

DR 96-150

ELECTRIC UTILITY RESTRUCTURING

Low Income Electric Assistance Program

Order On Motions for Clarification and Other Pending Motions

O R D E R N O. 23,945

April 5, 2002

I. PROCEDURAL HISTORY

On November 1, 2000, the New Hampshire Public Utilities Commission (Commission) issued an Order approving the energy assistance program and establishing the community action agencies as program administrator. Order No. 23,573 (Order). With specified modifications and clarifications, the Order approved the policies and recommendations dated August 18, 1998 submitted by the Low Income Working Group (Working Group).

The Order specifically approved and authorized the Community Action Agencies (CAA) to be the administrator of the electric assistance program (EAP). The Order also approved the Governor's Office of Energy and Community Services (ECS) to perform program evaluation and act as fiscal agent. The Order directed ECS to submit to the Commission a detailed, formal plan for program evaluation. The Order specified that the energy efficiency/conservation programs for low income customers would be part of the efficiency/conservation portion

of the systems benefit charge (SBC) instead of the low income portion. Finally, Staff was asked to review the Commission's rules and identify what rule changes would be needed to include the EAP, in recognition of the fact that the formal rulemaking process could not be undertaken until the restrictions in the Federal court injunction were resolved.

Several of the policy recommendations dealt with expenditure of funds, and the issue was also raised during the Commission hearing on March 9, 1999.

The Order discussed five categories of EAP expenses and how they were to be paid and funded:

1. Computerization start-up costs incurred by the CAA which are "prerequisites" for EAP.

The Commission approved CAA computerization start-up costs up to \$347,000 as described in CAA's budget estimates, to be paid initially under the special assessment statute, RSA 365:37,II, and funded by the low income component of the SBC.¹ Order, pages 16-17, 19.²

¹ In the Order, phrases such as, "funded by the systems benefit charge," were used interchangeably with phrases such as, "funded through the program fund." In this Order, a single reference to "funding by the SBC" or a similar phrase is used for consistency and simplicity.

² Pursuant to the Order, the Commission and Community Action Program-Belknap-Merrimack Counties, Inc. entered into a contract for the computerization start-up services on February 21, 2001.

2. Ongoing CAA administrative costs. Funding was to be by the SBC. Order, page 19.
3. Funding of (i) a memorandum of understanding to be entered into between the Commission and the ECS regarding program evaluation and fiscal agent services and (ii) ECS start-up costs which are "prerequisites" for EAP. Funding of both the memorandum and ECS start-up costs were to come from the SBC. Order, pages 18, 19.
4. Utility start-up and ongoing O&M costs "specific" to the EAP. Funding was to be by the SBC. Order, page 19.
5. Cost of a computer integration consultant to finalize the computer system functional specifications and be responsible for building and testing the communications system.³

The cost will be paid for under the special assessment statute, RSA 365:37,II, with consideration to filings from utilities requesting recovery of those expenses through

³ In the policy recommendations, the Working Group suggested the consultant be hired by CAA. However, pursuant to the Order, the Commission hired a consultant for this purpose after issuing a request for proposals drafted by the Working Group.

the SBC. Order, page 20.

The policy recommendations contemplated that CAA would, and ECS might, incur certain expenses related to electronic communications prior to collection of the SBC. Pursuant to requested action item number 7 of the policy recommendations, disbursement of funds for such advance funding, if not otherwise specifically approved in the Order, was to be specifically authorized by the Commission.

The Order further directed the utilities, ECS, and CAA to submit to the Commission on a quarterly basis, at least for the first year of the EAP, reports on their administrative expenses. In subsequent years, the Commission could require reporting on a less frequent basis. Order, page 19.

The Order provided that recovery of all start-up and ongoing administrative costs to be paid through the low income component of the SBC could be subject to review and approval by the Commission. Order, page 19.

Two motions for clarification of the Order were filed.

First, Granite State Electric Company (Granite State) filed a Motion for Clarification of Special Assessment in Order No. 23, 573 dated December 1, 2000 regarding the funding of the CAA's start-up costs through a special

assessment pursuant to RSA 365:37,II (Granite State Motion). No party objected to the Granite State Motion.

Second, Save Our Homes Organization (SOHO) filed a Motion for Clarification dated December 1, 2000 regarding recovery of program costs (SOHO Motion for Clarification).

Granite State filed an Objection to the SOHO Motion for Clarification dated December 11, 2000 and Public Service Company of New Hampshire (PSNH) filed a detailed Response to the SOHO Motion for Clarification dated December 11, 2000. ECS filed a detailed Response dated December 21, 2000 in support of the SOHO Motion for Clarification.

