

DE 05-157

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

Petition for Approval of 2006 “Core” Energy Efficiency Programs

Order Following Hearing

O R D E R N O. 24,599

March 17, 2006

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Leboeuf, Lamb, Greene & MacRae LLP by Maebh Purcell, Esq. for Unitil Energy Systems; Alexandra E. Blackmore, Esq. for Granite State Electric Co.; Devine, Millimet & Branch P.A. by Robert E. Dunn, Esq. for New Hampshire Electric Cooperative, Inc.; New Hampshire Legal Assistance by Alan Linder, Esq. for Save Our Homes Organization; Jack Ruderman, Esq. for the Office of Energy and Planning; Dana Nute for the New Hampshire Community Action agencies; Office of Consumer Advocate by F. Anne Ross, 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 October 14, 2005, Granite State Electric Company (GSEC), the New Hampshire Electric Cooperative (NHEC), Public Service Company of New Hampshire (PSNH) and Unitil Energy Systems (Unitil) jointly filed with the New Hampshire Public Utilities Commission a proposal for the 2006 “Core” Energy Efficiency programs. The filing concerns the energy efficiency programs that are funded pursuant to RSA 374-F:3,VI by the System Benefits Charge (SBC) that appears on the bill of each electric customer in New Hampshire. The 2005 programs were approved in Order No. 24,410 (December 3, 2004).

The Commission issued an Order of Notice on October 28, 2005, conducted a pre-hearing conference on November 16, 2005, and granted the intervention requests of the Save Our Homes Organization (SOHO), the New Hampshire Sustainable Energy Association, the Office of Energy and Planning and the jointly appearing New Hampshire Community Action

agencies and the New Hampshire Community Technical College at Laconia. On the afternoon of the pre-hearing conference, the Legislature took up and ultimately enacted Chapter 298, N.H. Laws of 2005 (SB 228). In light of the Legislature's consideration of the SBC programs, the Commission deferred to November 18, 2005, the technical session that usually occurs immediately following pre-hearing conferences. Staff submitted a report of the technical session on November 18, 2005, and a request to extend the procedural schedule by two weeks on December 27, 2005. In its original report, Staff noted the participants' agreement to request that the Commission allow the 2005 programs to continue pending the Commission's decision in the 2006 filing.

By Order No. 24,571 (December 30, 2005), the Commission adopted a procedural schedule recommended by the parties and Staff. The Order also explicitly granted the utilities' request for authority to continue to operate the Core programs at 2005 levels pending the Commission's consideration of the proposal for 2006 in this docket. Discovery proceeded according to the schedule originally proposed by the participants in the pre-hearing conference. Each of the petitioners filed a motion for a protective order with respect to certain data relating to the use of SBC funds by large commercial customers for energy efficiency projects. Also pursuant to the originally proposed schedule, the OCA submitted prefilled direct testimony on December 27, 2005.

On January 19, 2006, the Commission advised the parties by secretarial letter that the hearing in this case had been rescheduled to February 23, 2006. The Business and Industry Association (BIA) filed a position paper on February 22, 2006. The hearing took place as scheduled, at which time PSNH submitted a proposed settlement agreement entered into by the petitioning utilities, the New Hampshire Community Action agencies, the Office of Energy and

Planning, SOHO, and Staff. The settlement proposed a resolution of all outstanding issues except the source of energy efficiency funds temporarily diverted by some utilities to low-income energy assistance programs pursuant to 2005 N.H. Laws 298.

At hearing, PSNH filed a written statement of its position with respect to Chapter 298. The Commission invited other parties to brief the issue on or before March 1, 2006. Timely briefs on the question were filed by OCA and the New Hampshire Electric Cooperative (NHEC).

II. POSITIONS OF THE PARTIES

A. Summary of the 2006 Core Proposal

The petitioners seek to maintain the current menu of statewide Core programs: the Energy Star Homes program, the Home Energy Solutions program, the Energy Star Lighting program, the Energy Star Appliance program, the Home Energy Assistance Program (providing special energy efficiency assistance to low-income customers, as distinct from the program referenced in note 1, *supra*), the New Equipment and Construction program for commercial and industrial customers, the Large C&I (commercial and industrial) Retrofit program, the Small Business Energy Solutions program and certain educational programs. The petitioners also plan to continue certain programs available only in the service territories of individual utilities: the NHEC's load management program, Smart Start program and High Efficiency Heat Pump program; certain programs offered by PSNH for commercial and industrial customers as well as its Smart Start program, the Heatsmart program for low-income customers, an educational program targeted to commercial and industrial customers and the utility's pilot program of requests for proposals from commercial and industrial customers; and Utilil's energy efficiency web site and web-based Home Energy Audit program.

The petitioners point out that the programs have saved 2.3 billion lifetime kWh, the equivalent of saving \$250 million and representing a return of more than \$6 for every program dollar invested. In addition, they note that 110,000 customers have been provided services or products at an average cost of 1.8 cents per lifetime kWh saved, compared with an average retail price of 11.3 cents per kWh consumed in 2004. Furthermore, the petitioners explain that the programs are continually evolving “in response to changing technology, market conditions, program evaluations, and new standards as well as input from customers and other interested parties.” Finally, they report that the Core programs have been recognized nationally and regionally: the American Council for an Energy Efficient Economy (ACEEE) identified the Home Energy Assistance Program as an “exemplary” program in September 2005; between 2001 and 2004 New Hampshire moved from a middle ranking to first in the nation in consumer recognition of the ENERGY STAR label and in sales of certain ENERGY STAR appliances as a percent of total sales; and, the New Hampshire Lodging & Restaurant Association and the New Hampshire Department of Environmental Services promote the Core programs under the New Hampshire Sustainable Lodging Program, which was recognized with the 2003 SAMI IZZO Recycler of the Year Award.

The petitioners propose to continue the currently applicable performance incentive mechanism, whereby utility owners receive compensation for achieving specific program goals. They also seek authority to continue to approve and commit funds to certain projects that will take up to three years to fund and complete, notwithstanding the annual approval of the Core programs.

Overall, the petitioners sought authority to spend \$17,570,922 on statewide Core programs in 2006. According to their filing, they predict these expenditures will yield

641,270,877 in lifetime kilowatt-hour savings by 147,678 customers throughout New Hampshire.

B. Summary of the Settlement Agreement

The Settlement Agreement proposes that the Commission approve the utilities' 2006 Core programs filing, with certain modifications, as consistent with the public interest. The Settlement Agreement notes that the utilities modified their proposal to make minor corrections related to the Home Energy Assistance Program and, consistent with past practice approved by the Commission, to provide that the state's community action agencies would have the right of first refusal with respect to the delivery of services under the Home Energy Assistance Program.

Unlike the utilities' initial proposal, the Settlement Agreement calls for transferring responsibility for program monitoring and evaluation from the utilities to the Commission itself. The signatories recommend that the Commission would seek input and advice from the utilities on monitoring and evaluation and would also coordinate such efforts with the implementation of the Core programs. There was also agreement (1) to provide the utilities with opportunity to comment on preliminary study findings and results prior to publication, (2) to invite interested parties to attend and provide input at evaluation presentations, (3) to permit utilities, on a case-by-case basis considered in light of study design, costs, schedule and similar issues, to participate in regional monitoring and evaluation studies as well as studies conducted by multi-jurisdictional utilities, and (4) that the Commission would aggressively pursue all available means to protect customer confidential information as permitted by the Right-to-Know Law, RSA 91-A, given that monitoring and evaluation studies frequently require access to such information.

The Settlement Agreement further provides that the multi-year project approvals contemplated by the utilities should be subject to the availability of funds from the SBC. Finally, appended to the Settlement Agreement, and included as part of the agreement, is a proposed new policy for PSNH with respect to program eligibility for commercial and industrial customers that supply a portion of their energy needs through means that bypass their electric meters and for which no SBC revenues are collected. At present, PSNH simply precludes such customers from participating in the Core programs. Under the proposed new policy, (1) customer generation that exceeds 50 percent of the customer's annual maximum kilowatt demand will not qualify for services or incentives, (2) a customer's maximum incentive will be based on the net of its demand less the name-plate rating of the generation on the customer side of the meter, and (3) customers that install generation within one year of the date they install measures for which they receive a Core incentive payment will be required to refund any difference between the incentive received and the incentive they would qualify after installation of the generation. Such repayment would be required to take place within 60 days of PSNH's request.

The policy would not apply to customer generation used for emergency supply during services outages on PSNH's transmission and distribution system. Affected customers would be permitted to test emergency generators periodically and to participate in any PSNH demand reduction program by using emergency generation capability. Customer generation meeting the requirements for net metering would not trigger the restrictions on Core eligibility.

C. 2005 N.H. Laws 298

The signatories to the Settlement Agreement explicitly agreed that OCA was free to advocate the position taken in the testimony of its witness, Kenneth Traum, with respect to Chapter 298. The statute, enacted on the date of the prehearing conference in this docket,

provides for a temporary emergency reallocation of certain SBC funds, ordinarily devoted to energy efficiency programs, to serve a larger number of customers under the low income electric assistance program. Specifically, Chapter 298 provides *inter alia* that: (a) without increasing the currently applicable limit on each utility's SBC, a total of 30,000 New Hampshire customers could be served through the SBC-funded low-income electric assistance program, (b) that from January 1, 2006 through June 30, 2006, each utility may reallocate SBC funds from energy efficiency programs to the low-income program so as "to provide comparable monthly assistance to low-income customers within its service area eligible for low-income assistance," (c) that each utility "may continue to provide energy efficiency programs at the levels supported by funding at the [current] level," and (d) to the extent that energy efficiency funds are diverted to meet needs of low-income customers "the utility may correspondingly reduce its energy efficiency expenditures in equal installments over a period of 3 years by the equivalent total amount utilized to fund the temporary emergency measures described herein." 2005 N.H. Laws 298:2, II.

The OCA asks the Commission to determine that, to the extent Chapter 298 requires any utility to reduce energy efficiency funding such reductions should be made only to programs serving large commercial and industrial customers. According to OCA, Chapter 298 is silent on the question, leaving the Commission with considerable discretion with respect to such allocations. According to the OCA's post-hearing brief, "[i]n this case . . . the Commission's discretion should be guided principally by legislative intent, as expressed by the policy discussions which took place in the legislative committees" that considered the bill. OCA Legal Memorandum at 3-4. The OCA points out that at least one of the sponsors of the legislation

indicated that energy efficiency funds earmarked for “big box stores” should be the only funds diverted to supplement the energy assistance program. *Id.* at 4.

PSNH’s submission asked the Commission to determine that all rate classes be treated equally with respect to the diversion of energy efficiency funds to the low-income energy assistance budget. According to PSHN, it is clear this was the intent of the Legislature and the Commission should rely on what the statute actually says as opposed to what one or even several legislators said it meant during the enactment process. PSHN also suggests that adopting the OCA’s proposal would run afoul of RSA 378:10, which provides that utility rates and services may not unduly discriminate against any particular customer class.

The NHEC made a filing indicating its agreement with PSHN. According to the NHEC, the fact that a sponsor specifically raised the issue during the discussion of the bill, combined with the fact that the Legislature still chose to be silent on the question, is compelling evidence that the Legislature intended not to discriminate against any particular customer class in the diversion of SBC funds from energy efficiency to low-income energy assistance.

D. Community Technical College

It was noted at hearing that the proposed resolution of the case did not include the request that formed the basis of the proposal from the state Community Technical College at Laconia to use SBC energy efficiency funds to develop an energy management program at the college. According to the witnesses testifying on behalf of the utilities, OCA and Staff, the representatives of the college did not press their proposal during the discovery and settlement process and, accordingly, the signatories opted to defer consideration of the request.

III. COMMISSION ANALYSIS

The Commission initially approved the Core Energy Efficiency Programs in *Core Energy Efficiency Programs*, 86 NH PUC 805 (2001) (endorsing the concept of statewide programs) and *Concord Electric Co.*, 87 NH PUC 378 (2002) (authorizing implementation of specific program proposals on June 1, 2002). In these orders, the Commission made clear that it was acting to advance specific policy goals related to energy efficiency and demand-side management in the Electric Industry Restructuring Act as enumerated in RSA 374-F:3. The applicable policy principles have remained unchanged. Given the success of the Core programs since their advent in 2002, it is appropriate and consistent with the public interest that the basic approach to the use of SBC energy efficiency funds remain unchanged.

It is clear, and the proposed Settlement Agreement implicitly acknowledges, that New Hampshire's electric industry has evolved over the past four years. Moreover, the parameters of the System Benefits Charge on the electric bill of every New Hampshire customer, as reflected by the enactment of 2005 N.H. Laws 298, continues to engender legislative debate. While there is no suggestion in the record that monitoring and evaluation, as conducted under the aegis of the utilities over the past four years, has not been done responsibly, it is reasonable for us to adopt the proposal in the Settlement Agreement that the Commission take direct responsibility for the monitoring and evaluation of the Core energy efficiency programs. Regardless of whether the process is overseen by the utilities or the Commission through its staff, however, the Settlement Agreement makes clear the expectation that this work will go forward on a collaborative basis. The utilities, and other interested parties, will have an active role in monitoring and evaluating their use of SBC funds in the realm of energy efficiency. We

conclude that transferring responsibility for the monitoring and evaluation efforts to the Commission will result in more independent oversight.

With respect to the interpretation of Chapter 298, Laws of 2005, regarding the diversion of energy efficiency funds to low-income energy assistance, we have carefully considered the arguments of the parties and determined that the issue is not yet ripe for resolution. To the extent that it has been necessary for utilities to make such diversions, none have proposed reducing energy efficiency programs as a result. We note that Section 1 of Chapter 298, expressly provides for the recovery of such funds used for the EAP in excess of revenues under the SBC “in equal installments over the calendar years 2007, 2008, and 2009.” If recovery of funds through reductions in energy efficiency programs becomes necessary, it is our expectation that the affected utility or utilities will seek the approval of the Commission. In the meantime, energy costs continue to exert pressure on the low-income energy assistance budget and the Legislature may well consider this problem anew. Accordingly, we do not adopt OCA’s proposal here but emphasize that our decision to defer the question is without prejudice to an ultimate resolution.

In a related vein, there was significant discussion during the hearing regarding the status of market transformation, the potential for “free riders” in the large C&I programs and otherwise, and the societal benefit from reductions in overall demand resulting from such programs. At the hearing the witness for the utilities testified that in the design of the programs “it’s certainly our intent and our desire not to provide rebates for doing something that customers would otherwise do. ...We only look at the incremental cost associated with ‘what will it take to build a high energy efficient system’ and the rebates are designed to provide a portion of that incremental cost.” Transcript at p. 39. 2-20. These are clearly important issues that can be

considered in future program monitoring and evaluation but they are not ripe for consideration in this proceeding. Furthermore, they may be affected by ongoing legislative activities.

Likewise, we are not adopting the proposal that the Community Technical College made when it appeared at the Prehearing Conference, but did not further pursue. We are prepared to consider such a proposal in the future should its proponents wish to advance it. Our understanding is that the utilities and other parties remain open-minded with respect to this and other possible educational initiatives.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement submitted at hearing in this docket on February 23, 2006 is APPROVED and the petitioners are authorized to implement the Core energy efficiency programs, retroactive to January 1, 2006, according to the terms of the agreement.

By order of the Public Utilities Commission of New Hampshire this seventeenth day of March, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary