

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Low Income Electric Assistance Program

2022-2023 Program Administrative Budgets

Docket No. DE 22-043

**JOINT MOTION FOR REHEARING AND STAY OF ORDER NO. 27,031 AND
TO REOPEN THE RECORD**

Pursuant to RSA 365:21, RSA 541:3, New Hampshire Code of Administrative Rules Puc 203.07, and Puc 203.30, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty; New Hampshire Electric Cooperative, Inc.; Public Service Company of New Hampshire d/b/a Eversource Energy; and Unitil Energy Systems, Inc. (UES) (collectively, the NH Utilities); the New Hampshire Department of Energy; the Community Action Agencies (CAA); the Office of the Consumer Advocate; and LISTEN Community Services (altogether, the Moving Parties) respectfully request rehearing of Order No. 27,031 (July 9, 2024) (the Order), issued by the New Hampshire Public Utilities Commission (the Commission) in the instant docket. The Moving Parties also request that the Commission stay the Order and reopen the record to consider information relevant to the issues and schedule an additional hearing date regarding Tier 2 matters set forth below.

The Order changed the income eligibility threshold in Tier 2 of the Electric Assistance Program (EAP) based on misinterpretation of the evidence presented about the average energy burdens of EAP recipients. The Order mistakenly compares the accepted definition of an affordable “total home energy burden” with the average “electric burden” of EAP recipients in Tier 2 to justify decreasing the income threshold and removing low-income households from

EAP. Order at 12. As a result, the Order fails “to maximize the benefits . . . to the intended beneficiaries” of EAP, as required by statute, and will result in an unaffordable energy burden for certain Tier 2 recipients. *See* RSA 369-B:1, XIII; Transcript of Hearing Held 4/18/24 (Tr.) at 32-33.

In addition, the Order makes this significant change without any evidence in the record that the change would achieve savings that could benefit the EAP recipients in other tiers and address the future sustainability of the program. Moreover, the Order fails to consider the costs of implementing the Tier 2 change. As indicated in the attached letter from Jeanne Agri, CEO Community Action Program Belknap-Merrimack County (Attachment 1, CAA letter), the CAAs estimate the potential annual savings to be \$461,631 (expected to be achieved over two years). As described in the letter, the CAAs also anticipate that there will be additional costs to implement the change. A more detailed cost estimate will be provided to the Commission as soon as possible. In light of the foregoing, there is no basis for concluding that reducing the income threshold for Tier 2 customers will actually result in near-term savings, provide targeted assistance to EAP recipients in other discount tiers, or sufficiently address any concerns about future budget projections.

The Order removes low-income EAP recipients from the program at a time when “New Hampshire residents are having more difficulty today in paying their usual household expenses than they have had since the advent of COVID-19.” Colton Report, Hearing Ex. 3 at Bates 25. The record demonstrates that the Order makes this change even though there is sufficient funding to serve all EAP recipients up to 60% of state median income for the upcoming program year. Current budget projections for the 2024-2025 program year do not raise concern regarding the viability of EAP. The Moving Parties respectfully submit that additional evidence and

recommendation about the future sustainability of the EAP fund should be included in the utilities' March 2025 filing required by the Order. In the past, the Commission addressed budget shortfalls by limiting enrollment in EAP to a certain number of households and creating a waitlist for the program. This option was not discussed in the Colton Report or at the hearing on April 18, 2024. It is possible that similar action could be taken if needed in a future program year without having to reduce the income eligibility threshold. However, more evidence is needed on that point.

The Moving Parties also respectfully assert that the Commission misapplied the law in Order No. 27,031, and the decision will result in less efficient administration of EAP. The primary goal of EAP is “to maximize the benefits that go to the intended beneficiaries.” RSA 369-B:1, XIII. The statute requires program design that “has high operating efficiency, so as to” achieve that primary goal. *Id.* The evidence in the record demonstrates that the status quo administration of the program is highly efficient, in important part because efficiencies are gained by aligning the income eligibility for EAP with the federally funded Fuel Assistance Program (FAP), which is also administered by the CAAs. Because the Order’s change to the EAP income eligibility threshold will reduce program efficiency, rehearing is warranted. *See* Tr. at 31, 35; Attachment 1.

In support of this Motion, the Moving Parties state the following:

I. BACKGROUND AND PROCEDURAL HISTORY

In Docket No. DE 19-192, the Commission approved the EAP Advisory Board’s recommendation to increase the income eligibility threshold from 200% of the Federal Poverty Guidelines (FPG) to 60% of state median income. Order No. 26,321 (Dec. 26, 2019). In Order No. 26,321, the Commission concluded that the recommendation “appropriately consider[ed] the

statutory obligations” in RSA 369-B:1, XIII. Order No. 26,321 at 5. The Commission reasoned that the change would “benefit a broader category of low-income customers” and would improve administrative efficiency by aligning the EAP income eligibility threshold with the FAP income eligibility threshold, which would eliminate customer confusion. *Id.* The decision and reasoning were consistent with Commission precedent that sought to align the EAP income eligibility threshold with the FAP income eligibility threshold when possible. *See* Order No. 25,643 (March 28, 2014); Order No. 25,901 (May 13, 2016).

On July 29, 2021, the Commission opened Docket No. DE 21-133 to review the 2021-2022 EAP budgets. In Order No. 26,576 (Feb. 3, 2022), the Commission stated that the 2021-2022 program year budgets were approved during the January 27, 2022 prehearing conference. The Commission further clarified that the remainder of the proceeding would address “whether the current EAP meets the requirements of RSA 369-B:1, XIII, RSA 374-F:3, V(a), and RSA 374-F:4, VIII(a) and (c); whether the proposed EAP program is sufficiently targeted toward the lower income tiers; whether the enrollment in the EAP program can be increased; and whether the administrative costs for the EAP program can be reduced.” Order No. 26,576 at 3.

In Order No. 26,593 (Mar. 16, 2022), the Commission approved the Parties’ recommendation to retain a consultant to review and evaluate EAP. The scope of the work would be based on the EAP Advisory Board’s June 16, 2021 recommendation to analyze whether the program was meeting the goal of achieving a 4% to 5% electric energy burden for program recipients, to explore the possibility of expanding existing tiers or adding additional tiers, to consider ways to improve program reporting, and other opportunities to assist more customers.¹

¹ June 16, 2021 Letter of the EAP Advisory Board to the PUC, *available at* https://www.puc.nh.gov/regulatory/Docketbk/2021/21-133/MOTIONS-OBJECTIONS/21-133_2022-02-28_NHDOE_ATT-JT-MOTION-RETAIN-CONSULTANT.PDF (last accessed Aug. 1, 2024).

The Commission also required that the consultant “(1) collect data on the demographics of the participants, as to age, employment status, family size, ages of children, and disabilities; (2) explore improved low income targeting, shifting benefit away from the top income category to better serve the lowest income group enrolled in the EAP; and (3) consider the option of returning excess funding to ratepayers.” Order No. 26,593 at 1-2. The Commission also required that the consultant address any unanswered questions from Order No. 26,576 (Feb. 3, 2022) and conduct a comparative analysis of New Hampshire’s program to similar programs in other states. *Id.* at 2.

On July 28, 2022, the Commission opened Docket No. DE 22-043 to review the 2022-2023 program year budgets. In Order No. 26,693 (Sept. 29, 2022), the Commission approved the budgets for the 2022-2023 program year and stated that it would “consider matters of EAP budgeting, administration, and program design in the near future, in an effort to be proactive in ensuring that ratepayers receive the maximum benefit from the program.” Order No. 26,693 at 4. The Parties filed the consultant’s report (Colton Report) in Docket No. DE 21-133 and Docket No. DE 22-043 on October 3, 2022 along with the EAP Advisory Board’s recommendation to adopt some of the consultant’s recommendations to improve the program. Importantly, the Colton Report concluded that “the New Hampshire EAP is a fundamentally sound program.” Hearing Ex. 3, Bates 96. While the report recommended some modifications, “none of [the] modifications address the fundamental design and operation of the program” because fundamental design changes were not needed. Hearing Ex. 3, Bates 96. Through Order No. 26,739 (Dec. 1, 2022), the Commission transferred consideration of the consultant’s report and any future EAP program changes to Docket No. DE 22-043.

On July 17, 2023, the Commission issued a notice to announce the commencement of an adjudicative proceeding, an order on a petition to intervene, and a notice of prehearing conference in Docket No. DE 22-043. The Commission listed three issues for consideration:

- 1) Whether the Colton Report and EAP Advisory Board recommendations represent the most administratively efficient and best use of the EAP funds pursuant to the relevant statutes;
- 2) Whether the Commission should approve and adopt the recommendations;
- 3) If the current EAP program design still meets the applicable statutory standards in RSA 369-B:1 and RSA 374-F:3, V(a), per RSA 365:28. This included an assessment of the EAP administrative costs, the benefits accruing to low-income customers, and the potential for a streamlined qualification process for EAP recipients.

On August 9, 2023, the Commission issued Order No. 26,870 maintaining some aspects of the program design and ordering modifications to other aspects of the program design based on the Colton Report and the EAP Advisory Board's recommendations. Specifically, the Commission stated it was reasonable to 1) continue limiting the usage that the EAP discount is applied to at 750 kilowatt hours per month; 2) identify customers with high usage to refer to the low-income weatherization program; and 3) retain the program's five existing income tiers. Order No. 26,870 at 5. The Commission made one modification to the program design by adjusting the percentage discount in each tier pursuant to one of the recommendations in the Colton Report. *Id.* The Commission concluded that this modification was just and reasonable "to better serve the lowest-income EAP recipients." Order No. 26,870 at 5. The Commission further stated that it would consider the remaining recommendations in the Colton Report "as part of the

ongoing EAP review process” in Docket No. DE 22-043. *Id.* at 6. The remaining recommendations included whether the EAP should collaborate with the NH Department of Health and Human Services (DHHS) and local Public Housing Authorities to reach more eligible households and to automatically enroll eligible households in the program as well as to consider the integration of an Arrearage Management Program into the EAP. *Id.* at 4, 6.

On August 22, 2023, the Commission issued a Prehearing Order in Docket No. DE 22-043 to further clarify the scope of the proceeding. Despite concluding that the program should maintain the five discount tiers with modifications to the discounts ordered on August 9, 2023, the Commission stated it still wanted to explore whether further efficiencies could be gained by adjusting the number of tiers, modifying the tiers, or adjusting the kilowatt hour usage limit “beyond what was contemplated in the Colton Report.” Prehearing Order (Aug. 22, 2023) at 2. Among other issues, the Commission also wanted to explore whether there were ways to streamline enrollment for older recipients and recipients with disabilities and whether there were “any other useful efficiencies and modifications” that could be developed to maximize the benefit to EAP recipients “in greatest need and minimize overhead.” *Id.*

A hearing was held on April 18, 2024, at which Mr. Roger Colton testified regarding the Colton Report and answered the Commission’s questions about EAP and bill assistance programs generally. On July 9, 2024, the Commission issued Order No. 27,031, which is the subject of this Motion. In Order No. 27,031, the Commission reversed its decision in Order No. 26,321 (Dec. 26, 2019) by setting the eligibility for EAP at 200% of the FPG instead of 60% of state median income. The Commission further ordered the utilities to provide a report by December 15, 2024 on the EAP account balance and projections for program year 2024-2025

and to file a consolidated report by March 15, 2025 addressing various issues discussed in the Order.

II. LEGAL STANDARD

Pursuant to RSA 541:3 and 541:4, a party may move for rehearing of a Commission order within 30 days of the order by specifying every ground upon which it is claimed that the order is unlawful or unreasonable. The Commission may grant rehearing or reconsideration where a party states good reason for such relief. *Public Service Company of New Hampshire*, Order No. 25,361 (May 11, 2012) at 4. Good reason may be shown by identifying specific matters that were overlooked or mistakenly conceived by the deciding tribunal, or by identifying new evidence that could not have been presented in the underlying proceeding. *Id.* at 4-5. Notwithstanding RSA 541:5, within 30 days of the filing of a motion for rehearing, the Commission must grant the motion, deny the motion, or suspend the order or decision complained of pending further consideration, and the suspension may be upon such terms and conditions as the Commission may prescribe. RSA 365:21.

New Hampshire Code of Administrative Rules Puc 203.30(a) requires the Commission, upon request of a party, to authorize filing of exhibits after the close of hearing if the Commission finds the late submission of additional evidence will enhance its ability to resolve the matter. In determining whether to admit the late filed exhibit into the record, the Commission must consider the probative value of the exhibit, and whether opportunity to submit a document impeaching or rebutting the late filed exhibit without further hearing shall adequately protect the parties' right of cross examination. N.H. Code Admin. R. Puc 203.30(c). In this instance, because the Commission did not provide specific notice in advance of the hearing that it was considering reducing the income eligibility threshold for Tier 2, the parties did not have an opportunity to

provide the evidence for which late admission is sought here. *See* RSA 541-A:31; *See Residents of Colonial Drive, Moultonborough*, Order No. 26,841 (June 8, 2023) at 7 (Commission’s authority includes the power to stay or suspend activity in an adjudication when doing so would promote the efficient resolution of the issues before the Commission).

III. REQUEST FOR REHEARING/RECONSIDERATION AND REOPENING OF THE RECORD

a. The Record Demonstrates that the Discount Tiers and Income Threshold Recommended by the Colton Report and Approved in Order No. 26,870 Meet the Program Goal of Achieving a 4% to 5% Electric Burden for EAP Recipients.

When the Commission created EAP, it determined that the goal of the program was to reduce the electric burden of EAP recipients to 4% for non-heating customers and 6% for heating customers. Order No. 23,573 (Nov. 1, 2000) at 7, 13-14. At the time, the Commission correctly recognized that an affordable electric burden is different for customers who do not heat with electricity. The record in this case demonstrates that the same is true today. Tr. At 26, 36-37. In Order No. 24,664 (Sept. 1, 2006), the Commission determined that it was reasonable to set the target electric burden for EAP somewhere between 4% to 5% for all recipients. Order No. 24,664 at 3-4, 10-11. The Commission reiterated this goal in Order No. 24,903 (Sept. 30, 2008). Order No. 24,903 at 4, 13. The electric burden target of 4% to 5% has remained the goal since 2008, and the Commission has not articulated a separate electric burden goal for heating and non-heating EAP recipients. It is reasonable to set the same average electric burden target for all EAP recipients because “[o]nly one in nine [11%] New Hampshire households use electricity as their primary heating source.” U.S. Energy Information Administration, New Hampshire State Profile (Oct. 19, 2023), *available at* <https://www.eia.gov/state/print.php?sid=NH#72> (last accessed Aug. 2, 2024). In other words, the data shows that most EAP recipients do not heat their homes with electricity so it is unreasonable to judge the program’s success by comparing the average electric

burden of the program to an affordable total home energy burden that includes the costs of heating.

The Order in the instant docket imprecisely states that “the ‘commonly accepted definition of an affordable percentage of income (is) 6%.” Order No. 27,037 at 12 (citation omitted). To support that conclusion, the Order cites the Colton Report at Bates page 6. However, that section of the Colton Report analyzes “total home energy burdens” and not “electric burdens.” Hearing Ex. 3, Bates page 6. The report explains that the total home energy burden is “the sum of the burdens for electricity plus natural gas plus ‘other.’” *Id.* at Bates pages 6-7. The report specifically states that about “*half of the total home energy burden* for low-income households in New Hampshire can be attributed to electricity bills.” *Id.* at Bates page 7 (emphasis added). Therefore, it is not correct to conclude, as the Commission did, that an affordable “total home energy” burden is a reasonable goal for determining the target “electric burden” of EAP recipients. *See* Order 27,037 at 12.

Roger Colton testified that a 6% energy burden is considered affordable for “total home energy.” Tr. at 26. Therefore, 6% “works” as a goal for electric heating “because there’s not another fuel.” *Id.* at 36. However, the goal needs to be “something less than 6 percent” for non-heating customers because they are paying for other fuels to heat their homes. *Id.* at 36-37. Mr. Colton stated that there are different opinions about what constitutes an affordable electric burden (Tr. at 35-37), but “the 4% to 5% [target] in New Hampshire is certainly within the range of reasonableness, either for non-heating or for heating. A bit high for non-heating, but not unreasonably high.” *Id.* at 37.

In Order No. 26,870 (Aug. 9, 2023), the Commission approved Roger Colton’s recommendation to modify the discounts in each of the five tiers. Order No. 26,870 at 5. This

change shifted some benefits away from the highest income tier to the lower income tiers to better meet the program goal of achieving a 4% to 5% electric burden. It also directly addressed one of the primary concerns stated in Order No. 26,593. Notably, Roger Colton did not recommend reducing the maximum income eligibility threshold of EAP, and no party argued for a change to the income eligibility threshold. Hearing Ex. 3, Bates pages 99-100. The Colton Report’s recommended modification to the discounts in each tier produced an average program-wide electric burden of 4.9% and resulted in the following changes to the discounts and the average electric burden of EAP recipients in each tier:

EAP Tier	Existing ²		Recommended ³	
	Discount	Burden	Discount	Burden
2	8%	4.3%	5%	4.5%
3	22%	4.9%	19%	5.1%
4	36%	5.1%	36%	5.1%
5	52%	5.3%	54%	5.1%
6	76%	7.0%	86%	5.0%
Program-wide	---	5.1%	---	4.9%

Id. at Bates pages 98-99. The evidence demonstrates that this program design meets EAP’s target affordable electric burden on a program-wide basis. Roger Colton testified that this modification was reasonable because the data deals with averages, and he cautioned against overstating the precision when interpreting the data in the context of a tiered discount design. Tr. at 23. For Tier 2 specifically, the average electric burden was in the middle of the 4% to 5% goal for an

² The “existing” discount percentages are as of the issuance of Roger Colton’s report in September 2022.

³ In August 2023, the Commission approved changes to the discount percentages recommended by Roger Colton to begin October 1, 2023, the start of the 2023-2024 EAP program year, and therefore the “recommended” changes are currently in effect.

affordable electric burden. However, the Order unreasonably concludes that certain Tier 2 recipients should lose the discount because the average electric burden in Tier 2 is lower than the 6% that is affordable for a “total home energy” burden and lower than the electric burdens of the other EAP tiers.

The Colton Report states that New Hampshire ratepayers with household income between 150% and 200% of the FPG have an average electric burden of 5% and an average total home energy burden of 10%, which is well above the generally accepted definition of affordable. Hearing Ex. 3, Bates page 7 (Table 2). No evidence in the record supports the conclusion that households between 200% of the FPG and 60% of the state median income will have a total home energy burden near or below 6% even while receiving the EAP discount in Tier 2. It is, therefore, unreasonable to conclude that certain low-income EAP recipients in Tier 2 no longer need the discount because the discount results in an “affordable” electric burden of 4.5% for those recipients. In fact, the testimony in the record is that “[t]he tier that goes up to 60 percent of State Median Income is needed” because the households still struggle to afford their basic needs as their “net household resources” may not be sufficient despite having a higher income. Tr. at 32-33.

The evidence demonstrates that “the burdens were reasonably related” and parity between discount tiers significantly improved based on the Colton Report’s recommended modification to the program design approved in Order No. 26,870. Tr. at 23; Hearing Ex. 3, Bates pages 98-99. The Colton Report considered three different options for achieving parity among the tiers, and the report explains why its recommended option is the most reasonable way to achieve the program goals. Hearing Ex. 3, Bates pages 48-54. “The reasonableness of the discount levels is measured by the extent to which those discounts result in bills representing an

affordable electricity burden for EAP participants.” *Id.* at Bates page 48. The recommended option “most closely match[ed] each Tier both to the target burden of 4% to 5% and to each other.” *Id.* at Bates page 51. Even though the average burden in Tier 2 remained lower than the average burden in the other tiers, it “remain[ed] in the mid-range of the target range” for the program without dropping below the target range, and the other tiers remained within the target range despite being at the upper end. *Id.* at Bates pages 52-53. The record shows that EAP is doing exactly what it was intended to do for the Tier 2 recipients, and this result does not come at the expense of other low-income EAP recipients.

b. There is No Record Evidence that Any Savings Would Be Achieved by Reducing the Income Eligibility Threshold; New Evidence Presented with this Motion Demonstrates that Any Potential Savings Would Be Insufficient To Address Any Future Budget Shortfalls or To Reduce the Electric Energy Burden of Other EAP Recipients.

The Order states that the EAP income eligibility threshold should be reduced “for [the] future sustainability of the program,” and the savings should be reallocated among the remaining EAP recipients. Order 27, 031 at 12-13. However, there is no evidence in the record that this change would achieve any savings, and even if savings were achieved, it is unclear how those savings would be reallocated to other recipients. Furthermore, there is no evidence in the record that any savings would reduce the average electric burden of EAP recipients in other tiers or that the savings would help the future sustainability of the program. Instead of streamlining enrollment or trying to reach more eligible households, the Order removes low-income households from the program even though budget projections show that there is sufficient funding to serve households up to 60% of state median income during the next program year. While the August 22, 2023 Prehearing Order states that the Commission wanted to explore how to streamline enrollment for older recipients, the Order at issue would remove older individuals

on fixed incomes from the program. Attachment 1, CAA letter. The Order, therefore, fails to maximize the benefits to the intended beneficiaries.

The CAAs estimate that reducing the income threshold and removing EAP recipients from Tier 2 could potentially achieve savings “within the next couple of years.” Attachment 1, CAA letter at 2. However, the CAAs also estimate that any savings would be offset by the increased cost of implementing the program change. Attachment 1, CAA letter. Even without increased administrative costs, the estimated savings are not enough to have any impact on the average electric burdens of recipients in the other tiers. Therefore, the Order would increase the average electric burden of the households removed from Tier 2 while leaving the average electric burden of the remaining eligible households mostly unchanged. As a result, the change fails to achieve the program goals set out in statute and Commission precedent.

The estimated savings would also not be sufficient to address the future sustainability of the program based on the Department of Energy’s projections. DOE Record Response, Attachment RR-4, Bates 22-24, *available at* https://www.puc.nh.gov/Regulatory/Docketbk/2022/22-043/LETTERS-MEMOS-TARIFFS/22-043_2024-05-23_NHDOE_RECORD-REQUEST-RESPONSES.PDF (last accessed Aug. 2, 2024). Although the future sustainability of the program is of concern, the record demonstrates that there is enough funding to serve eligible households up to 60% of the state median income for the 2024-2025 program year. Therefore, the record establishes that it is not necessary to remove an estimated 5,900 low-income households from the program at this time.

Because there is sufficient funding for the 2024-2025 program year to serve eligible households up to 60% of the state median income, no party argued for decreasing the income eligibility threshold in this docket. Accordingly, there was no need to present evidence in the

record that analyzed potential changes to the program design that would address a potential budget shortfall. The Moving Parties respectfully submit that this issue be addressed in the utilities' March 2025 filing in advance of the 2025-2026 program year. Even if the income eligibility threshold is reduced to 200% of the FPG now, any potential budget shortfall would need to be addressed before the 2025-2026 program year. The new evidence shows that the budget projections will not substantially change if the income eligibility threshold is decreased to 200% of the FPG now. The new evidence also shows that reducing the income eligibility threshold may increase costs in the short term. Even if there are no additional costs to implement this change, any potential savings will not have a significant impact on the yet to be developed budget projections for the 2025-2026 program year. Attachment 1, CAA letter.

The Commission should grant rehearing so the Moving Parties can develop the record about potential program design changes that would address any potential future budget shortfalls. Other options should be considered that would not include removing households from the program. In Docket No. DE 14-078, the Advisory Board "reviewed thirteen scenarios for program modifications, evaluating each for its ability to support program sustainability while continuing to provide meaningful benefits to EAP participants." Order No. 25,901 (May 13, 2016) at 2-3. This would also not be the first time that the Commission has confronted a potential future budget shortfall. In the past, the Advisory Board recommended capping enrollment and creating a waitlist in order to continue providing a meaningful discount while maintaining sustainable funding. This option could potentially be implemented again without reducing the income eligibility threshold. The Moving Parties should have an opportunity to develop the record about the impact of different changes and to make a recommendation that is consistent with the statutes, Commission precedent, and program goals.

Notably, the Colton Report did not recommend reducing the income eligibility threshold. Hearing Ex. 3, Bates page 99. The Order incorrectly suggests that the Colton Report recommended reducing the income eligibility threshold to reallocate savings among the other tiers in the event the state needs to reduce the overall cost of EAP. Order at 12-13. However, the Report states that it “would be more appropriate to reduce the maximum income eligibility for Tier 2 to 200% of Poverty *in lieu of* reducing discounts for the lower income Tiers” in the event the state needs to reduce costs. Hearing Ex. 3, Bates page 99 (emphasis added). In other words, the Colton Report does not recommend that the income eligibility threshold should be reduced solely to achieve savings. The Report recommends that change as the lesser of two evils when compared to reducing the discount for the lower income tiers. Roger Colton was not asked to provide testimony to address any potential budget shortfall in the 2025-2026 program year. For example, he was not asked about the merits of capping enrollment and creating a waitlist. Neither the Colton Report nor Mr. Colton’s oral testimony address whether capping enrollment and creating a waitlist would be preferable to reducing the income eligibility threshold, especially when the newly available evidence demonstrates that reducing the income eligibility threshold would not have a significant impact on the short-term budget projections.

Therefore, the Commission should reopen the record to consider the newly available evidence and grant rehearing to consider additional evidence about options to address any potential budget concerns for the 2025-2026 program year.

- c. **The Commission’s Order Incorrectly States that the Legal Standard Is To Seek the “Most Administratively Efficient” Use of EAP Funds, Contrary to RSA 369-B:1, XIII and Commission Precedent.**

The Commission describes itself as “charge[d] to seek the most administratively efficient and best use of EAP funds.” Order 27,031 at 8 (citing RSA 374-F:3, V(a); RSA 374-F:3, VI; RSA 374-F:3, VI-a; RSA 374-F:4, VIII(a) and (c); RSA 374-F:4, X; RSA 374-F:4, XI; RSA 374-F:4, XII; and RSA 369-B:1, XIII). However, none of the statutes cited in the Order state that the goal is the “most administratively efficient” use of funds. One statute, RSA 369-B:1, XIII, does state that the low-income programs should be designed to have “high operating efficiency.” However, the purpose of designing a low-income program that operates with high efficiency is “to maximize the benefits that go to the intended beneficiaries.” RSA 369-B:1, XIII. In other words, the statute does not mandate efficiency for efficiency’s sake. Rather, the program design must maximize benefits in a highly efficient manner.

If the goal were to achieve the “most administratively efficient” program then an argument could be made that the program should provide a flat discount to all recipients. But in Order No. 23,573 (Nov. 1, 2000), the Commission rejected this approach because it does not target assistance and maximize the benefits to recipients. Order No. 23,573 at 10-12. The Commission noted that a flat discount for all recipients had relatively low administrative costs, but this was only “one measure of operating efficiency.” *Id.* at 11. The Commission further stated that “targeting assistance and maximizing the benefits to participants both suffer when administrative costs are the sole driver behind program design.” *Id.* at 12; *see also* Order No. 23,980 (May 30, 2002).

Therefore, when reviewing a change to EAP, “the Commission must review the recommendations and evaluate whether assistance continues to be appropriately targeted to participants and whether the efficiency of EAP operations will be negatively impacted by the proposed changes.” Order No. 25,901 (May 13, 2016) at 3-4; *see also* Order No. 26,321 at 4. The

new evidence presented with this Motion demonstrates that the efficiency of program operations will be negatively impacted if Order No. 27,031 is not stayed or reversed. Attachment 1, CAA letter. The CAAs explain that it would be significantly less efficient and potentially increase costs to operate EAP with an income eligibility threshold that is different from FAP. The CAAs state that “[m]atching eligibility guidelines between the two programs has been one of [the] greatest efficiencies.” Attachment 1, CAA letter. If Order No. 27,031 is implemented, the CAAs will need to create a separate application, new outreach materials, re-train their staff, and spend more time processing applications, among other things. Attachment 1, CAA letter.

The Order also ignores evidence in the record that demonstrates it is more administratively efficient to align the income eligibility threshold for EAP and FAP. Roger Colton recommended keeping the EAP income eligibility threshold at 60% of state median income, in part, because it is more administratively efficient. Tr. at 30-31; *see also* Hearing Ex. 3, Bates page 99. He stated that if the EAP income eligibility threshold were reduced it “would have administrative implications, because having it at 60% of state median income means it fits with the LIHEAP Program eligibility, and there would need to be new administrative processes if EAP eligibility and the LIHEAP eligibility were different.” Tr. at 31. When discussing similar programs in other states, Mr. Colton stated “the eligibility is frequently, maybe even most frequently, tied to what the state is doing with LIHEAP eligibility. *Because the goal is to gain the efficiencies* from melding the utility – the ratepayer-funded program with the publicly-funded programs, to the extent possible.” *Id.* at 35 (emphasis added). In other words, the Order chooses a less administratively efficient way to run the program without any evidence that it would better maximize benefits to the intended beneficiaries.

Commission precedent recognizes that it is more efficient to align the EAP income eligibility threshold with FAP. “Continuing with an income eligibility threshold consistent with the FAP will streamline the common application process for the EAP and the FAP, resulting in administrative efficiency.” Order No. 25,901 at 4. Aligning the income eligibility thresholds is also more efficient because it “eliminates customer confusion.” Order No. 25,643 (March 28, 2014) at 2; Order No. 25,901 at 3; Order No. 26,321 at 5. Confusion among customers will not streamline enrollment or maximize benefits to the intended beneficiaries. At present, the income eligibility threshold is the same for FAP, the federally funded Weatherization Assistance Program (WAP), the Home Energy Assistance (HEA) Program, and EAP. These programs address energy costs in different ways, and it is easier for low-income households to understand eligibility when the income threshold is the same.

There is no evidence in the record of this docket that demonstrates or even suggests that it is now more efficient to operate EAP at a different income eligibility threshold than FAP. The record in this docket, past Commission precedent, and the new evidence presented with this Motion clearly demonstrate that it is more efficient to keep the EAP income eligibility threshold aligned with FAP when there is enough funding for the upcoming program year.

WHEREFORE, for the reasons discussed above, the Moving Parties respectfully request that the Commission:

- (1) Grant rehearing on the issues presented in this Motion pursuant to RSA 365:21 and RSA 541:3 and schedule a new hearing date, including a new procedural schedule;
- (2) Stay Order No. 27,031 with respect to modifying the EAP income eligibility threshold, pending rehearing pursuant to RSA 365:21;

(3) Reopen the record pursuant to Puc 203.30 to consider the information presented in the attached CAA letter; and

(4) Order such further relief as may be just and equitable.

The Moving Parties reserve their rights to raise additional procedural and substantive matters with regard to the change in the EAP income eligibility threshold, and other new issues the Commission has reserved for further discussion or filing on August 15, 2024, December 15, 2024, and March 15, 2025. These and other matters remain unresolved and so have not been addressed in this Motion for rehearing.

Respectfully submitted,

**Public Service Company of New Hampshire
d/b/a Eversource Energy**

By its Attorney: /s/ David K. Wiesner
David K. Wiesner
Senior Counsel
Public Service Company of New
Hampshire d/b/a Eversource Energy
780 North Commercial Street
Post Office Box 330
Manchester, NH 03105-0330
603-634-2961 David.Wiesner@eversource.com

New Hampshire Electric Cooperative, Inc.

By its Attorney: /s/ Susan S. Geiger
Susan S. Geiger
Orr & Reno
45 South Main Street, P.O. Box 3550
Concord, NH 03302-3550
603-223-9154
sgeiger@orr-reno.com.

Unitil Energy Systems, Inc.

By its Attorney: /s/ Matthew C. Campbell

Matthew C. Campbell

Senior Counsel

Unitil Service Corp.

6 Liberty Lane West

Hampton, NH 03842-1720

campbellm@unitil.com

Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty

By its Attorney: /s/ Michael J. Sheehan

Michael J. Sheehan, Esq. #6590

116 North Main Street

Concord, NH 03301

603-724-2135

Michael.Sheehan@libertyutilites.com

Office Of The Consumer Advocate

By: /s/Michael J. Crouse

Michael J. Crouse, Esq.

Staff Attorney

Office of the Consumer Advocate

21 South Fruit Street, Suite 18

Concord, NH 03301

603.271.1173

Michael.J.Crouse@oca.nh.gov

New Hampshire Department of Energy

By its Attorney: Mary E. Schwarzer

Mary E. Schwarzer, Esq. #11878

21 South Fruit Street, Suite 10

Concord, NH 03301

(603) 271-3670

Community Action Program Belknap-Merrimack on behalf of NH Community Action Association

By: /s/ Jeanne Agri

CEO

Community Action Program Belknap-Merrimack

2 Industrial Park Drive, Bldg. 1

Concord, NH 03301

603.225.3295

jagri@capbm.org

LISTEN Community Services, Inc.

By its Attorney: /s/ Raymond Burke

Raymond Burke, Esq.

Stephen Tower, Esq.

New Hampshire Legal Assistance

117 North State Street

Concord, NH 03301

(603) 206-2214

rburke@nhla.org

stower@nhla.org

Dated: August 8, 2024

Certification of Service

I hereby certify that on this date a copy of this Motion was filed electronically with the Commission, and a copy was sent electronically to the service list in Docket No. DE 22-043 consistent with the secretarial letter of March 17, 2020.

New Hampshire Legal Assistance

8/8/2024

Date

/s/Raymond Burke

Raymond Burke

Attorney for LISTEN Community Services, Inc.