

DE 05-124

STATE-WIDE LOW INCOME ELECTRIC ASSISTANCE PROGRAM

Order Approving Certain Program Modifications

ORDER NO. 24,542

November 4, 2005

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Mark Dean, Esq., of Devine Millimet for New Hampshire Electric Cooperative Inc.; Meabh Purcell, Esq., of LeBoeuf, Lamb, Greene and MacRae, for Unitil Energy Systems, Inc.; Donald Pfundstein, Esq., of Gallagher, Callahan and Gartrell, for Granite State Electric Company; Steve Eckberg, of Belknap-Merrimack Community Action Program, for the New Hampshire Community Action Association; Alan Linder, Esq., of New Hampshire Legal Assistance, for Save Our Homes Organization; Maryann Manoogian, Director, for the Office of Energy and Planning; Rorie E.P. Hollenberg, Esq. for the Office of Consumer Advocate; and Edward N. Damon, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On July 29, 2005, the Commission opened Docket No. DE 05-124, Electric Assistance Program - Annual Budget: October 2005 – September 2006 Program Year. Granite State Electric Company (GSEC), New Hampshire Electric Cooperative, Inc. (NHEC), Public Service Company of New Hampshire (PSNH) and Unitil Energy Services, Inc. (UES) (together, the Utilities) and the Office of Energy and Planning (OEP) submitted their budgets for the upcoming program year as previously ordered.¹ The Community Action Agencies did not file a separate budget with the Commission as its program year administrative costs were incorporated

¹ On May 30, 2002, the New Hampshire Public Utilities Commission (Commission) issued Order No. 23,980 in Docket No. DE 02-034 approving a tiered discount electric assistance program (EAP) for low-income customers. In its order, the Commission directed Granite State Electric Company (GSEC), New Hampshire Electric Cooperative, Inc. (NHEC), Public Service Company of New Hampshire (PSNH), and Unitil Energy Systems, Inc. (UES) (together, the Utilities) in conjunction with the Community Action Agencies (CAAs) and the Office of Energy and Planning (OEP) to submit their first year budgets for start-up and administrative costs. The Commission also directed the Utilities, OEP and the CAAs to submit budgets for subsequent years 60 days prior to the start of the program year. The Commission approved the 2003-2003 program year costs, budgets for the 2003-2004 program year and certain program modifications in Order No. 24,329 (May 21, 2004). Last year, the Commission approved budgets for the 2004-2005 program year in Order No. 24,399 (November 12, 2004).

in the utility budget filings. On August 8, 2005, the Office of Consumer Advocate (OCA) filed with the Commission its notice of intent to participate in this docket on behalf of residential ratepayers.

On September 22, 2005, the EAP Advisory Board submitted its recommended changes to the EAP for the 2005/2006 program year.² The Advisory Board's recommendations addressed the EAP eligibility level, the method of prioritizing the waiting list, and the pre-program arrears component. The Advisory Board also recommended that reserve funds be used over the next program year to meet the immediate needs of the program and that the Utilities be allowed to defer recovery of program costs within any given month in a program year for recovery in a subsequent month within the same program year.

On September 30, 2005, the Commission issued Order No. 24,522 approving the proposed budgets for the program year beginning October 1, 2005 and providing for Commission review and approval of actual expenses incurred upon completion of the 2005-2006 program year.

On October 4, 2005, the Commission issued an Order of Notice scheduling a hearing for October 20, 2005, on the Advisory Board's recommendations, noting that the recommendations raised issues related to the EAP program design and the need for program enhancements and/or modifications.

On October 17, 2005, New Hampshire Legal Assistance on behalf of Save Our Homes Organization filed a petition to intervene in the proceeding.

On October 17, 2005, the Commission issued a secretarial letter asking the parties to be prepared to address the legal and policy issues related to an increase in the low income

² The EAP Advisory Board was established by the Commission in DE 96-150 and is composed of representatives from GSEC, NHEC, PSNH, UES, SOHO, CAA, OCA, the NH Municipal Welfare Directors, OEP and Staff.

portion of the system benefits charge (SBC) from 1.2 mils per kWh to the statutory limit of 1.5 mils per kWh.

On October 18, 2005, the Office of Consumer Advocate (OCA) filed a motion requesting the Commission to supplement its October 4, 2005 Order of Notice in order to notice the issue of whether the Commission may increase the level of the SBC (OCA Motion to Postpone). The OCA further requested that the Commission postpone hearing and consideration of the SBC issues. A hearing was held as scheduled on October 20, 2005.

II. ADVISORY BOARD RECOMMENDATIONS

A. EAP Program Reserve: A program reserve was established during the first year the EAP was in operation. While the EAP is a statewide program, each utility holds a portion of the reserve balance, making it administratively difficult to draw from the reserve should it be necessary to meet the needs of the EAP. Accordingly, the Advisory Board recommends that the Commission authorize GSEC, NHEC, PSNH and UES, at the direction of the Commission Staff, to transfer funds from the utility held reserve balances to the State Treasury for deposit in the EAP account. Such transfers would occur as necessary to meet the obligations of the program as the program enrollment transitioned to a sustainable level.

B. EAP Eligibility Level: Based on its projections, the Advisory Board has determined that the sustainable level for EAP is approximately 17,500. The current program enrollment is approximately 23,000. While this higher enrollment level has been sustained by funds collected through the low income portion of the SBC which accumulated in the State Treasury account during the program ramp up, those funds will be depleted by November 2005 and reserve funds will need to be used to meet the financial obligations of the program. In order to accomplish the transition to an enrollment of 17,500, in March 2005 it was determined that no

new enrollments could be accepted and a waiting list was established. As a result, enrollment is declining as customers do not recertify because they either fail to complete the recertification process or have incomes in excess of the income eligibility guidelines at the time of recertification. While projections show that there are sufficient funds in the reserve to continue to meet the program obligations during the transition to a sustainable participation level, the Advisory Board believes it is appropriate to take steps to shorten the transition period timeframe, thus improving the financial outlook of the program and shortening the period of time for individuals on the waiting list. Therefore, the Advisory Board recommends reducing the eligibility level from 185% to 150% of the Federal poverty guidelines for the 2005/2006 program year.³

C. **Waiting List**: In order to better target assistance to those who most need it, the Advisory Board recommends the waiting list for the EAP be prioritized by the Federal poverty guidelines. The Advisory Board noted that there is no difference in the administrative cost of prioritizing the waiting list by the Federal poverty guidelines and of prioritizing it by the date the customer went on the waiting list.

D. **Regulatory Assets**: Once the enrollment level reaches a sustainable number, the annual revenues funding the EAP and the annual expenses supporting participant benefits and program administration will be substantially equal during each program year. However, the monthly revenues may not always match the monthly expenses. In some months, revenues may exceed expenses; in others, expenses may exceed revenues. As a result, after the transitional period ends and the EAP enrollment reaches a sustainable level, the Advisory Board recommends that the Utilities be authorized to establish regulatory asset accounts to defer

³ Order No. 23,980 set the EAP eligibility level at 150% of the Federal Poverty Guidelines. The eligibility level was subsequently changed to 185% of the Federal poverty guidelines in Order No. 24,329.

expenses if, in any given month, the EAP funds held at the State Treasury are insufficient to reimburse a utility for the amount of its EAP expenses in excess of its EAP-SBC collections. The Advisory Board also recommends that, in the event of any deferrals, the Utilities be authorized to collect such funds from future EAP revenues. The Advisory Board further recommends that such deferred recoveries be reviewed by Staff during its monthly reconciliation of EAP revenues and costs and that the Advisory Board be notified when such a deferral occurs. At the hearing, the Advisory Board supplemented its recommendation to allow for the accrual of interest on any amounts deferred. Such deferrals would accrue interest at a rate equal to the 3 month LIBOR rate as of the first of each month. The 3 month LIBOR rate is the same rate at which the Utilities pay interest on the reserve.

E. Pre-Program Arrears: In light of the financial projections for the 2005/2006 program year, the Advisory Board recommends the pre-program arrears component be suspended for the upcoming program year while the EAP transitions to a sustainable enrollment level. The Advisory Board recommends this issue be reviewed prior to the start of the 2006/2007 program year to determine if it would be financially viable at that time.

III. POSITIONS OF THE PARTIES AND STAFF

F. PSNH

PSNH testified in support of the Advisory Board recommendations. PSNH stated it believes the Commission has the authority to increase the low income portion of the SBC to 1.5 mils per kWh but no more. PSNH supported an increase in the low income portion of the SBC to 1.5 mils per kWh while maintaining the current 1.8 mils per kWh funding level for the energy efficiency programs. Noting that RSA 374-F:3, VI requires that restructuring “be implemented in a manner that benefits all consumers equitably and does not benefit one

customer class to the detriment of another” and that “costs should not be shifted unfairly among customers”, PSNH pointed out that an increase in the low income portion of the SBC would benefit all customers as need for assistance that goes unmet by the EAP would most likely be met by local welfare rolls, funding of which is borne by all taxpayers.

PSNH did not support the proposal offered by UES to serve all eligible customers during the upcoming winter heating season, citing concerns about the adequacy of future revenue from the low income portion of the SBC to guarantee the deferrals that would potentially be created. PSNH offered no comment on the OCA Motion to Postpone.

G. GSEC

GSEC expressed its support for the recommendations of the Advisory Board, finding them to be the result of a meaningful, deliberative process. Although the Commission may have the authority to raise the low income portion of the SBC, GSEC urged the Commission to consider the impact the increase would have on customer bills. While noting that efforts to increase funding for the EAP were truly laudable, GSEC indicated that it was particularly sensitive to further increases in customer rates.

GSEC did not support the UES proposal to expand enrollment and serve all eligible customers during the upcoming winter heating season. GSEC had no objection to the granting of the OCA Motion to Postpone.

H. UES

With the exception of the recommendation to lower the eligibility level to 150% of the Federal poverty guidelines, UES supported the Advisory Board recommendations. UES opined that the Commission does have the authority to increase the low income portion of the SBC up to 1.5 mils per kWh and that it could be increased without affecting the current energy

efficiency SBC level. Rather than increase the low income SBC, UES testified that, on an emergency and temporary basis, the EAP ought to operate on a deferral basis. Pointing to the increases in gasoline, heating oil and natural gas prices as well as to the expected increase in electricity prices, UES asserted that these are extraordinary circumstances facing New Hampshire customers and an extraordinary response is needed. Therefore, UES proposed enrolling all customers on the waiting list in the EAP, regardless of funding, and, once certified, enrolling all new applicants as well. UES recognized that the current EAP funding level was not sufficient to support the enrollment level envisioned by its proposal and suggested the answer was to create temporary deferral accounts. In essence, these accounts would reflect loans from the Utilities to the EAP that would be repaid, with interest, at a later date. UES did not offer a definitive answer on the source of funds for the repayment.

UES took no position on the OCA Motion to Postpone.

I. NHEC

NHEC supported the adoption of the Advisory Board recommendations. NHEC stated that, as a matter of law, it did not believe there was any serious question about the Commission's authority to increase the low income portion of the SBC to 1.5 mils per kWh. NHEC noted it was loath to support such an increase, particularly at this time of year, but recognized the real need to address the imbalance between the resource demands being made on the EAP and the available funding. Accordingly, NHEC indicated it would not object to a temporary increase in the low income portion of the SBC to address the circumstances of this winter as long as it was temporary and the Advisory Board recommendations were adopted.

NHEC did not support the UES proposal to expand the EAP enrollment this winter. NHEC took no position on the OCA Motion to Postpone.

J. OCA

The OCA supported the adoption of the Advisory Board recommendations. While indicating that it felt the Order of Notice was inadequate for the purposes of notifying the public of a possible increase in the SBC, the OCA did not object to the taking of comments by the Commission on the issue of raising the SBC. The OCA took no position on the fundamental issue of increasing the SBC, however, in view of its position that the Commission's October 17, 2005 secretarial letter did not afford it adequate time to consult with its Advisory Board on the matter.

The OCA did not support the proposal presented by UES. OCA estimated that, assuming one half of the potential enrollees were to sign up for the program, the total annual funding deficit resulting from UES' proposal would be on the order of \$17-18 million. See Hearing Transcript at 78-79.

K. OEP

OEP supported the adoption of the Advisory Board recommendations but expressed reservations, in light of the potential increase in SBC funding, about the recommendation to lower the eligibility level to 150% of the Federal poverty guidelines. OEP agreed that the Commission has the authority to increase the low income portion of the SBC from 1.2 mils per kWh to 1.5 mils per kWh. OEP expressed concern about an increase, however, if it resulted in taking funds from the energy efficiency portion of the SBC. In light of the increasing energy costs and approaching heating season, OEP expressed concern that changing the income eligibility guidelines would potentially result in the removal from the program of approximately 3,400 households currently receiving benefits as those households would no

longer meet eligibility standards. Expressing a desire for more information regarding the amount of revenue that would be generated by an increase from 1.2 mils per kWh to 1.5 mils per kWh and the rate implications for all customer classes for each utility, OEP concurred with the OCA Motion to Postpone, suggesting it would provide the parties and any other interested stakeholder the opportunity to exchange information and supplement the record.

OEP took no position on the UES proposal to open the program to all customers on the waiting list and all new enrollments.

L. NH Community Action Association

The NH Community Action Association (NHCAA) testified in support of the Advisory Board recommendations. While NHCAA took no position on the Commission's authority to increase the low income portion of the SBC, it did indicate it would be in favor of the Commission doing so, provided such an increase was not at the expense of the energy efficiency programs. NHCAA estimated approximately \$3.25 million would be raised if the low income portion of the SBC were increased to 1.5 mils per kWh. While this amount would not be enough to fund the proposal put forth by UES, NHCAA posited that it might be adequate to address concerns raised about lowering the eligibility level to 150% of the Federal poverty guidelines, thus allowing the eligibility level to remain at 185% of the Federal poverty guidelines.

NHCAA took no position on the OCA Motion to Postpone or on the UES proposal to expand enrollment.

M. SOHO

SOHO testified in support of the Advisory Board recommendations. On the

issue of raising the low income portion of the SBC, SOHO stated that its legal analysis found that the Commission has the legal authority to increase the low income portion of the SBC to 1.5 mils per kWh without further legislative action. While SOHO was generally supportive of increasing the low income portion of the SBC, it did not support reducing the energy efficiency portion of the SBC to fund an increase in the low income portion of the SBC. Rather, SOHO would support a total SBC of 3.3 mils per kWh. SOHO also indicated it believed the low income portion of the SBC could be increased on a temporary basis and suggested 6 months as an appropriate length of time.

SOHO supported the OCA Motion to Postpone, suggesting it would be the prudent course of action and would serve to negate any opportunity to challenge the Commission decision on the grounds of inadequate notice.

SOHO did not support the proposal to expand EAP enrollment presented by UES.

N. Staff

The Commission Staff testified in support of the Advisory Board recommendations. Staff noted that the Commission dealt with a similar question about the adequacy of the notice in the low income gas assistance program docket. While stating that it did not find more specific notice was required, the Commission found in that docket that supplemental notice would be useful. Staff suggested that it might be beneficial in this proceeding to allow the parties additional time to consider the UES proposal that was explained, for the first time, at the hearing.

Staff noted that extensive comment had already been made on the question of the Commission's authority to raise the low income portion of the SBC to 1.5 mils per kWh and that it was satisfied that the analysis was correct and the Commission had the legal authority to do so.

Staff took no position on the UES proposal to expand EAP enrollment, as the proposal had just been presented to the parties that day and additional time was required for consideration of the proposal. Staff noted, however, that at the current estimate of 23,000 customers currently receiving EAP benefits, plus the 4,000 on the waiting list, Staff estimated that UES' proposal would result in an annual funding deficit of approximately \$6-7 million.

IV. PUBLIC COMMENTS

Senator Peter H. Burling, Senate District 5, expressed concern during the hearing about the impact on the residential and commercial and industrial ratepayers in his district, who are already facing significant increases in their electric bills starting November 1, if the Commission were to raise the SBC. He stated that while it is critical to maintain support for a comprehensive low income support system, it should be accomplished without in effect taxing the business ratepayers in his district. He urged that the Commission retain the *status quo* regarding low income bill support and current support for energy efficiency programs. In his view, the decision of where to obtain the necessary funding is a legislative function which the legislature and he are prepared to carry out.

On November 2, 2005, Senator Theodore L. Gatsas, Senate District 16 and President of the New Hampshire Senate, submitted a letter to the Chairman of the Commission requesting that the Commission defer any increase to the SBC pending action of the Legislature. Senator Gatsas stated that the Senate intends to hold a special session to require the energy efficiency portion of the SBC be transferred to the low income portion of the SBC for a period of 6 months in order to assist low income households in New Hampshire.

V. COMMISSION ANALYSIS

Overall, we find that the EAP is a well managed, fiscally sound program.

Moreover, we find that the recommendations submitted by the Advisory Board ensure not only the continued viability of the EAP but also preserve the targeting of benefits in a way that serves those most in need. We therefore approve the Advisory Board's recommendations today with the exception of the recommendation to change the eligibility level to 150% of the Federal poverty guidelines, which is discussed further below.

We noted in a Secretarial Letter issued on October 17, 2005, that “[i]n light of sharply rising energy costs and the pressures that will be placed on low income customers this winter” that we would consider whether to raise the low income portion of the SBC to its statutory limit, which would have the effect of providing assistance to more than 4,000 additional households. However, Senate President Gatsas asked in his November 2, 2005 submittal that the Commission defer action on increasing the low income portion of the SBC inasmuch as the Senate intends to hold a special session to require that funds from the energy efficiency portion of the SBC be transferred to assist low income households. We conclude that deference to “the sense of the Senate that the System Benefits Charge should not be increased at this time” is proper inasmuch as the SBC is, in the first instance, a legislative creation and that any action by the Commission to change the low income SBC presently would be potentially counter-productive and injurious to the program and its beneficiaries.

As for the Advisory Board's recommendation to change the eligibility level from 185% to 150% of the Federal poverty guidelines, it would be advisable to adopt that recommendation if there were no increase in the funds available for the EAP. However, given that the Legislature may make additional funds available, we will defer action on the eligibility

level because lowering the eligibility level and then raising it again a short time later would likely cause a disruption in benefits to numerous customers with incomes between 150% and 185% of the Federal poverty guidelines. The Advisory Board has indicated that there are sufficient funds in the program reserve to meet the obligations of the program currently at the higher income eligibility standard during the transition to a sustainable enrollment level. Therefore, we conclude that consideration of the Advisory Board's recommendation to reduce the eligibility level can be deferred, pending action by the Legislature, without undermining the operation of the EAP.

Finally, with respect to UES's proposal to provide benefits to all eligible customers regardless of the availability of funds and to proceed on a deferred funding basis, we find that however well-intentioned the proposal may be that it could effectively result in a low income SBC in excess of the statutory limit of 1.5 mils per kWh and that it would be contrary to the intent of RSA 374-F by creating new deferred costs. In addition, even if permissible, it would not be advisable to pursue the UES proposal while the Legislature is considering a statutory change to funding the EAP. Accordingly, we reject the proposal.

Based upon the foregoing, it is hereby

ORDERED, that, with the exception of the recommendation to modify the income eligibility level, the recommendations submitted by the EAP Advisory Board are approved; and it is

FURTHER ORDERED, that the amendment to the Advisory Board recommendations relative to interest on deferral accounts is approved; and it is

FURTHER ORDERED, that the OCA Motion to Postpone consideration of an increase to the low income portion of the SBC is granted; and it is

FURTHER ORDERED, that copies of this order be provided to the Governor, the Senate President, the Speaker of the House, and the Chairs of the Senate Committee on Energy and Economic Development and the House Committee on Science, Technology and Energy.

By order of the Public Utilities Commission of New Hampshire this fourth day of November, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary