

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION
Low Income Electric Assistance Program
2022-2023 Electric Assistance Program Budgets
Docket No DE 22-043**

NEW HAMPSHIRE DEPARTMENT OF ENERGY'S COURTESY INFORMATIONAL BRIEF
REGARDING THE \$7 MILLION APPROPRIATED TO THE DEPARTMENT
BY LAWS 2022, CH. 346:4

At the final hearing in this docket, the Public Utilities Commission (Commission) asked the New Hampshire Department of Energy (Department) to file a legal brief explaining how the Department's use, or anticipated use, of \$7 million appropriated to the Department pursuant to Laws 2022, ch. 346:4 "comports" with that statute. *See* Exhibit 7, Hearing Transcript April 18, 2024 (hereinafter "4/18/24 Tr.") at 190, 182-184, 156-58.

I. THE COMMISSION DOES NOT HAVE JURISDICTION; PROVIDED NO NOTICE; THERE IS NOTHING TO ADJUDICATE

The Department provides this courtesy informational brief to answer the Commission's questions. First, however, the Department emphasizes from the outset that the Commission does not have jurisdiction over the Department's \$7 million appropriation or the Department's exercise of its sole discretion over that appropriation. The Commission reviews and approves electric assistance program (EAP) utility administrative budgets, which include Community Action Agency administrative budgets, and EAP benefit levels and procedures, but the Commission does not have authority to direct or otherwise influence the Department's exercise of its sole fiscal discretion, explicitly given to the Department by the General Court.

Rather, "[t]he expenditures of any moneys appropriated or otherwise provided to carry on the work of any department of state government shall be subject to the approval of the governor, with the advice of the council." RSA 4:15. In managing its appropriations, the Department

follows the dictates of the State’s financial and accounting system (NH FIRST Financials), Generally Accepted Accounting Principles (GAAP), and any advice provided by the Department of Justice. *See* RSA 7:8 (Attorney General supervises state agencies “to the end that they perform their duties according to law.”); *see also* RSA 4:15 (expenditures of appropriations are reviewed and approved by the Governor and Executive Council “for the purpose of securing the prudent and economical expenditures of the moneys appropriated.”). Thus, the Department is bound to abide by that mandatory guidance. The Department provides this explanation of how it exercises its fiscal authority over the \$7 million appropriation as a courtesy to the Commission because our two agencies share responsibility for providing for the viability of the EAP in order to continue to provide benefits to low-income electric customers, however separate our individual responsibilities and authorities may be.

Second, even assuming for the sake of argument that the Department’s anticipated use of the \$7 million (hereinafter “\$7M”) was subject to Commission authority, which it is not, the propriety of the Department’s fiscal decisions regarding the \$7M appropriation are not at issue or contested in this docket. The Commission has not provided any notice to suggest that the Department’s interpretation or application of Laws 2022, ch. 346:4 is within the scope of this docket.¹ *See* RSA 541-A:31.

Further, and again assuming for the sake of argument the Commissions’ authority, there is nothing substantive to adjudicate, and no contested matter. *See* RSA 541-A:1, I (defining

¹ *See* RSA 541-A:31 (defining “notice” as, *inter alia* inclusive of “a reference to the particular sections of the statutes and rules involved”); *Commencement of Adjudicative Proceeding and Notice of a Prehearing Conference* (July 17 2023) at 3 (opens adjudicative proceeding on Colton Report, issue of third party suppliers and EAP program design); *Order Nisi* No. 26,870 (August 9, 2023) at 4-6 (summarizing Colton Report/EAP design matters at issue); *Prehearing Order* (September 15, 2023) at 2-3 (defining “scoping areas” for further review of EAP design); EAP Admin Budgets 2022-2023, Hearing Transcript August 8, 2023 at 8 (according to the Commission, software funding is “an ancillary matter” that came to the Commission’s attention after the issuance of Orders of Notice, prior to additional Commission statements defining the scope of the docket as EAP design).

“adjudicative proceeding”); and RSA 541-A:1, IV (defining “contested case”); RSA 541-A:31. The Department’s courtesy letter, filed on August 1, 2023 into two separate EAP administrative budget dockets, Dkts. No. 21-133 and this docket, described its intended use of some of the \$7M appropriation. None of the seven other parties in those dockets² who represent a wide range of stakeholders, and who are members of the EAP Advisory Board, have raised any concern about that courtesy letter or the Department’s intended use of the money.³ Thus, there is no “case or controversy” and nothing to adjudicate with regard to the \$7M allocation. *See* RSA 541-A:1, I and RSA 541-A:1, IV; RSA 541-A:31.

Because the Commission does not have fiscal authority over the \$7M appropriation, or jurisdiction over the Department, or the Department’s exercise of fiscal discretion, and because- even assuming jurisdiction- the issues were not noticed and are not contested, the Department does not submit this brief for adjudication.

II. BACKGROUND

In a letter filed on August 1, 2023, the Department notified the Commission that it had allocated and intended to expend \$450,000 of the \$7M appropriated to the Department by HB 2023 (2022), codified as Laws 2022, ch. 346:4. *See* Exhibit 7. As the letter explained, the purpose of the Department’s expenditure is to replace aging software currently utilized by the

² In addition to the DOE, parties to this docket (hereinafter “Parties”) include the Community Action Agencies (through lead agency Belknap-Merrimack); the Public Service Company of New Hampshire d/b/a Eversource, Unital Energy Systems, Inc., the New Hampshire Electric Co-operative, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty, the Office of the Consumer Advocate and LISTEN represented by New Hampshire Legal Assistance. The Parties sit on the EAP Advisory Board, and all but one EAP Advisory Board member are Parties in this proceeding.

³ *See* Dkt. No 22-045 4/16/24 Tr. at 193, 182 (no reply briefs anticipated); Dkt. No. 22-043 08/08/23 Tr. at 27-28 (Commission asks if other parties have “any comments on this topic of software spending . . . Office of the Consumer Advocate and Eversource counsel on behalf of NH Utilities answer in the negative); *see also* Dkt. No. 23-073 EAP Admin Budget 2023-2024 Hearing Transcript September 21, 2023 at 39-40 (Community Action Agencies strongly support new software).

Community Action Agencies (CAAs) to administer three energy programs: the Electric Assistance Program (EAP), the federally funded Fuel Assistance Program, and the federally funded Weatherization Assistance Program.⁴ The \$450,000 expense represents EAP's estimated portion of the estimated \$1.2 million shared cost of new software. In the Department's opinion, the joint purchase of software is the most frugal way to purchase software for the benefit of the EAP; otherwise, the EAP would have to incur the full cost of developing proprietary software, which might itself approximate \$1.2 million. *See Exhibit 7; RSA 4:15; n.4.*

At a hearing held one week later, the Department explained that the Department's August 1, 2023 letter was provided as a courtesy to the Commission and for informational purposes only, stated that the expenditure did not require the Commission's review and approval, and confirmed that the Department was not seeking any relief from the Commission regarding the expenditure. *See Hearing Transcript of August 8, 2023 (08/08/23 Tr) at 26 (Policy and Programs Division Director states letter is being filed "as a courtesy").* In response to a Commission question, the Department explained that the software contract would go through the normal, competitive request-for-proposal process, following which it would be reviewed by the Department of Justice and Department of Administrative Services before being placed on an agenda for approval by the Governor and Executive Council. *See 8/08/23 Tr. at 26-27.*

Approximately nine months later at the final hearing in this docket, the Commission stated that some "sort of a legal briefing" would be helpful to the Commission because it was "confused about the usage of the \$7,000,000," and whether the Department's proposed usage

⁴ Upon Commission's inquiry in a hearing held on the EAP 2023-2024 administrative budgets in Docket No. 23-073, DOE explained that the EAP software is 20 plus years old, well past the end of its useful life, and has had some severe hiccups in the past few years that have created challenges for the agencies and for the Department. Dkt. No. 23-073 EAP PY 2023-2024 Hearing Transcript of September 21, 2023, at 37-38. Belknap-Merrimack Community Action Program, the lead community action agency, also strongly supports replacement of very old software and notes that its use "for intake and certifiers" is extremely challenging. *Id.* at 39-40.

“comport[ed]” with the statute. 4/18/24 Tr. at 157. The Commission asked the Department if it would be willing to file a legal brief on this issue. *Id.* at 157.

III. COMMISSION’S LEGAL QUESTIONS

At the April 18, 2024 hearing, 04/18/24 Tr. at 184-85, the Commission provided its legal questions orally.⁵ On May 22, 2024, the Commission clarified its inquiry in a procedural order, asking Department to address the following issues:

- (1) Whether the \$7 million appropriated to the DOE by legislation passed in 2022, *see* 2022 N.H. Laws ch. 346:4, must be deposited directly into the Electric Assistance Program Fund and used solely for the payment of EAP benefits; or
- (2) Whether these funds may be used for other purposes under New Hampshire law.

