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October 23, 2023

Daniel C. Goldner, Chairman
New Hampshire Public Utilities Commission
21 South Fruit Street
Concord, NH 03301

Re: DE 23-073 Low Income Electric Assistance Program, 2023-2024 Electric Assistance Program Budgets, *DOE's Position Regarding Application of FAP Funds*

Dear Chairman Goldner:

On September 21, 2023, the New Hampshire Public Utilities Commission (“the Commission”) conducted a hearing in the above referenced docket. At that hearing, Chairman Goldner asked whether state Electric Assistance Program (“EAP”) funds could be deployed more efficiently if federal Fuel Assistance Program (“FAP”) fund were used to reduce customer bills *before* the EAP discounts were applied. *See* Sept. 21, 2023 Transcript at 47-50, 67. FAP is New Hampshire’s arm of the federal Low Income Home Energy Assistance Program (“LIHEAP”).

The Department’s Division of Policy and Programs has considered the Chairman’s question. As the designated recipient of FAP funding, the Department shares the Commission’s goal that both the FAP and the EAP be cost-effective to best assist the target population. In the opinion of the New Hampshire Department of Energy (“DOE” or “the Department”), federal guidelines raise significant legal questions regarding the ability to apply FAP funds to customer bills before applying EAP discounts.

New Hampshire’s EAP program is a version of a “percentage of income payment program” (PIPP). The United States Department of Health and Human Services (DHHS) has determined that “the process of subtracting the LIHEAP benefit from the client’s energy bill and to then calculate the PIPP discount and/or the client’s payment amount appears to be using LIHEAP as a resource and creates an inequity or adverse treatment for LIHEAP clients participating in the PIPP.” The DHHS further concludes that “Such use of LIHEAP funds appears to be out of compliance with Sections 2605(b)(7) of the LIHEAP statute” *See* LIHEAP Information Memorandum 2010-13, *Use of LIHEAP Funds Coordinated with Vendor Assistance Program*, available here: [LIHEAP IM 2010-13 Use of LIHEAP Funds Coordinated with Vendor Assistance Programs | The Administration for Children and Families \(hhs.gov\)](#). This federal guidance seemingly bars the approach contemplated.

The Department also gives significant weight to the practical issues and challenges New Hampshire’s electric utilities have identified in their recent filing. *See* Joint Utilities Letter (Oct 20, 2023) at 2-3. Accordingly, based on both legal and practical concerns, the Department does not

recommend any changes to the current approach, whereby the EAP discount is applied to customers' bills first and the FAP funds are applied to the customers' remaining balances.

Consistent with the Commission's March 17, 2020 letter, this letter is being filed solely in electronic form. Thank you for your attention to this matter.

Respectfully Submitted,

/s/ Mary E. Schwarzer

Mary.E. Schwarzer
Staff Attorney/Hearings Examiner
Department of Energy

Docket (electronic service)

Cc: Joshua Elliot, Director, Division of Policy and Programs,
Amanda O. Noonan, Director, Customer Service

Docket #: 23-073

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Printed : 10/23/2023

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