

THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DE 22-043

Low Income Electric Assistance Program
2022-2023 Electric Assistance Program Budgets

Joint Response to Record Request of Unutil Energy Systems, Inc.; Public Service Company of New Hampshire d/b/a Eversource Energy; New Hampshire Electric Co-operative, Inc.; and Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty

I. INTRODUCTION

On August 22, 2023, the New Hampshire Public Utilities Commission (the “Commission”), issued a Prehearing Order describing the Commission’s review of the Low-Income Electric Assistance Program (“EAP”) and identifying seven scoping areas of focus for this proceeding. On April 18, 2024, the Commission conducted a hearing in this proceeding. At the hearing, the witness, Mr. Roger Colton, identified two possible alternatives to address the question presented in Scoping Area Six, which focuses on safeguards to ensure EAP beneficiaries do not receive more monthly credit than actual monthly expenditure on energy supply. *Prehearing Order* (August 22, 2023) at 2-3. The first potential alternative is to give EAP customers a choice between: (i) purchasing energy supply from their utilities, and receiving a discount on both the energy and delivery portions of their bill; or (ii) purchasing energy supply from a competitive supplier and receiving a discount only on the delivery portion of their bill. Hearing Transcript of April 18, 2024, at 47-49, 123, 190-191. The second potential alternative is to establish a framework in which all customers in the EAP program would receive their energy supply from one or more statewide EAP energy suppliers selected through a competitive solicitation process. *Id.*

As a record request, Chairman Goldner asked Unitil Energy Systems, Inc.; Public Service Company of New Hampshire d/b/a Eversource Energy; New Hampshire Electric Co-operative, Inc.; and Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (the “Joint Utilities”) to consider the feasibility of these two proposed alternative solutions and report back to the Commission in this docket. *Id.* at 190-191. The Joint Utilities have conferred on the two potential solutions and appreciate the opportunity to provide their perspectives on them. For the reasons discussed in this Response, the Joint Utilities do not recommend that either alternative solution be adopted by the Commission.

II. BACKGROUND

In the initial design of the EAP, participants who chose to purchase energy supply from a competitive supplier could not receive the EAP discount on the energy supply portion of their electric bills. In early 2017, the EAP Advisory Board (the “Board”) convened a subcommittee to consider options that would allow participants on competitive supply to receive the EAP discount on the supply portion of their electric bill.

On April 5, 2018, the Board filed a recommendation requesting that the Commission approve the application of the EAP discount to the entire bill of all program participants, regardless of whether they were on utility-provided default service (“Default Service”) or enrolled with a competitive supplier. *Statewide Low-Income Electric Assistance Program*, DE 18-057, EAP Advisory Board, Recommendation Regarding Customers Using Competitive Suppliers (April 5, 2018) (Docket Book Tab 1). The Board recommended using the Default Service rate as a proxy to calculate the discount for competitive supply customers because this approach would: (1) reward the use of retail choice; (2) limit the exposure of the EAP fund in cases where a customer is paying an unusually high competitive supply rate; and (3) avoid the

billing complexity of calculating specific discounts for various suppliers at various supply rates. *Id.* at 1.

On May 4, 2018, the Commission approved the Board's recommendation to extend the EAP discount to the energy portions of the bills of EAP participants who elect to buy energy from a competitive supplier, using the Default Service rate as a proxy for the competitive supply rate to which the discount would be applied. *Statewide Low-Income Electric Assistance Program*, DE 18-057, Order No. 26,132 (May 4, 2018).

In 2023, the Audit Staff of the Department of Energy ("Department") conducted a review of the EAP and issued a final Audit Report dated June 1, 2023. Hearing Exhibit 6 (*Department's Final Audit Report* (June 1, 2023) (Docket Book Tab 63)). Among other things, the Department's Audit Staff noted that several EAP customers had credit balances on their accounts. *Id.* at 24-25 and 43-44. Audit Staff determined that these anomalous credit balances occur when a utility's Default Service rate (which is used as a proxy to calculate the EAP discount) is greater than the price being charged for competitive supply. *Id.*

Despite the fact that using the Default Service rate as a proxy is an imperfect solution and may result in such anomalies, the Board concluded that it was still more efficient than building and maintaining rate tables for the dozens – if not hundreds – of prices billed by the utilities on behalf of third-party competitive suppliers. *Id.* The Department's Audit Staff concurred with that conclusion. *Id.*

As noted above, in this proceeding the Commission has expressed interest in considering possible safeguards to ensure that EAP beneficiaries do not receive higher monthly bill credits than their monthly bill expenditures. Earlier this year, the Joint Utilities examined their respective internal processes and billing systems to assess the feasibility of a technology solution to this

issue. As discussed in their March 6, 2024 Technical Statement, the Joint Utilities concluded that the complexities associated with modifying their systems to accommodate rate tables for different prices billed on behalf of multiple third party-suppliers would be significant. Hearing Exhibit 11 (Joint Utilities Technical Statement (Mar. 6, 2024) at 3-5 (Docket Book Tab 105)). The Joint Utilities further concluded that continuing to use the Default Service rate as the basis for determining all EAP participants' discounts is more administratively efficient, and less expensive, than reconfiguring their respective billing systems to accommodate a technology solution.

As noted above, during the April 18th hearing, Mr. Colton identified two other possible solutions to address the issue of EAP beneficiaries receiving higher monthly credits than their actual monthly expenditures. Chairman Goldner asked the Joint Utilities to confer regarding those two potential alternative solutions and report back to the Commission through a record request response. A summary of the Joint Utilities' review and evaluation of those two potential alternative solutions is provided in the Discussion Section that follows.

III. DISCUSSION

A. Potential Alternative Solution 1: Limiting the EAP Discount to the Delivery Portion of the Bill for Customers Choosing Competitive Supply

The Joint Utilities acknowledge that it is technically feasible to implement a framework prohibiting EAP customers who are enrolled with competitive suppliers from receiving a discount on the energy supply portion of their bill. Indeed, that is the EAP framework that was in place until it was modified in 2018 by Commission Order No. 26,132. The Joint Utilities conclude, however, that this proposed alternative solution restricts customer choice in a manner that conflicts in significant respects with New Hampshire's Electric Utility Restructuring Law. N.H. Rev. Stat. § 374-F ("Chapter 374-F"). The Joint Utilities further conclude that a party could

challenge this framework on those grounds.

Chapter 374-F restructured the electric industry in New Hampshire, and the EAP is within the scope of the electric utility restructuring law. RSA 374-F:3, V(a) (“...Programs and mechanisms that enable residential customers with low incomes to manage and afford essential electricity requirements should be included as a part of industry restructuring.”). Chapter 374-F:3 sets forth the principles that govern electric utility restructuring in New Hampshire. Those principles include: allowing customers to choose among electricity suppliers to help ensure fully competitive and innovative markets (RSA 374-F:3, II); directing the Commission to seek to implement full customer choice among electricity suppliers (RSA 374-F:3, XV); and explaining that the rules governing market activity should apply to all buyers and sellers in a fair and consistent manner (RSA 374-F:3, VII). Chapter 374-F:4, which addresses the implementation of restructuring, provides that the Commission “is authorized to require the implementation of retail choice of electric suppliers for **all** customer classes of utilities providing retail electric service under its jurisdiction.” RSA 374-F:4, I (emphasis added).

It is arguable that forcing a customer to choose between full EAP participation (and receiving a discount for both supply and delivery) and purchasing energy from a competitive supplier (and receiving a discount only on delivery charges) violates the principle of full customer choice for all customer classes. This argument is premised on the idea that low-income customers eligible for EAP benefits would be left with no real practical choice other than to remain on Default Service. This is the case because many low-income customers cannot afford their electricity bills without the discounts provided by the EAP on both the energy supply and delivery portions of the bills. Consequently, many EAP participants would be compelled to remain on Default Service by necessity. This is the antithesis of customer choice, a foundational

restructuring policy principle articulated in RSA 374-F:3,II, and would undermine a fully competitive energy supply market.

It is also arguable that requiring low-income customers to either remain on Default Service and receive the EAP discount on the entire bill or purchase competitive supply and forego the EAP discount on the supply portion of the bill treats one class of customers differently than all other customers. This disparate treatment runs contrary to the principle that all buyers of electricity should be treated in a “fair and consistent manner in order to ensure a fully competitive market.” RSA 374-F:3, VII

Conversely, an argument could be made that participating in the EAP and choosing competitive supply are both voluntary activities, and therefore there is no restriction on customer choice in violation of Chapter 374-F. That argument is premised on the idea that limiting the EAP discount to the delivery portion of the bill for customers choosing competitive supply is simply a condition to participation in the EAP. A customer would still be free to choose competitive supply, but as a condition of that choice, the customer’s EAP discount would be limited to just the delivery portion of the bill. The Commission’s authority to impose such a limitation arguably can be found in RSA 369-B:1, XIII, which provides that the Commission “should design low income programs in a manner that targets assistance and has high operating efficiency, so as to maximize the benefits that go to the intended beneficiaries of the low income program.” One could argue that limiting the EAP discount to delivery charges only for customers on competitive supply ensures that the program has a “high operating efficiency” because non-participants are not required to fund “subsidies” in excess of participating customers’ expenses.

Although reasonable arguments can be made both for and against the first proposed alternative solution to the Scoping Area Six issue, the New Hampshire legislature had made clear

that retail choice is the policy of New Hampshire—and that policy is consistent with the New Hampshire constitution and will produce a “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, II. The legislature also has found that “[a]llowing customers to choose among electricity suppliers will help ensure fully competitive and innovative markets.” RSA 374-F:1, II; RSA 374-F:3, II. On balance, these overriding policy considerations can be viewed as outweighing any potential efficiency gains that might be achieved by adopting the first proposed solution.

The Joint Utilities continue to believe the Commission correctly decided in 2018 that the EAP Board’s “recommendations appropriately consider the statutory obligations . . . ,” and that expanding the EAP discount to cover the supply portion of consolidated bills for customer enrolled with a competitive supplier “will benefit a broader category of income-eligible customers and, with close Board monitoring, will not impact the EAP’s viability.” Order No. 26,132 at 6. Moreover, as noted in the Department’s Technical Statement, it appears that the circumstance giving rise to this issue was an anomaly that occurred in 2022 when competitive energy supply rates were lower than Default Service rates. Hearing Exhibit 12, at 5. As indicated by the Department, with the exception of 2022, EAP participants who have chosen a competitive energy supplier have generally received an overall bill discount lower than the EAP discount percentage for which they are eligible. *Id.* Accordingly, the Department suggests that no safeguards are necessary to ensure that EAP beneficiaries do not receive more monthly credit than the actual monthly expenditure on energy supply. *Id.*

B. Potential Alternative Solution 2: Aggregating Supply for EAP Participants

The Joint Utilities recommend that the Commission reject this proposed alternative

solution because it is unlikely to generate market interest from competitive suppliers and arguably is in conflict with the principles of retail choice set forth in New Hampshire's Electric Utility Restructuring Law.

Competitive electric power suppliers are not public utilities pursuant to RSA 362:2. RSA 374-F:7, I. Notwithstanding a competitive supplier's non-utility status, the Department is authorized to establish requirements, excluding price regulation, for competitive electricity suppliers, including registration, registration fees, customer information, disclosure, standards of conduct, and consumer protection and assistance requirements. *Id.* Although both the Commission and the Department have some oversight authority over competitive suppliers, there is no provision in New Hampshire law that authorizes the state to require competitive suppliers to procure energy for EAP participants as a stand-alone group. Therefore, any such procurement would need to be voluntary and may result in minimal participation, as was the case in Pennsylvania, as discussed below and as referenced by Mr. Colton during the hearing. Hearing Transcript of April 18, 2024 at 48-49.

In 2017, PPL Electric Utilities Corporation ("PPL") implemented a program in which Customer Assistance Program ("CAP") participants could only "shop" for energy through a Standard Offer Program ("SOP") for those CAP customers (the "CAP SOP"). *PPL Electric Utilities Corporation*, Pennsylvania Public Utilities Commission, Docket No. P-2020-3019356 (December 17, 2020) at 103-104. In order to participate in the CAP SOP, Electric Generation Suppliers ("EGS") were required to serve customers at a 7 percent discount off the Price-to-Compare (PTC) at the time of enrollment. *Id.* at 104. In 2020, PPL petitioned the Pennsylvania Public Utilities Commission to discontinue the CAP SOP due to, among other reasons, minimal participation by EGS. *Id.* at 104-107. The Pennsylvania Public Utilities Commission found,

among other things, that the CAP SOP was not a successful program due to the lack of EGS participation and adopted the Administrative Law Judge's recommendation to discontinue the program. *Id.* at 124, 125, 130.

Requiring all EAP participants to participate in a single aggregated procurement pool also arguably violates Chapter 374-F because it would interfere with full customer choice for all customer classes. Specifically, this approach prohibits EAP participants from selecting the competitive supply option that best suits their needs, which may be informed by any number of considerations, including the following factors: potential renewable energy options; preference for a longer or shorter term contract; the existence and amount of early termination fees; the supplier's process for communicating the end of a fixed price period of service; or the opportunity to refer friends and neighbors for credit against charges. This approach also would treat EAP participants differently from all other customers, which is contrary to the Chapter 374-F principle that rules governing market activity should apply to all buyers in a fair and consistent manner. RSA 374-F:3, VII. For these reasons, and those set forth above, the Joint Utilities recommend that the Commission reject this alternative approach.

IV. CONCLUSION

The Joint Utilities acknowledge that the current EAP framework, which uses Default Service rates as a proxy for all participating EAP customers' energy supply rates, is not a perfect solution. However, the alternatives identified thus far are less than ideal for the reasons discussed herein. The current framework, although admittedly imperfect, is consistent with legislative directives to offer "programs and mechanisms that enable residential customers with low incomes to manage and afford essential electricity requirements" and "maximize participant benefits." RSA 374-F:3,V(a); RSA 369-B:1, XIII. Moreover, an argument can be made that the current

framework, which has existed since 2018, appropriately balances the promotion of universal retail choice with program operating efficiency. Because the EAP discount on energy supply is capped at the Default Service rate, if a customer chooses a supplier with higher rates, then other ratepayers are not required to “subsidize” the difference between the Default Service and competitive supply rate. If, on the other hand, a customer makes a choice that results in a lower supply rate, the customer is rewarded for participating in the competitive market with those savings plus the EAP discount as applied based on the Default Service rate.

As noted above, the Commission previously found that the use of Default Service as a proxy to calculate the EAP discount on the supply portion of participants’ bills appropriately considers the statutory obligations in Chapters RSA 374-F and RSA 369-B:1, benefits a broader category of income-eligible customers, and will not impact the EAP’s viability. *Statewide Low-Income Electric Assistance Program*, DE 18-057, Order No. 26,132 (May 4, 2018) at 5-7. Those findings are still valid, and therefore the Joint Utilities do not recommend that the Commission reverse its precedent. The continued use of Default Service as a proxy rate, although not perfect, is consistent with the statutory obligations in Chapter 374-F and 369-B:1 and is superior to the alternatives considered thus far.

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Certificate of Service

I hereby certify that on this 21st day of May, 2024, a copy of the foregoing Joint Response to Record Request was electronically delivered to the service list in this docket.

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

Matthew C. Campbell