

**STATE OF NEW HAMPSHIRE**  
**BEFORE THE PUBLIC UTILITIES COMMISSION**  
**DE 21-133**  
**LOW-INCOME ELECTRIC ASSISTANCE PROGRAM**

**2021-2022 Electric Assistance Program Budgets**

**JOINT MOTION TO RETAIN CONSULTANT, TO SUSPEND THE DOCKET,  
AND TO APPROVE PROPOSED PROCEDURAL SCHEDULE**

NOW COME the Parties, Unitil Energy Systems, Inc. (UES), Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource), Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (Liberty), the New Hampshire Electric Cooperative, Inc. (NHEC), the Community Action Agencies (CAA), the Office of Consumer Advocate (OCA), LISTEN Community Services (LISTEN), and the New Hampshire Department of Energy (DOE), (hereinafter “the Parties,”) and in response to Order 26,576 (February 3, 2022), the Parties move for (1) expedited approval of the June 2021 recommendation of the Electric Assistance Program (EAP) Advisory Board Recommendation to retain a consultant, (2) suspension of this docket pending the completion of the consultant’s work, and (3) approval of the proposed procedural schedule contained herein.

In support, the Parties state as follows:

**I. Background**

1. On February 3, 2022, the Commission issued Order 26,576 (the “Order”) following the January 27, 2022 prehearing conference in this docket. *Inter alia*, the Order approved the EAP 2021-2022 administrative budgets, clarified that any determinations in this docket would concern future program years only, and specified that the remainder of the proceeding would address whether:

- the current EAP [program] meets the requirements of RSA 369-B:1, XIII, RSA 374-F:3 V (a), and RSA 374-F:4, VIII (a) and (c);
- the proposed EAP program is “sufficiently targeted towards the lower income tiers;”

- the enrollment in the EAP program can be increased; and
- the administrative costs for the EAP program can be reduced.

Order at 3.

2. The Order also made twelve “record requests” of the parties and directed that responses be filed no later than February 28, 2022. (The Parties have filed responses in a separate document.) The Order also cancelled a March 10, 2022 hearing and scheduled a final hearing for May 16 and May 17, 2022.

The Commission noted that it selected these hearing dates to allow a Commission order “well before late July 2022, when budgets are due for EAP program year 2022-2023.” *Id.* at 3-4.

3. The Order also directed the parties to file a proposed procedural schedule on or before February 28, 2022. *Id.* at 5. The Commission stated that the schedule should make provisions for proposals for improvements to the current EAP, discovery with respect to such proposals, with final proposals to be filed by May 9, 2022. *Id.* at 5.

4. The Order also granted the intervention request of LISTEN Community Services and ruled that Exhibits 1-12 would not be admitted in evidence prior to hearing. *Id.* at 2-3.

## **II. The Commission Should Approve the Pending EAP Advisory Board’s June 16, 2021 Recommendation to Retain a Consultant to Provide the Advisory Board with Information Necessary to Properly Consider the Issues in this Docket**

5. The Parties appreciate the Commission’s clarification of matters to be addressed in this docket, as set out in its February 3, 2022 Order. The matter of “spend down” and other identified issues are ones in which the Parties have an on-going interest and concern. See Response to Record Request No. 7.

However, no individual party has the expertise required to address these issues at this time.

6. The Parties emphasize that the program design and EAP fund balance issues identified by the Commission are not identical to the question of overall program costs. “Utility incremental costs generally include expenses for the production and printing of educational materials such as posters and brochures, customer service, legal services, and IT support. . . . [t]he CAA administrative costs cover

activities such as client outreach and intake, applications processing, enrollment of participants, and periodic review of program eligibility.” See DOE Recommendation of August 20, 2021 (tab 7) at 1. There is no reason to believe any use of the EAP funds would significantly alter the EAP 2022-23 administrative budgets. Such a decision would, however, significantly impact the ability to fund the development of new software to administer the program as well as the availability of funds required for a consultant and any programmatic changes that the Advisory Board may recommend based on the consultant’s review.

7. Moreover, the Parties, which represent many of the entities that participate in the EAP Advisory Board, nonetheless cannot speak for the Advisory Board itself. See *Rules of Governance of the New Hampshire Electric Assistance Program Advisory Board* (Adopted April 25, 2003) at 2 (“No member shall speak on behalf of the Advisory Board or its members without prior approval of the Advisory Board.”).<sup>1</sup> The governance rules define “speak on behalf of” as “advocacy, policy recommendations, or stating positions and answering questions with respect to matters on which the Advisory Board has not taken a formal position or made a decision.”

8. In addition, not all members of the EAP Advisory Board are parties to this docket. For example, the New Hampshire Local Welfare Administrators Association (NHLWAA) is a member of the Advisory Board and is not a party to this docket.

9. The need for additional expertise, an opportunity for the EAP Advisory Board to review any consultant’s recommendations, and an opportunity for the Advisory Board to formulate its own recommendations to the Commission, are reasons for the Commission to adopt the Advisory Board’s previous recommendation dated June 16, 2021 (Attachment 9.1 to the record request responses, and attached hereto with the same designation). The Advisory Board’s recommendation seems to have been made in an effort to address many of the central issues in this case. See Attachment 9.1 at 2 (“the Advisory Board plans to use the results of the program review to develop recommendations for improving

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<sup>1</sup> The governance document is available at <https://www.energy.nh.gov/sites/g/files/ehbemt551/files/inline-documents/sonh/eap-board-rules-governance.pdf>.

the effectiveness and efficiency of the EAP in fulfilling program goals and for prudently spending down a portion of the EAP fund in compliance with applicable law.”)

10. New Hampshire Legal Assistance (NHLA), on behalf of LISTEN Community Services, has tentative plans to retain a nationally respected expert, Roger Colton, in connection with this docket. However, Mr. Colton is not available until April at the earliest. As an alternative to NHLA/LISTEN retaining Mr. Colton, the Parties prefer issuing a request for proposals (RFP) (via either the Department of Energy or one or more utilities) for EAP-related consulting services, with Mr. Colton available to bid rather than being under contract to any individual party. In the view of the Parties, this would be a more fair and reasonable method of gaining access to expert assistance.

11. In short, although the Parties agree that the issues the Commission has outlined should be addressed, without the assistance of a consultant neither the Parties nor, presumably, the EAP Advisory Board are well positioned to address the issues and provide the recommendations sought by the Commission. Moreover, even if each individual party retained an expert, thereby incurring duplicative expenses, and then reached consensus on a recommended course of conduct, the Parties would remain unable to speak on behalf of the EAP Advisory Board.

12. Accordingly, the Parties ask that the Commission grant the EAP Advisory Board’s June 16, 2021 Recommendation, and further find that the June 16, 2021 Recommendation is reasonable and in the public interest, such that the expenses associated with issuance of the RFP and hiring of a consultant may be included in the 2022-2023 EAP administrative budget(s). The Parties also ask that Commission approval be granted at the earliest possible opportunity to allow the Parties to proceed effectively and efficiently.

**III. The Commission Should Suspend this Docket Pending Completion of the Consultant’s Work and the EAP Advisory Board’s Subsequent Review and Recommendation Regarding that Work.**

13. As noted, *supra*, the Commission has defined the remaining issues in this case, each of which requires expertise that none of the individual parties possess. The Parties therefore seek a suspension of the docket, and a postponement of the May hearing, to allow time for the acquisition of expert advice

which is necessary to properly inform the parties of the issues to satisfy the Commission's inquiry. Suspension would also provide an opportunity to obtain information about the cost to develop new software for the EAP program, as the current software is 20 years old and at an end-of-life state. The software would support both the EAP program and the Fuel Assistance Program (FAP), as it does today. Unlike the current software, which is owned by the CAAs, the DOE will own the new software. The DOE has recently begun the process of identifying the business requirements for the software in advance of issuing an RFP.

14. If the docket were to proceed as scheduled the Parties (and ultimately the Commission) would have insufficient information at hearing and a deficient record upon which to rely. Such reliance risks significant amounts of SBC funds being disbursed inefficiently and perhaps even ineffectively. Requiring the Commission to decide the future course of the EAP without the benefit of expert advice would not serve the interests of New Hampshire's most vulnerable electric customers nor the public interest generally.

15. "The Commission shall grant a request for postponement of hearing if it finds that to do so would promote the orderly and efficient conduct of the proceedings." N.H. Code Admin Rules Puc. 203.13 (c). A postponement to develop key information relevant to the focus of the remaining substantive issues in this docket would promote the orderly and efficient conduct of the proceedings, and does not otherwise impede the Commission's decision making as it does not preclude the Commission from making programmatic changes to the EAP at any time during the 2022-2023 program year. Accordingly, a proposed procedural schedule is appended hereto.

16. While the Parties acknowledge the Commission's goal of having all open issues in this docket decided by July, and thus prior to the filing of budgets for the 2022-2023 program year, the Parties believe it would better advance the Commission's ultimate objectives if the Commission were to suspend the schedule in this proceeding, authorize the issuance of an RFP for a consultant as requested by the Advisory Board, allow sufficient time for the consultant to complete a review, analysis, and evaluation of existing program design, and for the Advisory Board to use the results of the program review to develop

recommendations for improving the effectiveness and efficiency of the EAP in fulfilling program goals and for prudently spending down a portion of the EAP fund consistent with applicable law. As explained above, the program design and EAP fund issues the Commission wishes to address are not coextensive with the inputs that will drive the EAP administrative budgets for program year 2022-2023. As a consequence, the EAP administrative budgets for 2022-2023 can be submitted, reviewed, and approved in September 2022 even as work on the identified issues continues.

17. The Parties respectfully disagree with the Commission's apparent view that the New Hampshire General Court has created a \$1 million statutory limit for the EAP account balance. See Order 26,576 at 4 (referencing, in record request 7, a "\$1 million dollar statutory limit"). The Legislature itself intentionally established a relative standard with regard to the SBC and the EAP program fund balances to avoid any purely mathematical calculation or resolution, thereby potentially avoiding a "rush to spend." RSA 374-F:4 VIII (c) requires an evaluation that the balance is "not likely" to be "substantial[ly] reduc[ed]." See RSA 374-F:4 VIII (c), ("If the commission determines that the low-income program fund has accumulated in excess of \$1,000,000 and that the excess is not likely to be substantially reduced over the next 12 months...").

18. While the EAP Advisory Board has considered changes intended to reduce the EAP Fund balance, if made now, any recommendation would lack necessary insight into the needs of the low-income community in New Hampshire and how the EAP can best serve those needs. Authorizing the issuance of an RFP for a consultant will provide the Advisory Board and the Commission sufficiently complete and insightful information regarding any programmatic changes and accompanying reduction of the EAP Fund.

19. In short, consistent with Puc 203.13 (e), the Commission should grant the Parties unanimous request for suspension, until a consultant has issued a report, the EAP Advisory Board has had sufficient opportunity to review the consultant's work, and the Advisory Board submits a recommendation to the Commission for any program changes.

WHEREFORE, in response to Commission Order 26,576 (February 3, 2022) the Parties, by and through their counsel or representatives, respectfully asks that the Commission:

- A. APPROVE, on an expedited basis, the EAP Advisory Board's pending June 16, 2021 Recommendation that a consultant be retained by DOE or a utility(ies);
- B. FIND that the pending EAP Advisory Board's June 16, 2021 Recommendation is reasonable and in the public interest, thus permitting associated expenses to be included in the 2022-23 EAP administrative budgets;
- C. SUSPEND this docket, consistent with Puc 203.13 (e) and RSA 374-F:4 VIII (c), until such time as the consultant issues a report, the EAP Advisory Board has a reasonable time to review such report, and the Advisory Board has filed a related recommendation with the Commission;
- D. APPROVE the Parties' proposed procedural schedule; and
- E. GRANT such other and further relief as is equitable, just, and in the public interest.

Respectfully submitted on behalf of all the Parties,

Date: February 28, 2022

*/s Mary E. Schwarzer*

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Certificate of Service

I hereby certify that on February 28, 2022, a copy of this objection has been electronically forwarded to the service list.

*/s Mary E. Schwarzer*

Mary E. Schwarzer