



October 20, 2023

BY E-MAIL

Daniel Goldner, Chairman
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301-2429

**Re: DE 23-073, 2023 - 2024 Electric Assistance Program Budgets
Response to Question Concerning Application of FAP Funds**

Dear Chairman Goldner,

On September 21, 2023, the New Hampshire Public Utilities Commission (the “Commission”) conducted a hearing in the above-referenced matter. At that hearing, Chairman Golder asked whether state Energy Assistance Program (“EAP”) funds could be deployed more efficiently if federal Fuel Assistance Program (“FAP”) funds were used to reduce customer bills before EAP discounts are applied.¹ Chairman Goldner asked Unitil Energy Services, Inc. (“Unitil”) to look into the feasibility of this approach and invited Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”), Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (“Liberty”), and the New Hampshire Electric Cooperative (“NHEC” and together with Unitil, Eversource, and Liberty the “Joint Utilities”) to weigh-in on this question as well.²

The Joint Utilities have examined their internal processes and systems and jointly conferred on Chairman Goldner’s question. On behalf of the Joint Utilities, Unitil hereby provides the Joint Utilities’ perspective on the feasibility of changing the order in which low-income assistance benefits are applied to electric customer bills.

I. Overview of Fuel Assistance Program

The FAP is New Hampshire’s arm of the federal Low Income Home Energy Assistance Program (“LIHEAP”), which is funded through the United States Department of Health and Human Services (“DHHS”). Congress sets total LIHEAP funding during the annual appropriations process and those funds are distributed based on a formula that takes into account factors such as weather, average heating and cooling costs, and the number of eligible recipients in the state.

¹ DE 23-073, Transcript at 47-50, 67 (September 21, 2023).

² *Id.* at 50; *Statewide Low-Income Electric Assistance Benefits, 2023-2024 Program Administrative Budgets*, Order No. 26,891 (Sept. 28, 2023) at 7 (encouraging the Joint Utilities to “explore the potential for applying Federal funding to the EAP program on an ongoing basis, to augment the resources available for serving EAP needs while helping to use the system benefit charge funds more effectively.”).

LIHEAP funding is divided into three categories: (1) “regular” funds, also referred to as formula or “block grant” funds; (2) emergency contingency funds; and (3) Leveraging Incentive grants.³ The federal block grant funds are administered by the New Hampshire Department of Energy (the “Department”) and these funds are used to provide assistance to low-income customers in meeting their home heating needs. Although the Department administers the program, the on-the-ground work is done by local Community Action Agencies (“CAAs”) with which the Department contracts.⁴

The FAP funds available to reduce a customer’s bill are based on a total “pledged” amount that is determined by the CAAs and provided to the Joint Utilities. The CAAs also notify the Joint Utilities of a customer’s enrollment in EAP with an Enrollment Notification. This notification includes, among other things, the discount tier to which the customer has been assigned.

The Joint Utilities apply the EAP discount rate designated by the CAA to the customer’s monthly bill and then apply any available FAP funds to the remaining balance, subject to the timing constraints and limitations described below. The FAP funds are applied to customer account balances during the months of November through May.

II. Feasibility of Applying FAP funds prior to EAP Discount

The Joint Utilities have identified several practical issues and challenges to implement an approach in which FAP funds are utilized before the EAP discount is applied to customer bills.

First, customers are not enrolled in EAP and FAP at the same time and enrollment dates can be months or even years apart. In addition, customers are not always enrolled in FAP before the start of a heating season and may apply for assistance in the middle or at the end of a heating season. The Joint Utilities would need to employ a manual process (outside of the billing system) to track and accommodate these timing differences.

Second, FAP funds may be fully utilized in the middle of a billing cycle. The Joint Utilities do not have the ability to apply the EAP discount to the remaining portion of a bill (in the middle of a billing cycle) and then re-bill the impacted customers. There likely would be incremental costs to enable that functionality, assuming it is possible. And assuming it is possible, issuing multiple bills to customers in a given month could lead to customer confusion and dissatisfaction.

Third, the only customers that qualify for both EAP and FAP are electric heating customers. Also, not all electric heating customers will apply for FAP enrollment. Therefore, the Joint Utilities believe that the universe of customers that are enrolled in both EAP and FAP is

³ 42 U.S.C. §§ 8621-8630.

⁴ New Hampshire Department of Energy, Fuel Assistance Program, <https://www.energy.nh.gov/consumers/help-energy-and-utility-bills/fuel-assistance-program>

small relative to the total number of customers enrolled in EAP.⁵ Thus, the total savings generated by changing the current approach may not be significant at the present time.

In addition to the practical challenges discussed above, there may be legal considerations that bear on the question of whether federal FAP funds can be applied to a customer's bill before the EAP discount is applied.

DHHS is empowered to determine how federal LIHEAP funds will be spent and applied. On July 21, 2010, DHHS issued LIHEAP Information Memorandum 2010-13 concerning the use of LIHEAP funds coordinated with Vendor Assistance Programs ("LIHEAP Memo").⁶ The LIHEAP Memo states as follows:

[DHHS] has determined that the process of subtracting the LIHEAP benefit from the client's energy bill and to then calculate the [Percentage of Income Payment Plan or PIPP] discount and/or the client's payment amount appears to be using LIHEAP as a resource and creates an inequity or adverse treatment for LIHEAP clients participating in the PIPP. Such use of LIHEAP funds appears to be out of compliance with Sections 2605(b)(7) of the LIHEAP statute, which in part states: "...no household receiving assistance under this title will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements..." and Section 2605(f) which states "...home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household under this title shall not be considered income or resources of such household (or any member thereof) for any purpose under any Federal or State law..." [DHHS] will question any such practice and ask for a grantee's legal opinion supporting this practice and its compliance with the LIHEAP statute.

Thus, the LIHEAP Memo suggests that applying LIHEAP funds to a customer's bill before applying the EAP discount may be tantamount to treating LIHEAP funds as an available resource to the detriment of eligible LIHEAP recipients, in order to reduce the cost of the state's EAP program. In addition, LIHEAP funds effectively would be used to subsidize the obligations that EAP non-participants pay to support the EAP. An argument could be made that such a change in funding priority between two different assistance programs would violate Section 2605(f) of the LIHEAP statute. And as noted in the LIHEAP Memo, if LIHEAP funds are used in ways that are "different than what is described in the LIHEAP plan [that] may constitute an improper use of funds, and States may be held responsible for the repayment to [DHHS] for the use of such funds."

⁵ Eversource estimates that of the approximately 25,000 customers enrolled in EAP, 2,000 also are enrolled in FAP. Liberty estimates that of the 1,250 customers enrolled in EAP, 50 also are enrolled in FAP. NHEC estimates that of the 2,834 customers enrolled in EAP, 240 also are enrolled in FAP. Unitil estimates that of the 2,805 customers enrolled in EAP, 489 also are enrolled in FAP. Please note that there may be differences in the manner in which the utility companies track this data. Therefore, this information is being provided as a rough approximation of the relative magnitude.

⁶ LIHEAP IM 2010-13 Use of LIHEAP Funds Coordinated with Vendor Assistance Program, *available at* <https://www.acf.hhs.gov/ocs/policy-guidance/liheap-im-2010-13-use-liheap-funds-coordinated-vendor-assistance-programs>

III. Conclusion

The Joint Utilities appreciate the opportunity to provide this written response to the Commission. Conceptually, the approach suggested by Chairman Goldner is both logical and reasonable and the Joint Utilities share the Commission's goal of ensuring the cost-effectiveness of the EAP. However, as discussed herein, there are several practical barriers, and potentially a legal bar to pursuing this approach. For these reasons, and at this time, the Joint Utilities do not recommend any changes to the current approach, whereby the EAP discount is applied to customer bills first and the FAP funds are applied to the remaining balance.

Sincerely,

A handwritten signature in black ink that reads "Matthew Campbell". The signature is written in a cursive style with a large, prominent initial "M".

Matthew C. Campbell

cc: Service List