

DM 03-006

**ENERGY EFFICIENCY PROGRAMS
FOR GAS AND ELECTRIC UTILITIES**

Order Granting Motions to Dismiss

O R D E R N O . 24,203

September 5, 2003

I. PROCEDURAL HISTORY

This matter comes before the Commission on motions by various parties to dismiss this proceeding. On January 29, 2003, the New Hampshire Public Utilities Commission ("Commission") opened this docket to address performance incentive rates for energy efficiency programs for electric and gas utilities. The docket was opened in response to a request submitted by the Gas and Water Division of the Commission, in accordance with Order No. 24,109 (December 31, 2002) in Docket DG 02-106, Energy Efficiency Programs for Gas Utilities. In that docket, the Commission approved a Settlement Agreement adopting energy efficiency programs for gas utilities in New Hampshire for the Program Year ending April 30, 2006. The Settlement Agreement approved by the Commission contained stipulated incentive rates ranging from 8% up to 12%:

"Incentives for Program Year One [January 1, 2003 through April 30, 2004] shall be calculated in accordance with the guidelines established by Commission Orders 23,574 and 23,850 for electric utility energy efficiency programs and applied on a uniform basis to both Gas Utilities. The Settling Parties and Staff further agree that the Gas

Utilities will fully participate in any generic docket that may be opened by the Commission to address issues relating to performance incentive rates for energy efficiency programs. Performance-based incentive awards shall be set initially at eight percent (8%) with a cap of twelve percent (12%) by sector..." (Settlement Agreement at 13.)

A Prehearing Conference was held before the Commission on March 11, 2003 at 10:00 a.m., at which the Commission granted the motions to intervene of Public Service Company of New Hampshire (PSNH), Northern Utilities, Inc. (Northern), Unitil Energy Systems (Unitil), Granite State Electric Company (GSEC), Energy North Natural Gas d/b/a Keyspan Energy Systems New England (Keyspan), and New Hampshire Electric Cooperative (NHEC). The Office of Consumer Advocate (OCA) appeared on behalf of residential ratepayers. The Commission deferred ruling on the motion to intervene of Action, Inc. (Action), and hereby grants Action's motion to intervene.

The utility parties generally agreed at the prehearing conference that this inquiry should not proceed at this time, or that if it does, it should be done with maximum efficiency, and that present incentive rates should be maintained. OCA and staff disagreed with the suggestion that the proceeding not go forward, and asked the Commission to look at the incentive levels proposed in neighboring states. After the close of the prehearing conference, Staff and the parties participated in a

technical session. By letter dated March 11, 2003, Staff reported that the Staff and Parties agreed to meet again on June 25, 2003 in a technical session to propose a procedural schedule for the remainder of the docket, and that June 25, 2003 be set as the deadline for filing procedural motions relating to continuation of the docket. The Commission approved this proposed schedule by secretarial letter dated April 7, 2003.

On June 25, 2003, Staff reported that the technical session held that day had not resulted in a full procedural schedule, but that Staff and Parties did agree that dispositive motions would be due July 18, 2003.

On July 18, 2003, motions to dismiss this docket were filed by PSNH, Unitil, GSEC, NHEC, and Northern. Counsel for NHEC filed a letter reciting that all the utilities except Keyspan are in favor of dismissing this docket, that Keyspan takes no position on the motions to dismiss, that OCA assents to dismissal, and that Staff opposes dismissal. On July 25, 2003, Staff requested an extension of time until August 1, 2003, to file its response to the motions to dismiss, and the Commission granted the request by secretarial letter dated August 1, 2003.

II. POSITIONS OF THE PARTIES

A. Public Service Company of New Hampshire

PSNH seeks dismissal of the within docket, arguing that appropriate time and effort have already been spent by many parties over the past several years to arrive at the performance incentive previously approved by the Commission and now in effect for PSNH. PSNH notes that the Core Energy Efficiency Programs approved by the Commission in Order No. 23,982, (May 31, 2002) in Docket DE 01-057, Joint Petition for Approval of Core Energy Efficiency Programs, have not yet completed one program period. PSNH argues that time and resources can better be spent on delivering energy efficiency services to customers, and discussing changes to the programs that will be offered in 2004, rather than conducting discovery, filing testimony, conducting cross-examination and presenting argument over an issue that was debated and settled by many others before this date.

PSNH argues that the Commission should be wary of upsetting the compromises, concessions and negotiated terms contained in the report of the Energy Efficiency Working Group (EEWG), which was adopted by the Commission in *Electric Utility Restructuring - Energy Efficiency Programs*, 85 NHPUC 684, 694 (2000). PSNH notes that the Commission approved the present electric utility-specific "incentive entitlements" when it

accepted the Core Energy Efficiency Programs, quoting from Commission Order No. 23,982 at 7, 13. PSNH states that the Commission has long held utilities are entitled to compensation for loss of sales resulting from energy efficiency programs, and that the performance incentive formula is the alternative recommended by the Working Group and approved by the Commission to replace lost fixed cost recovery. PSNH also notes that the first analysis of the performance incentive formula has yet to be performed, as the initial period for the Core programs will not conclude until December 31, 2003, with evaluation to take place thereafter.

B. Granite State Electric Company

GSEC argues that the proceeding should be dismissed because the public interest would best be served by maintaining the present Commission-approved performance incentive rates and methodology for energy efficiency programs. GSEC also avers that the investigation is premature, and that re-examining present performance incentive rates is not supported by adequate facts or public policy considerations, is not an efficient use of regulatory or utility resources, and is unduly costly for all entities involved.

GSEC states that it and numerous others spent many significant hours working closely together to develop an

appropriate mechanism for shareholder incentives, and that the Report of the EEWG, adopted by the Commission in *Electric Utility Restructuring - Energy Efficiency Programs*, 85 NHPUC 684, 694 (2000), includes a well-reasoned incentive approach that provides shareholder rewards based on the cost-effectiveness of the pursuit of energy efficiency programs. GSEC also avers that there has not been the kind of change in circumstances contemplated by the Report and the Commission Order that would warrant revisiting the present incentive approach. GSEC states that staff reference to a riskless rate of return, as included in the Massachusetts Guidelines set out in D.T.E. 98-100, is misplaced, citing deviations by the DTE from such guidelines in recent years, in part because of declines in the incentives for desired efficiency performance as treasury bill rates have declined. GSEC also avers that the shareholder incentive should not be tied to prime rates or any other economic index. GSEC argues that there is no evidence that the current rates are either unjust or unreasonable, or that they do not strike an appropriate balance between customers and shareholders.

GSEC states that the Core programs are still in their infancy, and are supported by customers. GSEC argues that these programs should be the focus of utilities' efforts at this time,

rather than incentive rate litigation. GSEC avers that such litigation would serve only to remove the focus from enhancing the policy goals of moving towards market-based programs, and eliminating subsidies.

C. New Hampshire Electric Cooperative

NHEC moves to dismiss the instant proceeding on similar grounds. NHEC cites the Commission's order approving the energy efficiency Settlement Agreement, Order No. 23,982, in which the Commission acknowledged the "Herculean amount of planning, coordination and negotiation" that led to the Settlement Agreement, including the performance incentive at issue in this docket. NHEC also points to the stability that the approved incentive mechanism provides through the end of the transition period of the last utility to introduce retail choice, citing the Report at p. 22. NHEC argues that Staff's reference to the decline in the prime rate is misplaced, given the Report's use of extended periods of "inflation or deflation" as the trigger for revisiting the mechanism. NHEC points out that Massachusetts has departed from the reliance on its earlier use of risk-free returns. NHEC states that the resources that would be expended on this program would be better directed towards the implementation of the programs themselves.

D. Unitil

Unitil also cites the Commission's recent approval of the performance incentive mechanism, the benefits of stability and focus on program implementation, and the fact that the Massachusetts DTE no longer relies on the risk-free return set out in its Guidelines document.

E. Northern

Northern notes that this docket would be the fourth time since 2000 that the Commission has considered the issue of what compensation should be provided to utilities to incent them to implement successful energy efficiency programs, and that in the last three dockets, the Commission has consistently approved the same performance incentive mechanism recommended to the Commission by the EEWG. Northern argues that Staff has presented no evidence to support its contention that circumstances have changed significantly since the Commission's orders approving the current mechanism. Northern also avers that the New Hampshire efficiency performance incentive mechanism is consistent with incentives provided in other New England states, and reflects agreement among a broad spectrum of interests, including those of the Commission Staff and all New Hampshire utilities, reached after lengthy negotiations. Reviewing the purposes of the incentive, Northern states that

reducing or eliminating its value results in a disincentive for the utility, and negatively affects the motivation to successfully implement the programs, leading in turn to the need for greater regulatory oversight. Northern also argues that New Hampshire utilities have only just begun program implementation, after lengthy planning and negotiation, and further proceedings in this docket can only distract from that mission. Northern states that no significant change in circumstances has occurred that would trigger the provisions of Part 9(3)(i) of the EEWG report adopted by the Commission. The reductions in the prime rate and the treasury bill rate, states Northern, do not justify the need for further review of the performance incentive's rate or its methodology. Northern notes that the Massachusetts DTE no longer relies on the (lower) risk-free rate. The performance incentive approved by the Commission on several occasions, argues Northern, is not tied to any such financial benchmark, and is not intended to reflect the cost of capital or debt. Rather, Northern states, the incentive is a negotiated figure intended to encourage a utility to act against its interest, and offer programs that reduce the utility's sales and revenues.

F. Staff

Staff objects to the motions to dismiss, arguing that the reevaluation of the performance incentive rate was

anticipated in earlier Commission orders approving such a mechanism, citing *Electric Utility Restructuring - Energy Efficiency Programs*, 85 NHPUC 684, 694 (2000). Staff asserts that the annual review of programs set out in the EEWG report is intended to include a review of the performance incentive mechanism, and further notes the express language of the Report regarding the need to reevaluate the incentive rates should economic conditions change. Staff further argues that reviewing and potentially reducing the performance incentive is consistent with and supportive of the Commission's goal of moving energy efficiency programs away from rebates and towards market-based, rather than utility-sponsored, programs.

With respect to the level of effort parties have made in negotiating the program terms included in the EEWG report and the gas program Settlement Agreement, Staff argues that neither should deter the Commission from proceeding with this docket. Staff particularly notes that the gas program Settlement Agreement explicitly states that the Commission accepted the recommendation that a docket be opened to review incentive mechanisms.

Staff avers that economic conditions have changed, and such changes necessitate reevaluation of the incentive mechanism. Staff argues that the Commission did not accept the

inflation/deflation trigger contained in the EEWG Report, but instead advised parties that it would "closely scrutinize" the utility filings to evaluate whether the performance incentive mechanism fairly balances the interests of shareholders and customers. Staff states that economic circumstances have changed for the utilities, citing reduced prime and treasury bill interest rates, and recent Federal Reserve concerns about deflation. Staff argues that further discovery is necessary to provide a basis upon which the Commission can consider the performance incentive mechanism.

Staff presents data suggesting that the New Hampshire performance incentive rates are above the New England average, although Staff also notes that one state uses a non-distribution-utility to provide energy efficiency, and Massachusetts supplements the performance incentives for Keyspan with an explicit lost base revenue adjustment to base rates.

Staff argues that performance incentive rates were intended to incent extraordinary performance, and were not intended to compensate utilities for all risks. Specifically, the Staff argues that performance incentives were not intended to provide a dollar-for-dollar compensation for lost revenues.

Staff disagrees that evaluation of the performance incentive will adversely affect the deployment of energy efficiency programs.

III. COMMISSION ANALYSIS

The standards for determining the motions before us vary somewhat between the electric and gas utilities, in that the gas utilities signed a Settlement Agreement that expressly provides for a further evaluation of the performance incentive mechanism, whereas no such commitment has been made by the electric utilities. However, in both cases, we find that the public interest will be better served if the utilities continue at this time with program implementation under the performance incentive mechanism now in place, and the reevaluation of the mechanism be deferred until after the Commission Staff has had an opportunity to examine data relating to each company's performance during the first full year of operating the core programs. Once such evaluation has occurred, Staff may then request that the Commission examine the performance incentive. In the event the Commission undertakes such examination, and if such examination reveals a need to adjust the incentive amount, such adjustment shall occur prospectively, i.e., it shall become effective at the beginning of the program year following the one during which any adjustment is deemed appropriate.

The performance evaluation mechanism provides a partial compensation to the utility for the fact that the more successful the efficiency program, the lower the utility's sales and correspondingly the lower the utility's net income. It also provides a means to incent the utilities "to aggressively pursue achievement of the performance goals of their energy efficiency programs." EEWG Report at 20. The mechanism is not structured to provide a particular return on investment, nor to cover specifically identified costs of capital. Rather, it is a negotiated amount that may be considered by some as an offset, at least in part, to the lost revenues that result from effective program implementation efforts, and to motivate companies to achieve or exceed program goals. Thus, it is not necessary to reduce (or increase) the rate to track closely changes in the cost of capital. The present incentive mechanism provides a just and reasonable balance between the interests of shareholders and the interests of customers, and a change in the mechanism at this point could disturb that carefully-negotiated balance. We also find that at this early stage of program implementation, utility resources will be better expended focusing on quality roll-out of the efficiency programs than litigating the performance incentive mechanism.

The questions raised by Staff concerning the relative rates for performance incentives between New Hampshire and other New England states will be a useful avenue of inquiry when the Commission undertakes a reevaluation of the performance incentive mechanism.

For the foregoing reasons, it is hereby

ORDERED, that the within docket is dismissed without prejudice.

By order of the Public Utilities Commission of New Hampshire this fifth day of September, 2003.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary