DE 04-052

PAY-AS-YOU-SAVE^{TM} ENERGY EFFICIENCY PILOT PROGRAMS

Review of Current Programs

Order Approving Continuation of the Programs

O R D E R N O. 24,417

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I. PROCEDURAL HISTORY

On April 1, 2004, the New Hampshire Public Utilities Commission (Commission) issued an Order of Notice opening this docket to determine the future of Pay-As-You-Save^{TM} (PAYS®) program offerings in New Hampshire. This program is currently limited to the service territories of Public Service Company of New Hampshire (PSNH) and New Hampshire Electric Cooperative, Inc. (NHEC). The Order of Notice specified that Granite State Electric Company (GSEC) and Unitil Energy Systems, Inc. (Unitil) were mandatory parties to this proceeding. The investigation in this proceeding undertook a review of issues related to the future direction of PAYS® programs currently offered on a pilot basis by PSNH and NHEC (sometimes referred to as the Pilot Programs). Among the issues explored in this docket were whether the current Pilot Programs should be expanded; whether rebates should continue to be a component of PAYS® and, if so, the appropriate levels of those rebates; and whether other program changes were needed if it is determined that the PAYS® programs should continue in some form.

On April 23, 2004, PSNH and NHEC filed with the Commission petitions to intervene and the Office of Consumer Advocate (OCA) filed its notice of intent to participate on behalf of residential ratepayers consistent with RSA 363:28. On April 26, 2004, the New Hampshire Public Interest Research Group (NHPIRG) filed with the Commission a petition to intervene and a petition to establish a procedure for intervenor funding pursuant to RSA 365:38-a.

On April 28, 2004, a pre-hearing conference was held at the Commission in accordance with the Order of Notice. On April 30, 2004, Commission Staff filed a letter with the Commission containing a proposed procedural schedule. On May 20, 2004, the Commission issued a secretarial letter noting that all petitions to intervene were granted, approving the proposed procedural schedule and waiving the pre-hearing order requirement of N.H. Code Admin. Rules, Puc 203.05(e). On May 28, 2004, NHPIRG filed with the Commission a motion for designation of NHPIRG as eligible for intervenor funding; this motion withdrew NHPIRG's previous petition to establish a procedure for intervenor funding. OCA, NHEC and GSEC all opposed the petition, in pleadings filed June 7, 8 and 11, 2004 respectively. PSNH filed a response on June 7, 2004 that posed questions regarding the mechanics of the statute.

On June 4, 2004, PAYS® America filed a letter with the Commission regarding the use of the names PAYS® and Pay-As-You-Save™.[1] On June 11, 2004, NHPIRG filed with the Commission its recommendations for the future of PAYS® in New Hampshire in accordance

[1] In part, the letter requested the Commission to use the appropriate registered symbols, i.e., PAYS® and Pay-As-You-Save™ when using these terms. This docket, which established and implemented a program based on the PAYS®model, predated the registration of those symbols and the Commission's previous orders did not make any assumptions about whether those symbols would be registered. For the sake of simplicity and consistency in this Order, and to avoid possible injury to private rights associated with these symbols, this Order uses the registered symbols, PAYS® and Pay-As-You-Save™ throughout to describe the Pilot Program or future programs based on the PAYS® model, as the context may require. However, we are mindful of the issues raised regarding these terms; usage of the terms in this order is merely a literary device and is not intended to convey any conclusion regarding whether current or proposed programs faithfully reflect the principles enumerated by PAYS America.

with the procedural schedule. On June 14, 2004, Unitil filed a response to NHPIRG's motion for designation as eligible for intervenor funding and to the objections and responses filed by other parties.

The Commission granted a request of PSNH, GSEC, NHEC and Unitil (the Utilities) to extend their filing date for testimony and reschedule the technical session from July 29, 2004 to August 5, 2004. On August 2, 2004, PSNH, on behalf of itself and the utilities, filed with the Commission a proposal for the future of PAYS® (Joint Utility Proposal). On August 27, 2004, the Commission issued a secretarial letter requesting that NHPIRG file additional documentation regarding its motion for designation as eligible for intervenor funding.

On September 3, 2004, Commission Staff, NHPIRG, NHEC, GSEC and PSNH filed direct testimony with the Commission and on September 7, 2004, Unitil filed its direct testimony. Also on September 7, NHPIRG filed additional information regarding the intervenor funding motion. On September 17, 2004, Commission Staff filed supplemental testimony with the Commission and NHPIRG, GSEC and PSNH filed response testimony, as did NHEC on September 21, 2004. The Commission held hearings in this docket on September 21 and October 22, 2004.

II. POSITIONS OF THE PARTIES AND STAFF

A. Description of NHPIRG's June 11 Recommendations

In its initial June 11, 2004 filing, NHPIRG made two primary recommendations: a) limit rebates to the amount required to qualify energy efficiency measures as PAYS® products[2] or the CORE Statewide Energy Efficiency Programs (CORE Programs) maximum,

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[2] According to the Settlement Agreement approved by the Commission in *New Hampshire Electric Cooperative and Public Service Company of New Hampshire*, 86 NH PUC 814 (2001) which resulted in the implementation of the Pilot Programs by PSNH and NHEC, PAYS® measures should produce sufficient savings that the cost of the installed measure can be paid off through a monthly PAYS® Delivery Charge (PDC). The Settlement Agreement

whichever is less, in order to eliminate competition between the two programs and make the most efficient use of available System Benefits Charge (SBC) funding[3] and b) use a guarantee fund rather than a revolving loan fund in order to leverage the amount of capital to pay the up-front cost of PAYS® measures.[4]

NHPIRG also offered eleven other subsidiary recommendations as well as an example of how to implement the recommendations, including a set of general recommendations. NHPIRG agreed with the Utilities' position regarding the acceleration of monthly payments up to an amount equal to the estimated savings, provided that successor customers are offered, and the original customer has the right to return to the original payment schedule and, to ensure all parties acknowledge that the basic premise of PAYS® is that savings exceed payments, some notation is made on the bill identifying that the customer has chosen that payments be accelerated.

With regard to the relationship between the Utilities and PAYS® program vendors, NHPIRG recommended that a system for de-listing vendors with a poor performance record be set up and that a clarifying statement be added to the PAYS® customer agreement near the pricing information. According to NHPIRG, the statement should point out that the certifying agent makes no representations about the vendor's pricing other than that the savings

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provided in particular that the PDC would be calculated so that the measure's total cost is equal to no more than two thirds of the estimated savings, allocated over no more than three quarters of the estimated useful life of the measure, unless the customer agreed otherwise.

[3] NHPIRG recommended that the PAYS® analysis tool be used as a simple overlay to the current system to determine the portion of the CORE rebate that would be applied to the customers' project. According to NHPIRG, limiting rebates as it recommended would be more consistent with the long term goal of eliminating rebates and transforming the market so that customers become willing to invest in energy efficiency on their own rather than through the other proposed approaches.

[4] Under the guarantee fund approach, a utility relies on its own capital to pay for the up-front cost of measures; the fund, capitalized with SBC revenues not needed for program administration, would be available to reimburse the utility for customer defaults in the repayment of measures. Under the revolving loan fund approach, a utility relies on SBC revenues paid into the fund to pay for the up-front cost of measures and the utility thus incurs no risk for customer defaults. In the PAYS® Pilot Programs, PSNH adopted the revolving loan fund approach while NHEC implemented the guarantee fund approach with a 10 to 1 leverage ratio. That is, NHEC puts up $10 to pay for the up-front cost of measures for every $1 of SBC revenue paid into the guarantee fund.

are estimated to exceed costs and that the best way to be confident that prices are reasonable is to obtain multiple bids.

