

PUBLIC UTILITIES COMMISSION

IN RE: REQUEST BY NATIONAL GRID :
FOR CHANGE OF GAS DISTRIBUTION :
RATES :

Docket No. 3943

2008 SEP -5 PM 3:00

RECEIVED

POST-HEARING MEMORANDUM OF GEORGE WILEY CENTER

Introduction

The economic crisis facing Rhode Island is much worse today than it was when National Grid proposed a 10% discount for low-income households. Last month National Grid terminated the largest number of gas and electric customers in a single month in Rhode Island's history. *See 2008* (copy attached as *App. 1*). Even before unemployment soared to a nation-high of almost 9%, no party objected to National Grid's proposal to institute a low-income discount of at least 10%. In the last two months, three of Rhode Island's neighbors – Massachusetts, New Hampshire and Maine – have enacted new protections for low-income customers even absent the severity of Rhode Island's current crisis. *See pp. 7-9 infra*.

The George Wiley Center asks that the Commission approve a discount of 50% off the customer and distribution charges, commensurate with the discount provided to National Grid's electricity customers, albeit still inadequate to the need. As Commissioner Bray noted at the hearing, because all of National Grid's gas customers are also electric customers, the gas discount could readily, and should equitably, be extended not just to LIHEAP customers, but to the entire A-60 class. *See Transcript (Tr.) 9/11/08 at 234-235.*

The Law

The legal basis for the proposed discount is discussed in *See Memorandum of George Wiley Center re Legality of Low-Income Discount (WC Legal Memo)*. Summarized briefly: The factual question under G.L. § 39-2-5(2) is whether the special rate proposed by the utility is either “just and reasonable” in the Commission’s view or “required in the interests of the public.” § 39-2-5(2). *WC Legal Memo* at 1-4. This language must be liberally construed. G.L. § 39-1-38. The Commission has “all additional, implied, and incidental power which may be proper or necessary to effectuate [the statute’s] purposes.” *Id.* The Commission need not be persuaded that a rate discount “will succeed” in achieving a public interest goal; it is sufficient that it concludes that it “may succeed.” *Violet v. Narragansett Electric Company*, 505 A.2d 1149, 1152 (R.I. 1986)(emphasis original). The Commission’s discretion is limited under § 39-2-5(2) only by the mandate that the special rate not be “unjustly” discriminatory. *Id.*

The Massachusetts Supreme Judicial Court considered a discount not unlike the one proposed here in *American Hoechst Corporation v. Department of Public Utilities*, 379 Mass. 408, 399 N.E.2d 1 (Mass. 1980). *Hoechst* concerned a discount for elderly low-income customers originally proposed by Massachusetts Electric Company. The company expressed concern for the needy and for its corporate reputation, but provided no firm cost-based rationale for the rate. *Id.* at 410. The lost revenues were to be recouped from other residential customers.

The department adopted the discount, but ordered that it paid by all the company’s customers and not residential customers alone. *Id.* Responding to an appeal by institutional and business customers, the Massachusetts Supreme Judicial Court affirmed. The Court held that the principles stated in *Rhode Island Consumer’s Council v. Smith*, 111 R.I. 271 (1973) were not

controlling in light of the fact (as here) that the discount was proposed by the company and not by the Department of Public Utilities. “There can be no question that the department’s jurisdiction over the entire rate structure includes the authority to approve a reduced rate for certain customers.” *Hoechst, supra* at 411. The only question was whether the utility’s proposed rate was “unduly or irrationally discriminatory.” *Id.*

The Court also rebuffed a claim that the discount amounted to unlawful discrimination, stating that “[i]t is axiomatic in ratemaking’ that ‘different treatment for different classes of customers, reasonably classified, is not unlawful discrimination.’” *Id.* at 411-412, quoting *Boston Real Estate Board v. Department of Public Utilities*, 334 Mass. 447, 495 (1956). “‘The controlling consideration of the public interest in the exercise of the department’s statutory regulating power’ must encompass at least the approval of this rate.” *Id.* at 413.

