include the GSEC Home Energy Management program (direct control of residential electric water heaters for load management purposes), the NHEC Load Management System (similar to the GSEC

Home Energy Management Program), the NHEC Pilot PAYS Program for residential customers, the NHEC High Efficiency Heat Pump Program (for residential and commercial customers), a renewable energy and distributed generation study for the NHEC service territory, PSNH's Pilot PAYS Program for municipal customers, a geothermal option for PSNH customers participating in the Energy Star Homes program, a PSNH "Heatsmart" program for low-income customers (involving discounts and interruptible power for certain electric heat customers), a PSNH pilot program of weatherization projects for non-electric heat customers, additional education measures for up to five PSNH customer groups, a pilot RFP (request for proposal) program for PSNH C&I customers, and Unitil's energy efficiency web site.

In their petition, the utilities represented that the uniform planning, delivery, evaluation and access to energy efficiency programs previously established for the Core programs would continue in 2004 under their proposal. According to the Electric Utilities, "[t]o the extent practicable, the efficient delivery of services will not depend on which community the customer or member resides or does business." Petition at 2. According to the Electric Utilities, each individual utility would have "flexibility in its implementation strategies and may deliver its programs in a particular way" but, from the customer

perspective, "the program will look virtually the same in all service territories." *Id.*

The proposal of the Electric Utilities provides for the continuation of the performance incentive mechanism presently in place. See Order No. 24,203 (September 5, 2003) (noting that evaluation of existing incentive program will occur in 2004, after which any adjustments would become effective in the next program year). The Electric Utilities requested that evaluations of the performance incentive be completed by July 1, 2004 to allow the Commission to address the issue prior to the 2005 program year.

The Electric Utilities further requested that customers be allowed to apply for and receive commitments during 2004 for energy efficiency projects to be completed in 2004, 2005 and 2006. According to the Electric Utilities, this is necessary and appropriate because large C&I customers often have a planning horizon of two years with respect to capital projects, because home builders will plan construction starts for the following year based on the number of Energy Star homes each utility is authorized to support, and because such approval would allow Community Action Agencies and other contractors involved with the Home Energy Assistance Program to plan for the crews that will be necessary to implement the program and coordinate it with federally supported weatherization projects.

The final element of the Electric Utilities' proposal concerns interim changes in program budgets. The Electric Utilities request authority to transfer up to 20 percent of an individual program's budget to another program without Commission approval. They would limit this authority by agreeing not to transfer funds between the residential and C&I sectors without Commission approval, nor would they transfer in excess of 20 percent of a program's budget without such specific authority from the Commission. However, with respect to budget transfers greater than 20 percent, the Electric Utilities ask the Commission to allow Staff or interested parties to file any comments on such a proposed transfer within two weeks. In the event no comments were filed, the changes could be automatically effective 30 days from the filing, unless the Commission gives notice that a more in-depth review is necessary.

Appended to the Electric Utilities filing is a monitoring and evaluation plan, providing *inter alia* for most programs to receive an "impact evaluation" in either 2004 or 2005, a work plan for the collaboration between the Electric Utilities and the state's Community Action Agencies (CAAs) with respect to the delivery of programs for low-income customers (and the coordination of such efforts with the federally funded weatherization efforts also conducted by the CAAs), various supporting calculations and, finally, a chart summarizing the

Core Programs' proposed budget and goals for 2004. They provide for the expenditure of \$15,116,588 in SBC funds during the year, resulting in lifetime savings of 699,345,177 kwh. Services would be provided to 132,117 customers, all but 10,000 of whom would be in the Energy Star Lighting program).

B. Settlement Agreement

The Settlement Agreement filed on December 4, 2003, was entered into among the Electric Utilities, the OCA, all intervenors and the Commission Staff. It provides for Commission approval of the Electric Utilities' proposal, subject to certain conditions and explicit understandings.

The parties and Staff agreed that certain issues would be reserved to future proceedings. Those issues are: (1) analysis of the performance incentive, (2) PAYS and (3) analysis and recovery of internal and external administrative costs by the Electric Utilities.

With respect to low-income programs, the Settlement Agreement provides that the Electric Utilities will work with the CAAs and the OEP to coordinate the delivery of services under the Home Energy Assistance Program and the federally supported weatherization program, in order to maximize benefits to participating customers and to capture potential program efficiencies and thus to ensure the sound fiscal management of the SBC funds so expended. Pursuant to the Settlement

Agreement, CAAs wishing to participate in providing services under the Home Energy Assistance Program would agree to join in a bidding process with other energy service providers to establish qualifications and pricing for program services.

The CAAs agreed that the CAA Weatherization Directors Association would assign a representative as a single point of contact for the CAAs in connection with this docket. The CAAs further agreed that the Weatherization Directors Association would monitor production among the CAAs to help address problem areas, with the CAAs agreeing to work together to assist any individual CAA that is having difficulty achieving program goals.

The Settlement Agreement further provides that qualified CAAs would have the right of first refusal with respect to services provided through the Home Energy Assistance Program, provided that the CAAs agree to provide services at established statewide rates and meet established statewide standards for customer response time, work quality and delivery of program services.

