

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 10-188**

**ELECTRIC AND GAS UTILITIES**

**2011-2012 CORE Electric Energy Efficiency and Gas Energy Efficiency Programs**

**Order Approving Settlement Agreement**

**ORDER NO. 25,189**

**December 30, 2010**

**APPEARANCES:** McLane, Graf, Raulerson & Middleton, P.A. by Sarah B. Knowlton, Esq. for Granite State Electric Company d/b/a/ National Grid and EnergyNorth Natural Gas, Inc. d/b/a National Grid NH; Mark W. Dean, Esq. for New Hampshire Electric Cooperative; Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Orr & Reno, P.A. by Rachel Aslin Goldwasser, Esq. for Unitil Energy Systems, Inc. and Northern Utilities, Inc. d/b/a Unitil; New Hampshire Legal Assistance by Alan Linder, Esq. for The Way Home; New Hampshire Community Action Association on behalf of the New Hampshire Community Action Agencies by Dana Nute; New Hampshire Office of Energy and Planning by Eric Steltzer; Home Builders and Remodelers Association of New Hampshire by Elizabeth Fischer; Conservation Law Foundation by N. Jonathan Peress, Esq.; R. Jeremy Hill, *pro se*; Office of the Consumer Advocate on behalf of residential ratepayers by Meredith A. Hatfield, Esq.; and Suzanne G. Amidon, Esq. and Marcia A. B. Thunberg, Esq. for Staff of the New Hampshire Public Utilities Commission.

**I. PROCEDURAL HISTORY**

On August 3, 2010, Granite State Electric Company, d/b/a National Grid (National Grid) New Hampshire Electric Cooperative, Inc. (NHEC), Public Service Company of New Hampshire (PSNH) and Unitil Energy Systems, Inc. (UES) (collectively, Electric Utilities) and EnergyNorth Natural Gas, Inc. d/b/a National Grid NH (National Grid NH) and Northern Utilities, Inc. d/b/a Unitil (Northern) (collectively, Gas Utilities) made a joint filing of 2011-2012 CORE Electric Energy Efficiency and Gas Energy Efficiency programs. The CORE energy efficiency programs are funded by the system benefits charge (SBC) paid by electric utility customers and authorized by RSA 374-F:3, VI and certain forward capacity market (FCM) proceeds generated by the

Independent System Operator-New England (ISO-NE) FCM auctions. The gas utility energy efficiency programs are funded through the Local Distribution Adjustment Charge (LDAC). Consistent with Order No. 25,062 (January 5, 2010) in Docket No. DE 09-170, regarding the 2010 CORE electric efficiency filing, the Electric and Gas Utilities proposed for the first time a coordinated two-year energy efficiency program for 2011 and 2012.

On August 5, 2010, the Office of the Consumer Advocate filed a letter notifying the Commission of its participation in this docket on behalf of residential ratepayers pursuant to RSA 363:28. The Office of Energy and Planning (OEP) filed a petition to intervene on August 11, 2010. The Commission issued an Order of Notice on August 12, 2010, and scheduled a prehearing conference and technical session for August 31, 2010.

On August 20, 2010, the New Hampshire Community Action Association (CAA) filed a petition to intervene. On August 26, 2010, The Way Home, Daniel Ramage and R. Jeremy Hill, US Energy Savers LLC (USES), and Conservation Law Foundation (CLF) filed petitions to intervene. The Home Builders and Remodelers Association of New Hampshire (Home Builders) filed a petition to intervene on August 30, 2010. The Electric Utilities filed a joint objection to the petitions to intervene of USES and Messrs. Ramage and Hill on August 31, 2010.

On September 2, 2010, Staff, on behalf of the parties, filed a proposed procedural schedule. The New Hampshire Energy Trust (Trust) filed a proposal on September 10, 2010 seeking to administer both the gas and electric energy efficiency programs. The Trust filed a corrected proposal on September 13, 2010 and on September 16, 2010. Also on September 16, the Trust filed a petition to substitute the intervention of Messrs. Ramage and Hill with the intervention of the Trust. On September 17, 2010, the New Hampshire Housing Finance Authority filed a petition to intervene.

National Grid, NHEC, PSNH, UES, Northern, and National Grid NH filed an objection to the Trust's petition to substitute the Trust for the interventions of Messrs. Hill and Ramage on September 20, 2010. The joint objection also stated that the Trust proposal should be dismissed because it related to matters outside the scope of the docket. Also on September 20, 2010, the New Hampshire Department of Environmental Services filed a motion to intervene.

On September 22, 2010, PSNH filed a letter reserving the right to serve data requests upon NHET and to Messrs. Ramage and Hill to the extent NHET's proposal suggested changes to the 2011-2012 CORE Electric Energy Efficiency and Gas Energy Efficiency program filing.

On September 27, 2010, the Commission issued a secretarial letter approving the proposed procedural schedule, stating that the Trust proposal to assume administration of the energy efficiency programs was beyond the scope of the docket and denying the Trust's motion to intervene. The Commission granted intervention to Daniel Ramage, Jeremy Hill, the Home Builders, USES, CLF, The Way Home, CAA, and OEP. The Commission deferred ruling on the late-filed petitions of the Housing Finance Authority and Department of Environmental Services to allow an opportunity for parties to comment on those petitions.

Staff and the parties conducted discovery pursuant to the approved procedural schedule and met in technical and settlement sessions.

On October 15, 2010, Staff filed the joint testimony of James J. Cunningham, Jr. and Al-Azad Iqbal and OCA filed the testimony of Stephen R. Eckberg. Mr. Hill, *pro se*, and Eric Steltzer for the OEP also filed testimony on October 15.

On November 15, 2010, the following rebuttal testimony was filed by: Carol Woods for NHEC; Angela Li, Brian Kearney, and Thomas Palma on behalf of the Gas Utilities; Angela Li, Carol Woods, Thomas R. Belair, and Thomas Palma on behalf of the Electric Utilities; and

Messrs. Cunningham and Iqbal for Staff. The Gas Utilities filed corrected testimony on November 19, 2010.

On December 13, 2010, Tom Frantz and Jack Ruderman, Staff members of the “SB323 Study Coordination Team” filed a letter with a proposal for funding the evaluation of N.H. energy efficiency programs as mandated by 2010 N.H. Laws Ch. 335 (SB 323). Messrs. Frantz and Ruderman recommended that the Commission invoice the CORE Gas and Electric Energy Efficiency Program administrators for 80% of the SB 323 study costs and authorize the administrators to recover these costs through their energy efficiency monitoring and evaluation budgets for 2010 and 2011.

The OCA filed a settlement agreement executed by the OCA, Staff, the Electric and Gas Utilities and other parties on December 15, 2010. Also on December 15, National Grid NH filed a motion for protective treatment regarding a discovery request from the OCA (OCA Set 2-1) which requested information regarding a contract between National Grid NH and Conservation Services Group.

The hearing was held on December 16, 2010 as scheduled. At hearing, the Commission made several record requests of Staff and the Electric and Gas Utilities. On December 20, 2010, National Grid filed its response to a record request reserved as Exhibits 17 (corrected with a filing on December 22, 2010) and 18. Also on December 20, the OEP filed a response to a record request reserved as Exhibit 21. On December 22, 2010, Staff filed the response to a record request reserved as Exhibit 16 and UES filed responses to record requests reserved as Exhibits 17 through 19. PSNH filed responses to record requests reserved as Exhibits 17 through 20 on December 23, and the NHEC filed its version of Exhibits 17 and 18 on the same day. National Grid filed its version of Exhibit 19 on December 27, 2010.

## **II. INITIAL FILINGS**

### **A. Electric CORE Energy Efficiency Programs**

The Electric Utilities programs are known as the CORE Programs and are funded by the SBC as well as by FCM payments administered by the ISO-NE. The Electric Utilities proposed that the CORE Program Management Team, comprising representatives from each electric utility, with one member specifically designated as liaison with Staff, continue to oversee CORE program activities and quarterly reporting, and resolve issues that arise by consensus.

In their section of the filing, the Electric Utilities requested approval to continue the following CORE residential program offerings in 2011 and 2012: 1) EnergyStar® Homes program; 2) the fuel-neutral NH Home Performance with EnergyStar® program (HPwES) implemented by PSNH and UES; 3) EnergyStar® Lighting program; and 4) EnergyStar® Appliance program. In addition, the Electric Utilities proposed to fund the low-income weatherization program, known as Home Energy Assistance (HEA), at 14.5% and 15% of total SBC budgets for 2011 for 2012, respectively.

For Commercial and Industrial (C&I) customers, the Electric Utilities requested authority to continue the New Equipment and Construction program, the Large C & I Retrofit program, the Small Business Energy Solutions program and educational programs targeted to C&I customers.

The Electric Utilities also requested authority to offer company-specific electric energy efficiency programs. NHEC and PSNH proposed to offer the Smart Start program for 2011 and 2012. NHEC said it planned to continue offering its High Efficiency Heat Pump program for 2011 and 2012. PSNH asked for authority to provide services under the EnergyStar® Homes Program Enhancement (Geothermal and Air Source Heat Pump) Option (a program that has a

number of goals related to heat pump technologies, including the determination of the cost effectiveness of various technologies including air source and geothermal heat pumps), an Education Enhancement for C&I Customer Partnership program, and a C&I Request for Proposals (RFP) Program for Competitive and Economic Development. UES requested approval to continue its Energy Efficiency On-Line Tools program. All Electric Utilities proposed program goals and measurements to evaluate the savings in each of the programs.

The Electric Utilities requested that the Commission approve the continuation of the budget adjustment guidelines currently in place, which preclude significant shift of funds between the residential and commercial sectors without Commission approval. Pursuant to this policy, budget transfers between individual programs within a customer sector of up to 20 percent of the individual program's budget may be made without Commission approval provided that Staff and interested parties are notified. In addition, budget transfers between individual programs within a single customer sector of greater than 20 percent of the individual program's budget must be filed with the Commission. Staff and interested parties may file comments with the Commission within two weeks of the Utilities' filing. If no action has been taken by Staff and interested parties, the budget transfer requests shall be deemed approved unless the Commission, within 30 days of the filing, notifies the company of the need for a more in-depth review.

#### **B. Gas Energy Efficiency Programs**

The Gas Utilities said that they would continue their energy efficiency program offerings for 2011 and 2012, with a few changes from their last Commission-approved programs. The Gas Utilities proposed the following residential programs: 1) Residential High-Efficiency Heating; 2) Water Heating and Controls program; 3) Home Performance with EnergyStar® program; and 4)

Income-Eligible program. National Grid NH said it would also offer a New Home Construction with EnergyStar® program, Energy Audit with Home Performance, and a Residential Building Practices and Demonstration Program. UES requested approval to offer an Energy Efficiency On-Line Tools program.

For C&I customers, the Gas Utilities proposed the following programs: 1) New Equipment and Construction program; 2) Large C&I Retrofit program; and 3) Small Business Energy Solutions program. The first two programs contain both prescriptive and custom retrofit measures. The Small Business program is a new program targeted at gas customers with annual gas consumption up to 40,000 therms. UES requested approval to offer a Multi-Family Retrofit program. The Gas Utilities also proposed to offer the following outreach and communication programs: 1) Energy Efficiency Communication and Education; 2) Trade Ally Training and Codes & Standards Program; and 3) Building Operators Certification program.

The Gas Utilities proposed to expand the low income program to serve individually metered gas multifamily facilities. The proposed budgets were increased to account for such individually metered low income multifamily facilities. The low income program budgets were increased to accommodate the expiration of other funding sources.

The Gas Utilities proposed energy efficiency budgets using the same budget categories as the Electric Utilities to allow for comparability between planning and reporting. In addition, the Gas Utilities said that they will adopt the presentation of the performance-based shareholder incentive mechanism in the same manner as presented by the Electric Utilities.

### **III. SETTLEMENT AGREEMENT**

The Electric and Gas Utilities, OEP, CAA, The Way Home, the OCA (the Settling Parties) and Staff presented a Settlement Agreement with the following key provisions:<sup>1</sup>

#### **A. Quarterly Meetings and Reports**

The CORE Management Team will meet quarterly in 2011 and 2012, instead of monthly as has been the practice in 2010, to review the implementation of the Electric and Gas Energy Efficiency programs and related issues consistent with the past practice in the CORE energy efficiency programs. The CORE Management Team will establish an agenda at the end of each meeting for the next quarterly meeting. Particular items of interest for the 2011 quarterly meetings include 1) the quarterly reports; 2) marketing, education, and outreach; and 3) monitoring and evaluation. Any party to this docket may introduce other issues at the quarterly meetings provided that the issues relate to the 2011-2012 Electric and Gas energy efficiency programs. Working groups will seek consensus on how to deal with program issues that arise during the Quarterly Meetings.

As has been the practice with the CORE electric energy efficiency programs, the Electric and Gas Utilities will file quarterly reports no later than 60 days after the end of the quarter. The quarterly reports shall include: 1) a summary of the highlights of the 2011-2012 CORE Electric Energy Efficiency and Gas Energy Efficiency programs, including program expenses, participation, and lifetime kWh and MMBtu savings; 2) details of the electric and gas program budgets, showing the expenses by activity and by customer sector; 3) a summary of the electric and gas utility highlights of the HEA program; 4) an electric-related FCM report; 5) monitoring

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<sup>1</sup> The letter headings in this section do not correspond to the letter headings in the Settlement Agreement because some of the Settlement Agreement sections of the Settlement Agreement have been condensed. Further, at hearing a number of minor edits were noted, correcting typographical errors in the Settlement Agreement.



and evaluation reports prepared by Staff and the Electric and Gas Utilities; and 6) details on program marketing.

The marketing report will provide: 1) the total amount budgeted for each marketing program, 2) the amount spent to the date of the report, and 3) a description of what funds remain available for marketing. The quarterly meetings will be an opportunity to review marketing expenditures as necessary. If the reports indicate that marketing funds are not being expended as budgeted, the CORE Management Team or the Settling Parties and Staff can propose devoting such unexpended funds to support the 2011-2012 Electric or Gas energy efficiency programs, depending on whether the excess marketing funds come from the electric or gas energy efficiency program.

On June 1 of each year, PSNH will provide a calculation of set-aside money available under RSA 125-O, pursuant to a settlement approved by the Commission by secretarial letter dated November 4, 2010.

#### **B. Performance Incentive for Gas and Electric Programs for 2011-2012**

The Electric and Gas Utilities will calculate the performance incentive relating to the 2011-2012 CORE Electric Energy Efficiency and Gas Energy Efficiency programs by using actual expenditures rather than budgeted expenditures, up to a maximum of 5% of the total approved by the Commission for each utility's residential and C&I sectors, including the performance incentive, for each year. A utility may apply for permission to exceed the 5% cap provided that it can demonstrate good reasons why the cap should be exceeded for that program year.

That the Electric and Gas Utilities will prepare annual performance incentive filings consistent with the method approved for use by the Electric Utilities in Docket No. DE 09-170

(the proceeding for the 2010 CORE program years) and will strive to complete their prior year performance incentive filings by June 1 of the subsequent year. The annual performance incentive filing will include end-of-year reconciliation in their performance incentive filings to document and identify any carry forward balance.

### **C. Commission Financial Audits**

The Commission Audit Staff will conduct an annual financial audit of the Electric and Gas energy efficiency programs.

### **D. Monitoring and Evaluation**

#### **1. Electric Energy Efficiency Programs**

The Staff will provide quarterly reports on the status of monitoring and evaluation (M&E) activities involving the Electric energy efficiency programs. The report will be filed with the Commission 60 days after the close of the relevant quarter. The M&E reports will include the total amount budgeted for each M&E program, the amount spent to the date of the report, and a description of what funds remain available for M&E. The CORE Management Team will review the M&E reports in the quarterly meetings and if the CORE Management Team finds that that M&E funds are not being expended as anticipated by the budget, the CORE Management Team may propose allocating such unencumbered funds to support the CORE programs.

Staff will ensure that on a prospective basis all M&E reports are available on the Commission's website and will notify the parties in this docket as to how those reports can be accessed. Attachment C to the Settlement Agreement outlined the CORE M&E activities anticipated for 2011.

The Settling Parties and Staff are aware that a proposal was filed with the Commission recommending that unspent 2010 M&E funds be utilized for a study of the state's energy

efficiency and sustainable energy programs pursuant to SB 323. While the Settling Parties and Staff did not take a position on the recommendation, they agreed that the legislatively-required study will provide important information about the CORE and gas efficiency programs, and that the Gas and Electric Utilities will cooperate with the consultants selected for the study.

## **2. M&E by Gas Utilities**

The Gas Utilities will file quarterly reports no later than 60 days following the end of the relevant quarter on the status of M&E activities and this report will provide the total amount budgeted for each M&E program, the amount spent to the date of the report, and a description of what funds remain available for M&E. The report will also be provided to the Staff and Settling Parties. If the reports indicate that the M&E funds are not being spent as budgeted, the CORE Management Team may recommend that any unencumbered funds be used to support the Gas energy efficiency programs. As with the Electric M&E reports, Staff will ensure that all M&E reports on a prospective basis be made available on the Commission's website with notice to the Settling Parties on how to access the reports.

### **E. Energy Efficiency for Low Income Customers**

The Electric Utilities will allocate 14.5% of overall CORE program budgeted amounts to the Home Energy Assistance (HEA) program for program year 2011 and 15% for program year 2012, and the Gas Utilities will allocate \$840,895 to the low income program for 2011 and \$903,062 for 2012. The low income program budgets and expenditures will be reviewed in the quarterly meetings. To provide uniformity in the calculation of costs and benefits in the HEA program, PSNH will discontinue its practice of including all non-SBC costs and energy savings in its calculation of the benefit/cost ratio for this program.

### **F. Program Savings Calculation**

The calculation of program savings in the Electric and Gas energy efficiency August 2, 2010 filing for 2011 is appropriate. The calculation of the projected savings for the 2012 program year will be updated and filed by September 30, 2011 and will be supported by additional information including historical kilowatt-hour saving trends, measure life, measure mix; energy codes, and other factors which may impact projected savings such as an updated avoided energy and capacity costs study for the New England region. Attachment D to the Settlement Agreement provides the form to be used by the Electric and Gas Utilities in preparing the updated savings calculation.

#### **G. On-Bill Financing**

On-bill financing is an important tool for the successful implementation of the Electric Utilities' energy efficiency programs and should be expanded to the extent consistent with State law.

#### **H. Contractor Recruitment**

By the end of the first quarter of 2011, the Electric and Gas Utilities will issue a public solicitation of interest to assess the interest that contractors may have to participate as qualified contractors to deliver the HPwES program. The Utilities will report on the level of interest received in response to the public solicitation.

Depending on the response to the public solicitation, the Electric and Gas Utilities may issue RFPs to add qualified contractors to the list of approved contractors to deliver the energy efficiency programs. Further, the Electric and Gas Utilities will modify their websites by the end of the first quarter of 2011 to allow interested parties to inform the utilities of their interest in receiving the most recent solicitation of interest. This process will provide a model for future

solicitations of interest, qualifying of contractors, and an RFP process for other large programs such as the Small Business Energy Solutions Program.

### **I. 2012 Program Year**

Program improvements for the 2012 program plan should be discussed at the quarterly meetings during 2011 and that any proposed program changes shall be filed with the Commission no later than September 30, 2011.

### **J. Marketing Plan**

The Electric and Gas Utilities will file a marketing plan for 2011 with input from the Parties and Staff, including a detailed budget, no later than January 30, 2011. The Electric and Gas Utilities will file a similar plan for 2012 no later than October 31, 2011.

### **K. Utility-Specific Issues**

#### **1. NHEC Load Management Program**

NHEC will continue to operate its existing Load Management Program outside of the SBC-funded CORE programs. This program would not be subject to Commission review and approval. In the event NHEC proposes SBC funding for future programs, it will make such proposals through a CORE docket and seek Commission approval. NHEC will include in its quarterly reports updates concerning the existing Load Management Program.

#### **2. Home Performance with Energy Star®**

PSNH and UES should continue implementation of the fuel-neutral pilot program under the New Hampshire Home Performance with EnergyStar® Program (HPwES), consistent with Order No. 24,974. In 2011 PSNH and UES will cap rebates for all HPwES programs at 50% of the project expenditures (instead of 75%, which has been in effect for 2010), or \$4,000, whichever is less. For 2011, PSNH can serve up to 716 homes and UES can serve up to 100

homes in the HPwES fuel neutral pilot program. PSNH and UES continue to earn a performance incentive for electric savings in HPwES.

UES and PSNH will continue to use the Home Heating Index to screen eligible customers and will continue to serve electrically heated homes. In the event more customers seek to participate in the program than are set forth in the proposed levels, PSNH and UES will maintain a waiting list and may petition the Commission for approval to serve additional customers. PSNH and UES will complete the evaluation of the HPwES pilot program by June 1, 2011 and file the evaluation in the instant docket which will include, at a minimum, a review of the following aspects of the HPwES program: cost effectiveness; energy savings; impacts on contractors and the market; program design, market transformation effects; and recommendations on how the program could be improved. Finally, if PSNH and UES decide to continue the HPwES pilot program or a full fuel-blind program for 2012, they will seek Commission approval no later than September 1, 2011.

### **3. Northern Utilities Inc.**

Northern is not offering the EnergyStar® Home program for the 2011 program year. In 2011, Northern will reconsider this decision for the 2012 program year.

## **IV. POSITIONS OF THE PARTIES**

### **A. US Energy Savers, LLC**

USES did not sign the Settlement Agreement and did not appear at the hearing.

### **B. Conservation Law Foundation**

CLF did not sign the Settlement Agreement but stated at the hearing that it did not have any issues with the Settlement Agreement.

### **C. Daniel Ramage**

Mr. Ramage did not sign the Settlement Agreement and did not appear at the hearing.

**D. Department of Environmental Services**

The Department of Environmental Services did not sign the Settlement Agreement and did not appear at the hearing.

**E. New Hampshire Housing Finance Authority**

The New Hampshire Housing Finance Authority did not sign the Settlement Agreement and did not appear at the hearing.

**F. Jeremy Hill**

Mr. Hill stated that he did not support the Settlement Agreement. He expressed concern about the limited opportunities provided by the utilities to qualified contractors who are interested in providing services funded through in the CORE energy efficiency program. Mr. Hill explained that he was a Building Performance Institute (BPI) certified professional but that the Electric Utilities only offered a limited window of time, on an annual basis, for qualified professionals to be included on the list of eligible contractors. By comparison, Mr. Hill said that Maine did not restrict shows of interest to once a year but offered qualified auditors and installers the opportunity to enroll and participate in the program at any time. He further expressed concern that the extent of the incentive offered by the utilities, at 75% of the cost of measures up to \$4,000, combined with the limited ability of customers to choose their own contactor, was hindering the development of the market for energy assessments and weatherization in New Hampshire. Mr. Hill expressed concern about the two-year duration of programs under the Settlement Agreement and its effect of foreclosing eligible installers from work with the utilities and called for an open and continuous enrollment process for qualified contractors.

**G. Home Builders and Remodelers Association of New Hampshire**

The Home Builders did not sign the Settlement Agreement but expressed support for on-bill financing of energy efficiency improvements and also supported a more open process by which the Electric and Gas Utilities seek contractors to install energy efficiency measures such as the open and continuous enrollment approach for qualified contractors advocated by Mr. Hill. Otherwise the Home Builders concluded by stating that it did not have any issues with the Settlement Agreement.

**H. Electric and Gas Utilities, OEP, CAA, The Way Home, OCA and Staff**

National Grid, NHEC, PSNH, UES, Northern, National Grid NH, the OCA, the CAA, OEP, The Way Home and Commission Staff agreed to the Settlement Agreement presented to the Commission at the December 16, 2010 hearing. They requested that the Commission approve the filing by the Electric Utilities and Gas Utilities for the respective 2011-2012 energy efficiency programs as modified by the Settlement Agreement.

Commissioner Below inquired about the proposed \$50 incentive for Energy Star® storage water heaters with a .62 energy factor (EF) or greater as shown on page 24 of gas section of Exhibit 2 and asked whether the Gas Utilities were aware that most recent EnergyStar® standard for storage water heaters required a minimum EF rating of 0.67 instead of 0.62. The Gas Utilities responded that they planned to offer a \$100 rebate for units that meet the new EnergyStar® standard, that the issue had been addressed in a data request, and that they may want to continue offering the lower incentive for units with an EF between .62 and .67, but were amenable to limiting the incentive to only EnergyStar® rated storage water heaters. The OEP stated that one of its data requests had addressed some of these issues and filed Exhibit 21, containing the response to OEP Set 1-2 Gas following the hearing.



Commissioner Below further inquired of the Gas Utilities whether they had considered an additional incentive for higher efficiency gas condensing storage water heaters with an EF rating of .80 or greater (for units with less than 75 MBH output) as they emerged into the marketplace, noting the positive benefit-to-cost ratio identified for this measure in the *Additional Opportunities for Energy Efficiency in New Hampshire Final Report – January 2009*, prepared by GDS Associates, Inc. for the Commission. The Gas Utilities responded that they had not been planning to offer an additional incentive for these higher efficiency condensing storage water heaters, but were amenable to doing so.

Commissioner Below also asked whether the Electric Utilities had considered offering an incentive or demonstration program for electric heat pump hot water heaters as a potentially more efficient alternative to conventional electric resistance hot water heaters and the Utilities responded that they could investigate that issue in the 2011 year.

With regard to various home energy assessment or audit programs, Commissioner Below asked the Gas and Electric Utilities whether they typically included blower door testing and thermal imaging in their programs. The Utilities generally responded that blower door testing was typically done if air sealing was indicated as a likely measure, but that while thermal imaging was not typically included in the utility funded audits or assessments, customers could typically pay extra for this service from the same contractor at same time as they might be conducting the utility sponsored audit.

Finally, Commissioner Below asked whether the Electric Utilities had considered participating with the Electric Power Research Institute (EPRI) in its program to evaluate emerging high potential energy efficiency measures in New Hampshire, where EPRI might provide the instrumentation, data collection and analysis for certain new products that utilities

may want to demonstrate and evaluate for larger scale energy efficiency programs, such as outdoor LED lighting, air source heat pumps for space conditioning, and heat pump hot water heaters. The Electric Utilities responded that they were not aware of that possibility, but would be interested in exploring it.

## **V. COMMISSION ANALYSIS**

### **A. Motion for Confidential Treatment**

The Right-to-Know Law provides each citizen with the right to inspect public information in the possession of the Commission. RSA 91-A:4, I. RSA 91-A:5, IV exempts from public disclosure any records that constitute confidential, commercial, or financial information. As set forth in *Lambert v. Belknap County Convention*, 157 N.H. 375 (2008), building on *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005), we apply a three-step analysis to determine whether information should be protected from public disclosure pursuant to the Right-to-Know law. *See, e.g., Unutil Corporation and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) and *Public Service Co. of New Hampshire*, Order No. 25,037 (October 30, 2009).

The first step is to determine if there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the analysis is complete and the Right-to-Know law requires disclosure. If a privacy interest is at stake, the second step is to determine if there is a public interest in disclosure. Disclosure that informs the public of the conduct and activities of its government is in the public interest; otherwise disclosure is not warranted. If there is a public interest in disclosure, the third step requires a balancing between the public interest in disclosure and the privacy interest.

In furtherance of the Right-to-Know law, the Commission's administrative rule, N.H. Code Admin. Rule Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. Puc 203.08 (b).

National Grid NH filed a motion to protect the confidentiality of certain provisions of a Services Level Agreement between National Grid NH and Conservation Services Group, Inc. as well as certain details in the attachments to the agreement. National Grid NH produced this document in response to discovery request OCA 2-1. In its motion, National Grid NH asserts that the information requested contains terms, conditions, and price schedules and responses to requests for proposals that constitute confidential information and contractual terms and conditions. National Grid NH states that it considers this information to be confidential, commercial and financial information and that it does not disclose the information to the public. National Grid NH asserts that there is a significant privacy issue at state with respect to the redacted contract terms because the confidential information contains competitive energy efficiency labor and materials pricing and contract terms that are commercially sensitive, disclosure of which could be harmful to the competitive position of Conservation Services Group, Inc. National Grid NH also asserts that disclosure of the information could chill the willingness of Conservation Services Group, Inc. to participate in providing energy efficiency services in New Hampshire in the future and could harm its competitive position in obtaining these and similar services in the future, which could ultimately harm customers.

We have reviewed the information *in camera* and have determined that the redacted terms contained in the Services Level Agreement between National Grid NH and Conservation Services Group, Inc. and attachments is confidential commercial or financial.

We next determine whether there is a public interest in disclosure of this information. Because disclosure is warranted only if there is a public interest related to the conduct of government, we consider whether making this information public would shed light on the Commission's review of National Grid NH's energy efficiency program. The programs subject to review in this docket concern utility-sponsored energy efficiency programs for residential and commercial customers. Budgets for individual program costs and savings have been publicly provided to establish the cost-effectiveness of these programs. The information sought to be protected concerns terms between a utility and a subcontractor. We do not find that the information sought to be protected from disclosure significantly enlightens the public about our determination of whether the proposed energy efficiency programs achieve the specific goals of RSA Chapter 374-F articulated below and whether they should be approved.

Lastly, in balancing the public interest in disclosure against the governmental interest in nondisclosure and the privacy interest in nondisclosure, we agree that the harm of public disclosure of the competitive energy efficiency labor and materials pricing and commercially sensitive contract terms outweighs the benefits of disclosure. Because we conclude that the information is exempt from public disclosure under the Right-to-Know law, we grant the motion for confidential treatment concerning the redacted details of the Services Level Agreement between National Grid NH and Conservation Services Group, Inc. as well as the redacted information in the attachments to the agreement.

## **B. Settlement Agreement**

## 1. CORE Electric and Gas Energy Efficiency Programs for 2011-2012

Since 2001, the Commission has approved ratepayer-funded energy efficiency programs for Electric Utilities and Gas Utilities.<sup>2</sup> This is the first year in which the electric and gas utility programs have been combined and reviewed in one docket. We review these programs pursuant to directives found in RSA Ch. 374-F that programs should be designed to reduce market barriers to investments in energy efficiency and provide incentives for appropriate demand-side management and not reduce cost-effective consumer conservation. *Electric Utility Restructuring*, Order No. 23,574, 85 NH PUC 684, 691 (2000), citing RSA 374-F:3, X. Also, utility sponsored energy efficiency programs should target cost-effective opportunities that may otherwise be lost due to market barriers. *Id.* The objective of the CORE programs should be “consistency in both program offering and program design” and that the Commission’s focus in considering them would be on their “efficacy.” *Id.* at 693 and 695. We apply these principles as well as the standards we traditionally apply to the review of settlement agreements, *see e.g. Public Service Company of New Hampshire*, Order No. 25,123 (June 28, 2010) at 28-29, to our review of the programs proposed by the Electric Utilities and Gas Utilities.

We approve the proposed program offerings by the Electric and Gas Utilities, as modified by the Settlement Agreement, with certain conditions stated below. Further, we approve the Electric and Gas Utilities’ request to make budget transfers between individual programs within

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<sup>2</sup> See, *CORE Energy Efficiency Programs*, Order No. 23,850, 86 NH PUC 804 (2001); *Concord Electric Co.*, Order No. 23,982, 87 NH PUC 378 (2002); *EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England and Northern Utilities, Inc.*, Order No. 24,109 (December 31, 2002); *Granite State Electric Co.*, 88 NH PUC 624 (2003); *Granite State Electric Co.*, 89 NH PUC 676 (2004); *EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England and Northern Utilities, Inc.*, Order No. 24,458, 90 NH PUC 161 (2005); *Northern Utilities, Inc.*, Order No. 24,534, 90 NH PUC 463, (2005); *Granite State Electric Co.*, 91 NH PUC 166 (2006), *Granite State Electric Co.*, 91 NH PUC 626 (2006); *Northern Utilities, Inc.*, Order No. 24,630, 91 NH PUC 256 (2006); *2008 Core Energy Efficiency Programs*, Order No. 24,815, 92 NH PUC 507 (2007); *Northern Utilities, Inc. d/b/a Unitil*, Order No. 24,968 (2009); *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 24,995 (2009); and *2009 CORE Energy Efficiency Programs*, Order No. 24,930 (January 5, 2009).

a customer sector of up to 20% of the individual program's budget without Commission approval provided that interested parties and Staff are notified; and to make budget transfers between individual programs within a single customer sector of greater than 20% of the individual program's budget provided it is filed with the Commission, and Staff and interested parties may file comments with the Commission within two weeks of such filing. Such transfer shall be deemed approved by the Commission unless the Commission notifies the utility of the need for more in-depth review within 30 days of the filing.

## **2. Quarterly Meetings**

At the outset, we note that the Settling Parties and Staff agree to resume quarterly rather than monthly meetings. Given that this filing is for a two-year energy efficiency program for the Electric and Gas Utilities, we agree that it is appropriate to meet on a quarterly basis. Pursuant to the Settlement Agreement and past practice, the CORE Management Team will continue to consist of representatives from each utility and will make decisions by consensus, with one member specifically designated as the liaison between the parties and Staff. We believe it is important to maintain this open dialogue between various interest groups, the utilities, and Staff on the operation and effectiveness of the programs and we conclude that meeting less frequently will continue to allow this open dialogue and avoid the administrative burden of more frequent meetings. Secondly, the CORE Management Team will still be positioned to recommend program changes in a timely, uniform and consistent manner.

## **3. Performance Incentives**

We find it reasonable that the performance incentives for the Electric and Gas Utilities be based on actual spending as opposed to budgeted spending to avoid potential double-counting of

budgets in the calculation of performance incentives. Further, even though SBC and LDAC funds are limited, we find it in the public interest to limit spending to no more than 5% above the budgeted spending to assure that the utilities do not fund current year programs with a subsequent year's available funding.

With respect to any unspent program funds budgeted for 2010 that are carried over to actual spending in 2011, we direct the Electric and Gas Utilities to avoid double counting the carry-over funds in the calculation of the performance incentive. By way of example, we note that National Grid NH estimates that it will carry over approximately \$2 million in unspent 2010 budgets to the 2011 program year. We direct National Grid to refrain from claiming a performance incentive on this carry over amount.

#### **4. Monitoring and Evaluation**

With respect to Attachment C to the Settlement Agreement, which depicts the planned M&E activities for 2011, we approve the proposed plan. We have reviewed the responses to record requests, which provide additional information regarding the availability of 2010 money for the SB 323 study. We understand that the M&E planned for 2011 may be constrained because of the overall limit of M&E expenditures to 5% of the energy efficiency budgets, and because of the need to allocate some of the unspent funds from the 2010 M&E budget to support the SB 323 study.

The December 13, 2010 letter from Messrs. Frantz and Ruderman recommended that 80% of the SB 323 study costs, or \$224,000, be invoiced to the utilities. The letter contained an attachment that described the proposed proportionate share of each utility toward the \$224,000. Based on the responses to record requests identified as Exhibits 16, 17, 18 and 19, we understand that the utilities have unspent funds that can be carried forward to the 2011 M&E budget to

support 2011 M&E activities. Therefore, in closing out their 2010 program budgets, we direct each of the utilities to transfer forward and increase their 2011 M&E budgets by the smaller of: 1) the amount of their unspent surplus in their M&E budget line items, or 2) their net total energy efficiency program budget surplus. At a later date or dates the Commission will invoice each utility for its share of support for the SB 323 study, using the attachment to the December 13, 2010 letter as a guideline. If the CORE Management Team determines that 2011 M&E activities as described in Attachment C to the Settlement Agreement have to be curtailed as a result of payment for the SB 323 study, we direct Staff to file with the Commission a modified 2011 M&E plan no later than March 31, 2011. Finally, we find it appropriate for Staff to provide quarterly reports on M&E activities to the CORE Management Team.

