

DE 01-057

CONCORD ELECTRIC COMPANY, CONNECTICUT VALLEY ELECTRIC COMPANY,
EXETER & HAMPTON ELECTRIC COMPANY, GRANITE STATE ELECTRIC COMPANY,
NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC. AND PUBLIC SERVICE
COMPANY OF NEW HAMPSHIRE

Joint Petition for Approval of Core Energy Efficiency Programs

Order Approving Settlement Agreement and Authorizing
Implementation of Programs

O R D E R N O. 23,982

May 31, 2002

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Helen Fitzpatrick, Esq. for Connecticut Valley Electric Company; LeBoeuf, Lamb, Greene & MacRae, L.L.P. by Meabh Purcell, Esq. for Concord Electric Company and Exeter & Hampton Electric Company; Laura S. Olton, Esq. for Granite State Electric Company; New Hampshire Legal Assistance by Alan Linder, Esq. for the Save Our Homes Organization; Meredith Hatfield, Esq. for the Governor's Office of Energy and Community Services; Devine Millimet & Branch, P.A. by Robert E. Dunn, Jr., Esq. for New Hampshire Electric Cooperative, Inc.; Jane Doherty for the Environmental Responsibility Committee of the Episcopal Diocese of New Hampshire; Office of Consumer Advocate by Anne M. Ross, Esq. on behalf of residential ratepayers; and Donald M. Kreis, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. INTRODUCTION

The Electric Industry Restructuring Act, RSA 374-F, was enacted with the "overall public policy goal" of developing "a more efficient industry structure and regulatory framework that results in a more productive economy by reducing costs to consumers while maintaining safe and reliable electric service with minimum adverse impacts on the

environment." RSA 374-F:1, I. To that end, the Act sets forth 15 specific "interdependent policy principles," see RSA 374:-F:1, III, among which is the objective of energy efficiency, specifically: "Restructuring 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 customer conservation. Utility sponsored energy efficiency programs should target cost-effective opportunities that may otherwise be lost due to market barriers." RSA 374-F:3, X.

In an effort to advance and implement these legislative determinations of public policy, the New Hampshire Public Utilities Commission (Commission) entered Order No. 23,574 on November 1, 2000, adopting with certain modifications the recommendations of the New Hampshire Energy Efficiency Working Group. See *Electric Utility Restructuring - Energy Efficiency Programs*, 85 NH PUC 684 (2000). Order No. 23,574 directed New Hampshire's five electric utilities¹ to

¹ There are actually six entities involved, only five of which are technically a "public utility" under the Commission's enabling statutes. Two utilities, Concord Electric Company (Concord Electric) and Exeter & Hampton Electric Company (Exeter and Hampton), are affiliates and have appeared here jointly; they are sometimes referred to collectively with reference to their parent company, Unitil. The New Hampshire Electric Cooperative (NHEC) is not a public

work together to develop a series of "Core" Energy Efficiency Programs - i.e., programs that would be available to electric customers throughout the state, regardless of service territory - to be funded by ratepayers via the System Benefits Charge authorized by RSA 374-F:VI. Today's order, marking the culmination of the year and a half of work that has followed Order No. 23,574, authorizes the commencement of the Core Energy Efficiency Programs, with associated utility-specific programs, on June 1, 2002.

II. BACKGROUND AND PROCEDURAL HISTORY

This docket began on March 14, 2001 with the filing of a joint petition by Concord Electric, Connecticut Valley Electric Company (CVEC), Exeter & Hampton, Granite State Electric Company (GSEC), NHEC and Public Service Company of New Hampshire (collectively, the Petitioners). The Petitioners sought approval of five Core Programs for residential customers - Energy Star Homes, Energy Star Appliances, Residential Lighting, Residential Retrofit and Low-Income Efficiency Services - as well as three Core Programs to be offered commercial and industrial (C&I) customers: Lost

utility, see RSA 301:57 (authorizing NHEC to so elect), but is still subject to the Restructuring Act, see RSA 362:2, II. and for the sake of convenience is referred to here as one of the "utilities" involved in this docket.

Opportunities/New Construction, Large C&I Retrofit and Small C&I Retrofit.

The Commission granted intervention petitions submitted by the Conservation Law Foundation (CLF); the Environmental Responsibility Committee of the Episcopal Diocese of New Hampshire, the Province I Environmental Network of the Episcopal Church and New Hampshire Interfaith Power and Light (appearing jointly and collectively referred to here as the Environmental Responsibility Committee); the Governor's Office of Energy and Community Services (ECS), the New Hampshire Department of Environmental Services (DES), and the Save Our Homes Organization (SOHO). The Commission also granted the limited intervention petitions of New Hampshire Ball Bearing, Inc., EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England and the Society for the Protection of New Hampshire Forests (SPF). The Office of Consumer Advocate (OCA) entered an appearance on behalf of residential ratepayers pursuant to RSA 363:28.

Following a Pre-Hearing Conference and a period of discovery, the Petitioners entered into a Settlement Agreement on October 4, 2001 (Phase I Settlement) with OCA, the Commission Staff and those intervenors that had been participating actively in the docket to that date: CLF, the

Environmental Responsibility Committee, ECS, SOHO, DES and SPF. Following a hearing conducted on October 31, 2001, The Commission approved the Phase I Settlement in Order No. 23,850 (November 29, 2001).

The Phase I Settlement called for the approval of the proposed Core Programs, with such approval to be deemed the first of two phases in an ongoing proceeding to be conducted in the instant docket. As a part of the Phase I Settlement, the Petitioners agreed to "dedicate sufficient funds and resources, subject to the constraints of each Utility's budget, to deliver the Core Programs in a consistent manner to as many New Hampshire residents, businesses and public facilities as possible through year end 2003, or until such further time as the Commission may direct." Order No. 23,850, slip op. at 7.

The signatories to the Phase I Settlement agreed that Phase II of the docket would involve the submission of utility-specific filings, and would cover these issues: final Core Program budgets for each utility, cost-effectiveness analyses for the programs as implemented by each utility, final utility-specific program goals and the utilities'

estimated shareholder incentive.² *Id.* at 7-8. Certain additional modifications to the Petitioners' initial Core Programs proposal were also specifically enumerated in the Phase I Settlement.³ *See id.* at 8-15. The Commission concluded that the Petitioners' initial filing, as modified and conditioned by the Phase I Settlement, "creates energy efficiency programs that are reasonable and in the public interest." *Id.* at 16. Accordingly, the Phase I Settlement was approved. *Id.*

Order No. 23,850 additionally approved the Petitioners' joint request for modification of the November 2000 Order with regard to the cost-effectiveness test to be applied to the calculation of shareholder incentive payments.

² In the November 2000 Order, the Commission approved a specific shareholder incentive formula proposed by the Energy Efficiency Working Group, which was designed to permit the Petitioners to recover incentives of up to 12 percent of program budgets, with the residential and commercial/industrial sectors to be assessed separately in terms of the actual cost-effectiveness and energy savings achieved when compared to the projected results. *See* 85 NH PUC at 689, 694.

³ As noted in Order No. 23,850, the negotiated changes to the Petitioners' initial filing fell mainly in three areas: (1) strengthening the coordination between the Low Income Program and the work of Community Action Agencies, (2) strengthening efforts in outreach and education, and (3) improving the coordination among the utilities in the implementation and management of the Core Programs. *See* Order No. 23,850, slip op. at 17.

Specifically, the Commission approved the use of a single avoided cost methodology throughout the state, as opposed to applying each utility's uniquely calculated avoided cost figures in establishing its incentive entitlement. It was noted that, absent such a policy choice, it would be likely that some Core Programs would not be available throughout the state because they would be deemed not cost-effective in some service territories. See *id.* at 19-20.

The Commission received an intervention petition from Bob Reals, an energy consultant, on December 27, 2001. The petition was granted by secretarial letter issued on January 18, 2002.

Phase II of the docket began with the submission on January 11, 2002 of GSEC's utility-specific filing. PSNH made its submission on January 22, 2001.⁴ The parties and Staff conducted a status conference and technical session February 13, 2002, and thereafter recommended a procedural schedule to govern Phase II of the docket, which was approved. Concord Electric, Exeter & Hampton, CVEC and NHEC made their utility-specific filings on February 27, 2002. A series of technical

⁴ Order No. 23,850 directed PSNH and GSEC to submit their utility-specific filings on or before December 31, 2001. This deadline was later extended and all Phase II filings were made on a timely basis.

sessions and formal settlement discussions ensued, resulting in the filing of a proposed Settlement Agreement (Phase II Settlement) on May 8, 2002 on behalf of the Petitioners, OCA, the Environmental Responsibility Committee, ECS, SOHO, DEC and Staff.

The Commission conducted a merits hearing on May 15, 2002 to consider the Phase II Settlement. A panel of witnesses testified in support of the proposed agreement and individual representatives of the Petitioners answered questions concerning utility-specific issues. No party appeared in opposition to the settlement.

III. SUMMARY OF THE PHASE II SETTLEMENT AGREEMENT

The Phase II Settlement proposes that the roll-out date for statewide Core Energy Efficiency Programs be June 1, 2002. The agreement explicitly sets forth that the actual delivery of Core Programs may differ among utilities only in the method by which each utility implements the program. For example, according to the settlement, some utilities may use their own personnel to deliver Core Programs while others may contract with an outside vendor or vendors. The signatories to the Phase II Settlement explicitly agreed that appropriate mechanisms are in place to provide consistency of messages, measures and rebates, as well as appropriately consistent

design, marketing, education, delivery and evaluation of the Core Programs. The agreement further recites that utility-specific programs that go beyond the Core offerings are reasonably related to the needs identified by each utility with regard to its specific service territory.

Specific budgets and goals for each utility were incorporated as appendices to the Phase II Settlement. Attachment 2 to the agreement comprises a list of seven specifically defined budget-tracking categories, the purpose of which is to assure consistency in the analysis of Core Program expenditures.⁵ The budget appendices propose expenditures from June 1, 2002 through December 31, 2003 as follows:

	<u>Budget</u>	<u>Lifetime kWh Savings</u>
PSNH	\$15,991,457	562,597,186
Granite State	\$ 2,131,600	91,830,000
NHEC	\$ 1,580,000	31,215,657
Unitil	\$ 3,369,184	126,324,663
CVEC	\$ 371,879	9,213,986

⁵ The seven categories are: Administration-Internal, Administration-External, Customer Rebates & Services, Internal Implementation Services, Marketing, Evaluation and Lifetime KWH, the latter defined as the lifetime kilowatt-hour savings captured by the program during the applicable reporting period.

The Phase I Settlement contemplated the creation of a Monitoring and Evaluation Committee comprised of representatives of each utility. According to the Phase I Settlement, the purpose of the Monitoring and Evaluation Committee is to oversee quarterly reporting, conduct joint program evaluations, share information, seek input from the parties and Staff and to report to the parties and to the Commission with regard to market progress for each program. The Phase II Settlement modifies this aspect of the earlier settlement to provide for the addition of a representative of the Commission Staff to the Monitoring and Evaluation Committee. This Staff representative would be a permanent, non-voting member of the Committee with access to all Committee materials and the right to attend and participate in all Committee meetings. The Phase II Settlement explicitly provides that Staff participation in the Monitoring and Evaluation Committee would not bind the Commission or any intervenors with regard to the Committee's recommendations or determinations, or the recoverability of any Committee-related expenses. The agreement also expressly acknowledges that the Commission retains all rights under applicable law to review, approve or reject matters considered by the Committee.

Appended to the Phase II Settlement are monitoring

and evaluation plans for the Energy Star Homes, Residential Lighting and New Construction/Major Renovation programs. There is also a template for developing the plans for the remaining programs, along with a schedule for doing so. It provides for the finalization of all monitoring and evaluation plans by June 28, 2002. The Phase II Settlement agreement includes the utilities' commitment to collect the same data and report it consistently throughout all service territories in support of planned monitoring and evaluation activities.

The signatories to the Phase II Settlement agreed that common assumptions should be used for cost-effectiveness analysis absent good reason for deviating from such assumptions. In this context, "common assumptions" include but are not limited to measure life, kilowatt-hour savings and operating hours. The utilities agreed that any deviations from common assumptions would be clearly indicated in reports, with a thoroughly stated rationale included, so as to facilitate meaningful and timely review of such deviations by the parties and Staff. The Phase II Settlement explicitly acknowledges that utilities are currently using a number of different benefit-cost analysis models, and the signatories therefore recommend that a study be performed comparing the various models and that recommendations be developed on how

best to account for any discrepancies among the models currently in use. It was agreed that such study and recommendations would be completed and distributed to the parties and Staff for review by December 31, 2002.

Appended to the Phase II Settlement is a marketing plan covering each of the planned Core Programs. The plan describes the "undesirable market conditions" that are hampering the proliferation of energy efficient technologies and the anticipated strategies for transforming the relevant markets.

The Phase II Settlement acknowledges that there are differences among the utilities with regard to how costs related to energy efficiency programs are presently recovered. The agreement provides that, effective on June 1, 2002, all prudently incurred costs related to energy efficiency programs, including those not recovered in the past, should be recovered via the System Benefits Charge. The only exception is CVEC, which has not yet undergone restructuring and which, therefore, does not assess a System Benefits Charge against its customers. The agreement contemplates that CVEC will continue to recover its prudently incurred energy efficiency expenses via its existing Conservation & Load Management Percentage Adjustment (C&LMPA) mechanism.

Shareholder incentive payments, as approved in Order No. 23,574, are discussed in the Phase II Settlement. Specifically, the agreement refers to them as "shareholder/member" incentives, to clarify that NHEC wishes to recover such payments on behalf of its member-owners. The Phase II Settlement also provides that all assumptions used during the pre-approval phase of the Core Programs will be used at the appropriate time at the end of the program period to calculate results and establish incentive entitlements. It was also agreed that revised assumptions and evaluated findings should be used to determine energy savings underlying the incentive targets and tracking data for the ensuing program period.

With regard to the protocol for assuring that Core Programs are truly available on a statewide basis, the Phase II Settlement provides that the Core Programs Management Team, comprised of representatives of the Petitioners, will consult with the residential and C&I program teams to review the consistency of program delivery at all quarterly management team meetings and will address any issues that arise related to program consistency.

Appended to the Phase II Settlement is a list of tasks that remain to be completed. They range from the

selection of vendors to provide certain services to the development of additional marketing materials to the creation of two key common program elements: a statewide toll-free number and a web site for the Core Programs.

The agreement acknowledges that CVEC and the Unitil companies require recovery of costs not directly related to the provision of Core Energy Efficiency Programs but which are indirectly related to them, previously allowed or directly related to energy efficiency programs that antedate the Core Programs. Accordingly, the Phase II Settlement contemplates that CVEC recover (A) as part of its energy efficiency budget, the amount of \$18,593 related to project no. 33032 and \$1,731 in connection with CVEC's funding share of the New Hampshire Energy Plan, and (b) the appropriate net revenue loss related to conservation and load management programs implemented prior to 1998 until such time as such net revenue losses are reflected in base rates or through some other appropriate method, and interest on over-collections or under-collections in the C&LMPA as traditionally allowed by the Commission. With regard to the Unitil Companies, the agreement calls for recovery of appropriate lost base revenue related to demand-side management programs implemented prior to November 2000 through such time as the lost based revenue is reflected in

base rates or through some other appropriate method.

Finally, the Phase II Settlement contemplates that the instant docket will remain open for consideration of the following issues: (a) the remaining tasks specifically identified in the agreement, (b) reviewing final Monitoring and Evaluation Plans, (c) reviewing reports of the Monitoring and Evaluation Committee, and (d) addressing any issues that may arise related to low-income Core Program and federal weatherization programs collaboration efforts, including the training and education plan.

In furtherance of the Phase II Agreement, the signatories recommend that the Commission approve the agreement as well as the applicable tariff filings of CVEC, NHEC, Concord Electric, Exeter & Hampton and Granite State. The Commission is also asked to approve

all energy efficiency programs involving the sale, delivery and installation of approved measures whether or not they involve the payment of an incentive. To the extent that such approved programs or services are tied to the delivery o[r] the sale of electricity or other product or service by or on behalf of the Utilities, or to the extent that the approved programs require or utilize common vendors, manufacturers, and contractors, the Commission [should] continue to regulate such transactions closely such that the so-called "State Action Immunity" to antitrust complaints against the Utilities would apply under state or federal law filed by government authorities, manufacturers[,] other vendors, suppliers and contractors.

Phase II Settlement Agreement at 9.

IV. COMMISSION ANALYSIS

The statutory framework under which we consider the proposed Core Energy Efficiency Programs, and, in particular, the relevant policy principles that we are charged with implementing, are set forth in the introductory preamble to this order. These provisions from the Restructuring Act make clear that energy efficiency is a crucial and key element of the electric industry transformation contemplated and mandated by the Act.

When we approved the Phase I Settlement Agreement, we had occasion to discuss in some detail our view of the critical role to be played by the Core Energy Efficiency Programs. See Order No. 23,850, slip op. at 15-20. We incorporate that discussion by reference here, and reaffirm our commitment to the principles and policy choices articulated therein. It suffices to stress here that our basic premise is that the availability of a consistent and consistently promoted set of energy efficiency programs is highly preferable to the *status quo ante*, which involved varying ability of initiatives depending on service territory.

Accordingly, we find that it is consistent with the public good to make the Core Energy Efficiency Programs

available to New Hampshire electric customers as soon as practicable. It is also our finding that the programs and commitments described in the Phase II Settlement Agreement are reasonable and appropriate. Therefore, we will approve the Phase II Settlement Agreement and authorize the commencement of the Core Energy Efficiency Programs on June 1, 2002 as contemplated by the agreement.⁶

Several aspects of the Phase II Settlement deserve particular emphasis here. First, we note with approval the signatories' agreement to add a representative from the Commission Staff as a non-voting but otherwise fully participating member of the Monitoring and Evaluation Committee. Inherent in the Core Programs paradigm is the notion that the utilities, as opposed to some outside entity within or without the government, are responsible for providing the Core Programs. Particularly because that the mechanism for funding the Core Programs - the system benefits charge - is not unlike a tax and its proceeds therefore not unlike public funds, it is appropriate for the Commission

⁶ We note that our decision to that effect will not be final and unappealable by June 1. However, at hearing, the Petitioners indicated that they were willing to move forward with the Core Programs on June 1 if approved in this Order. Our approval granted herein is intended to apply both to the Core Programs as well as the revised tariff pages appended to the Phase II Settlement.

Staff to have a role in assuring that monitoring and evaluation efforts are rigorous and thorough. We note, with approval, that Staff participation in this process is without prejudice to the Commission's authority to review the work of the Monitoring and Evaluation Committee.

It is also useful and consistent with appropriate public policy for the Petitioners to have agreed upon a set of common definitions for tracking program activities for budgeting purposes. Consistent financial benchmarks are vital to the process of effective oversight, and we will be aggressive in assuring that the financial reports we receive from the utilities are thorough, comprehensible and presented in a uniform manner by the utilities.

Similarly, we endorse the suggestion in the Phase II Settlement Agreement that common assumptions should be used in performing cost-benefit analyses across the various service territories. We recognize that, for various historical and logistical reasons, the utilities have employed and presently continue to employ several different models for conducting cost-benefit analyses. We will hold the utilities to their commitment to perform an analysis by year's end aimed at addressing in a meaningful way the discrepancies this situation engenders.

With reference to Attachments 4E (the Monitoring and

Evaluation Plan Timeline) and 5 (Remaining Tasks), we note with some concern that much remains to be done in order to assure that the Core Programs operate effectively. In particular, we note the testimony at hearing that some of the deadlines in Attachment 4E have already been missed.

Therefore, we place the parties on notice that we will hold them to the deadlines to which they have agreed in these attachments, particularly the ultimate June 28 deadline for completing the Monitoring and Evaluation Plan and the June/July timetable for making a statewide toll-free number and web site available for promotion of the Core Programs. The latter two initiatives are, we believe, crucial to the success of the programs.

As we have previously noted, the Commission in Docket No. DE 01-080 approved a pilot, utility-specific Core program for NHEC and PSNH. This is the Pay-as-You-Save (PAYS) program, designed to allow customers to finance energy efficient improvements to their premises out of the energy savings received thereby. Both NHEC and PSNH responded to record requests posed by the Commission at hearing, designed to explore the question of the extent to which the PAYS concept may not be adequately tested because it will be competing with the significant subsidies offered by various statewide Core Programs.

PSNH's response indicates that its PAYS programs may complement its CORE programs and therefore no apparent conflict exists. NHEC's responses reveal that there are several measures within the CORE programs that are similar to those offered in its PAYS pilot. However, NHEC submits that running the programs in parallel will offer its members greater choices which will assist in removing market barriers to energy efficiency. NHEC also states that because PAYS is a novel approach, it is impossible to determine the extent, if any, to which PAYS programs will conflict with CORE programs.

These responses allay some of the concerns we have about whether the CORE programs offered by PSNH and NHEC may impede the success of their PAYS pilots. We note that an evaluation of PAYS in the absence of a corresponding CORE program with substantial measure subsidies, will be different from an evaluation of PAYS in conjunction with programs that contain such subsidies. We will accordingly place greater weight on evaluation of the utilities' implementation of the PAYS pilot (here, NHEC and PSNH) and will not reject PAYS if the pilot experience shows a smaller-than-expected number of participants.

Our objective is to assure a successful PAYS pilot without causing undue delay in the advent of the statewide Core Programs. Therefore, we will approve the plans of PSNH

and NHEC to move forward with the statewide programs but will, if necessary, convene further proceedings in Docket No. DE 01-080 to address issues that arise with regard to the interaction between the PAYS pilot and the other Core Programs. During the two years of the PAYS pilot, should NHEC or PSNH determine that one or more of the Core Program Components interfere(s) with the PAYS Pilot by creating competing and/or confusing offers to customers, either or both companies may request the Commission to temporarily waive the obligation to implement the interfering Core Program component(s) and to shift the associated funding to the PAYS pilot or to another Core program component.

Finally, we take up one issue addressed in the November 2000 Order that remains unresolved. At that time, we indicated that an open question remains whether the state's gas utilities should be required to participate in the Core Programs and/or to offer similar programs to their customers. See 85 NH PUC 695. Although we solicited comments on the applicability of the November 2000 order to gas utilities, that issue remains unexplored to date. On May 15, 2002, the Commission's Gas and Water Division submitted a memorandum to the Commission recommending that a proceeding be opened to address implementation of energy efficiency programs on gas

utilities. Accordingly, we will instruct our Executive Director to cause a copy of this Order to be served on the gas utilities within our jurisdiction, which will serve to inform them that we intend to open a docket to consider the role of gas utilities in making energy efficiency a reality for all New Hampshire energy consumers, regardless of heating method employed.

We conclude with an expression of gratitude for a year and a half of intense work on the part of all concerned. Even though the Energy Efficiency Working Group laid an effective groundwork in 2000 for the programs we approve today, the task of making these programs a reality involved a herculean amount of planning, coordinating and negotiating. We commend the utilities and the intervenors for their effective and creative work, which we believe portends a successful implementation of the Core Energy Efficiency Programs and a resulting transformation of relevant markets so that energy efficiency becomes the norm throughout New Hampshire.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement submitted in this docket on May 8, 2002, including the appended tariff revisions, is APPROVED; and it is

FURTHER ORDERED, that the Core Energy Efficiency Programs described in that Agreement are authorized to commence on June 1, 2002.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of May, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary