STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DE 08-120

2009 Core Energy Efficiency Programs

Staff Legal Analysis on the Proposed Use of Systems Benefit Charge Revenues for a Fuel-Blind Pilot Program in Home Energy Solutions

I. Background

In the above captioned docket, Public Service Company of New Hampshire (PSNH) and Unitil Energy Systems, Inc. (UES) propose a fuel-blind home weatherization program in the Home Energy Solutions (HES) portion of the Core energy efficiency programs. PSNH made a filing on December 11,2008 setting forth its legal position on this issue. In addition, at the hearing on December 11, 2008, PSNH introduced the proposed outline for the program as Exhibit 4.

The Home Energy Solutions program is supported by the System Benefits Charge (SBC) paid by all electric utility customers pursuant to RSA 374-F:3 VI under the Electric Utility Restructuring Act. The purpose of the HES program is, or has been until now, to provide basic electric energy efficiency upgrades to customers with a high electric use rate (30 kilowatt hours (kWh) per day) and to customers who heat at least 65 percent of their residence with electric heat. The HES program provides basic services including insulation, weatherization and cost-effective appliance and lighting upgrades.[1] Participating customers receive from the SBC funds an incentive of 75 percent up to $4000 of the installed cost of recommended measure. Participation in the program is not means-tested. In other words, the benefits under this program may be paid to anyone who meets the high electric use or electric heat test regardless of their ability to pay for the benefits.

Both Granite State Electric Company d/b/a National Grid and the New Hampshire Electric Cooperative are proceeding with the offering of HES programs to

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[1] Other than weatherization, all other components of HES are covered by Energy Star lighting and Energy Star appliances under the Core programs.

residential electric-heat customers. However, PSNH and Unitil claim that the HES program is fully subscribed. The two utilities are serving all qualifying customers who are willing to be served. PSNH and Unitil propose to offer the HES program to residential customers who heat their homes with natural gas, propane or oil.

The total HES 2009 program budget is $2,019,389. PSNH stated in Exhibit 4 that it plans to include the costs of the fossil savings measures and associated MMBtu savings as the Planned and Actual benefit/cost ratios. PSNH does not plan to convert the MMBtu savings into kWh savings for the performance incentive calculation.

Also in Exhibit 4, UES said that it will include all project costs, including the cost of fossil fuel savings measures and the associated MMBtu savings in its Planned and Actual benefit/cost ratio. In addition, UES plans to incorporate the MMBtu savings into its Planned Performance Incentive as either a separate MMBtu savings metric or converted to kWh and rolled into the kWh savings metric.

According to the filing made by the utilities for the 2009 Core programs, the benefit/cost ratio associated with the HES program as proposed by utilities, including the fuel blind program proposed by PSNH and UES, is 0.9.

At the December 11th hearing, the Office of Consumer Advocate (OCA) and Commission Staff expressed the opinion that the use of SBC money for non-electric benefits is not allowed by RSA 374-F:3,VI. In addition, OCA and Staff opined that the benefit/cost ratio of 0.9 percent shows that the expansion of the HES program on a fuel-blind basis is not cost effective.

The Chairman directed that interested parties should file legal memorandum with the Commission, by close of business on Wednesday, December 17, as to whether the Commission could or should approve the use of SBC revenue for non-electric benefits.

II. Legal Argument

A. The Legislature Directed the Use of the System Benefits Charge Revenue for Benefits Associated with Electric Service

PSNH argues that the programs funded by the ratepayer SBC need only be related to "energy efficiency" and not electric energy efficiency programs. PSNH claims that the legislature could have specifically restricted the use of energy efficiency measures to electric energy efficiency programs by specifically stating that the SBC was to be used for "electric energy efficiency programs" in RSA 374-F:3,VI.

PSNH ignores the fact that the entire chapter law (RSA 374-F) relates to electric utility restructuring. Interpretation of RSA 374-F:3,VI is not difficult and the statute is not ambiguous.

RSA 374-F:3,VI states as follows:

> VI. BENEFITS FOR ALL CONSUMERS. Restructuring of the electric utility industry should be implemented in a manner that benefits all consumers equitably and does not benefit one customer class to the detriment of another. Costs should not be shifted unfairly among customers. A nonbypassable and competitively neutral system benefits charge applied to the use of the distribution system may be used to fund public benefits related to the provision of electricity. Such benefits, as approved by regulators, may include, but not necessarily be limited to, programs for low-income customers, energy efficiency programs, funding for the electric utility industry's share of commission expenses pursuant to RSA 363-A, support for research and development, and investments in commercialization strategies for new and beneficial technologies. (emphasis added).

The provision undisputedly provides that ratepayer funds raised through the system benefits charge should be used for energy efficiency measures related to the provision of electricity. PSNH claims that the definition of energy efficiency in RSA 374-F somehow changes the clear language in RSA 374-F:3,VI. This claim demonstrates that PSNH is searching for any rational to support its desire to use electric ratepayer funds for weatherization for residents who heat with oil, natural gas, or propane. PSNH's claim fails on the plain language of the statute.

The SBC supported by RSA 374-F:3,VI was not enacted to provide social benefits[2] or energy efficiency benefits generally. The SBC, as stated in the statute, was enacted to "fund public benefits related to the provision of electricity" that are sufficiently beneficial to be funded by limited utility ratepayer charges. Expanding the use of the funds to support non-electric benefit improvements would exceed the statutory authority of the Commission as enacted by the New Hampshire legislature.

Furthermore, the use of the SBC is to benefit the electric service delivery system because energy efficiency results in avoided costs to the distribution and transmission electric system. RSA 374-F:3, the section of the statute containing

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[2] The legislature did recognize the social benefit of funding programs for low income customers. RSA 374-F:3,VI which is discuss later in this memorandum.

the electric utility restructuring principles, refers to "system" in a number of sections as follows:

374-F:3 Restructuring Policy Principles.

I. SYSTEM RELIABILITY. Reliable electricity service must be maintained while ensuring public health, safety, and quality of life.

Clearly, the "system" which must remain reliable is the system which delivers electric service—including the transmission and distribution of electric service.

V. (a) UNIVERSAL SERVICE. Electric service is essential and should be available to all customers. A utility providing distribution services must have an obligation to connect all customers in its service territory to the distribution system. A restructured electric utility industry should provide adequate safeguards to assure universal service. Minimum residential customer service safeguards and protections should be maintained. Programs and mechanisms that enable residential customers with low incomes to manage and afford essential electricity requirements should be included as a part of industry restructuring. (emphasis added)

Again, this reference is to the "distribution" system. This principle includes the social goal of allowing programs and mechanisms that enable low income residential customers to afford essential electric service. The legislature specifically established as a social goal the provision of special assistance to low income residential ratepayers. This subject will be referred to again later in this memorandum.

(c) Default service should be designed to provide a safety net and to assure universal access and system integrity. Default service should be procured through the competitive market and may be administered by independent third parties. Any prudently incurred costs arising from compliance with the renewable portfolio standards of RSA 362-F for default service or purchased power agreements shall be recovered through the default service charge. The allocation of the costs of administering default service should be borne by the customers of default service in a manner approved by the commission. If the commission determines it to be in the public interest, the commission may implement measures to discourage misuse, or long-term use, of default service. Revenues, if any, generated from such measures should be used to defray stranded costs.

VI. BENEFITS FOR ALL CONSUMERS. Restructuring of the electric utility industry should be implemented in a manner that benefits all consumers equitably and does not benefit one customer class to the detriment of another. Costs should not be shifted unfairly among customers. A nonbypassable and competitively neutral system benefits charge applied to the use of the distribution system may be used to fund public benefits related to the provision of electricity. Such benefits, as approved by regulators, may include, but not necessarily be limited to, programs for low-income customers, energy efficiency programs, funding for the electric utility industry's share of commission expenses pursuant to RSA 363-A, support for research and development, and investments in commercialization strategies for new and beneficial technologies. (emphasis added)

The statutory language also states that "costs should not be shifted unfairly among customers." The costs, in this case, are the costs of electricity and the customers are electric customers. What PSNH and UES propose to do is to shift the costs of Core energy efficiency measures from homeowners who heat with natural gas, propane or oil to electric customers. Under the statute such shifting is not permitted. Even within the Core programs, the Commission prohibits cost shifting from one sector to another, based on this very statute. If the SBC, funded by electric ratepayers, is shifted to the extent proposed by UES and PSNH, what are the benefits to the electric system? What are the benefits to the distribution system or the transmission system? Simply stated—few, if any, and not close to the costs borne by the electric ratepayers.

B. The Pact that System Benefits Charge Revenue Produces Non-Electric Benefits is Irrelevant as to the Use of the System Benefits Charge Revenues

According to PSNH, the fact that the SBC produces non-electric benefits somehow justifies the use of system benefit charge revenue to provide a rebate to customers for weatherizing a house heated by gas, propane or oil.

In making this argument, PSNH fails to state that the recognition of non-electric benefits relates not to the use of system benefits charge revenues but to the recognition of benefits in the total resource cost (TRC) test used to measure the cost-effectiveness of a particular program or activity. See Docket No. DR 96-150, Electric Utility Industry Restructuring, Report to the New Hampshire Public Utilities Commission From the New Hampshire Energy Efficiency Working Group (Report) (July 6, 1999). In the Report, the working group agreed "that non-electric resource avoided costs should be included to the extent that they are attributable to an energy efficiency program and can be reasonably quantified based on expected customer savings associated with such resources." Report at 16.

This recommendation had nothing to do with the use of system benefits charge revenues for non-electric benefits. Synapse Energy Economics, Inc., the consultant that prepared the report on avoided energy costs study, uses the TRC test that the electic utilities used in preparing the 2009 Core program filings. In fact, in the settlement agreement, the Settling Parties and Staff agreed that the TRC test used in the 2009 Core program filings is appropriate. For PSNH to claim that the non-electric benefits recognized in the TRC test supports PSNH's desire to subsidize weatherization of oil/natural gas/propane heated homes with SBC revenue completely distorts the use of non-electric benefits in the TRC test.

The SBC is intended to be used for cost-effective electric energy efficiency measures. PSNH's request that the Commission approve its use of system benefits charge money for non-electric (thermal) benefits is asking the Commission to exceed its statutory authority under RSA 374-F.

C. Core Low Income Assistance Programs Have Always Been Exempt from the Benefit/Cost Test and Have Leveraged Money in Other Fuel-Blind Programs for Maximum Benefit

In the Restructuring New Hampshire's Electric Utility Industry: Final Plan (February 28, 1997) (Final Plan), the Commission noted that it had asked parties offering comments and testimony on assistance to low income residential customers to identify programs and mechanisms that enable residential customers with low incomes to manage and afford essential electricity requirements.

Based on the comments received, the Commission authorized the establishment of a low income assistance program to be funded through a system benefits charge. The Commission stated: "Such a program should accomplish three goals: first, to bring electric bills into the range of affordability; second, to encourage conservation and the use of energy efficiency mechanisms to make electric bills manageable; and third, to make the most effective use of limited funding." Final Plan at 95. The Commission established a working group to advise the Commission on the development and implementation of a low income assistance program.

In support of funding this program through a SBC, the Commission found that: "Although there are benefits that accrue to the distribution company in the form of reduced collection costs, reductions in their uncollectible expenses, and perhaps a lower working capital requirement, all of which could have the effect of lowering the distribution company's revenue requirement, thereby lowering distribution rates, there are also societal benefits that accrue in the form of less demand for local property tax revenues to provide crisis or temporary assistance for low income residents." Id. At 96. On that basis, the Commission decided it was appropriate to levy the charge to support low income assistance programs to all customer rate classes.

In the New Hampshire Energy Efficiency Working Group Report, the Working Group specifically recommended that the exception to the benefit/cost ratio requirement of greater than or equal to one should include low income programs. The Working Group stated that with the low income programs, there would be additional, unique benefits that remain un-captured, and that the benefit/cost of educational programs, where the benefits often occur in the future, are also difficult to estimate. The Working Group concluded: "Therefore, for both low-income and educational programs, cost-effective analysis should still be run if feasible and cost-effectiveness remains a concern. But the Working Group recommends that low-income and educational programs that fall below a benefit to cost ratio of 1.0 may still be approved by the Commission if the programs are otherwise well designed." Report at 17. The Commission acknowledged these recommendations and ordered the utilities to file utility-specific plans for the Commission's review. See Order No. 23,574, 85 NH PUC 684 (November 1, 2000).

In Docket No. DE 01-057, *Core Energy Efficiency Programs*, the Commission considered the individual utility plans. With respect to weatherization, the utilities agreed to work with the state's community action agencies to coordinate the delivery of services offered under the Low Income Energy Efficiency Program and the Federal Weatherization Assistance Program for the purpose of maximizing benefits to participants. See Order No. 23,850, 86 NH PUC 804 (November 29, 2001). In their filing, the utilities proposed to participate in the development of a comprehensive plan to implement the coordination and delivery of Core and Weatherization services. Id. At 808.

This coordination was described in testimony filed in Docket No. DE 07-106,2008 *Statewide Core Electric Efficiency Programs.* See Order No. 24,815, December 28,2008. Dana Nute, the Director of Housing Rehabilitation and Energy Conversation for the Community Action Program (CAP) for Belknap and Merrimack Counties, provided testimony on November 27,2007. Mr. Nute testified in relevant part as follows:

> "Each Agency through the Fuel Assistance Program certifies clients for income qualification. During the interview the client is asked if he/she is interested in the Weatherization Program. At this point if the client chooses "yes" then this client goes on the waiting/backlog list. . . .this list is for the Federal Program and not the Core Program, however, a large number of these clients are also on the Electric Assistance Program (EAP) which is

> funded by the System Benefits Charge as is the CORE Program. When a client is eligible for EAP this client is also asked if they are interested in the Home Energy Assistance (HEA). If they reply yes then the client is on the waiting list/backlog list for the CORE Program called the HEA program."

This testimony demonstrates the interrelationship between the Core programs and the Fuel Assistance Program. The interrelationship of this program, which results in weatherization being provided on a fuel-blind basis, leverages Core money to obtain more Federal Fuel Assistance. This uniquely fuel-blind portion of the Core programs is strictly limited to low income to help coordinate assistance as a societal goal and to maximize the ability of the state to leverage Federal monies. The merits of the low income programs should not be used to argue for subsidies for residents in income classes who can afford weatherization without help from other electric ratepayers.

D. The Mere Need for a Weatherization of Oil/Natural Gas/Propane Heated Homes Does Not Qualify it For Funding from the System Benefits Charge.

PSNH claims that there is a need for a fuel blind weatherization program. In support of this contention, PSNH refers to emergency legislation passed in special session that recognizes the need for enhanced weatherization to income-eligible New Hampshire citizens. 2008 Laws 392:I,1.

The mere need for expanded weatherization of homes in New Hampshire does not qualify these homes for service under the electric ratepayer funded system benefits charge. At hearing on December 11,2008, PSNH claimed that there are about 600,000 homes in New Hampshire that need weatherization. While the accuracy of this information is subject to check, as previously stated, the Core energy programs are not designed to address every social problem in the state of New Hampshire that arises because of the cost of energy. In fact, the Legislature has created a fuel-blind energy efficiency fund that can be used for PSNH's and UES' proposal. That fund is the Regional Greenhouse Gas Emissions Fund established by RSA 125-O:23.

RSA 125-0:19-28 enables New Hampshire's participation in the Regional Greenhouse Gas program which requires electric utilities that emit carbon dioxide to purchase allowances at auction, one megawatt hour per allowance, proportionate to the emissions. The funds obtained through the auction are to be placed in the

Greenhouse Gas Emissions Reduction Fund. RSA 125-O:23, which governs the Fund, states:

> III. Fund moneys shall be used to support energy efficiency, conservation, and demand response programs to reduce greenhouse gas emissions generated within the state, which may include programs proposed and administered by private entities, as well as by the department, the commission, and other state and local governmental agencies. Such programs may include, but not be limited to, improving the electrical <u>and thermal</u> energy efficiency of New Hampshire's residential housing and commercial building stock via <u>weatherization,</u> energy auditing, energy efficiency related work force training and development, revolving loan funds for efficiency related investment, related industrial process and control systems, integration of passive solar heating and ventilation systems, and efforts to increase adherence to energy related building and electrical codes. These funds shall not be transferred or used for any other purpose.(emphasis added)

In establishing this fund, the Legislature recognized that there was need for funding energy efficiency measures outside of the Core energy efficiency programs. The Greenhouse Gas Emissions Reduction Fund can clearly be used for any electrical <u>and thermal</u> energy efficiency measures. As established by the Legislature, the purposes for which these funds may be used are broad, expansive and neutral as to fuel and to participants. Because the goal of reducing greenhouse gas emissions is beneficial to society at large, the Greenhouse Gas Emissions Reduction Fund provides a societal benefit that is constrained neither by fuel nor by the beneficiaries' income. PSNH and UES' fuel blind program can be funded with monies from the Greenhouse Gas Emissions Reduction Fund without conflict with the statute.

While some parties have expressed concern that the Greenhouse Gas Emissions Reduction Fund should not be used to support Core energy efficiency programs, a similar argument can be made that the funds raised from electric ratepayers through the system benefits charge should not be used to fund programs that can and should be supported by the Greenhouse Gas Emissions Reduction Fund.

Finally, PSNH's claim that a pilot project funded by the system benefits charge revenue will provide experience in running such a program from utilizing future funding sources such as the Greenhouse Gas Emissions Reduction Fund is no reason for exceeding the statutory limits on the use of the funds pursuant to RSA 374-F:3,VI and X.

E. PSNH and UES' Proposal are not Cost-Effective

RSA 374-F:3,X states that "Utility sponsored energy efficiency programs should target cost-effective opportunities that may otherwise be lost due to market barriers." (emphasis added.) PSNH and UES have indicated that the benefit/cost ratio associated with the use of the system benefits charge to subsidize the weatherization of oil/natural gas/propane heated homes is 0.9. By their own measurement, which includes the lifetime savings of kWhs and MMBtus, the pilot program is not cost-effective.

In Order No. 22,875 (March 20, 1998), the Commission stated that "the most appropriate policy [regarding energy efficiency] 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 [restructuring] plan must address. . . . [T]here 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.' " 83 NH PUC 126, 163 (1998).

As directed in Order No. 22,875, a working group was formed to propose recommendations on energy efficiency. In its final report, the working group agreed that "all programs including new market transformation initiatives should be screened using this new cost-effectiveness test, and that programs are expected to surpass a 1.0 benefit/cost ratio.)" Order No. 23,573, 85 NH PUC 676 at 688 (November 1,2000). By Order No. 23,573, the Commission accepted the cost-effectiveness test as proposed in the report.

The principle of cost-effectiveness remains unchanged in the statute and as a standard for review of the Core programs. By statute, the Commission may not allow the use of electric ratepayer money collected through the system benefits charge to be used for programs that are not cost-effective. The Core programs are not a social program intended to solve the problem of all the housing stock envelope deficiencies in New Hampshire. As noted above, the Legislature has created a fund—the Greenhouse Gas Emissions Reduction Fund—which does not have a statutory requirement that funded programs be cost-effective.

[3] By way of information, the working group also recommended that "Both low-income programs and educational programs could still be approved by the Commission even if they do not surpass a 1.0 benefit/cost ratio given their additional hard-to-quantify benefits." 85 NH PUC 676 at 688 (November 1, 2000).

III. Conclusion

The Commission should deny the use of funds from the systems benefit charge for PSNH and UES' proposed pilot because such use is not only inconsistent with the legislated purpose of system benefits charge revenue, such use is not cost-effective. The Commission should direct PSNH and UES to report back to the Commission with a proposal to use the $2 million designated for the pilot program for an appropriate, cost-effective purpose permitted by RSA 374-F and the Core energy efficiency programs, or to allocate the money to National Grid and the New Hampshire Cooperative for their HES initiatives.

Respectfully Submitted

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