#### **5. Home Performance with EnergyStar®**

We approve the Settlement Agreement's provision to allow PSNH and UES to continue to implement the HPwES on a fuel-neutral pilot program basis consistent with Order No. 24,974 (June 4, 2009) and approve the redesign of Northern's HPwES to conform to the Electric Utilities' pilot program offerings. The modifications proposed by the Settlement Agreement are reasonable and in the public interest.

#### **6. Program Savings Calculation**

The Electric Utilities and Gas Utilities agree to provide additional information when submitting calculations of program savings and to provide documentation for the projected 2012 program savings, in the format attached to the settlement agreement (Attachment D), by September 30, 2011. We find this request for additional information to be reasonable and we will require the Electric Utilities and Gas Utilities to provide this information going forward.

#### **7. Northern and EnergyStar® Homes**



We agree with the Settlement Agreement provision which states that when Northern prepares its 2012 energy efficiency plan revisions, Northern should reconsider its decision not to offer the EnergyStar® Homes program. EnergyStar® Homes is an effective way to deliver whole-house savings and we strongly encourage Northern to consider the benefits of offering the program for 2012.

#### **8. Additional Measures**

At the hearing, Commissioner Below raised questions about incentives for gas storage water heaters that no longer qualify for EnergyStar® rating, higher efficiency condensing hot water heaters, and electric heat pump hot water heaters, as well as the possibility of utility participation in EPRI demonstration programs. With regard to gas hot water heaters, we direct the Gas Utilities to discontinue offering an incentive for storage hot water heaters that no longer qualify for EnergyStar® rating (less than .67 EF) and we urge them to consider an additional incentive for higher efficiency condensing water heaters (EF of .8 or greater) that do not otherwise qualify for higher planned incentives as “Condensing Stand Alone 75 to 300 MBH” or “Integrated water heater/condensing boiler” as they become available in the marketplace. With regard to a heat pump water heater incentive or pilot for evaluation and participation in EPRI demonstration programs, we encourage the Electric Utilities to explore these possibilities. We would welcome any recommendations that might be filed on these matters by September 30, 2011, when both the Gas and Electric Utilities will be filing updates for the 2012 energy efficiency programs, if not sooner.

#### **9. Contractor Requirement**

According to the Settlement Agreement, the Electric Utilities and Gas Utilities agree to issue a public solicitation of interest from contractors interested in providing services under the

HPwES pilot program. The Electric Utilities and Gas Utilities also agreed, by no later than March 31, 2011, to modify their web sites to allow contractors to use the web site to notify the utilities of their interest and to request additional information be sent to them.

At hearing, Mr. Hill testified that, in practice, the Electric Utilities allow qualified building professional contractors to make a show of interest only on an annual basis and for a limited period of time. Mr. Hill testified that other states, such as Maine, allow contractors to be added to the list of qualified contractors throughout the year and he recommended that New Hampshire's energy efficiency programs adopt this model.

The utility witnesses stated that the contractor solicitation terms in the Settlement Agreement are a step toward a process that would be open to all interested qualified building professionals. Toward that end, and in addition to the terms of the Settlement Agreement, we direct the Electric and Gas Utilities to modify their contractor enrollment process by May 1, 2010 so that qualified building professionals may be added to the list of eligible contractors throughout the year (and removed if they longer meet minimum qualifications or performance standards established by the Utilities). We direct the Utilities to report to us by March 31, 2011 with the progress they have made toward achieving a more open and continuous contractor qualification and enrollment methodology.

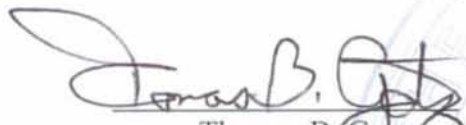
Having reviewed the 2011-2012 CORE Electric Energy Efficiency and Gas Energy Efficiency programs as well as exhibits and testimony presented at hearing, we find the programs to be in the public interest and we will approve them as amended by the Settlement Agreement subject to the additional conditions discussed herein.

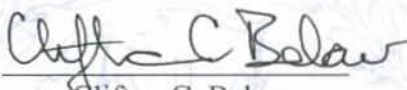
**Based upon the foregoing, it is hereby**

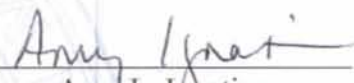
**ORDERED**, that the Settlement Agreement for the 2011-2012 CORE Electric Energy Efficiency and Gas Energy Efficiency Programs is hereby **APPROVED** as conditioned herein; and it is

**FURTHER ORDERED**, that National Grid NH's motion for confidential treatment of responses to data request OCA 2-1 is hereby **GRANTED**.

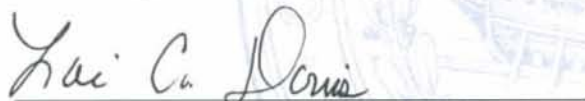
By order of the Public Utilities Commission of New Hampshire this thirtieth day of December, 2010.

  
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Thomas B. Geiz  
Chairman

  
\_\_\_\_\_  
Clifton C. Below  
Commissioner

  
\_\_\_\_\_  
Amy L. Ignatius  
Commissioner

Attested by:

  
\_\_\_\_\_  
Lori A. Davis  
Assistant Secretary