NHPIRG strongly disagreed with PSNH's assessment of bad debt risk and recommended that a 10% default rate be assumed as a prudent, if not excessively conservative, rate for a PAYS® program as it is several times the rate for which there is any evidence and over 100 times the rate experienced in the NHEC PAYS® Pilot. NHPIRG further recommended that any default up to the pre-determined prudent level be covered by a guarantee fund using SBC funds. Its position was that if the default rate exceeded 10%, or some other amount agreed to by the parties, it should be considered to be the result of imprudent management by the utility and the utility stockholders should be required to cover the resulting portion of the bad debt.

NHPIRG further recommended that portable PAYS® measures[5] continue to be offered in order to provide program benefits to a broader range of customers. NHPIRG also recommended that all cost-effective resource efficiency measures continue to be eligible under the PAYS® Program, regardless of the type of resource saved (i.e., the program should be fuel-blind). In making this recommendation, NHPIRG relied upon the GDS Associates, Inc. December 2003 process evaluation of the PAYS® Pilot Programs, which stated on page 11 that, "[o]pportunities do exist for measures being installed though the Utilities' PAYS® pilots to yield non-electric energy savings benefits."

NHPIRG supported further investigation of the costs of computer billing modifications indicated by PSNH in discovery and, if necessary, assistance to PSNH and other Utilities in finding cost effective contractors to provide billing system modifications more in line with reasonable estimates. NHPIRG also recommended that the Commission consider using a

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[5] Portable measures, as opposed to permanent measures, are energy efficiency measures that can be easily removed from the premises in which they are installed.

third party program operator in the event the parties did not resolve the conflict between managing a successful energy efficiency program and the temporary loss of revenues and profits and improving administrative efficiency. NHPIRG further recommended that the forms, contracts, staff communications, utility websites and other forms of communications about PAYS® be reviewed and simplified where appropriate in order to lessen the sense of the complexity of the PAYS® Program. NHPIRG further stated that expansion of PAYS® to all utilities for markets where issues related to successor customers do not exist, such as short term portable measures and products for municipal, large non-profit, federal, state and select large power customers, should not be delayed. According to NHPIRG, PAYS® can be expanded more cautiously for other customers as the parties monitor results over the next three years.

Finally, NHPIRG made several general recommendations, including allowing vendor financing to reduce utility exposure to bad debt, limiting the expansion of PAYS® to three years and continuing the current PAYS® shareholder incentive mechanism which it stated should continue to be based on the amount of customer repayments, because customer repayments are the actual conclusion of the PAYS® system, not the installation of measures.

B. Description of the August 2 Joint Utility Proposal

The Joint Utility Proposal spelled out the Utilities' proposal to offer a pilot program, offered in conjunction with the CORE Programs, in order to test several different financing options for an additional three years. In developing their proposal, the Utilities stated their adherence to the following principles: any offering must be compatible with the CORE Programs; expansion of the existing Pilot Programs should proceed cautiously and should seek to maximize opportunities for success and minimize any risks to customer projects or program funding; consideration should be given to program costs, including the cost of implementation, as well as cost effectiveness; and flexibility should be afforded both in terms of the choices available to customers as well as in terms of offerings made by individual Utilities.

NHEC and PSNH proposed the following modifications to their existing programs: a) establish a minimum project size of $1,000 for commercial and $500 for residential projects; b) portable measures will not be funded; c) PSNH will expand the program to include customers participating in the Small Business Energy Solutions Program beginning in 2005; d) "quick pay" options will be explored (allowing, for example, customers to have the option of paying off the entire balance of the amount financed on the first billing cycle); and e) no change to rebate levels or funding mechanisms (a revolving loan fund for PSNH and a line of credit using corporate funds for NHEC). PSNH noted unsuccessful efforts in the past to establish a leveraged funding approach, as well as its belief that an investor owned company would be imprudent to place its shareholders at potential risk for failed customer loans.

In the Joint Utility Proposal, GSEC and Unitil agreed to offer a zero percent interest on-bill financing mechanism in lieu of the offers made by PSNH and NHEC. GSEC's offer would apply to municipal customers of the CORE Programs for Large Business Energy Solutions and New Construction and would enable such customers to finance their co-pays for up to 24 months through a charge appearing on their electric bills. GSEC proposed to target, initially, those municipalities that have not actively participated in the programs in the past and to establish a budget ceiling to avoid oversubscription.

Unitil proposed the use of a revolving loan fund of up to ten percent of its annual SBC-funded Energy Efficiency budget, structured on PSNH's revolving loan fund and including a non-refundable administrative charge of five percent that would be added to the amount financed and used to offset additional administrative costs. Both GSEC and Unitil stated that this was a lower cost option than implementing an offering similar to what PSNH and NHEC are currently offering through the existing Pilot Programs.

Addressing the lessons learned from the Pilot Programs to date, the Utilities stated that they believe that the existing Pilot Programs have been successful in providing customers with the up-front capital needed to implement efficiency projects. According to the Utilities, this is particularly true in the case of municipalities where the process of securing capital can be difficult and time consuming. Furthermore, the Utilities said their assessment of project savings has positively influenced customers to move forward with proposed projects. However, the Utilities maintained there is little experience and insufficient evidence from which to draw conclusions regarding the impact of this approach on the barriers to installing energy efficiency measures in rental properties or where there is uncertainty about future occupancy.

The Joint Utility Proposal delineated what the Utilities refer to as “several potential significant customer relations challenges” relating to PAYS® that they state have not yet been tested by the Pilot Programs. These elements of the Pilot Programs included issues such as transfer of the premises, disconnection for non-payment, and long repayment terms. The Utilities urged cautious expansion of the Pilot Programs to allow time to explore these issues further and argued against an “all or nothing approach” where PAYS® is the only option considered.

The Joint Utility Proposal also addressed at some length the use of the name PAYS®. The Utilities have taken the position that they do not wish to use the name PAYS® going forward, due to concerns about the use of the trademark and that their current proposals ostensibly would not meet the three key elements of the PAYS® criteria as defined by PAYS America.

C. PSNH

PSNH supported the Joint Utility Proposal described above and indicated its willingness to accept the proposed modifications to that proposal as delineated in Staff's Supplemental Testimony. PSNH expressed its interest in continuing the PAYS® Program and stated that, in its view, PAYS® is a supplement to the CORE Programs. According to PSNH, its PAYS® Program directly addresses certain cash flow issues faced by the municipalities that the Program is designed to serve. PSNH expressed four major objections and concerns about NHPIRG's recommendations, namely, risk to shareholders, being required to borrow funds, customer equity regarding rebate levels and transferring PAYS® Program responsibilities to vendors. *See* Day 1 Transcript at 20-36. PSNH noted a number of problems[6] with regard to financing mechanisms that go beyond the use of the present revolving loan fund, but agreed to explore the issue with Staff.

D. NHEC

NHEC, like PSNH, stated its belief that the Supplemental Testimony filed by Staff is a good framework for resolving the outstanding issues and therefore supported the Joint Utility Proposal as modified by Staff's Supplemental Testimony. NHEC noted that its one point of disagreement relates to the issue of the ten percent reduction of the rebate levels suggested by Staff. NHEC stated that its existing formula for calculating CORE Program rebates already

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[6] According to PSNH, a Commission requirement that PSNH borrow funds would be precedent setting; normally PSNH fashions its own corporate finance policy, subject to subsequent oversight by the Commission. The Commission must approve any new financing that has a term of greater than one year, sets the utility's overall level of short term borrowing and examine PSNH's capital structure when setting the overall rate of return during a rate case. The Commission has heretofore decided what financings or borrowings PSNH must undertake.

