State of New Hampshire
Public Utilities Commission

DE 07-064

Investigation of Energy Efficiency Rate Mechanisms

Initial Comments of The Way Home

Intervenor The Way Home sets forth the following initial comments in response to the March 13, 2008 secretarial letter in the above entitled matter:

1. Introduction

The Way Home appreciates the efforts of the New Hampshire Public Utilities Commission (Commission) to investigate methods of encouraging investment in energy efficiency. The following initial comments are provided in response to questions presented in the March 13, 2008, secretarial letter.

2. Vulnerability of Low Income Households to Price Increase

Low-income residential households continue to face persistent market barriers to energy efficiency investment, including, but not limited to, the lack of disposable income to invest in energy efficiency and/or take advantage of relevant tax incentives. There exists a substantial demand for energy efficiency from low-income residential households. Existing incentive based SBC funded programs have helped many low-income persons and families reduce their energy bills, allowing more of their fixed incomes to be dedicated to other necessities. If passed, the Regional Greenhouse Gas Initiative (RGGI) may also help meet some of this substantial demand as well. At the

same time, however, low-income households are the most vulnerable consumer group to price volatility as well as the shifting of risk from utilities to consumers.

3. The Link Between Decoupling and Energy Efficiency is Unclear

Decoupling does not encourage investment in energy efficiency. "While it [decoupling] can remove disincentives for utilities to promote efficiency, decoupling is not designed to create an incentive for energy efficiency."[1] At best, the incentive issue is not resolved with revenue decoupling.[2] In the end, decoupling will not necessarily create corporate enthusiasm for energy efficiency investments.[3]

Of course, decoupling can be implemented in a variety of ways and in different combinations with other policies. Certain classes of customers can be immunized from adverse rate adjustments, customers can share in increased revenue, etc. It can be put in place in conjunction with a mandate of substantial investments in energy efficiency, with or without financial rewards or incentives. It can be put in place with a system of "recoupling" back to the utilities the sales loss as a result of variables other than utility spent energy efficiency.[4] Indeed, each variation of decoupling carries with it distinct regulatory, policy and legal implications, including the possible interaction with other existing dockets and statutes.

4. Declining Revenues May Result from Factors Other Than Energy Efficiency

There is a significant distinction between "truing-up" lost revenues and "truing-up" lost revenues specifically attributable to utility inspired energy efficiency

---

[1] *See* "Decoupling for Electric and Gas Utilities Frequently Asked Questions (FAQ)", National Association of Regulated Utilities Commissioners (NARUC), September 2007, p. 3.
[2] Dr. David Dismukes Nov. 17, 2007, presentation, LSU, p. 22.
[3] Rick Weston Nov. 17, 2007, presentation, RAP, last page.
[4] Dr. David Dismukes Nov. 17, 2007, presentation, LSU, p. 22.

investments. Traditional ratemaking already accounts for much of the aspects of what has been described as "truing-up".

The latter may be more consistent with the stated goal in this docket of exploring ways of removing disincentives to utility inspired energy efficiency investments. However, this method appears to carry with it vast uncertainty. Netting out the revenue affect of changing economic conditions, the weather, consumer-inspired behavior, fuel switching, monopolist inefficiencies in operation, population changes, code and appliance changes, loss of large customers, etc., and "recoupling" back to the utility those defined and undefined sales risks can be difficult and problematic. It is unclear what econometric modeling may be used, how it will be used and if it will be successful in pinpointing lost revenues specifically attributable to utility inspired energy efficiency investments.

Moreover, it is likely that decoupling can create a disincentive to the utility to operate efficiently, thus resulting in greater operating costs (i.e. lost revenues).

5. Risk Shifts from Utilities to Consumers Under Decoupling

Decoupling can aptly be characterized as a revenue guarantee mechanism[5], exposing consumers to significant market risk that the incumbent utility is best positioned to handle. The Commission, in its role as an arbiter under RSA 363:17-a, may consider whether decoupling can be inconsistent with the primary purpose of regulation in the protection of the public in the role of consumers, rather than in the role of producers or taxpayers.[6] In reality, investor owned utilities have already largely internalized the risk of previous investments under the expectation of a non-revenue guarantee regime. It may therefore be economically inefficient to shift the same risk to consumers now.

---

[5] *See* The National Association of State Utility Consumer Advocates (NASUCA), Decoupling Resolution, June 12, 2007, attached hereto, pp 1-3.

[6] *See* J.C. Bonbright, "Principles of Public Utility Rates" (Columbia Univ. Press., 1961) at 4.

Even if the utilities can demonstrate that they can effectively net out the sales impact of utility energy efficiency investments from other variables, there is no guarantee energy efficiency investments would increase. A degree of risk would still shift from the utilities to the consumers. Assuming arguendo that energy efficiency investments do increase, most low-income families will not immediately benefit in such a way to offset the likely price increases. Thus, many low-income families, disabled persons and senior citizens, many on fixed incomes, will likely be exposed to increased energy prices. Some customers may be able to afford to absorb modest price increases under decoupling while waiting their turn in line for energy efficiency improvements. Low-income families cannot easily do this.

In the end, in the midst of an economic slowdown, the entities best able to absorb sales risks in such an environment are the utilities, not the disabled, elderly and low-income families.

6. Some Rate Designs Act As a Disincentive to Energy Efficiency

Some rate structures in New Hampshire do create a disincentive to energy efficiency. For example, the use of declining block rate structures for natural gas utilities present a disincentive to consumer conservation and consumer investment in energy efficiency. The use of a declining block rate structure discourages consumer investment in energy efficiency. In fact, consumers have an incentive to consume more energy to reach the tail block and the coincident cheaper therms. An inclining block[7] rate structure would serve to promote consumer investment in energy efficiency and consumer conservation. Additionally, price signals more related to actual usage, rather than a high

[7] Dr. David Dismukes Nov. 17, 2007, presentation, LSU, p. 32.

customer charge, will encourage conservation and consumer energy efficiency investments.

7. Conclusion

It is unclear at this time whether decoupling is in the best interest of customers and whether it will in fact promote energy efficiency.

8. Recommendations

The Way Home recommends that the Commission undertake a thorough investigation of the merits of decoupling and revenue guarantee mechanisms in this docket and include in its investigation an analysis of the various implementation strategies. Deciding whether to adopt a decoupling mechanism in individual rate cases could effectively shut consumer intervenors out of the process due to their lack of financial resources to participate in a full-blown rate case. After a thorough investigation in this docket, the parties will be better able to brief the procedural and related legal questions presented in the March 13, 2008 secretarial letter, including whether decoupling would constitute an alternative form of regulation under RSA 374:3-a.

Respectfully submitted,

THE WAY HOME
By Its Attorneys,
New Hampshire Legal Assistance
117 North State Street
Concord, NH 03301
Phone: 603-223-9750
Fax: 603-223-9794

Alan Linder

Alan Linder
Email: alinder@nhla.org

Dan Feltes by AL
Dan Feltes
Email: dfeltes@nhla.org

4/11/08
Date

Certificate of Service

I hereby certify that on this date I sent copies of the within document by email to the service list.

New Hampshire Legal Assistance

4/11/08
Date

Alan Linder
Alan Linder
Attorney for The Way Home

THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
RESOLUTION 2007-01

NASUCA ENERGY CONSERVATION AND DECOUPLING RESOLUTION

Whereas, the provision and promotion of energy efficiency measures are increasingly viewed by state commissions as a necessary component of utility service;

Whereas, many states are now encouraging rate-regulated utilities to adopt energy efficiency programs and other demand-side measures to decrease the number of units of energy each utility's customers purchase from the utility;

Whereas NASUCA has long supported the adoption of effective energy efficiency programs;

Whereas recent proposals by rate-regulated public utilities for the initiation or expansion of energy efficiency measures have featured utility rate incentives or revenue "decoupling" mechanisms that guarantee utilities a predetermined amount of revenues regardless of the number of units of energy sold;

Whereas, the utilities proposing decoupling measures seek guarantees from public utilities commissions that they will receive their allowed level of revenues;

Whereas, these utilities justify this departure from traditional rate-making principles on the theory they are being asked to help their customers purchase fewer energy units from them by promoting energy efficiency measures and other demand-side measures, thereby reducing their revenues and, consequently, their returns to their shareholders, and that decoupling mechanisms compensate utilities for revenues lost due to conservation;

Whereas, these utilities contend that because these measures reduce their revenues, they have a disincentive to encourage programs that aid their customers in purchasing fewer units of energy;

Whereas, historically, rates have been set in periodic rate cases by matching test-year revenues with test-year expenses, adding pro forma adjustments and allowing the utilities an opportunity to earn a reasonable rate of return on their investments in exchange for a state-protected monopoly;

Whereas revenue guarantee mechanisms allow rate adjustments to occur based upon one element that affects a utility's revenue requirement, without supervision or review of other factors that may offset the need for such a rate change;

Whereas, historically, rate-regulated utilities were not guaranteed they would earn the allowed return; rather, earnings depended on capable management operating the utilities in an efficient manner;

Whereas, many utilities proposing revenue decoupling request compensation for revenue lost per customer, implying that sales volumes are declining, when in fact these utilities' total energy sales revenues are stable or increasing;

Whereas, there are a number of factors that may cause a utility to sell fewer units of energy over a period of time, including weather, changing economic conditions, shifts in population, loss of large customers and switches to other types of energy, as well as energy efficiency and other demand-side measures;

Whereas many utilities have been offering cost-effective energy efficiency programs and actively marketing these programs for years without proposing or implementing rate incentives or revenue guarantee mechanisms such as decoupling, and have continued to enjoy financial health;

Whereas past experience has shown that revenue guarantee mechanisms such as decoupling may result in significant rate increases to customers;

Whereas some utilities have referenced the benefit of encouraging energy efficiency programs as a justification for revenue guarantee mechanisms without in fact offering any energy efficiency programs, indicating that the revenue guarantee mechanisms are attractive to utilities for reasons other than their interest in promoting energy conservation;

Whereas past experience has shown that rate increases prompted by revenue guarantee mechanisms such as decoupling are often driven not so much by reduced consumption caused by utility energy efficiency programs, as by reduced consumption due to normal business risks such as changes in weather, price sensitivity, or changes in the state of the economy;

Whereas utilities are better situated than are consumers or state regulators to anticipate, plan for, and respond to changes in revenue prompted by normal business risks, and the shifting of normal business risks away from utilities insulates them from business changes and reduces their incentive to operate efficiently and effectively;

Whereas the traditional ratemaking process has historically compensated utilities for experiencing revenue variations associated with normal business risks;

NOW THEREFORE NASUCA RESOLVES:

To continue its long tradition of support for the adoption of effective energy efficiency programs;

And to oppose decoupling mechanisms that would guarantee utilities the recovery of a predetermined level of revenue without regard to the number of energy units sold and the cause of lost revenue between rate cases;

BE IT FURTHER RESOLVED:

NASUCA urges Public Utilities Commissions to disallow revenue true-ups between rate cases that violate the matching principle, the prohibition against retroactive ratemaking, the prohibition against single-issue ratemaking, or that diminish the incentives to control costs that would otherwise apply between rate cases;

NASUCA urges State legislatures and Public Utilities Commissions to, prior to using decoupling as a means to blunt utility opposition to energy efficiency and other demand-side measures, (1) consider alternative measures that more efficiently promote energy efficiency and other demand side measures; (2) evaluate whether a utility proposing the adoption of a revenue decoupling mechanism has demonstrated a commitment to energy efficiency programs in the recent past; and (3) examine whether a utility proposing the adoption of a revenue decoupling mechanism has a history of prudently and reasonably utilizing alternative ratemaking tools;

If decoupling is allowed by any state commission, NASUCA recommends that the mechanism be structured to (1) prevent over-earning and provide a significant downward adjustment to the utilities' ROE in recognition of the significant reduction in risk associated with the use of a decoupling mechanism, (2) ensure the utility engages in incremental conservation efforts, such as including conservation targets and reduced or withheld recovery should the utility fail to meet those targets, and (3) require utilities to demonstrate that the reduced usage reflected in monthly revenue decoupling adjustments are specifically linked to the utility's promotion of energy efficiency programs.

NASUCA authorizes its Standing Committees to develop specific positions and to take appropriate actions consistent with the terms of this resolution to secure its implementation, with the approval of the Executive Committee of NASUCA. The Standing Committees or the Executive Committee shall notify the membership of any action taken pursuant to this resolution.

Approved by NASUCA:
Denver, Colorado

June 12, 2007

Submitted by:
NASUCA Consumer Protection Committee

June 11, 2007

Opposed:
Ohio
Indiana
Colorado
Wyoming

Abstained:
Massachusetts
California