These two motions and the responses to them are described in greater detail in Section II below.

By letter dated May 30, 2001, Amanda Noonan submitted supplemental policy recommendations on behalf of the Low Income Working Group.

Representative Neal Kurk, Chairman of the Fiscal Committee of the General Court, submitted a letter to the Chairman of the Commission dated November 19, 2001 informing him of a Fiscal Committee vote that

"any statewide low income electric assistance program must be reviewed and approved by the committee prior to any action being taken that advances the implementation of the program. Specifically, this means that no expenditure or commitment of any money from funds collected for

this purpose from the systems benefit charge may take place, directly or indirectly, during any stage of the preparations to devise or implement a plan prior to Fiscal Committee approval."

According to Representative Kurk, this vote was on the recommendation of a subcommittee which had met to determine the intent of RSA 6:12-b, as amended, relating to funds collected from the SBC for statewide assistance programs for low income customers of electric utilities.

By letter dated December 4, 2001, PSNH requested that CAA's start-up costs paid for under the special assessment statute be allocated to the electric utilities according to kilowatt-hour sales instead of annual revenues. PSNH said that the annual revenues basis for assessing costs would exclude revenues from the New Hampshire Electric Cooperative (NHEC) since it has a Certificate of Deregulation on file and the annual revenues basis is therefore not an appropriate or equitable basis for assessing costs.

The Commission responded in a letter dated February 15, 2002, reaffirming the annual revenues basis for allocation. The Commission said it is appropriate for NHEC's revenues to be included in the calculation of the special assessment.

The Commission issued a letter dated December 24, 2002, requesting each New Hampshire electric utility to provide an estimate of implementation and on-going administrative costs for both the EAP and an alternative

tiered discount program. All six electric utilities submitted cost information to the Commission during January 2002.

As further described in Section III below, the Commission opened a new docket, DE 02-034, on February 27, 2002 to consider certain alternatives to the EAP. Comments from the parties to this docket are due in the near future and a hearing is scheduled for April 17, 2002.

By letter dated April 3, 2002, SOHO filed a Motion to Complete the Program Design for the Electric Assistance Program in Compliance with RSA 369-B:1,XIII (SOHO Motion to Complete). PSNH was said to oppose the SOHO Motion to Complete and Unitil, on behalf of Concord Electric Company and Exeter and Hampton Electric Company, has expressed no objection to the requested sixty-day period for submitting modifications to the EAP so long as the September implementation date specified in DE 02-034 would not be delayed.

Also by letter dated April 3, 2002, ECS and SOHO filed a Motion for Ruling on the SOHO Motion for Clarification (ECS/SOHO Motion for Ruling). PSNH was said to concur with the relief requested in the ECS/SOHO Motion for Ruling and Unitil has expressed no objection.

The SOHO Motion to Complete and the ECS/SOHO Motion

for Ruling are described in greater detail in Section II below.

II. SUMMARY OF MOTIONS, INCLUDING POSITIONS OF THE PARTIES

The Granite State Motion sought clarification that "all utilities may recover through the SBC all start-up costs incurred by the CAA and paid [by the utilities] through a special assessment." Although styled as a motion for clarification, this Motion, in part, requested recovery for the computer integration consultant costs initially assessed against the utilities, an option specifically provided for in the Order. The Motion also requested recovery for CAA's computerization start-up costs paid for by a special assessment.

The SOHO Motion for Clarification requested clarifications of Order 23, 573 that:

1. Utility start-up and O & M costs "specific to the program" under the Order and therefore reimbursable should only consist of "incremental" costs "exclusively" incurred as a result of the EAP. An "incremental" cost would be defined as a cost that is newly incurred as a direct result of the EAP and is not currently in rates.

SOHO said an existing staff position already in rates is an example of a cost that would not be

an "incremental" cost recoverable through the low income portion of the SBC.

As an example of a cost that would not be incurred "exclusively" as a result of the EAP, SOHO cited the cost to a utility of redesigning its bill format. SOHO stated this would be a cost incurred as a result of the move to retail choice and not the EAP.

2. "Start-up" costs should be limited to the cost of building and testing the electronic communications system, hiring of staff and staff training solely for EAP, and other start-up costs the Commission identifies prior to implementation of the EAP.

SOHO asserted in particular that other pre-implementation costs related to EAP, such as preparation for and attendance at Low Income Working Group and Advisory Board meetings, should not be recoverable as "start-up" costs.

3. Only EAP costs net of savings resulting from EAP ("net costs") should be subject to EAP funding. In particular, SOHO stated that utilities will experience easily identifiable and quantifiable

savings from reduction of working capital and bad debt expenses as a result of EAP.

4. Start-up costs should not be exclusively paid during the first year of the program but should be amortized over a reasonable time period in order retain full funding for EAP participants in the first year.
5. All parties requesting recovery from the EAP fund should be required to submit an annual budget for review and approval by the Commission prior to the start of the program year.

Granite State's Objection to the SOHO Motion for Clarification requested that the Commission deny the relief sought by SOHO and provide instead that utilities may recover "all of their start-up and O & M costs relating to the EAP through the SBC." In particular, Granite State objected to items 1 and 2 of the SOHO Motion for Clarification as described above and the adoption of the net costs concept (item 3 above).

Public Service Company of New Hampshire (PSNH) also filed a detailed Response to the SOHO Motion for Clarification.

Regarding the question of what costs are recoverable from the EAP fund (items 1 and 2 of the SOHO Motion for Clarification), PSNH commented that utility staff time used in startup should not be categorically excluded from recovery,⁴ that additional expenses of bill format changes beyond the cost of the redesign required by restructuring ought to be recoverable, and that reasonable out of pocket expenses for EAP implementation should also be eligible for recovery, subject to Commission review.

PSNH joined Granite State in objecting to the net cost concept (item 3).

PSNH suggested that start-up costs are more appropriately charged to the first year the low income component of the SBC is collected if the funds are available without putting EAP certified applicants on waiting lists (item 4) and that because of uncertainty about the costs of a new program like EAP, the Commission require a full review of costs following the first full year that applications have been taken in lieu of submission and review of a budget before the beginning of the program (item 5).

Finally, PSNH suggested the Commission open a new docket or issue a new service list for this docket to avoid

⁴ PSNH stated that "staff time devoted to EAP startup can be shown to be incremental by evidence of staff overtime and/or outside vendor services."

using the lengthy service list from DR 96-150.

ECS also filed a Response to the SOHO Motion for Clarification dated December 21, 2000.

ECS agreed with SOHO that the question of what start-up and O & M costs are to be paid out of the low income component SBC should be further clarified (items 1 and 2 of the SOHO Motion for Clarification). ECS said there is a need to define somewhat narrowly, or at least very cautiously, what costs are recoverable.

ECS agreed that utility costs incurred relating to participation in Working Group meetings or similar restructuring planning and implementation efforts should not be recoverable from the EAP fund (ECS said it and CAA were not going to seek such recovery) and more generally that "other administrative costs not directly associated with implementation of the EAP" should not be recoverable either.

Finally, ECS agreed that each utility submit a proposed budget to the Commission prior to the EAP program year, since pre-filing of budgets from all parties involved, even if they are estimates, is necessary for ECS to perform its duties under the EAP program.

SOHO stated in its Motion to Complete that the public interest would be promoted if the Commission "further probed

the administrative cost estimates submitted by the utilities to determine whether these estimates can be reduced" and explored other ways to reduce costs of the EAP. SOHO asserted that modifications can be made to the EAP which will reduce costs and promote the legislative directive of RSA 369-B:1,XIII to target assistance and maximize the benefits to low income customers.

Accordingly, SOHO requested that the Commission direct (i) the Low Income Working Group to submit a completed program design for the EAP within sixty days, with modifications to reduce the start-up and ongoing administrative costs of the EAP and (ii) Commission Staff to obtain data from the utilities sufficient to enable the Staff to thoroughly analyze the administrative cost estimates for the low income program.

ECS and SOHO state in their Motion for Ruling that a ruling on the pending motions for clarification would provide needed guidance to the parties in this docket and in DE 02-034 on allowable program costs, budgets, and recovery of start-up and ongoing administrative costs and could impact the utility cost estimates for the EAP. Accordingly, they request that the Commission expeditiously rule on the SOHO Motion for Clarification.

III. COMMISSION ANALYSIS

We recognize that certain events since the Order was issued affect the status of the EAP we approved in the Order and the implementation of a statewide low income energy assistance program.

For example, the legislature amended RSA 6:12-b, effective September 3, 2001, to now provide:

"6:12-b Maintenance of Funds Collected Pursuant to Electric Utility Restructuring Orders. - On request of the public utilities commission, 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 public utilities commission. 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 public utilities commission. 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 public utilities commission. For each biennium thereafter, appropriations and expenditures of such funds shall be made through the biennial operating budget."