The Electric Utilities, in turn, agreed they would strive to market the low-income program in a manner that promotes a reasonably level flow of work for the CAAs. In cases where the CAA cannot provide low-income energy efficiency services in accordance with the production schedule appended to

the Settlement Agreement, the work would be assigned to other qualified vendors, which would be held to the same production standards applied to the CAAs. In such circumstances, the relevant utility would provide notice to the affected CAA and the Weatherization Directors Association, with the CAAs reserving the right to file an appropriate motion with the Commission for resolution of the matter.

The Electric Utilities, the OEP and SOHO agreed to work to maintain a uniform training and customer education program for all entities delivering low-income energy efficiency services. The Settlement Agreement provides that the maximum expenditure for services provided under the Home Energy Assistance Program would be \$4,000.²

With respect to the low-income programs, appended to the Settlement Agreement (as Exhibit B) is a detailed "collaboration implementation plan" for the Home Energy Assistance Program and the federally funded weatherization plan. It includes a project timeline for a typical customer, a general program outline and flow chart, standards for auditor training, provisions related to customer service and customer education, capacity planning standards with respect to the CAA, and an explicit understanding that the "fundamental principle" of the Electric Utilities' collaboration with the CAAs is that "by

² Testimony adduced at the hearing clarified that this maximum expenditure is \$4,000 per customer.

working together, it will be possible to bring more services to more low income customers." Settlement Agreement at B-6.

According to Exhibit B, a total of 151 additional customers will be served as a result of the collaboration plan, compared to the goals set forth in the Electric Utilities' petition.

The Settlement Agreement explicitly provides that the goals set forth in Exhibit B supercede those in the original petition. Each electric utility agreed to track its internal and external administrative costs with respect to the low-income programs. Notwithstanding their original proposal, the Electric Utilities further agreed to transfer no funds from the low-income program without prior approval by the Commission. The Electric Utilities agreed that CORE low-income funds would be made available to provide measures and services to both single-family and multi-family residences. Finally with respect to the low-income program, the Electric Utilities agreed to furnish data to track compliance with the provisions in the Settlement Agreement relating to the program.

The Settlement Agreement includes certain provisions relating to program implementation generally. Each electric utility would continue to be responsible for contracting for and overseeing program services in its service territory, but commits to working with the other electric utilities to ensure that all potential efficiencies from program coordination are

achieved. The Electric Utilities further agreed (1) to continue to use common vendor requests for proposals, rebate and application forms and marketing materials, (2) to continue the development and operation of a statewide marketing program, (3) to continue to support the statewide toll-free telephone number and common web site associated with the Core programs, and (4) to perform joint program goals.

The Settlement Agreement notes that the Electric Utilities have established a Core Program Management Team, which would continue to operate and be comprised of representatives of each utility. The Electric Utilities further agreed to continue Core Program Monitoring and Evaluation Team to oversee quarterly reporting, joint program evaluations, information sharing and the receipt of input from the parties and Staff. The Monitoring and Evaluation Team would be comprised of representatives from each electric utility and the Commission Staff, with the Staff representative serving as a permanent, non-voting member of the group.

The Electric Utilities agree to continue to provide quarterly reports that compare program goals to actual accomplishments. To that end, Exhibit G to the Settlement Agreement contains specific definitions of budget categories. Further, the Electric Utilities agree to continue to evaluate the Core programs using methods that produce results that are

reviewable, appropriate and reliable. Evaluation studies, where practical, would be completed jointly or would be part of regional or national efforts.

Under the terms of the Settlement Agreement, evaluation of the Core Programs would include process evaluations (to assess the effectiveness of program delivery and related issues), impact evaluations (to assess the actual demand and energy savings achieved by the programs) and market transformation assessment. Total expenditures on regional or national evaluation studies would be limited to a maximum of 25 percent of the monitoring and evaluation budget. Evaluations would be filed with the Commission, with copies to the parties and Staff.

The Electric Utilities agreed that the Core Management Team would continue to meet with the parties and Staff quarterly, after each quarterly report has been received and reviewed. The Settlement Agreement explicitly provides that any issues with respect to the quarterly reports, the data in them, future Core activities or actions and inaction by the Management Team may be brought to the Commission for resolution.

The Settlement Agreement contains specific provisions with respect to disposal and recycling of refrigerators and other appliances replaced in connection with the Core programs. The Electric Utilities agreed to dispose of properly, or

recycle, any such appliances as well as recycling lamps and ballasts when the utility is responsible for installing the measures. The Electric Utilities agreed to require that participating C&I customers not install any replaced equipment at any other location in the applicable utility's service territory.

With respect to the multi-year approval proposal in the petition, the Settlement Agreement provides that customers will be allowed to apply for and receive commitments during 2004 for projects to be completed in 2004, 2005 and 2006. The Electric Utilities would be authorized to make commitments to customers presenting "definitive plans" to be completed in subsequent years, with 2004 program guidelines and rules applying to the 2005 and 2006 commitments. The Settlement Agreement further provides that customers receiving commitments in 2004 would not be barred from participating in any new energy efficiency programs established in 2005 or 2006 to supplant or supplement existing programs, subject to the highest dollar-amount limitation per customer for the 2004, 2005 or 2006 programs.

The Settlement Agreement provides that, to some extent, this process involves committing sums from the 2005 and 2006 Core Programs budgets prior to those budgets being approved by the Commission. There is a limitation, however: The total

of all customer commitments in any given program, in any future year, would not be permitted to exceed 40 percent of the amount budgeted (in connection with customer rebates and/or services) without prior concurrence of the parties and Staff. All such customer commitments would be contingent upon the continuation of energy efficiency program funding.

III. COMMISSION ANALYSIS

When we approved the initial implementation of the Core Energy Efficiency programs in 2002, see Order No. 23,982 (May 31, 2002), we discussed in some detail the policy principles from the Electric Industry Restructuring Act, RSA 374-F, that informed our determination that it was consistent with the public interest to approve the Core programs proposed at that time and their funding via the System Benefits Charge authorized by RSA 374-F:VI. See Order No. 23,982, slip op. at 1-3, 16-17. In authorizing the implementation of the electric industry Core programs, along with certain utility-specific initiatives not offered statewide, for the period June 1, 2002 through December 31, 2003, we endorsed both the approach and the menu of programs proposed by the utilities.

In the instant proceeding, all parties and Staff are requesting that the Commission approve what is in essence a continuation of the programs implemented in 2002. We agree with the parties and Staff that such action is in the public

interest, inasmuch as the record reflects that the Core programs have been almost entirely successful.

Both the Settlement Agreement proposed by the parties and the record adduced at hearing demonstrate that one area of concern in 2002-2003 was the low-income energy efficiency program. Specifically, the ability of New Hampshire's Community Action Agencies (CAAs) to deliver program services to eligible customers, in the aggregate, fell short of both the utilities' expectations and the Commission's. We agree with the parties that these difficulties do not justify abandoning the approach of utility cooperation with the CAAs. These agencies have extensive contact with low-income customers who need energy assistance and are therefore well-positioned to assure that the program reaches as many low-income customers as possible. The CAAs are also charged with delivering the federally financed weatherization program and, thus, are in a position to assure that eligible customers are able to take full and efficient advantage of both programs. This ability to combine and leverage the two programs could be lost if contractors other than CAAs, to the extent any might exist, deliver the SBC-funded low-income energy efficiency program to customers.

We further agree with the parties and Staff that the Settlement Agreement reflects an appropriate and laudable set of steps designed to improve the CAAs' performance. The fact that

the CAAs, through their association, participated as a party to this docket is especially helpful. This is because the CAAs have affirmatively expressed a commitment to the terms of the Settlement Agreement after participating directly in their development.

We stress, however, that the CAAs are not utilities and, thus, not within the jurisdiction of the Commission. In other words, it is the utilities that are ultimately responsible for delivery of SBC-funded energy efficiency programs and it is the utilities that will be held accountable for any program mismanagement. Thus, it is the responsibility of the utilities and not the Commission to assure that the CAAs, as the utilities' contractors, perform in a manner that is consistent with their commitments.

Another aspect of the Settlement Agreement that deserves particular comment is the proposal to allow utilities to commit during 2004, on a limited basis, SBC funds that will be collected in 2005 and 2006. The parties and Staff have amply demonstrated why this is sound policy, in light of the fact that many if not most electric customers in a position to take advantage of the Core programs will plan in 2004 for capital improvements to be implemented and paid for in those subsequent years. We also expect that this initiative will eliminate in 2004 a problem narrowly avoided this year in connection with the

low-income program, i.e., under-utilized CAA staff resources once all current-year SBC funds have been committed.

Finally, for purposes of clarity, we set forth our understanding of the effect of the provisions in the Settlement Agreement with respect to the Pay-As-You-Save (PAYS) program that PSNH and the NHEC operated during 2002 and 2003 on a pilot basis. As we noted in Order No. 24,232, we are deferring all PAYS-related issues to a separate docket that we expect to open in early 2004, with the objective of synchronizing PAYS with the Core programs in time for the 2005 program year. We reserved the right in Order No. 24,232 to continue the PAYS pilot; discontinue PAYS in the PSNH service territory, the NHEC service territory, or both; require some or all additional electric utilities to offer PAYS and even to determine that PAYS should replace some or all rebate and/or subsidy programs presently being offered. The Settlement Agreement facilitates this determination by allowing the PAYS pilots to go forward on a temporary basis, on the terms outlined in the utilities' initial filing, pending our determinations in the upcoming PAYS proceeding.

Based upon the forgoing, it is hereby

ORDERED, that the Settlement Agreement submitted in this docket on December 2, 2003 is APPROVED and the petitioners

are authorized to implement energy efficiency programs effective on January 1, 2004 as described in that agreement.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of December, 2003.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham J. Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary