

DE 07-009

STATEWIDE LOW INCOME ELECTRIC ASSISTANCE PROGRAM

Investigation into Administrative Costs

Order Following Prehearing Conference

ORDER NO. 24,738

April 5, 2007

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Devine, Millimet & Branch, P.A. by Mark W. Dean, Esq. for New Hampshire Electric Cooperative, Inc.; Alexandra E. Blackmore, Esq. for National Grid; Gary M. Epler, Esq. for Unil Energy Systems, Inc.; New Hampshire Legal Assistance by Alan M. Linder, Esq. for The Way Home; Ralph Littlefield for the Community Action Association; Amy L. Ignatius, Esq., for the Office of Energy and Planning; Office of Consumer Advocate by Meredith M. Hatfield, Esq., on behalf of residential ratepayers; and Edward N. Damon, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

This proceeding before the New Hampshire Public Utilities Commission follows up on the Commission's approval by Order No. 24,696 in Docket No. DE 06-079 (November 8, 2006) of the 2006-2007 program budgets for the statewide Electric Assistance Program (EAP) for low-income customers. As indicated in Order No. 24,696, the purpose of this proceeding is to consider ways of streamlining administrative processes and reducing administrative costs of the EAP, make determinations about the recoverability of certain costs incurred by the Community Action agencies, and review the amounts and types of administrative costs incurred since October 1, 2003.

The Commission issued an order of notice on January 17, 2007, scheduling a pre-hearing conference for February 13, 2007. The order of notice made the utilities operating the program - Granite State Electric Company d/b/a National Grid (National Grid), New Hampshire Electric Cooperative, Inc. (NHEC), Public Service Company of New Hampshire (PSNH) and Unil

Energy Systems, Inc. (Unitil) -- mandatory parties to this proceeding. On January 19, 2007 the Office of Consumer Advocate (OCA) entered an appearance on behalf of residential consumers pursuant to RSA 363:28, II. The Commission received timely intervention requests from The Way Home (a non-profit organization that seeks to promote affordable housing), the New Hampshire Community Action Association (CAA) on behalf of the state's six Community Action agencies and the Office of Energy and Planning (OEP). The Way Home filed a preliminary statement of position on February 12, 2007. On February 13, 2007, PSNH filed a request to recover its share of certain software costs related to the services provided by the Community Action agencies.

The prehearing conference took place as scheduled on February 13, 2007, followed by a technical session. On February 27, 2007, Staff filed a report on the technical session, including a proposed procedural schedule. On March 1, 2007, the OCA and The Way Home filed joint comments regarding Staff's report.

II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

A. PSNH

PSNH first addressed whether the \$41,000 software development costs incurred by the Community Action agencies are recoverable under the legislation creating the Special Winter Electric Assistance Program (SWEAP), 2005 N.H. Laws, Ch. 298. PSNH interpreted two provisions of Chapter 298 -- one capping the temporary program at 30,000 participants, and the other limiting administrative costs to those incurred to serve more than 30,000 -- to be potentially inconsistent. PSNH stated that the two sections could be reconciled when viewed in the context in which the law was passed. PSNH contended that, by the time the SWEAP was authorized, there was a complete delivery infrastructure in place, and administrative costs of

outreach, intake and applications had already been incurred. PSNH then reviewed Order No. 24,696, approving the budgets for the 2006-2007 program year, and noted that the Commission had found that special information technology expenses of approximately \$24,000 submitted by the Community Action Association for recovery were unforeseeable costs completely outside the control of the EAP program and necessary for the implementation of the revised program. PSNH pointed out that the Commission had treated software development costs separately from administrative costs. PSNH maintained that the \$41,000 software expense was an unforeseeable cost outside the control of the CAA and necessary for the implementation of the SWEAP. PSNH concluded that those expenses should not be treated as administrative costs, but as out of pocket expenses for services required by SWEAP. PSNH filed a request that the Commission allow it to pay the Community Action agencies their shares of the \$41,000 software expenses and to recover those costs from regular revenues derived from the low-income portion of the System Benefits Charge.

B. NHEC

NHEC supported recovery by the Community Action agencies of \$41,000 in software costs, characterizing such recovery as equitable. NHEC pointed out that the prohibition on recovering administrative costs must be viewed as part of the chapter law, not as an amendment to the underlying statute, because funds are now being collected under the enabling statute for administrative costs and the prohibition does not apply to those funds.

NHEC expressed concern that the expenditure of time over the next few months to explore administrative issues in depth would cloud other equally or more important issues involving the EAP. NHEC stated that this docket should incorporate substantive program design

and delivery cost issues. NHEC recommended combining the administrative portion of this proceeding with the main proceeding to consider the program and budget for 2007-2008.

In response, PSNH stated that the remarks of NHEC made sense and that in order to have a program design for the 2007-2008 year, work on program design and administrative costs needs to be completed before September 29, 2007, to allow sufficient time for the utilities and the Community Action agencies to implement the program.

C. The Way Home

Together with the OCA, The Way Home raised the issue of the \$41,000 in software costs and characterized the expense as administrative. The Way Home stated that it read Chapter 298 literally, concluding that the law prohibits the use of those funds if the number of customers served is under 30,000. The Way Home stated that there seems to be an implication that if more than 30,000 customers are served, a *pro rata* share of the costs may be recovered. The organization emphasized that it believes the law is clear and that the question for the Commission is not whether the costs were incurred or should be reimbursed but, rather, whether the legislature prohibited such reimbursement. The Way Home suggested that the Commission consider seeking an opinion from the Attorney General's Office regarding interpretation of the statute.

Regarding the scope of this docket, The Way Home proposed several issues for consideration, including methods of streamlining costs without adversely affecting the operation or integrity of the program. Such methods might include certification and recertification of eligibility by mail rather than requiring in-person interviews and consideration of whether certain categories of participants could be deemed automatically eligible based upon proof of participation in other public benefit programs. The Way Home also suggested exploring whether

there would be a significant cost saving associated with a flat discount rather than a targeted tiered discount, whether there are unreasonable delays and unnecessary costs regarding the software vendor and whether the Commission and parties should review the appropriateness of continuing the vendor contract.

The Way Home placed great importance on the issue of monitoring, reminding the Commission of the determination in *Statewide Low-Income Electric Assistance Program*, 87 NH PUC 349, 370 (2002), that it is critical for a program like this to have effective evaluation and monitoring. The Way Home stated that monitoring is critical and has been one of the guiding principles of EAP proceedings because it covers programmatic, design, cost, and structural issues. However, The Way Home stated that although the EAP Advisory Board, with Staff's assistance, had done an exemplary job of getting a handle on fiscal matters, it falls short on the issue of monitoring, specifically with respect to accessing data. The Way Home stated that it would like to explore the problem of, and solutions to, accessing data. The organization recommended that the Commission retain the services of a consultant to review the areas of monitoring and evaluation, administrative costs, and fiscal flow structures and provide an opinion with a view toward the most effective way to deliver the program.

Regarding NHEC's suggestion of combining the administrative cost portion of this proceeding with the main proceeding, The Way Home took the position that it is difficult to separate the two issues. Nonetheless, The Way Home urged the Commission not to postpone the examination of administrative costs.

D. OEP

Concerning the \$41,000 in software costs, OEP agreed that the applicable statute is not particularly clear, but concluded that it allows for the costs of providing electric assistance, and

the \$41,000 is such a cost. OEP interpreted the statutory prohibition against administrative costs as covering salaries, benefits, and office overhead benefits, given the concerns legislators have raised. OEP suggested that it is reasonable to construe the statute as a prohibition against spending more on agency administration, but not precluding recovery of a direct out-of-pocket cost that was required to make the program work.

OEP reminded the Commission that when the law was passed, it was a crisis situation. Winter was underway, and the weather was cold. OEP contended that the CAA did not have time to clarify the issue, and as time went on, it became clear that the program had become more complicated and could not be effectively implemented without changes to the existing software. OEP stated that it believes software development is a direct cost of providing electric assistance, is allowed for in the statute, and should be recovered.

Regarding other issues, OEP proposed inquiring into ways to streamline the program to save money. According to OEP, the EAP and the Fuel Assistance Program were supposed to be fairly similar in implementation, with an easy synergy between the two, but in reality EAP has become more complex. OEP asked the Commission to investigate the difficulty the Community Action agencies may be having in implementing two different systems, requirements, and reporting methods, why some of those requirements have evolved, and whether there are ways to accomplish the same goals with fewer requirements.

Additionally, OEP proposed investigation of the monitoring and evaluation program and the difficulties with the software vendor that make it difficult to get accurate reporting and meaningful monitoring and evaluation. OEP suggested two possible changes: improving the current software and/or performing monitoring and evaluation externally. Finally, due to the number of participants and viewpoints, the OEP recommended designating a member of the

Commission Staff as a facilitator to manage exploration of the issues, add structure to the proceeding, and issue periodic status reports.

According to the OEP, it would be administratively efficient to use this proceeding to consider both the issue of administrative costs and the 2007-2008 program. The OEP stressed, however, that it was not looking to reopen issues explored in last summer's docket.

E. National Grid

National Grid proposed that the Community Action agencies be permitted to recover a one-time software development cost associated with implementing and terminating the temporary EAP because the costs were a direct result of the enactment of the program and would not have otherwise been incurred. However, it was National Grid's position that if the costs are deemed by the Commission to be administrative costs, Chapter 298 would prohibit recovery of the costs. According to National Grid, recovery from EAP program funds after the SWEAP ended would be appropriate because the statute specifically refers to funds that were appropriated under the program, as opposed to regular EAP program funds that are available. Regarding combining the administrative cost review with the annual proceeding, National Grid agreed that the program design issues and administration of the program are intertwined and stated it is appropriate to consider all of these issues simultaneously.

F. Unitil

Unitil supported recovery of the \$41,000 by the Community Action agencies, expressing agreement with PSNH, National Grid and, in particular, the OEP's statements emphasizing the practical and equitable arguments that the costs were incurred under emergency circumstances and were necessary to enable the provision of assistance during that time. Unitil also supported

the proposal to appoint a member of the Commission Staff to oversee the discussion, and to consider both administrative costs and the 2007-2008 program in this docket.

G. OCA

The OCA asked the Commission to decide whether the \$41,000 in software costs are administrative, in light of how similar costs have been recorded and reimbursed in the past. The OCA also indicated that if the Commission determines the costs are not administrative and are recoverable, the Commission should review the costs to be sure they are a reasonable use of the System Benefits Charge funds. The OCA supported the OEP's suggestion that a facilitator be appointed to aid the process.

The OCA stated that, after four years of EAP, it is now appropriate to review the relevant procedures to identify problem areas and streamline the administrative processes. According to the OCA, there may be tasks the Community Action agencies are required to complete that are inefficient or cause them to expend funds for which they cannot obtain recovery. In addition, the OCA proposed consideration of the role of the EAP Advisory Board and its authority, stating that it can be frustrating for the Board to review the smallest details of the program yet be unable to effect changes, such as resolving the ongoing issues with the software vendor. The OCA supported a review of monitoring and evaluation, including the lack of data on the performance of the EAP program that, according to the OCA, is due largely to the failings of the software vendor. The OCA said the lack of good data makes it difficult to defend a vitally important program to constituencies outside of the Commission, and suggested that the Core Energy Efficiency programs, also funded by the System Benefits Charge, provide a good example of how monitoring and evaluation should be managed.

H. Community Action Association

The Community Action Association explained that the \$41,000 in software development costs necessitated by the change in program design for the SWEAP program was never specifically discussed with the legislature. The Community Action Association also acknowledged that Chapter 298 is vague in its use of the term “administrative costs.”

With regard to EAP administrative costs, the Community Action Association observed that this program has been heavily monitored and evaluated throughout its existence. According to the association, the Community Action agencies were selected to administer the EAP program initially based upon a bid for annual administrative costs of \$1.4 million. The association pointed out that although the program ceiling had remained at 23,800 participants for several years, the ceiling has now risen to 30,000 participants without any significant increase in the budgeted administrative costs.

The Community Action Association supported continued tight control over administrative costs and exploring ways to make the EAP more efficient; however, it pointed out that the EAP is one of the largest social service programs within the state and is cost-efficient. The association acknowledged that there have been on-going problems with the software vendor, but explained that originally the software was designed to serve both the fuel assistance and the EAP programs. When it became necessary to split the software for these two large programs, the software vendor had to spend more time and develop a more complicated program for EAP, according to the association. The Community Action Association pointed out that the software vendor was selected because it was the lowest bidder, suggesting that sometimes in an effort to limit costs quality may be compromised. The Community Action agencies recently contracted with a third party to review the software including the source code, functionality and reporting

systems, according to the association. The Community Action Association indicated that once that report is completed, the association will bring recommendations to the EAP Advisory Board concerning the program software and its vendor.

I. Staff

Staff reiterated its previously expressed position that the \$41,000 in software development costs were one-time costs needed to implement the SWEAP legislation and were neither on-going nor associated with the processing and approval of EAP applications, and therefore were not “administrative costs” within the meaning of Chapter 298. Thus, according to Staff, the statute does not preclude recovery of these costs. Staff also suggested that it would not be productive to reconsider after such a short time the Commission’s decision of September 2006 to retain the basic structure of the EAP as a program of tiered discounts. However, Staff supported examining ways to streamline processes and further reduce administrative costs. Staff also acknowledged that the Commission had not examined and ruled specifically on administrative costs of EAP incurred after October 1, 2003, suggesting that such inquiry is appropriate in this docket.

III. COMMISSION ANALYSIS

A. Petitions to Intervene

Given that there were no objections, and that all the petitions to intervene demonstrated rights, duties, privileges, or other interests that may be affected by this proceeding, the Commission granted from the bench all the petitions to intervene.

B. Procedural Schedule

Following the Prehearing Conference, the parties and Staff, as reported in a letter dated February 27, 2007, met in a Technical Session and agreed on the following schedule:

Circulate questions among parties to narrow issues	March 2, 2007
Feedback from parties on questions	March 23, 2007
Technical session on questions and feedback	April 13, 2007
Monitoring and evaluation status report by Advisory Board subgroup	April 20, 2007
Status report on process issues and procedural schedule	May 4, 2007

We note that the OCA and The Way Home in their March 1, 2007 letter accurately characterize the March 2 questions as an informal measure and they fairly suppose that an opportunity for more formal discovery is likely to be a feature of the next phase of this proceeding.

Furthermore, we will allow the parties until April 10, 2007, to provide feedback on the questions to be examined in this docket. Finally, subject to this revision, we find that the proposed procedural schedule is otherwise consistent with the public good and it is therefore approved.

C. Software Development Costs

With respect to the \$41,000 out of pocket costs incurred by the CAA to implement the changes required by Chapter 298, of the Laws of 2005, we note that paragraph II of section 6 of this legislation provides: “No funds made available in section 2 of this act shall be used by any community action agency to pay administrative costs except those administrative costs associated with providing electric assistance to more than 30,000 households.” The SWEAP legislation, however, does not define “administrative costs.”

In speaking about the software costs, Mr. Littlefield indicated that the Community Action Association had “asked members of the Legislature to address this issue in upcoming legislation, to provide greater clarification to the commission in terms of their feelings about what the law was intended to do and how that might impact on this particular issue [W]e feel [recovery of the software costs] is in keeping with what we agreed to with state leadership, but we also

agreed that it's not necessarily what's reflected in the law that was passed by the Legislature." Tr. at 44. Given these circumstances, we will defer ruling on this subject to allow the possibility of a legislative resolution or clarification.

D. Process for Resolution of Issues

The OCA and The Way Home requested that we retain consultants to advise us on ways to streamline the administrative processes used for the EAP and to design an appropriate monitoring and evaluation plan. Rather than issue Requests for Proposals to engage consultants at this time, a process which could pose a significant obstacle to timely completion of this proceeding, we find it reasonable to proceed instead on the working assumption that the parties and Staff have the requisite expertise, given their extensive and relevant experience. Accordingly, we request that the parties develop recommendations for streamlining administrative processes based upon their experience with the EAP over the past four years. However, with respect to monitoring and evaluation, consistent with Staff's April 5, 2007 recommendation, we will take the additional step of directing Staff to contact Roger Colton, who was instrumental in the original design of the EAP, to solicit his input and, if appropriate, to engage his assistance through a short term service agreement.

Since its inception in 2002, administration of the EAP has been predominantly a collaborative process, which has enabled cooperation among the Community Action agencies, the OEP and the utilities in administering this program. We recognize the need to perform a meaningful and timely evaluation of administrative expenses in this docket but we do not find it necessary to formally appoint a hearings examiner to facilitate the process. Rather, we expect Ms. Noonan and Mr. Damon to work with the parties to produce a prompt agreement on policies and actions wherever possible and to quickly identify areas of disagreement. Moreover, as part

of this effort, we ask the parties to consider whether changes are appropriate to the manner in which the EAP Advisory Board operates.

With respect to the proposal on the scope of the proceeding initially made by the NHEC at the prehearing conference, we deem it more efficient to combine the review of administrative costs with the annual program and budget review and we will therefore issue an appropriate supplemental order of notice to expand the scope of the docket. At the same time, and consistent with the views of the parties and Staff, we do not anticipate that the combined proceeding will result in any significant redesign of the basic tiered discount structure of EAP. In 2006, we addressed questions of basic program design. Revisiting program design again would likely increase administrative and implementation costs without assisting the ultimate beneficiaries of the EAP, New Hampshire's low income electric customers. Thus, we will entertain less fundamental program changes for the 2007-2008 program year, and we will include review and approval of the 2007-2008 EAP budget in this docket as suggested by the parties at the prehearing conference. We expect the parties and Staff to continue to explore other program design structures for the 2008-2009 program year, including a structure with an initial kWh block discount.

We further direct the parties and Staff to communicate with each other about the issues and actions that they can agree upon in this docket. The April 10, and April 13 and April 19 dates are intended to provide opportunities for that discussion to take place. The purpose of the status report due on May 4 is to inform the Commission concerning which issues will require formal adjudicative proceedings and which issues can be resolved by agreement.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule as modified herein is adopted; and it is

FURTHER ORDERED, that the scope of this proceeding shall be as prescribed in this Order; and it is

FURTHER ORDERED, that the pending petitions to intervene are granted.

By order of the Public Utilities Commission of New Hampshire this fifth day of April, 2007.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Lori A. Normand
Assistant Secretary