PSNH also states that leveraging with a guarantee fund is problematic, as there have been no specific recommendations as to how this could be achieved and such a funding approach was thoroughly explored and rejected as part of the design of the original PAYS® Pilot. In this docket PSNH has re-examined potential alternatives for "leveraging" funds without success. *See* Gilbert E. Gelineau Response Testimony at 4.

reduces rebates to the extent that the measure passes the PAYS® test with a five year term, so that in some cases the member/customer receives no rebate. NHEC stated that it would not want to have the ten-percent reduction added on to its existing formula. NHEC stated that it would rather have one or the other, and reiterated its belief that its existing formula is probably best for its members. NHEC's primary objections to NHPIRG's proposals relate to transferring PAYS® Program responsibilities to vendors, shifting all of its rebate money from its commercial CORE Programs to PAYS®, and calculating rebates in such a way that many of its customers would likely receive no rebates when rebates are important for customer acceptance of PAYS®. *See* Day 1 Transcript at 40-41.

E. Unitil

Unitil supported the Joint Utility Proposal, as modified by Staff's Supplemental Testimony. Unitil expressed its belief that its proposed on-bill financing option would be beneficial to the customer segments it has targeted for that option, but also stated its willingness to forgo the implementation of that proposed mechanism until further review of the PAYS® program following the extension of the program as proposed in this docket, *i.e.*, after 2007.

F. GSEC

Like Unitil, GSEC supported the Joint Utility Proposal, as modified by Staff's Supplemental Testimony. GSEC also argued that its proposed on-bill financing option would be beneficial to the targeted customers. GSEC expressed its desire that the Commission consider in the CORE Program docket the merits of its existing on-bill financing mechanism offered as part of the CORE Program to its Small Business Energy Solutions customers, its new on-bill financing proposal, and the appropriate standard of review for judging energy efficiency programs.

G. NHPIRG

The focus of NHPIRG's recommendations for PAYS® centered upon a design for the program that, in NHPIRG's view, would maximize the market transformative effects of the program by reducing the need for subsidies in the form of rebates and leveraging systems benefit fund dollars for additional investment in energy efficiency measures. NHPIRG made a series of recommendations in support of these goals, focusing on: a) screening measures designed such that incentives are set at the minimum level required to qualify projects as PAYS® projects (*i.e.*, projects that meet the original PAYS® Delivery Charge (PDC) calculation requirements regarding customer savings that exceed customer payments), thereby reducing the level of required rebates for any one individual customer and increasing the number of customers who may be served by the funds set aside for the program; b) taking advantage of opportunities to leverage additional funds through the use of a guarantee fund; c) transferring responsibilities from the utilities to the vendors; d) expanding the program to new customer groups; and e) improving the tools used to track progress of the program over time.

On the subject of leveraging, NHPIRG recommended the creation and use of a guarantee fund that leverages at least four times the amount of the fund to pay the up-front costs for PAYS® products purchased by customers. NHPIRG provided examples, using a number of assumptions about the program, to demonstrate how limiting rebates to the amount required to qualify measures as PAYS® products and leveraging funds would result in increased amounts of investment in energy efficiency over the "base case" that it describes, which is designed to show the amount of efficiency that results from the CORE program with a budget of one million dollars for subsidies and an assumed subsidy level of fifty percent. NHPIRG concluded that the amount of investment provided by a leveraging approach is more than twice the amount of the base case. Paul A. Cillo Direct Testimony at 25. Responding to Staff's testimony, NHPIRG maintained that if the utilities are not the borrower of leveraged funds, funds will not be sufficient for an expanded pilot. NHPIRG also argued that Staff's alternative to NHPIRG's proposal for calculating rebates will eliminate the opportunity for the Commission to test if the PAYS® model will be an effective alternative to the use of rebates.

NHPIRG recommended that some program responsibilities and costs should be transferred from the utilities to vendors. NHPIRG stated that to the extent that program responsibilities are successfully transferred from utilities to vendors, who profit from the sale of products in these programs, utility staff will be freed up to serve more customers and funds previously used by the utilities for administrative costs can instead be allocated to install measures. NHPIRG urged that, at a minimum, the utilities should be required to train vendors who have participated in their PAYS®' Pilot Programs and Small Business Energy Solutions and Large Business Retrofit programs to market program services, calculate PDC charges (so they can propose projects that qualify), and complete program forms. NHPIRG further recommended that vendors who meet those obligations should receive expedited approval of their projects and that such approval should not exceed two weeks. NHPIRG noted in its testimony that vendors for PSNH marketed approximately 25% of all projects anyway and that this percentage increased as the program matured; training vendors as NHPIRG proposes would encourage the trend to continue and increase.

NHPIRG further suggested that vendors be encouraged to provide expanded warranties and maintenance and to build both into the costs of their jobs. NHPIRG also recommended that vendors be bonded or post irrevocable letters of credit and agree to pay the utilities for the cost of failed inspections, thereby reducing the number of on-site inspections by utilities.

On the issue of program expansion, as noted above, NHPIRG stated in its June 11 filing that expansion of PAYS® to all utilities for markets where issues related to successor customers do not exist, such as short-term portable measures and products for municipal, large non-profit, federal, state, and select large power customers, should not be delayed. Specifically, NHPIRG recommended expansion to all customers in NHEC's CORE Small Business Energy Solutions and Large Business Retrofit programs and in PSNH's CORE program to all municipal, state and federal customers, hospitals and colleges (based on their Standard Industrial Classification, or SIC) as well as public housing authorities. NHPIRG recommended that NHEC set aside all of the SBC funds now allocated to subsidies in the aforementioned CORE programs for PAYS® projects and that PSNH set aside fifty percent of the same, again for PAYS® projects.

NHPIRG also recommended the use of the same evaluation tools and approach that was used during the initial pilot phase of the program, with minor modifications. NHPIRG stated that quarterly reporting should include the following data elements: a) the amount of funds available to use for rebates and a guarantee fund for PAYS® products; b) the total cost for installed PAYS® products (including the program charge); c) the number of customers who accepted offers; d) the reasons given by customers who did not accept offers; and e) the amount of subsidies as a percentage of the total cost of the installed PAYS® products (not including utility administrative and implementation costs).[7]

In its Response Testimony, NHPIRG noted that there were a number of areas where NHPIRG was in agreement with the position of the Utilities as spelled out in the Joint

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[7] Some of these elements, such as the number of customers who accepted offers, are already being reported.

Utility Proposal. These included: a) extending the program through December 2007; b) imposing a minimum project size of $1,000 for commercial customers; c) removing the requirement to offer portable measures; d) allowing PSNH to offer an expansion of PAYS® to potential Small Business Energy Solutions customers; e) allowing customers to accelerate payments and to pay off their entire PDC obligation at any time;[8] and f) allowing utilities to choose to use whatever name for the program they want (*i.e.*, no utility need use the registered trademark "PAYS®" as the name for their pilot).

A letter from PAYS America[9] filed on June 4, 2004 detailed the registration of the PAYS® name granted on July 29, 2003. The letter asked the Commission to use the appropriate registered symbols when using these terms and to require all parties to the proceeding to do the same. Further, the programs identified as PAYS® and Pay As You Save™ must include three key elements: a) a tariff that assigns repayment of permanent measure costs to the meter location; b) billing and payment through a charge on the distribution utility bill with disconnection for non-payment; and c) independent certification that products and installation are appropriate and that estimated savings will exceed payments. However, the letter also noted that the Utilities have the right to call their energy efficiency programs whatever they want, subject to Commission approval, and affirmed that the terms of the trademark registration do not require that programs based on PAYS® and Pay As You Save™ be given those names. PAYS® asserted that only when the Utilities use the names PAYS® and Pay As You Save™ (*e.g.*, in responses to data requests, Commission reports, etc.) would they need to use and respect the trademark.

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[8] NHPIRG included a caveat that it supports the acceleration of the PDC "only if successor customers were offered, and the original customer had the right to return to, the original payment schedule, and some notation was made on the bill identifying that the customer had chosen to accelerate payments." Paul A. Cillo Direct Testimony at 3.

[9] PAYS America stated it is a non-profit corporation conducting research and providing public information about the PAYS® system. The principals of PAYS America are the same as the principals of the Energy Efficiency Institute.

NHPIRG stated that the name and trademark issue is moot because all parties agree that the utilities will not use the PAYS® trademark in the name of their programs. NHPIRG continues to recommend, however, that the Commission use the trademark in its order to ensure that all utilities implement programs where participants are assured they will personally benefit from their efficiency investments (*i.e.*, savings are greater than payments and payments are made only while the customer remains at the location) and that SBC funds are not wasted on a less effective collection system.

NHPIRG disagreed with the proposal that Unitil and GSEC implement an on-bill financing mechanism in lieu of mirroring or otherwise adopting either PSNH's or NHEC's PAYS® Pilot Program designs. In NHPIRG's view, such a program would be a step backward.

NHPIRG also disagreed with the utilities about the risks associated with bad debt. NHPIRG concluded that there is no basis to assume that customers with lower bills will cause bad debt 100 times greater than PSNH's traditional bad debt and 310 times that of NHEC's bad debt in its pilot to date. To eliminate the parties' concerns with leveraging, NHPIRG suggested that the Commission could order that future SBC funds be used to cover any bad debt in excess of the guarantee fund, as long as the utilities run their pilots properly.

According to NHPIRG, one of the fundamental questions in this docket is how customers will respond to lower subsidies or to no subsidies at all. The premise that NHPIRG has used as the basis for its program design is that both the Legislature and the Commission have indicated, as in the Electric Utility Restructuring docket, DE 96-150, that programs should ultimately move towards market solutions and away from a reliance on subsidies. NHPIRG stated it understands that there are questions that remain about how PAYS® will work and how it will interact with the existing CORE programs. NHPIRG argued that that is the purpose of the

Pilot Programs. According to NHPIRG, the test is restricted to customer groups that are the most reliable and therefore pose the lowest risk. NHPIRG stated that it has been done this way because it is carefully defined and will indicate whether customers will respond to lower subsidies or to no subsidies at all. NHPIRG believes that the PAYS® approach is the key to a long-term market transformation.

NHPIRG further stated that it could agree with Staff's proposal for a bad debt threshold, but disagreed with the level of the threshold, stating it could accept a threshold of 10% or more. Finally, NHPIRG expressed the concern that three years from now the Commission will still not know whether customers will respond to lower subsidies, if Staff's proposal is accepted, as there will be no test of whether customers will respond to lower subsidies.

NHPIRG concluded its recommendations by stating its belief that the best PAYS® program is one that expends the least amount of money required to ensure more customers install more resource efficiency measures.

H. OCA

The OCA generally supported the Joint Utility Proposal, as modified by Staff's Supplemental Testimony. OCA emphasized its belief that rebate levels, both for PAYS® as well as the Core Programs, should be lowered as a way to move toward a more market transformation-driven program. OCA endorsed GSEC's proposal that on-bill financing should be addressed in the Programs docket.

I. Staff

Staff's Supplemental Testimony addressed the following key points: a) PAYS® should be continued as a pilot program for PSNH and NHEC through 2007; b) PSNH should continue to offer PAYS® to its municipal customers; c) NHEC should be encouraged, but not mandated, to continue offering PAYS® to residential customers, at least until substantial evidence arises suggesting an unacceptable level of customer defaults; NHEC's commercial and other programs should continue to operate as well; d) PSNH should work with Staff to explore a viable third-party operated mechanism to leverage SBC revenues for additional resources but until such a mechanism is in place, PSNH should continue to use its revolving loan fund; e) rebate levels should be reduced by 10%, where such reductions do not disqualify the PAYS® project, and rebates in general should be reduced to the greatest extent possible in order to foster market transformation, rather than fueling customers' continuing reliance upon, and expectation of receipt of, large rebates;[10] f) PSNH should keep maximum flexibility in the design of its new billing systems to anticipate and accommodate, to the greatest extent practicable, PAYS® impacts on the billing system, particularly if the role of PAYS® programs vis-à-vis the existing CORE Programs is further expanded in the future; g) an extended PAYS® pilot can, among other things, test the level of actual PAYS® customer defaults and whether the program can operate successfully in conjunction with other Programs, conceivably abandoning rebate-only programs in the future if they prove to be less effective; and h) to provide for efficient utilization of administrative resources, qualifying Pilot Program projects should be at least $1,000 but customers should not be restrained from aggregating accounts or facilities to meet this minimum threshold.

Staff additionally noted that the Pilot Programs to date have not operated in a pure testing environment. This is because they exist alongside the current rebate-oriented Program

[10] Staff specifically recommended the application of a 10% reduction in the rebate levels when, after such a reduction is applied, the measure continues to pass the currently applicable PAYS® test utilized by PSNH and NHEC, as appropriate. For NHEC, whose rebate calculations are designed to move the customer to a maximum 5-year payback period for installed measures, the 10% reduction would only apply when such a reduction does not interfere with or otherwise preclude the achievement of a 5-year payback period.

offerings of the Utilities and customers are given a choice between Program offerings and a PAYS® offering. As a result, Staff maintained that it is still largely unknown what the real level of demand for PAYS® can be in the market for energy efficiency products and services.

Regarding the name and trademark issue, Staff stated that, to the extent the product name or trademark introduces additional unnecessary burden on the Utilities now or in the future, it is problematic. Calling the program by another name eliminates the problem and Staff reiterated that the promoters of the PAYS® concept have affirmed that use of the name and mark is not necessary. Staff noted that PAYS America has asked only that if the Utilities call the program a PAYS® program, then it must meet the fundamental criteria by which PAYS® is defined. Staff, therefore, recommended that the Utilities not be required to use the name PAYS®, thus avoiding any potential additional costs that might be associated with the use of that name.

Finally, Staff also agreed with Granite State's position that it is proper to examine GSEC's existing on-bill financing mechanism, which it has been offering as part of its Small Business Energy Solutions program (one of the CORE Programs), in the CORE Programs docket, rather than taking up an examination of that program offering in this docket.

III. COMMISSION ANALYSIS

The Commission has had occasion to consider the subject of energy efficiency in numerous previous proceedings. In the generic Electric Utility Restructuring docket, DE 96-150, the Commission commented,

> "We continue to believe that the most appropriate policy is to stimulate, where needed, the development of market-based, not utility sponsored and ratepayer funded, energy efficiency programs, a principle that the Legislature incorporated into RSA 374-F. However, the Legislature has also recognized the value of some utility sponsored energy efficiency programs, which we believe our plan must address. . . .

> We also recognize that there may be a place for utility sponsored energy efficiency programs beyond the transition period, but these programs should be limited to 'cost-effective opportunities that may otherwise be lost due to market barriers.' We believe that efforts during the transition toward market-based DSM programs should focus on creating an environment for energy efficiency programs and services that will survive without subsidies in the future.
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> We can not emphasize enough our belief that these [utility sponsored] programs must complement the new energy markets, and not hinder their development." *Electric Utility Restructuring*, 83 NH PUC 126, 163, Order No. 22,875 (1998)

In the Commission's Order directing the filing of the PAYS® Pilot Programs and CORE Programs, *Electric Utility Restructuring-Energy Efficiency Programs*, 85 NH PUC 684, Order No. 23,574 (2000), the Commission stated that it continued to embrace the overarching goal described in Order No. 22,875 reflected in the quotation above and stated, "[t]he benefits of a retail electric market will not be fulfilled without a competitive wholesale market and a vibrant, unsubsidized energy efficiency market." *Id*. at 692. Regarding the PAYS® concept in particular, the Commission stated its belief that,

> "there are many benefits that might be gained from moving energy efficiency programs from exclusive reliance on direct subsidies to greater participant funding of conservation measures. A properly designed [PAYS®] program . . . could potentially unleash pent-up consumer demand for efficiency measures." *Id*. at 694.

Subsequent to these orders, the Commission approved the establishment of particular energy efficiency programs, including the PAYS® Pilot Programs and the CORE Programs. *See e.g.*, *New Hampshire Electric Cooperative and Public Service Company of New Hampshire*, 86 NH PUC 814 (2001), Order No. 23,851 (approved settlement agreement regarding implementation of Pilot Programs); *Concord Electric Company*, 87 NH PUC, Order No. 23,982 (2002) (authorizing implementation of CORE Programs). More recently, the Commission has noted its goal of "synchronizing PAYS programs with the [CORE Programs]." *Granite State Electric Company*, 88 NH PUC 624, 631, Order No. 24,248 (2003).

We consider first the general question of whether to approve the continuation of the PAYS® Pilot Programs at PSNH and NHEC and whether to order their expansion to Unitil and GSEC. If so, we must then determine whether to approve any modification or expansion of the scope of such programs and the terms on which such programs will be operated.

PSNH, NHEC and NHPIRG each proposed that the PAYS® Pilot Programs at PSNH and NHEC be continued through December 2007 and the other parties and Staff supported continuation. Based on the record before us, we conclude that the results of the Pilot Programs justify their continuation at PSNH and NHEC on the terms on which they are now being operated, with the qualifications and exceptions noted below. If PSNH or NHEC wish to make any programmatic changes not contemplated by this Order, they must first obtain the approval of the Commission.

Our decision regarding the continuation of the PAYS® Programs starts with consideration of the data developed in connection with the Pilot Programs. Staff summarized the Pilot Program data as follows:

> "[PSNH], which has been running its pilot since January, 2002, reported that as of March 31, 2004, [it] used PAYS to provide municipal customers, with $962,860 in financial assistance for 105 projects. Municipal customers are the only customer type to whom PAYS is offered by PSNH at this time. As of March 31, 2004, 161 municipal facilities had shown an interest in PAYS, with 141 projects qualifying for PAYS; 14 projects did not pass the PAYS qualification criteria, while customers for the remaining six projects elected not to move forward for a total of 105 completed projects. PSNH reported combined corresponding lifetime energy savings estimates (calculated using the vendor proposals and reporting lifetime kWh savings) of 31,344,125 kWh for those 105 projects, leading to projected lifetime dollar savings (estimated by multiplying lifetime kWh savings by the customer's current rates) of $3,676,134. Program expenditures over the first quarter of 2004 totaled $18,139, of which $4,124 was for administrative and implementation costs, $12,149 was for contractor payments, and the remaining $1,776 was PSNH's shareholder incentive. PSNH received a total of $31,088 in PAYS Delivery Charge payments during the quarter.
>
> During this same reporting period [first quarter 2004], NHEC, which provides PAYS services to both commercial and residential customers in its pilot (which began in

June 2002), reported three completed commercial projects with reported costs of $32,385 and associated annual savings of $10,882 and one residential project at a cost of $1,651 with corresponding annual savings of $424. NHEC also reported PAYS billing of a total of $5,813 during the quarter, with $2,150 for portable measures, such as compact fluorescent light bulbs, and the remaining $3,663 for permanent measures. It should be noted that, unlike PSNH, NHEC's report does not provide cumulative information and provides annual rather than lifetime kWh savings." Staff Direct Testimony at 2-4.

NHEC reported that as of August 31, 2004, there were 184 members that had participated in the pilot program, involving $151,884 in program loans for installed measures. These included 167 lighting promotion participants for a total of $15,944, 7 residential participants for a total of $12,934, and 10 commercial participants for a total of $123,006. NHEC Direct Testimony at 2.

NHPIRG highlighted portions of the report of GDS Associates, Inc. which performed a process evaluation of the Pilot Programs. Comments were favorable, stressing that customers were installing more energy efficiency measures than they otherwise would have (p. 7), PAYS® allowed municipalities to install energy efficient measures with no upfront cost (p. 43), and the programs were successful in addressing three key barriers: high first cost, information on energy efficient equipment, and difficulty in obtaining financing (p 82). According to NHPIRG, customers have similarly reported that they would not have undertaken energy efficiency measures without the PAYS® Program. Day 2 Transcript at 21.

The PAYS® Programs at PSNH and NHEC commenced as Pilot Programs in January and June, 2002, respectively. Considering the amount of experience that has been gained since then, the analysis of the Pilot Programs conducted in this docket and the limited programmatic changes we envision, we conclude it is now appropriate to eliminate the "pilot" status of the programs. Nevertheless, we intend to open a proceeding in the spring of 2007 in order to review and investigate the operation of the PAYS® Programs in order to determine their future direction.[11] In addition, because of our desire to review the status of the PAYS®

[11] As we have in the past, see *e.g.*, *Granite State Electric Company*, Order No. 24,248, *supra* at 631, we reserve all rights to order the modification, termination or expansion of the PAYS® Programs.

Programs before they would otherwise expire in 2007, we accept NHPIRG's recommendations for on-going reporting by PSNH and NHEC. In accordance with PSNH's and NHEC's requests and in view of NHPIRG's position regarding the name and trademark questions, we do not expect PSNH or NHEC to continue to name their programs, PAYS® or Pay-As-You-Save.™ We are persuaded that adoption of a generic name for the underlying concept will help to avoid confusion, remove a potential impediment to Commission decision-making and allow beneficial programs to proceed. Although PSNH and NHEC may be inclined to employ different names to market their programs, we urge them to determine a common overall name, at least for reporting purposes, and notify the Commission and the parties to this proceeding. The Commission will refrain from using the PAYS® name as an official designation in further proceedings.

In the Joint Utility Proposal, GSEC and Unitil proposed "on-bill" financing programs in lieu of implementing PAYS®. GSEC's "on-bill" financing program currently is available to qualifying small businesses and it proposed to extend that program to municipal customers. At hearing, GSEC asked that consideration of its "on-bill" financing program, its extension to municipal customers and related questions such as the cost effectiveness standard of review for energy efficiency programs suggested by NHPIRG[12] be taken up as part of the CORE Energy Efficiency docket instead of in this proceeding.

Unitil does not have an "on-bill" financing program and its proposed program would be new. At hearing, Unitil indicated it would not object if the Commission ruled that Unitil need not implement its proposed "on-bill" financing program.

[12] NHPIRG had urged the Commission to order that "[a]ny efficiency program (PAYS® or CORE or a combination) that by design spends more money on subsidies, utility administration, and implementation than the amount required to simply pay the full cost for customers to install targeted measures will not be approved." NHPIRG testimony at 5-6.

NHPIRG opposed Unitil's proposed "on-bill" financing program and GSEC's proposal to expand its program. However, it did not ask that GSEC's existing program be terminated. *See* Day 2 Transcript at 60.

At this time we will not order Unitil or GSEC to implement PAYS® Programs, though both utilities are free to offer programs that mirror those offered by NHEC and PSNH if they so choose. We will not authorize Unitil to implement its proposed "on-bill financing" program. We will not disturb GSEC's "on-bill" financing program for its CORE programs but will not authorize its expansion to PAYS® Programs. There is, therefore, no need to rule on NHPIRG's recommended standard of review.

We next consider the numerous modifications to the PAYS® Programs currently in effect at PSNH and NHEC recommended by the parties. All agreed that a minimum PAYS® project size of $1,000 for commercial customers is appropriate and that portable measures need not be offered through 2007. In addition, they all recommended that customers be allowed to accelerate payments and pay off the PDC obligation at any time.[13] We conclude these modifications, including NHPIRG's requested proviso, are reasonable and we accept them.

In their Joint Utility Proposal, the Utilities requested that there be a $500 minimum project size for residential projects. This request applies only to NHEC because PSNH's PAYS® Program does not apply to residential customers. We will authorize NHEC to implement this modification at its discretion. We agree with Staff that customers should not be

[13] NHPIRG's recommendation was subject to successor customers being offered, and the original customer had the right to return to, the original payment schedule and a notation that the customer had chosen to accelerate payments was made on the bill. NHPIRG Response Testimony at 5. NHPIRG's proviso directly addresses, both for the original customer as well as any successor customer, the fact that an accelerated payment schedule could possibly result in the customer no longer meeting the PAYS® criteria that savings exceed the customer's level of expenditure for the installed measure over time.

restrained (or discouraged) from aggregating accounts or facilities in order to meet the minimum threshold for either commercial or residential projects.

During the proceeding, the parties offered at least three alternative proposals concerning which customers would be eligible to participate in PSNH's PAYS® Program. In the Joint Utility Filing, PSNH proposed to expand its PAYS® Program to include customers participating in its Small Business Energy Solutions Program beginning in 2005. NHPIRG recommended that PSNH expand its Program to include all municipal, state and federal customers, hospitals, colleges and public housing authorities. Paul A. Cillo Direct Testimony at 3. NHPIRG indicated these types of customers were a natural expansion of the municipal customers PSNH already serves because they are relatively low risk and benefit the community as a whole. *See* Day 2 Transcript at 89. In its Supplemental Testimony, Staff suggested that PSNH continue to serve municipal customers only, a recommendation which PSNH and the other Utilities supported. We approve Staff's recommendation in this respect. While Staff has expressed a desire to see some expansion of the program if all parties could agree to a tightly defined group of additional customers (*see* Day 2 Transcript at 105), we agree with Staff that SIC codes alone may not be the best way to identify new customers, as the SIC codes would not distinguish between a for-profit and not-for-profit entity. Regarding the possible expansion to small business customers, we believe that such customers might have a very different risk profile than municipalities and therefore conclude that expansion to that segment is not warranted at this time. In general, we believe that further expansion of the program to groups that might pose greater risks of default should be avoided until additional experience has been gained with the current group of customers to whom the program is now marketed.

We understand NHEC wishes to continue to be able to serve all of its customers with PAYS® products as it has in the past. NHPIRG recommended that NHEC serve all customers seeking to participate in its Small Business Energy Solutions and Large Business Retrofit Programs. NHPIRG did not explain if it intended residential customers to be excluded from participating and this subject was not further pursued at hearing. *See* Paul A Cillo Direct Testimony at 3. Staff suggested that NHEC be encouraged but not mandated to continue offering PAYS® to its residential customers for its bulb and other residential applications, at least until there is substantial evidence of unacceptable customer defaults. As we found no basis to exclude residential customers participation in NHEC's PAYS® Program, we accept Staff's recommendation.

In their Joint Utility Proposal, the Utilities expressed a preference for continuing the currently effective screening test for qualifying PAYS® projects. Under this test, any proven energy-saving measure qualifies as a PAYS® product if measure costs (including any program charges) do not exceed two thirds of the measure's estimated annual savings over three quarters of its estimated useful life (Two-Thirds/Three-Quarters Rule). In its Direct Testimony, NHPIRG recommended that the test be relaxed somewhat so that a measure would qualify if measure costs do not exceed three quarters of the measure's estimated annual savings over three quarters of its estimated useful life (Three-Quarters/Three-Quarters Rule). According to NHPIRG, the Three-Quarters/Three-Quarters Rule still ensures customers that an independent analysis estimates customers will receive net savings equal to at least one third of the amount of their payments. *See* Paul A. Cillo Direct Testimony at 21-22. In the Joint Utility Proposal, the Utilities stated that a less stringent test would qualify more "marginal" projects but also make it less likely that customers would save as they pay, which is the basic premise of PAYS®.[14] We are satisfied that the relatively modest relaxation of the screening test recommended by NHPIRG is appropriate and we will therefore approve it.

There is a question as to the shareholder mechanism to be applied to the PAYS® Programs. According to the Joint Utility Proposal, the Utilities advocate the use of the CORE Programs shareholder incentive for the PAYS® Pilot, arguing for a single mechanism to be applied to all energy efficiency programs. NHPIRG, by contrast, prefers the continuation of the existing incentive mechanism which ties the incentive amount to the amount of customer repayments. We agree with NHPIRG's view that the existing incentive mechanism, by tying incentives to the customer repayment stream, provides the proper incentives for this program and conclude that the present shareholder incentive mechanism should continue to operate.

NHPIRG made recommendations regarding the PAYS® budgets. According to NHPIRG, PSNH should be directed to set aside fifty percent of the SBC funds budgeted for subsidies in its CORE Small Business Energy Solutions and Large Business Retrofit programs for PAYS® projects and NHEC should be directed to set aside the entire amount of SBC funds now allocated to subsidies for those same programs. *See* Paul A. Cillo Direct Testimony at 3. With respect to this recommendation, we agree with Staff's position that the program should not be extended to these additional customer groups at this time and that the existing level of funding for the program should continue.

[14] Joint Utility Proposal at 7. PSNH said it has satisfied the three fundamental PAYS® criteria in implementing the PAYS® Program except in one limited respect. PSNH affirmed that in some situations it extended PAYS® financing where the savings *equaled* but did not exceed the amount customers would pay. Day 1 Transcript at 158; Day 2 Transcript at 104 (emphasis supplied). Given the fact that PSNH's PAYS® Program serves only municipal customers, we will not require PSNH to discontinue this practice in the limited situations in which it has followed it in the past. However, we direct PSNH not to expand the category of cases in which it has not followed the accepted screening test.

We next consider the three most significant disputed issues regarding the future direction of PAYS®: a) whether, as recommended by NHPIRG, PSNH and NHEC should transfer program responsibilities and costs to third party vendors; b) the funding mechanism to be employed in implementing PAYS® at PSNH, including the related bad debt risks to PSNH; and c) the level of CORE Program rebates available to a customer who is eligible to participate in PAYS®.

First, regarding the transfer of program responsibilities and costs to third party vendors, NHPIRG argued that vendors should be trained in marketing PAYS® services, calculating the charges and completing forms. Vendors who did so would receive expedited approval of their projects, i.e., within two weeks. Contractors should be bonded or post letters of credit and agree to pay utilities for costs of failed inspections due to poor workmanship. Utility on-site inspections would also be greatly reduced, thus bringing down utility expenses. Paul A. Cillo Direct Testimony at 4. According to NHPIRG, such a transfer of responsibilities would move the PAYS® Programs to a more market-driven approach, which the Commission envisioned in its previous orders.

PSNH opposed this recommendation, contending that such a transfer would, among other things: a) prevent it from meeting its tariff commitments; b) invite potential abuse by vendors who might be tempted to perform the PAYS® screening test calculation so as to inflate the price charged for the measure; and c) prevent it from marketing the program directly to customers and thus decrease the assurance of service quality to customers and increase its risk. *See e.g.*, Day 1 Transcript at 26-30, 36-37. PSNH also suggested that if it is required to borrow millions of dollars in order to fund the PAYS® Program, it will still be in the energy efficiency business in a large way. Day 2 Transcript at 34.

NHEC also objected to this recommendation, generally on the same grounds as PSNH. In addition, NHEC noted the difficulty it has had in attracting vendors to do work in NHEC's service territory. Day 1 Transcript at 39.

We are, of course, cognizant of the attractiveness of market-driven energy efficiency programs. However, upon careful consideration, we are unwilling at this time to accept NHPIRG's recommendation for transfer of responsibilities. The PAYS® Programs at PSNH and NHEC are not of a size, scope and development that would warrant the significant effort required for the utilities to transfer the responsibilities as recommended by NHPIRG. In addition, such a transfer appears to be currently unworkable for NHEC in view of the difficulty it has had in attracting vendors.

Second, regarding the issue of the funding mechanism to be employed in implementing PAYS® at PSNH and the related bad debt risks, NHPIRG recommended that both PSNH and NHEC set up a guarantee fund that leveraged additional funds at a 4:1 ratio to pay the up-front costs for PAYS® products. The utilities would repay their lenders by collecting funds from participating customers through a tariffed monthly PAYS® Delivery Charge (PDC), which would be sufficient to cover the cost of installation and financing, but exclude program implementation and operation expenses. NHPIRG opined that the 4 to 1 leverage ratio was very conservative in light of the Utilities' historical experience with bad debt, particularly in connection with the PAYS® Programs operated in New Hampshire. NHPIRG suggested that to eliminate the bad debt issue for the Utilities and Staff, the Commission could assure the utilities that any bad debt beyond the guarantee fund amount be recovered from the following year's SBC monies, provided the utility is properly operating the PAYS® program and diligently billing and collecting for it. Paul A. Cillo Response Testimony at 21.

NHEC arranged for the financing of PAYS® measures with a guarantee fund similar to that recommended by NHPIRG when it set up its PAYS® Program. According to NHEC, it did not have sufficient SBC funding to support a revolving loan fund of the type established by PSNH for financing PAYS® measures and therefore it turned to its company line of credit for funding and voluntarily adopted a leveraging ratio of 10 to 1. *See* Day 1 Transcript at 110-111, 137.

PSNH's PAYS® Program has a revolving loan fund that uses SBC revenues and customer repayments which, according to PSNH, allows it to operate PAYS® essentially without bad debt risk to its shareholders. PSNH objected to being ordered by the Commission to borrow funds and to establish a guarantee fund of the kind described by NHPIRG. PSNH argued that being ordered to borrow funds for a particular program is unprecedented in this State and that the provisions in RSA 374-F regarding the SBC are indicative of legislative intent as to what ought to be spent on energy efficiency programs after restructuring. *See* Day 2 Transcript at 89-90. Despite its past failures to obtain financing on terms acceptable to it, PSNH is willing to work with Staff to explore viable third-party operated mechanisms to leverage SBC revenues for additional resources.

On the question of risk from borrowing and leveraging, PSNH expressed concern with the increased risk of default by small business participants as compared to the risk of non-payment posed by municipalities and school districts; the possible unwillingness of a successor owner or tenant to pay for PAYS® measures installed by a previous occupant; the uncertainty as to whether the utility will be able to collect from a successor who disputes the obligation to pay; the possibility of a gap in occupancy when property is abandoned, as a successor is not liable for the amounts a predecessor may owe;[15] and the uncertainty regarding the future existence of the SBC to cover bad debt in excess of amounts in a guarantee fund. PSNH also argued that, with leveraging, there could be a longer payback period for repayment of the PAYS® measure than the period for paying off the bank loan, resulting in a mismatch between customers paying off the obligation and the loan that PSNH takes out to fund the measure. *See* Day 2 Transcript at 108. NHEC supported PSNH's position on borrowing and risk for a shareholder owned utility, emphasizing that while NHEC's owners and ratepayers are one and the same, PSNH's shareholders and ratepayers are different groups obtaining different benefits and running different risks from their relationship with PSNH.

We disagree with PSNH's view that ordering PAYS® to be operated under a guarantee-leveraging approach as recommended by NHPIRG or as operated by NHEC, would be tantamount to mandating PSNH to borrow money. Rather, we would leave it to PSNH as to how to obtain the necessary funding, as is the case when a utility is required to undertake a particular activity pursuant to its standard service obligations. Although funding might well involve borrowing by PSNH as its preferred method of capitalization, that is not necessarily so.

NHPIRG argues that the risk of bad debt from PAYS® operations is remote. However, we cannot say that the risk is so low that PSNH and its shareholders do not run any risk beyond the customary risk of imprudent actions; the guarantee fund-leveraging approach does appear to add risk for PSNH. In this regard, we believe that the distinction drawn by the Utilities between a member-owned entity such as NHEC and an investor-owned utility such as PSNH is relevant. For PSNH, the risks and rewards to shareholders and ratepayers from implementing PAYS® are not aligned as they are with NHEC, whose ratepayers are also its

[15] *See* Day 2 Transcript at 86-87. The NHPIRG witness had previously explained that "bad debt doesn't go with the customer. The future payments are not the responsibility of the customer that cleared out. The future payments will be collected from the next customer at that location." Day 2 Transcript at 39.

owners. We are also mindful of the fact that any bad debt would have an adverse impact on the funds available for other energy efficiency projects and establishing a guarantee fund could divert funds from being used to pay for measure subsidies. In addition, it has not been our policy to implement system benefits programs in this way. Under these circumstances, we will not order PSNH to undertake a guarantee-leveraging approach at this time. However, we do expect PSNH in conjunction with Staff to undertake a serious effort to determine whether there is any possibility of third party funding that would support leveraging. We will direct to file a report with the Commission on the results of that inquiry no later than June 1, 2005. We also endorse Staff's recommendation, supported by PSNH, regarding the benefits of maintaining maximum flexibility in the design of PSNH's new billing systems.

The third disputed issue involves rebate levels applicable to the PAYS® Programs. The issue arises because the PAYS® Programs are being operated simultaneously with the CORE Programs and there is a need to integrate and synchronize the two programs in a reasonable way. The parties advocated for four alternative approaches to this issue during the course of the proceedings.

PSNH has been operating its PAYS® Program so that the municipal customers served by the Program are given the full amount of the available CORE rebate before the PAYS® screening test is run. According to PSNH, this approach ensures customer equity in that similarly situated customers will have available to them the same benefits that other customers would have. *See* Day 1 Transcript at 21-22. NHEC, by contrast, calculates the CORE rebate applicable to a PAYS® measure based on the amount necessary, if any, to bring the pay-back period down to five years and applies this approach to all customers who apply for PAYS® funding.

NHPIRG proposed instead that both PSNH and NHEC should offer CORE program subsidies to PAYS®-eligible customers, but that no customer should receive a subsidy greater than the CORE program guidelines allow, and each subsidy should be further limited to the amount, if any, needed to qualify the project as a PAYS® product. Paul A. Cillo Direct Testimony at 3. According to NHPIRG, its approach can result in the same, or greater, customer participation and energy savings with less ratepayer funding, thus freeing up more funding for efficiency. NHPIRG maintains that its approach is more consistent with the long-term goal of eliminating rebates and transforming markets so that customers become willing to invest in energy efficiency on their own.[16]

NHPIRG also argues that the only way to test whether that goal can be achieved is to implement the approach proposed by NHPIRG. NHPIRG said that this should have been tested in the PAYS® Pilot Programs but was not. Responding to PSNH's customer equity rationale for its approach, NHPIRG contended that PSNH's standard is "no more equitable than requiring the utilities to give customers the same amount of dollars for each measure, or basing the standard on the amount each customer has paid in system benefit funds." Paul A. Cillo Direct Testimony at 33. In addition, NHPIRG argued that its approach "offers a different type of equity." Customers will be assured that a) more customers who are paying for these programs will have the ability to install the same measures because they have access to savings with little risk; b) subsidies will only be used when necessary to ensure that customers who purchase targeted measures that benefit the system overall will benefit personally as well; c) all participants will receive at least net savings equal to one-third of the amount they pay for

[16] NHPIRG's recommendation still relies on reduced levels of CORE rebates. However, NHPIRG argued that SBC-funded rebates are not used as an incentive to get customers to buy measures; rather, they are used to qualify targeted measures as PAYS® products because PAYS® provides a sufficient incentive for customers to buy them. Paul A. Cillo Testimony, Day 2 Transcript at 18-19.

measures; and d) for more costly, permanent measures, individual customers will only be asked to pay for measures while they benefit; if they change locations, their obligation to pay ends and the next customer who benefits assumes the obligation.

The fourth approach, urged by Staff, recommended the application of a 10% reduction in the CORE rebate levels for those measures where, when such a reduction is applied, the measure continues to pass the currently applicable PAYS® test now utilized by PSNH and NHEC, respectively. In the case of NHEC, whose rebate calculations are designed to move the customer to a maximum 5-year payback period for installed measures, the application of Staff's 10% reduction would only apply when such a reduction does not interfere with or otherwise preclude the achievement of a 5-year payback period. Staff noted that the PAYS® Programs operate and interact with the CORE Programs and thus there has not been a pure experiment of how successful the PAYS® concept is or would be. *See* Day 2 Transcript at 93-94. Staff said its proposed reduction in the rebate level represents an attempt to move toward market transformation in a small way. *See* Day 2 Transcript at 99. Both PSNH and NHEC supported Staff's recommendation. PSNH commented that the 10% reduction is not undue discrimination because in that case the customer also gets his portion financed by the utility. *See* Day 2 Transcript at 108.

The parties discussed at some length the so-called "free money" or "free ridership" phenomenon that is some times associated with reducing rebate levels. Free riders are customers who would install energy efficiency measures whether or not a subsidy is paid to them. Subsidies paid to free riders are economically inefficient because that money could have been used to cost effectively provide energy efficiency measures to customers who are not free riders.

GSEC argued that, in its view, the likelihood of free riders increases as rebates decrease; in other words, customers with small rebates will not move forward and customers who would have moved forward anyway will take advantage of the rebate. *See* Day 1 Transcript at 60. In particular, GSEC said that with smaller rebates, “the level of free riders will gradually creep up as a percentage of total participants.” Day 1 Transcript at 168. PSNH pointed out that some degree of free ridership will exist no matter how high the rebate and the goal is to strike the proper balance between minimizing the amount of money that will move customers to install energy efficiency measures that they would not do on their own and simply giving away money without getting the benefits of increased customer participation. *See* Day 1 Transcript at 64, 89, 149.

NHPIRG maintained that there are only two effective ways to address free ridership: using a system like PAYS® to reduce or eliminate subsidies so that customers spend their own money and not that of other ratepayers or having 100% participation since then free ridership would be an inconsequential part of the overall results of the program. *See* Day 2 Transcript at 22-23. According to NHPIRG, it is participation, not the amount of the rebate, that reduces free ridership. NHPIRG asserted that raising rebates may in fact increase the percentage of free ridership due to SBC funds being capped. *Id*.

Staff testified that with a smaller rebate there is a “shorter ride,” *i.e.*, less money will be wasted than if the rebate is larger. In other words, if there will be a certain amount of free ridership associated with any energy efficiency program that offers rebates (*i.e.*, a certain number of customers exist who would implement energy efficiency measures with or without the existence of a rebate, but who will take advantage of the rebate offer when it is available), then, for those free riders, the amount of rebate they will receive will be smaller than the amount they would receive if rebates remain unchanged. In Staff's view, while the level of free-ridership would increase, it would be proportional to the level of increased participation associated with being able to serve more customers with the same program, because the amount of rebate going to each customer (whether free-rider or not) is smaller. The bottom line, however, is that more efficiency measures could be installed with the same pool of dollars if customers accept the lower rebate incentive amounts as sufficient to induce them to install the efficiency measure or measures.

Our view of the position taken by NHPIRG regarding the appropriate CORE rebate level applicable to customers eligible for PAYS® is based on our experience to date with the PAYS® program. We particularly note the report of NHEC that when members where given the choice of a rebate or PAYS®, most of them chose the rebate. We expect that most customers will continue to choose a rebate as long as the CORE Programs exist in a form similar to those presently in effect. We are not prepared at this time to abandon or disrupt the current CORE programs in favor of PAYS® on a large scale, but as greater experience is gained over the next three years, this issue may be revisited. We will be particularly interested in seeing whether the additional reduction in rebate levels proposed by Staff, approved today, have any effect on participation in PAYS®.

In order to fully evaluate the PAYS® Programs and possible modifications in the future, we direct the Parties, in consultation with Staff, to amend their quarterly reports to include expanded data collection, monitoring and reporting on the issues addressed in this order. The issues include, but are not limited to, the level of participation, the impact of reduced rebate levels on PAYS® and CORE Programs, and the impact on utilities' bad debt that can be attributed to PAYS®.

Finally, NHPIRG filed a motion for designation of NHPIRG as eligible for intervenor funding pursuant to RSA 365:38-a, supplemented on September 7, 2004 as requested by the Commission in a secretarial letter dated August 27, 2004. NHPIRG's letter supplied information on its status as a retail customer and financial hardship, as needed to determine whether NHPIRG is eligible for intervenor funding under RSA 365:38-a.[17] We will address the issues under RSA 365:38-a in a separate order.

Based upon the foregoing, it is hereby

ORDERED, that the PAYS® Programs as currently in effect at PSNH and NHEC be continued through 2007 in accordance with the modifications set forth above; and it is

FURTHER ORDERED, that PSNH shall report, no later than June 1, 2005, its recommendations regarding third party funding that would support leveraging; and it is

FURTHER ORDERED, that those utilities operating PAYS® Programs shall amend their quarterly reports consistent with the terms of this order; and it is

FURTHER ORDERED, that those utilities operating PAYS® Programs agree upon a common name for the programs, at least for reporting purposes, that does not use the term PAYS® or Pay-As-You-Save™.

[17] Under RSA 365:38-a, in order for the Commission to approve intervenor funding, it must find that an intervenor is eligible for funding as a retail customer, demonstrates financial hardship and that funding is in the public interest because the intervenor "substantially contributes to the adoption by the commission, in whole or in part, of a position advocated by the [intervenor] in that proceeding, or in a judicial review of that proceeding."

By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 2004.

Thomas B. Getz Chairman	Graham J. Morrison Commissioner	Michael D. Harrington Commissioner

Attested by:

Kimberly Nolin Smith
Assistant Secretary