See Procedural Order Re: Briefing Schedule at 1 (May 22, 2024). The Commission’s initial, oral questions inform the Department’s interpretation of its written questions. The Department will break the first question into two parts, the first regarding direct deposit of the appropriation into the EAP Fund and the second regarding the purposes for which the Department may lawfully use the appropriated funds. The Department’s reference to the “EAP Fund” refers to the NH Treasury “fund or account,” RSA 6:12, I (b)(71).

⁵ Initially, the Commission phrased its inquiry as follows: “whether the 7 million [appropriated to the Department in Chapter Law 2022, ch. 346:4] is or isn’t part of the EAP Fund” (4/18/2024 Tr. at 190); whether “the 7 million should have been deposited directly into the EAP Fund itself” *Id.* at 157-58; whether the [the Department’s purchase of software constituted using the appropriation consistent with] “support of the continued payment of benefits” *Id.* at 157; what is “DOE’s understanding of the legislative appropriation of the \$7 million?” *Id.* at 153; “how the Department interprets how the \$7 million is to be used” *Id.* at 153-54; “why the \$7 million isn’t in the EAP fund itself” *Id.* at 154; “. . . the money has been there [appropriated] now, I think, a couple of years, it was 2022 when it was allocated. . . . It seems to me the rest of it [other than \$450,000 for software] should be in the EAP Fund, the regular EAP Fund that the utilities and the CAAs are using. And can the Department comment on why that wouldn’t be the case?” *Id.* at 156.

IV. THE DEPARTMENT’S USE AND INTENDED USE OF THE APPROPRIATION COMPORTS WITH LAWS 2022, ch. 346:4.

The Commission has raised questions of statutory interpretation. In summary, in response to the first part of the Commission’s first question, there is no statutory support for concluding that the Department must transfer the appropriation into the EAP Fund directly, in any particular amount, or on any given timeline. In response to the second part of the Commission’s first question, broadly speaking, Laws 2022, ch. 346:4 authorizes the Department to supplement the EAP Fund as it sees fit to support the continued viability of the “EAP benefit levels and procedures” established by the Commission. As the Department explains further in response to the second part of the Commission’s first question, see pp. 12-15 below, “EAP benefit levels and procedures” include the infrastructure and services that supports making bill assistance accessible to EAP participants. That includes making determinations of eligibility, performing participant intake, and utility billing—all of which require software systems which are currently funded by the low-income portion of the system benefits charge (SBC). *See, e.g.,* Dkt. No. DE 18-057 *Statewide Low-Income Assistance Program*, Order No. 26,485 (June 1, 2021) at 3-4, 7 (\$200,000 in EAP software expenses approved to allow utilities to comply with a then-recent PUC Order).

To the extent that the second part of Question 1 relates to the Commission’s Question 2, the provision of items and services that support the delivery of EAP bill assistance comports with the Laws 2022 ch. 346:4. Use of appropriated funds for any purpose that does not solely benefit EAP participants would not comport with the statute.

There are three pieces of legislation directly applicable to the legal questions at issue: Laws 2022, ch. 346:4 itself; and two statutes that Laws 2022, ch. 346:4 incorporates by reference, RSA 6:12, I(b)(71) and RSA 6:12-b (Supp. 2022). Although, 2022 Laws, ch. 346:4 is

not ambiguous, the incorporation by reference requires that the session law and the two statutes be read together to understand the Department’s authority and discretion in handling EAP-related funding, sourced from both SBC funds and the appropriation.⁶

Laws 2022, ch. 346:4, the focus of the Commission’s inquiry, states:

346:4 There is hereby appropriated the sum of \$7,000,000 to the department of energy, which shall be continually appropriated to the department and shall be nonlapsing, to supplement the dedicated fund described in RSA 6:12, I(b)(71), which, like other moneys in that fund, shall be maintained pursuant to the provisions of RSA 6:12-b and managed in accordance with the electric assistance program benefit levels and procedures established by the public utilities commission. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

RSA 6:12, I(b)(71) states:

Moneys received by the state treasurer, as provided in RSA 6:11, shall be accounted for in the state’s accounting system as general revenue of the state, with the exception of the following dedicated funds or accounts: . . . (71)
Funds received pursuant to 6:12-b which shall be maintained pursuant to the provisions of RSA 6:12-b.

RSA 6:12-b (Supp. 2023) states:

On request of the department of energy, the state treasurer shall maintain custody over funds collected by order of the public utilities commission consisting of only that portion of the system benefits charge directly attributable to programs for low-income customers as described in RSA 374-F:4, VIII(c). All funds received by the state treasurer pursuant to this section shall be kept separate from any other funds and shall be administered in accordance with terms and conditions established by the department of energy. Plans for the administration of such funds shall be approved by the fiscal committee of the general court and the governor and council prior to submission to the department of energy. Appropriations and expenditures of such funds in fiscal years 2002 and 2003 shall be approved by the fiscal committee of the general court and the governor and council prior to submission to the department of energy. For each biennium thereafter, appropriations and expenditures of such funds shall be made through the biennial operating budget.

⁶ The language of the session law and incorporated statutes is not ambiguous. However, the Commission suggested at hearing that it reads the session law differently. *See* 4/18/24 Tr. at 156 (Chairman believes most of \$7M “should [now] be in the EAP Fund”). Out of an abundance of caution, the Department has provided a legislative history. *See* Attachment A (Legislative history of HB 2023, 346:4). Available legislative history is minimal and unrevealing.

In general, the principles of statutory construction require that these laws be construed “consistent with [their] plain and ordinary meaning.” See *In Re Guardianship of C.R.*, 174 N.H. 804, 807 (January 2022) (all parts of a statute are construed together to effectuate the overall purpose and avoid an absurd or unjust result). If possible, every word and every provision is to be given effect; none should be ignored. See *Reading Law*, Scalia & Gardner, Section 26 [Reading Law: The Interpretation of Legal Texts - PDFDrive.com \(wordpress.com\)](https://www.pdfdrive.com/reading-law-the-interpretation-of-legal-texts-pdfs-free.html). Further, statutes incorporating other statutes are to be read together, and repeals by implication are disfavored. See *id.* Sections 39 and 55. If terms of art are at issue, the more specific meaning appropriate to the context and specialized field is the appropriate meaning to apply. *Appeal of Public Service Company of New Hampshire*, 125 N.H. 46, 52 (1984) (in matters of statutory interpretation, the NH Supreme Court will “follow common and approved usage except where it is apparent that a technical term is used in a technical sense”). Statutory construction that would result in an absurd result is disfavored. See *Reading the Law* (Scalia and Garner), Section 37.

With the above interpretive framework, the Department makes some preliminary observations and addresses the Commission’s first question, whether the \$7M must be transferred directly into the EAP Fund. Laws 2022 346:4 and the incorporated statutes do not require transfers from the appropriation directly to the EAP Fund in order to supplement that Fund, or require that transfers be made in any particular amount or on any given timeline. The language of the relevant laws supports the Department’s construction.

Laws 2022, ch. 346:4 establishes an appropriation. An appropriation is an “authority to spend” funds out of the State’s general fund, as distinct from authority over a dedicated “fund” of cash. Like all other general fund appropriations, the \$7M appropriation must be established in NH FIRST Financials where it must remain until “expensed.” By comparison, the EAP Fund is a

“dedicated fund” of cash money. That fund is not accounted for in the state’s accounting system as general revenue of the state or in NH First Financials. RSA 6:12, I(b). In other words, it is not part of the State’s general fund or on the Departments’ books. Instead, funds received by Treasury pursuant to RSA 6:12-b at the request of the Department, which now include not only SBC funds but also expensed funds originating from the \$7M appropriation, must be kept separate from monies in the general fund, and so are held in the EAP Fund – in their own separate bank account designated under RSA 6:12, I(b)(71); RSA 6:12-b. Once in the EAP Fund, the funds are accounted for separately from the \$7M general fund appropriation and all other monies held by the State, consistent with law.

Returning to the Commission’s first question, on its face, Laws 2022, ch. 346:4 grants discretion over expenditures of the \$7M appropriation to the Department, and not to the Commission. Although the Commission asserted that the Department should make only direct transfers to the EAP Fund to support the payment of benefits and should have, by now, transferred the bulk of the remaining appropriation into the EAP Fund, any such requirement would have to be evident in the text of Laws 2022 ch. 346:4, and no text supports that conclusion. *See* 4/18/24 Tr. at 156 (Chairman believes most of \$7M “should be in the EAP fund”). To the contrary, Laws 2022 ch. 346:4 states that the appropriation is “continually appropriated” and “non-lapsing,” indicating a legislative intent that the \$7M remain a Department appropriation through successive budget cycles. RSA 6:12-b makes it a matter of Department discretion whether and when monies are deposited in the EAP Fund, because those deposits are only permitted upon the Department’s request. Applying the plain and ordinary meaning of the text, “non-lapsing” and “continually appropriated [to the Department],” the answer to the first part of the Commission’s first question is “no.”

As the Department has demonstrated, since the \$7M appropriation was first made on September 15, 2022, the Department carefully monitors the balance of the EAP Fund and periodically exercises its discretion to supplement the EAP Fund in order to benefit the EAP and its participants. *See* DOE Response to Commission Record Requests (May 23, 2024) RR-4 and RR-5, Bates 000021-26. This careful review has resulted in the Department's decision to reserve \$450,000 in funds for EAP software, to expense \$900,000 to the EAP Fund in EAP program year (PY) 2022-2023 to avoid a deficit balance, and the anticipated expense of \$1.5M and \$2.25M in EAP PY 2023-2024 and PY 2024-2025, respectively, for the same reason. *See id.*

In fact, were the Department to exercise its discretion by expensing the bulk of the appropriation directly into the EAP Fund, (assuming expensing the bulk of the appropriation were consistent with GAAP), the purpose of the appropriation would be violated as a result of a separate statutory requirement that the Commission reduce or suspend collection of some or all of the SBC under certain conditions. *See* RSA 374-F:4, VIII(c) (Supp. 2023). RSA 374-F:4 VIII(c) provides:

The portion of the system benefits charge due to programs for low-income customers shall not exceed 1.5 mills per kilowatt hour. If the commission determines that the low-income program fund has accumulated an excess of \$1,000,000 and that the excess is not likely to be substantially reduced over the next 12 months, it shall suspend collection of some or all of this portion of the system benefits charge for a period of time it deems reasonable. The commission shall take no action to determine the accumulation of any excess in the low-income program fund or otherwise suspend the collection of some or all of the system benefits charge related to the low-income program fund before June 30, 2024.⁷

While the contemplated accumulated excess of \$1,000,000 in the EAP Fund is unlikely given current circumstances, and is not at issue here, were the Department to expense the entire

⁷ The Department notes that the Commission's authority is limited to collection of the SBC, in stark contrast to the Department's full fiscal authority over the EAP Fund itself and the \$7M appropriation.

\$7M allocation into the EAP Fund all at once, the EAP Fund *would* have “accumulated an excess of \$1,000,000,” resulting in a Commission proceeding to suspend all or a portion of the low-income portion of the SBC.” *See id.* That suspension would accrue to the benefit of rate payers in general, the majority of whom are not EAP participants. Such an outcome would be contrary to the General Court’s intent that the \$7M allocation be used solely for the benefit of EAP participants across multiple budget cycles. *See* Laws 2022, ch. 346:4.

The Department is aware that a different section of Laws 2022 ch. 346, Section 346:3 prohibits the Commission from action “to determine the accumulation of any excess in the low-income program fund or otherwise suspend the collection of some or all of the [SBC] related to the low-income program fund” until June 30, 2024. There is no parallel suspension of the Department’s authority and discretion over the appropriation made in Laws 2022, ch. 346:4, or a parallel deadline by which time the appropriation must be expensed. There is no text linking the Department’s authority over the \$7M appropriation or the ch. 346:4 phrase “benefit levels and procedures as established by the public utilities commission” with ch. 346:3. Thus, the session laws cannot have been intended to require the Department to expense the entire \$7M in the EAP Fund only to eventually trigger a suspension of the collection of the SBC. Rather, given the General Court’s stated purpose for the appropriation, it is logical that, the General Court intended to keep the approximate \$4 million balance of the EAP Fund in that fund for the payment of bill assistance and to keep the \$7M outside the EAP Fund, to be transferred only when the Department deemed it advisable. *See* Dkt. No DE 21-133 EAP Admin Budgets PY 2021-2022, Hearing Transcript January 27, 2022 at 9-10 (balance in fund as of October 2021 was approximately \$4M). This analysis is supported by the fact that in January 2022, the

Commission contemplated a suspension of the SBC rate to bring the fund balance down to a million dollars or fewer at the end of the then-current twelve month period. *Id.*

The Department also notes that its authority over the \$7M appropriation is consistent with its fiscal authority over the low-income program portion of the systems benefit charge, in the respect that Treasury maintains custody of both revenue sources in the EAP Fund “on request of the department of energy.” *See* Laws 2022, ch. 346:4 incorporation of RSA 6:12-b. On a monthly basis, Treasury accepts deposits into and makes payments out of the EAP Fund, which now consists of both revenue sources, at the direction of the Department. In other words, the General Court granted the Department full discretion over whether and when to deposit any SBC and/or appropriated funds into the EAP Fund, and in what amounts. *See* Order No. 26,693 (Sept. 29, 2022) at 2, 4.⁸

Turning to the second part of the Commission’s first question, “Whether the \$7M appropriation must be used solely for the payment of EAP benefits,” this question seems to equate “EAP benefit levels and procedures” with EAP bill assistance. *See* 4/18/24 Tr. at 154, 157. However, the quoted phrase used in Laws 2022, ch. 346:4 dictates that the appropriation is to supplement the EAP Fund and be managed in accordance with “EAP benefit levels and procedures.”

The reality is that management in accordance with “EAP benefit levels and procedures” encompasses all that is necessary to effectuate delivery of bill assistance to EAP participants.

The EAP Fund pays for the infrastructure that makes bill assistance available to EAP

⁸ Order No. 26,693 (Sept. 29, 2022) at 2, 4 states “The DOE oversees the financial administration of the EAP, and monitors, evaluates, and audits the program. In support of the EAP, the Utilities provide educational materials and customer service. The Utilities also bill and collect the [SBC], apply the EAP discounts to the bills of eligible customers, and add and remove customers from the program as the CAAs direct. . . . In light of the passage of HB 2023 providing [\$7M] . . . to augment the EAP monies . . . we find that the proposed budgets are reasonable.”

participants. For example, the EAP Fund supports staff costs, outreach campaigns, eligibility verification, enrollment, education, and, of special relevance here, IT support and software purchases. *See DOE letter filed on behalf of the EAP Advisory Board* (September 19, 2022) at 1 (describing EAP Admin budgets as including educational services, customer service, legal support and IT support); Dkt. No. 21-133 *Memo from DOE* (on behalf of EAP Advisory Board) (October 4, 2021) at 1-2 (same); Dkt. No. De 18-057, *Statewide Low-Income Assistance Program*, Order No. 26,485 (June 1, 2021) at 3-4, 7.

There is nothing in Laws 2022, ch. 346:4 that limits “EAP benefit levels and procedures” to “bill assistance.” If the General Court wished to create such a complex limitation, it could have and would have done so. Reading such a limitation into the law would lead to the absurd result that funds might be available for bill assistance, without an infrastructure to actually deliver the assistance to EAP participants. Such a construction would be absurd because it would defeat the purpose of Laws 2022 346:4, i.e., the on-going viability of the EAP. *See Reading the Law* (Scalia and Garner), Section 37. Further, the existing EAP Fund does not segregate SBC funds to be used for bill assistance and SBC funds to be used for administrative expenses. Monies coming into the dedicated EAP Fund, as monitored and directed by the Department, are fungible.

It must be remembered that “EAP benefit levels” are not directly equivalent to “bill assistance.” EAP benefit levels are assigned on the basis of participants’ household incomes and household size. Participants with the lowest incomes receive an 86% discount on the first 750 kWh of monthly electric usage, while qualifying participants with the highest incomes receive a 5% discount. *See Exhibit 3, Colton Report* (filed Oct 3, 2022) at Bates 000098. Laws 2022 ch. 346:4 reference to “[EAP] benefit levels and procedures” in the first instance signifies an intent

that the \$7M allocation would not be used as a windfall to drastically expand EAP benefit tiers but should instead be used to keep the EAP operating at established levels.

Turning to the Commission's final question, Question 2, there is a logical limit on the use of appropriated funds. Because the \$7M is designated to supplement the EAP Fund, the clear intent of the appropriation is that the Department is to expend the funds solely for the benefit of providing electric assistance to EAP participants, inclusive of bill assistance and administrative infrastructure as described above, including software purchases and support. The provision of items and services that support the delivery of EAP bill assistance comports with the statute. Use of appropriated funds for a purpose that does not solely benefit EAP participants would not comport with the statute.

V. CONCLUSION

Although a discussion of the Department's authority to expend funds is not necessary to determination of the issues noticed in this proceeding, and a ruling on the same would be outside the Commission's authority, the Department hopes that this brief provides the Commission with answers to its questions, an understanding of how the Department exercises its fiscal authority over EAP-related funds, and a clear understanding of the difference between the EAP Fund and the Department's appropriation.

Respectfully Submitted,

New Hampshire Department of Energy
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June 14, 2024

CERTIFICATE OF SERVICE

I hereby provide that a copy of this pleading was provided by electronic mail to the individuals included in the Commission's service list in this docket on this date, June 14, 2023.

/s/ Mary E. Schwarzer

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