In addition, DE 02-034 Low Income Energy Assistance Program/Tiered Discount Program has been opened by Order of Notice dated February 27, 2002. As stated in the Order of Notice, cost information submitted by the six jurisdictional electric utilities in November 2001 in DR 96-150 raises, among other things, issues related to

"whether the Commission should consider other program models such as a tiered discount program or a percentage of income payment plan run like New Hampshire's fuel assistance program."

Accordingly, the Commission stated,

"it is appropriate to further explore the tiered discount program, which is a modified percent of income plan, as well as revisions to the EAP that would change the collection of funds and the program administration to match that of New Hampshire's fuel assistance program."

For this purpose the Commission has engaged a consultant to develop a model tiered discount program to be provided to utilities for comment and directed Staff to work with the CAA to develop a revised program that more closely mirrors the administration of the fuel assistance program in New Hampshire. Comments on the programs are due in the near future and a hearing is scheduled for April 17, 2002 on the model programs.

We do not think these events moot the need to rule on the pending motions for clarification in DR 96-150. Many if not all of the issues raised by the motions will likely exist even if we approve a program different from the proposal we approved in the Order. We will therefore proceed to rule on them, leaving open the possibility that certain issues may have to be revisited in connection with the order to be issued in DE 02-034.

A. Granite State Motion

We construe the Granite State Motion, in part, as exercising Granite State's right to request reimbursement from the low income portion of the SBC for the computer integration consultant costs initially assessed against the utilities. Since no party objected to this Motion, and there is no other reason why such request should be denied, such request is granted.

Regarding Granite State's request for clarification of the treatment of CAA's start-up costs paid for through a special assessment, we think further clarification here is unnecessary. The Order expressly provided that EAP start-up costs incurred by CAA (and ECS) are prerequisites for EAP and therefore would be funded by the low income component of the SBC. Order, page 19.

B. SOHO Motion for Clarification

This Motion and the responses to it reflect concerns by the parties over the type of start-up and administrative costs recoverable through the low income component of the SBC, the timing of such recovery, and the desirability of prior Commission approval of annual budgets from those organizations requesting recovery from the low income portion of the SBC. At the outset, we note a number of the matters for which

clarification was sought are either inconsistent with the Order or were not covered by the Order. We will nevertheless consider them since the EAP would be an important new statewide program.

**1. Costs to be Allocated to the
Low Income Portion of the SBC**

In the Order, we urged CAA to obtain the best price it can for computer purchases and reminded CAA about the need to allocate expenses between the development of the EAP and other CAA programs. We also said we would rely on auditing and evaluation by staff to ensure that CAA's expense allocations are appropriate. Order, page 17.

Of course, our cautions to CAA would apply equally to the other EAP program participants requesting recovery from the low income portion of the SBC. Proper allocation of recoverable costs and businesslike operation of the fund, including the avoidance of "double recoveries" and improper cost-shifting, are necessary for achieving the legislative goals of "maximiz[ing] benefits that go to the intended beneficiaries of the low income program" and "enabl[ing] residential customers with low incomes to manage and afford essential electricity requirements." RSA 369-B:1, XIII; 374-F:3, V (a).

We give the following additional guidance regarding

cost allocations to utilities seeking cost recovery from the low income portion of the SBC. We note at the outset that it is not possible, nor desirable, to attempt to determine all questions of cost allocation and recovery in the abstract. Some such issues, including some raised by parties in the motions we consider here, must wait to be decided in the context of a specific request for recovery in the SBC.

First, while there are differences between the course of development of the low income assistance program and the energy efficiency programs, both of which receive SBC funding, the standards for inclusion of costs in the SBC should be consistent across program types, if possible. In general, the Commission allows the inclusion of reasonable, incremental costs of designing and implementing such programs against the available SBC funds.

In the case of the low income assistance program, we have also noted that costs must be specific to the program. We clarify that directly assignable costs, for which no other purpose can be identified, and which are not otherwise being recovered in base rates or other charges (such as the restructuring surcharge) fall within the category of costs specific to the program. We decline to determine in this order the extent to which indirect costs, or costs that must

be allocated between the low income assistance program and other purposes, may be considered "specific" to the program.

We will address this issue on a case by case basis. However, some guidance can be given at this point. With respect to the particular situations cited by the parties in their motions and responses, we would anticipate that the incremental costs of overtime incurred directly as a result of an employee's work in implementing the program would be allocable to the SBC. The incremental cost of the redesign of a bill format to handle the specific low income program copayment, over and above bill design costs incurred by the utility for other purposes (such as restructuring), to the extent identifiable, similarly would be appropriate for inclusion in the SBC.

However, costs for attendance at Low Income Working Group meetings would not necessarily be specific to implementation of the low income program fundable under the SBC. In this regard, we note that before the low income assistance program was ordered by the Commission on November 1, 2000, Working Group meetings could not be said to be specific to preparations for implementation of the program. Further, to the extent that later meetings were not necessary

to and focused on specific implementation issues, it may not be appropriate to include such costs in SBC recovery. We note that in recent months, attention has turned from implementation of the November 1, 2000 order, to consideration of the viability of an EAP, raising questions as to whether time at recent meetings can fairly be said to be specific to implementation of a program fundable under the SBC.

While this clarification does not cover all conceivable circumstances, further guidance can only be given in the context of specific proposals for cost allocation to the SBC. We note that, to the extent costs are not recoverable under the SBC, this does not constitute a disallowance of the costs. Rather, such costs are already in base rates or some other surcharge, and can remain in such rates so long as they are reasonable. The question is whether incremental recovery will be allowed out of the SBC.

2. Limitations on what constitutes a "start-up" cost.

In Docket No. DE 02-034, we are considering whether, given the high costs recently estimated by the utilities for implementation of the EAP, a tiered discount program (a variant of the burden-based bill assistance program) should be implemented in lieu of the EAP. Until it is resolved what form

of program will actually be implemented, it is not possible to specify further the definition of "start-up" cost.

3. "Net cost" concept

In the Order we specifically recognized that as a result of regular, timely payments from heretofore payment-troubled customers, long term benefits would be provided to the utilities and their remaining customers. Order, page 13 (emphasis added). Under the Order, savings from the EAP, other than the benefit credits applied to the accounts of qualifying low income customers, flow to all customers alike. We decline to revisit this question now on a motion for clarification.

4. Amortization of start-up costs

Lacking quantitative information about the magnitude of start-up and administrative costs and projected benefit amounts for the first year of the EAP, we will defer ruling on this matter until budgets are prepared and submitted to the Commission as described below.

5. Annual budgets

In the Order we did not specifically require the submission of annual budgets. We did, however, retain the responsibility of reviewing and approving all EAP costs.

We think there are significant advantages to carrying out this responsibility through Commission review and approval of annual budgets. Budgets will assist ECS in

managing EAP funds and generally improve the coordinated management of funding issues and customer enrollments. They provide a process for collecting information on all EAP costs from all parties which is consistent with the operation of the interim low income and energy efficiency programs. They help remove the uncertainty over what costs will be chargeable to the low income portion of the SBC. They assist the Commission in ensuring that recoverable start-up and ongoing administrative costs are proper and reasonable.

For these reasons, we will require the utilities, the CAA and ECS to submit annual budgets, including estimated revenues and costs, for our review and approval not less than sixty days before the start of each EAP program year. Our review and approval of the annual budgets in advance of an EAP year will, subject to audit of the actual costs incurred, constitute the review and approval of EAP costs we noted in the Order.

The budgets for the first EAP year must detail all "start-up" and first year O & M/administrative costs for which low income SBC funding will be sought. We expect the organizations to cooperate with one another in exchanging cost information for the first year as soon as feasible in order not to further delay the start of the EAP. We may consider

including in our approval of the budgets a trigger mechanism such that the parties would be required to submit new budgets if a significant variance is expected.

Finally, we will require after the fact reporting of on-going O & M/administrative costs as outlined in the Order.

This disposes of the issues raised by SOHO in its Motion for Clarification.

In its response, PSNH made a final suggestion that we open a new docket number or issue a new service list for EAP related matters. By opening DE 02-034, we have effectively done this and all further consideration of this matter will be done in DE 02-034.

C. SOHO Motion to Complete

We will transfer consideration of the SOHO Motion to Complete to DE 02-034 pending our consideration of written comments from the parties and information presented at the hearing.

D. ECS/SOHO Motion for Ruling

With the issuance of this Order, the ECS/SOHO Motion becomes moot and we therefore need not rule on it. However, it is fair to note that action has been deferred for some time on the Motion in light of legislative inquiries into program administration.

Based upon the foregoing, it is hereby

ORDERED, that as set forth above, Granite State Motion for Ruling is granted in part and denied in part; and it is

FURTHER ORDERED, that the SOHO Motion for Clarification is granted in part and denied in part in accordance with the above analysis, and, except as clarified or modified above, Order 23,573 remains in effect; and it is

FURTHER ORDERED, that as set forth above, a ruling on the SOHO Motion to Complete is transferred to DE 02-034; and it is

FURTHER ORDERED, that the ECS/SOHO Motion for Ruling is deemed to be moot in view of the other orders issued herein.

By order of the Public Utilities Commission of New Hampshire this fifth day of April, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland

Executive Director & Secretary