Hearing Testimony re Low-Income Discount

Pre-hearing evidence demonstrated without contradiction that a low-income discount meets § 39-2-5(2) standards. *WC Legal Memo* at p. 4. The evidence adduced at the hearing adds further uncontradicted support:

- The hardship borne by low-income customers has gotten worse, particularly over the past several years. Tr. 9/11/08 at p. 171-172.
- Low-income customers have been more severely affected by recent increases in commodity costs than other National Grid customers. Tr. 9/11/08 at p. 159-160, 185-186.
- Other customers may benefit indirectly from a low-income discount because the discount may lessen the cost of terminating and restoring low-income customers who fall behind on their bills. Tr. 9/11/08 at p. 170, 156-157, 192-193.

- Other customers may benefit as well from a decrease in the company's uncollectibles expense, which the parties have stipulated should be adjusted downward by \$150,000.00 in the event a discount is adopted. Tr. 9/11/08 at p. 175-176, 193, 239.

Commissioner Holbrook questioned whether other sources of low-income support may affect the need for a low-income discount. National Grid filed Record Request No. 21 in response, summarizing the total energy assistance funds provided to low-income gas and electric service customers over the last three years.

These figures confirm the urgency of a discount on gas customer and distribution charges. According to Record Request No. 21, the following funds were available to help reduce the bills of low-income gas customers for the 12-month period ending June 30, 2008 as follows:

LIHEAP	\$5,641,771 ¹
Good Neighbor Energy Fund	\$ 319,440
Supplemental LIHEAP funds (LIAP)	\$1,636,461
Various community sources	<u>\$1,510,809</u>
Total	\$9,108,481 ²

¹ Although Congress has appropriated more LIHEAP money for the upcoming year, the Commission concluded in Docket 4375 that most of the additional funds will be needed to offset increases in the price of oil heat. While the cost of oil has moderated since that time, the price of oil remains volatile.

² National Grid also listed net write-offs for all classes of \$9,230,765 and energy efficiency program money used to aid low-income customers totaling \$983,643. These last two figures are of minimal use in determining the need for a rate discount for several reasons.

National Grid cannot divide the write-offs by class, so it is impossible to tell how much of this money was used to write-off the debts of low-income customers.

More fundamentally, the issue is the size of the monthly bills faced by low-income customers. The goal should be a bill that the customer can afford to pay, not a bill the customer

The Good Neighbor Energy Fund services families that are not LIHEAP-eligible. It is not available to the class of LIHEAP customers at issue here. Deducting the Good Neighbor funds, National Grid indicates that a total of \$8,789,041 was available for rate relief for LIHEAP-eligible households last year.

There were 17,234 LIHEAP customers during this period according to National Grid. If the money available were divided equally among these low-income customers³, each customer's bills would be reduced by \$510 annually (\$8,789,040 divided by 17,234). National Grid calculates that the average residential customer pays \$1500.00 per year for gas heat. Tr. 9/11/08 at 178. Assuming that every low-income customer were to get an equal slice of these benefits, the annual average gas bill for a low-income LIHEAP household would still be \$990 (\$1500 minus \$510).

On the electric side: National Grid reports that the following funds were available to offset low-income electric bills in the 12 months ending June 30, 2008:

must confront over and over before the company writes it off as uncollectible. Low-income customers remain responsible even for debts the company has written off. For example, if a low-income customer moves and attempts to open a new account after the debt on an old one has been written off, National Grid requires that customer to pay the old debt before the new account may be created.

As to energy efficiency programs: While helpful, these programs have only an indirect impact on the amount low-income customers must pay each month. If an apartment is made more efficient, it should then cost some amount less to heat. It is impossible to quantify this impact (which will vary greatly from customer to customer), however, and therefore impossible to determine the dollar value to the customer of each dollar spent on energy efficiency.

³ There is no reason to believe that this money was in fact so divided. One of the problems with relying on charitable contributions is that the assistance tends to be *ad hoc*, varying with the amount of money available and the predilections of the charitable giver. A discount plan is different, and preferable, in part because its goal is not charity, but rather an affordable monthly bill commensurate with the low-income customer's usage and ability to pay.

LIHEAP	\$908,328 (for 2,857 electric heating customers)
Good Neighbor	\$13,977
A-60 Discount	\$5,500,000
CTC Settlement Funds	<u>\$1,805,070</u>
Total	\$8,227,375 ⁴

National Grid calculates that the average A-60 customer pays about \$75 per month for 500 kWh, or about \$900.00 per year, for electricity. *See Sur-Rebuttal Comments of George Wiley Center at App. 5.* It is not clear whether or not this figure includes the CTC Settlement fund money. If not, then the bill for the average non-heating customer would be about \$67 per year less (\$1,805,070 divided by 27,020 A-60 customers) or about \$823.⁵

The total cost of utilities for the average low-income household is thus in the vicinity of \$1823 to \$1890 per year (\$990 for gas and \$823 to \$900 for electricity). For a family living on a minimum wage (less than \$14,000 per year pre-tax @ \$7.40 per hour, 35 hours a week, 52 weeks a year), this is 13%-13.5% of the low-income customer's wages. It is a whopping 24%-25% of the \$7608 of assistance provided by public welfare to a family of four. *See App. V to Pre-Filed Comments of George Wiley Center.*

⁴ National Grid also listed write-off amounts (a total of \$14,100,000) and weatherization moneys (DSM funds of \$2,993,594) which are not included in this list for the reasons articulated in footnote 2.

⁵ The electric-heating customers receiving LIHEAP funds (2,857 customers receiving \$908,328) are not relevant here, as these customers have no gas-related expenses and therefore would not participate in the proposed discount.

A 10% discount is not enough, even taking into account other sources of assistance for low-income gas customers.

Recent Regulatory Decisions in Neighboring States

Regulatory bodies in neighboring Massachusetts, New Hampshire and Maine agree with the Wiley Center that the situation is drastic and more needs to be done.

The Massachusetts Department of Public Utilities (MDPU) was already requiring low-income discounts on gas distribution bills when it opened a docket to consider whether the discounts should be increased. See *Order Expanding Low-Income Consumer Protections and Assistance*, Massachusetts Department of Public Utilities No. D.P.U. 08-4 (September 15, 2008)(copy attached as *App. 2*). While low-income electric discounts are required by statute in Massachusetts, low-income gas discounts were created by MDPU rule. *App. 2* at p. 23.

Noting that “price increases have a disproportionate effect on low-income consumers” and that “[t]he need for Department action is clear”, *App. 2* at 1, the MDPU ordered both electric and gas companies to increase low-income discounts immediately, even absent a statutory mandate on the gas side: “Electricity and natural gas companies shall immediately increase discounts rates for eligible low-income consumers, and consider further discount rate increases and modifications through the Best Practices collaborative process, with the goal of restoring the low-income discount rate to the level that was in effect prior to March 1, 1998” (the level required by statute for electric companies only). *App. 2* at 2.

The MDPU has ordered gas companies to consider other discount concepts as well, including “tiered discounts”, which are similar to the Percentage of Income Payment Plan used successfully in Rhode Island in the late 1980’s and promoted for many years in Rhode Island by

the George Wiley Center. *App. 2* at 37. The MDPU expressed its support of setting rates according to tiered income categories, stating that “the Department supports the concept of varying the rate based on need.” *Id.*

New Hampshire already uses tiered discounts. On September 30, 2008, the New Hampshire Public Utilities Commission (NHPUC) increased the amount that other customers would pay to support these tiered low-income electric discounts (the “system benefits charge”) because of increases in electric rates, because “the number of customers in the smaller discount tiers has shifted to the larger discount tiers, such that the average person enrolled in the [discount plan] is receiving a higher discount,” and because non-electric energy prices are increasing and the demand for service provided by LIHEAP is up, “which is indicative of the difficult economic circumstances faced by low-income customers.” *Order Approving Budgets and Increase to System Benefits Charge*, New Hampshire Public Utilities Commission Order No. 24,903 (September 30, 2008)(copy attached as *App. 3*) at p. 12.

The NHPUC was “mindful” that increasing the low-income discount would raise rates for other customers, but concluded that the impact was reasonable (\$1.80 annually for residential customers in addition to the charge already in place for existing low-income discounts; \$7.50 annually for small business in addition the charge already in place for existing low-income discounts). *Id.* at 14.

On August 28, 2008, the Maine Public Utilities Commission (MPUC) increased funding for the electric Low Income Assistance Program (LIAP) by 13% in light of the fact that electric rates have increased 13% since 2006. *Order Setting Funding Level*, Maine Public Utilities Commission Docket No. 2008-106 (August 28, 2008)(copy attached as *App. 4*). The MPUC

thereby reversed a decision made earlier this year not to change LIAP funding. *Id.* at 2. The result was a funding increase of \$905,621, bringing the total LIAP funding for 2008 up to \$7,871,938.00, an amount which must be passed on to other Maine electric consumers. *Id.* at 3. The MPUC concluded that a 13% increase provided the best balance between the needs of low-income consumers and the burden on other rate payers. *Id.*

The George Wiley Center urges the Commission to respond similarly here. A 50% discount on gas distribution/customer charges would place Rhode Island in step with its neighbors, as well as with National Grid's low-income electric discount in Rhode Island and with National Grid's low-income discounts in other states, all of which are passed on to other customers. *See Pre-Filed Comments of George Wiley Center* at pp. 5-8; Tr. 9/11/08 at p. 234.

Decoupling

The George Wiley Center opposes the RDM as it is currently proposed for the reasons stated in the *Pre-Filed Comments of George Wiley Center* at pp. 10-13 and the *Sur-Rebuttal Comments of George Wiley Center* at p. 2. The Center is particularly concerned that the proposal shifts the risk of loss caused by any and all decreased usage from National Grid to Rhode Island ratepayers without a commensurate reduction in the company's rate of return.

If the Commission decides to adopt the RDM, the Wiley Center asks that it exclude low-income customers from the decoupling mechanism. National Grid agrees with this approach and has adjusted its proposal to carve low-income customers out of the RDM, along with the large and extra-large commercial and industrial customers. Tr. 10/22/08 at pp. 9-10, 89-90 (testimony of Peter Czekanski and Nickolas Stavropoulos). The impact of this adjustment is set forth in

Attorney General Record Request No. 1. Even with both of these carve-outs, the RDM would still cover 80% of National Grid's Rhode Island accounts. Tr. 10/22/08 at p. 11.

Low-income customers cannot afford to pay even a single dollar more for utility service. The RDM will result in increases in the cost of gas service for the foreseeable future, given that gas usage is decreasing and is anticipated to continue to decrease for the foreseeable future. See *Pre-Filed Comments of George Wiley Center* at 10. The George Wiley Center asks that the Commission insulate low-income people from rate increases that will ensue with adoption of the RDM at a time when their incomes are imperiled, or decreasing, with the poor economy.

Conclusion

For the reasons expressed here and in earlier filings, the George Wiley Center asks that:

- The requested increases in NG's ROE and in the customer charge be denied;
- The proposed low-income discount be adopted, but applied to the whole A-60 class and increased to 50%, so that it is commensurate with the discount offered to NG's electric customers in Rhode Island;
- The proposed RDM be rejected, or, if adopted, be adjusted as proposed by National Grid to exclude low-income heating and non-heating customers.

Respectfully submitted,
The George Wiley Center
By its attorney,

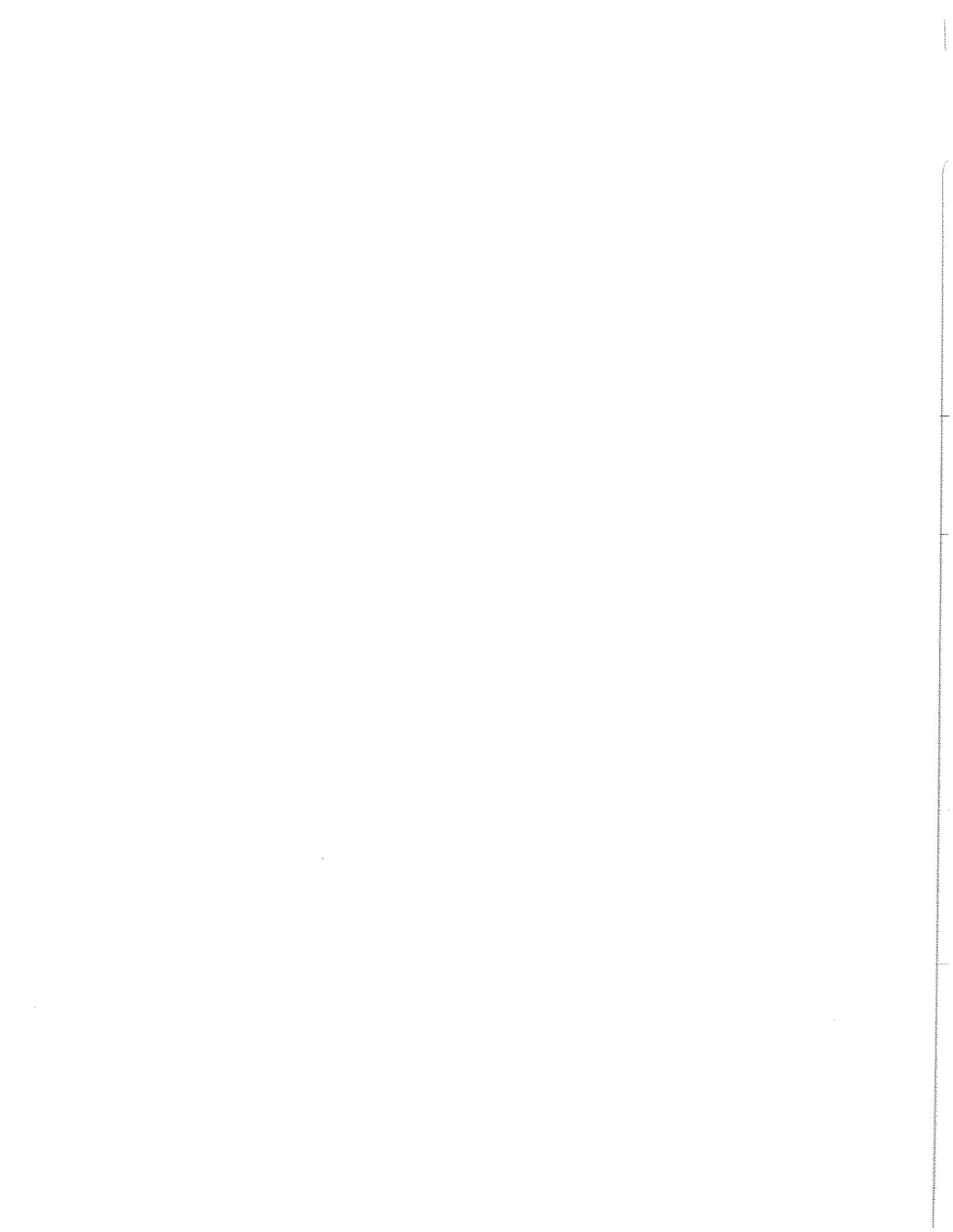


B. Jean Rosiello (#2886)
MacFadyen, Gescheidt & O'Brien
101 Dyer Street
Providence, RI 02903
401-751-5090

CERTIFICATE OF SERVICE

I certify that on November 6, 2008 I hand-delivered one hard copy of this document, plus appendices, on Jeffrey H. Gladstone, Esq. and Robert K. Taylor, Esq., Partridge, Snow & Hahn LLP, 180 South Main Street, Providence, RI 02903 and I served one copy, plus appendices, by email to each of the parties on the service list.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a horizontal line.



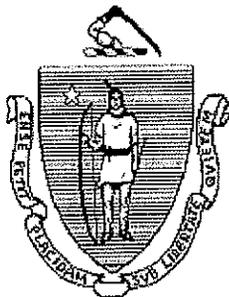
2008 MONTHLY UTILITY SHUT-OFFS

Month	SID		Restored		S/O		Restored		S/O		Restored		Total S/O		Total Restored	
	S	P	S	P	S	P	S	P	S	P	S	P	S	P	S	P
JAN	163	0	76	67	0	0	0	0	11	0	10	0				
FEB	153	0	69	40	0	0	0	0	5	0	3	0				
MAR	465	0	128	3	0	0	0	0	6	0	4	0				
APR	1047	0	277	28	934	6	628	8	10	0	7	0				
MAY	1423	56	454	39	2320	34	2128	28	62	0	59	0				
JUNE	1284	338	377	55	3145	37	2037	29	45	1	44	0				
JULY	1186	894	341	208	3175	38	2518	34	46	0	40	0				
AUG	978	287	434	163	2610	370	1826	268	35	0	32	0				
SEP	1263	372	608	182	3482	759	2813	575	35	1	34	0				
OCT																
NOV																
DEC																
YTD TOTAL	7983	1947	2762	785	16268	1243	11949	940	259	2	233	0	24504	3192	14944	1725
YTD AGG.		9930		3547		17509		12869		257		233		27696		16609

P = Protected Customer - A residential customer who is elderly, handicapped, seriously ill, receiving unemployment compensation, receiving federal hearing assistance or qualifies as a financial hardship. Financial hardship customers have a combined income at or below 75% of the RI median income as determined by the US Department of Health and Human Services.

S = Standard Customer - A residential customer who does not qualify as a protected customer.

YTD TOTAL	Shut Off		Restored	
	S	P	S	P
16621	1245	12182	840	940



The Commonwealth of Massachusetts
DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 08-4

September 15, 2008

Investigation by the Department of Public Utilities on its own motion into Expanding Low-Income Consumer Protections and Assistance, Including Standards For Arrearage Management Programs, Discount Rate, Service Termination, and Energy Efficiency Programs.

ORDER EXPANDING LOW-INCOME CONSUMER PROTECTIONS AND ASSISTANCE

TABLE OF CONTENTS

I.	<u>Summary</u>	1
II.	<u>Introduction</u>	3
III.	<u>Arrearage Management Programs</u>	4
	A. <u>Introduction</u>	4
	B. <u>Relevant Statutes, Regulations, and Department Orders</u>	6
	1. <u>St. 2005, c. 140, § 17</u>	6
	2. <u>Implementation of St. 2005, c. 140, § 17</u>	7
	C. <u>Enrollment in AMPs</u>	8
	1. <u>Introduction</u>	8
	2. <u>Summary of Comments</u>	9
	a. <u>Support for Automatic Enrollment in AMPs</u>	9
	b. <u>Opposition to Automatic Enrollment in AMPs</u>	10
	D. <u>Eligibility</u>	11
	1. <u>Introduction</u>	11
	2. <u>Summary of Comments</u>	12
	a. <u>Support for Changing Eligibility Requirements</u>	12
	b. <u>Opposition to Changing Eligibility Requirements</u>	12
	E. <u>Program Standardization of AMPs</u>	14
	1. <u>Introduction</u>	14
	2. <u>Summary of Comments</u>	15
	a. <u>Support for Standardization</u>	15
	b. <u>Opposition to Standardization</u>	15
	F. <u>Analysis and Conclusion</u>	16
	1. <u>Enrollment in AMPs</u>	16
	2. <u>Eligibility</u>	18
	3. <u>Program Standardization</u>	18
	4. <u>Conclusion</u>	21
IV.	<u>Low-Income Discount Rate</u>	22
	A. <u>Introduction</u>	22
	B. <u>Relevant Statutes, Regulations, and Department Orders</u>	23
	C. <u>Summary of Comments</u>	24
	1. <u>Bay State Gas Company</u>	24
	2. <u>Berkshire Gas Company</u>	25
	3. <u>Blackstone Gas Company</u>	26
	4. <u>Cape Light Compact</u>	26
	5. <u>National Grid</u>	27
	6. <u>New England Gas Company</u>	28
	7. <u>NSTAR</u>	28
	8. <u>Unitil</u>	29
	9. <u>WMECo</u>	31

	11.	<u>Associated Industries of Massachusetts</u>	34
	12.	<u>Attorney General</u>	34
	13.	<u>DOER/DHCD</u>	35
	D.	<u>Analysis and Conclusion</u>	36
V.		<u>Statewide Cost Recovery</u>	38
	A.	<u>Introduction</u>	38
	B.	<u>Summary of Comments</u>	39
	1.	<u>Support for Sharing Costs Statewide</u>	39
	2.	<u>Opposition to Sharing Costs Statewide</u>	39
	C.	<u>Analysis and Conclusion</u>	40
VI.		<u>Service Termination</u>	41
	A.	<u>Introduction</u>	41
	B.	<u>Relevant Statutes and Regulations</u>	41
	C.	<u>Summary of Comments</u>	42
	1.	<u>Length of Service Protection Period</u>	43
	2.	<u>Winter Moratorium</u>	44
	3.	<u>Recommended Changes</u>	45
	4.	<u>Reinstating Service After Termination</u>	46
	D.	<u>Analysis and Conclusion</u>	47
VII.		<u>Energy Efficiency</u>	48
	A.	<u>Introduction</u>	48
	B.	<u>Summary of Comments</u>	49
	C.	<u>Analysis and Conclusion</u>	50
VIII.		<u>Directive to the Companies</u>	52
IX.		<u>Motion of the Massachusetts Energy Directors Association and Low-Income Weatherization and Fuel Assistance Network</u>	54
X.		<u>ORDER</u>	55

I. Summary

In today's Order, the Massachusetts Department of Public Utilities ("Department") takes several steps to address the challenging conditions faced by low-income consumers, who must cope with significant increases in energy costs at a time of decreasing federal assistance. While the Department does not directly oversee fuel assistance programs, we do play an important role in enforcing laws and regulations of the Commonwealth established to protect and support natural gas and electricity consumers, particularly low-income consumers. In particular, the Department oversees utility administration of low-income discounts, arrearage management plans ("AMPs"), payment plans, and other consumer protection obligations and procedures. In this Order, we take steps to increase consumer protections, improve the affordability of electricity and natural gas for low income consumers, and expand consumer participation in the arrearage management plans administered by the regulated utilities.

The need for Department action is clear. Commodity fuel prices – in particular natural gas and home heating oil – are causing major increases in the costs of basic heating and electricity needs for all consumers. These price increases have a disproportionate effect on low-income consumers, increasing the number of consumers challenged by energy costs as well as the magnitude of that challenge. Further, these difficulties may be particularly acute in the coming heating season.

These conditions warrant the Department's comprehensive reevaluation and reinforcement of our consumer protection regulations and policies. Consequently, the Department opened this investigation into expanding protections and assistance for low-income

consumers in the Commonwealth. During the investigation, the Department heard testimony on how to strengthen company arrearage management programs, discount rate offerings, consumer protection regulations, and low-income energy efficiency programs.

In this Order, we require several changes to company low-income programs and protections, and direct companies to consider and design further improvements through a collaborative process aimed at establishing best practices. Most significantly, we find that:

- A. Electricity and natural gas companies shall immediately increase discount rates for eligible low-income consumers, and consider further discount rate increases and modifications through the Best Practices collaborative process, with the goal of restoring the low-income discount rate to the level that was in effect prior to March 1, 1998;
- B. Companies shall increase enrollment and effectiveness of AMP payment plans by building on existing community actions programs (“CAPs”), providing all low-income consumers who have an account in arrears the opportunity to participate in AMPs, and working with the Best Practices group to develop standard AMP payment plan features to increase program scope and benefit;
- C. Companies shall improve the coordination of low-income discount, AMP, and low-income energy efficiency programs; and
- D. The Department will initiate a rulemaking to enhance consumer protection measures and regulations governing service termination and service restoration.

II. Introduction

On February 12, 2008, the Department issued a Notice of Investigation (“NOI”) on its own motion into expanding low-income consumer protections and assistance, including AMPs, discount rate, service terminations, and energy efficiency programs, noting that much has changed over the past several years that bears fundamentally upon the design, commitment to, and implementation of the Department’s policies and regulations addressing the challenges faced by low-income consumers. Order Opening Investigation into Low-Income Protections and Assistance, D.P.U. 08-4. More importantly, commodity prices have increased dramatically, a trend that is expected to persist in the coming years. This trend in costs of underlying energy commodities directly affects the costs of natural gas or electricity, and in turn affects the affordability of essential energy needs.

The Department opened the NOI to ensure adequate consumer protection for all, and to address the fact that the recent energy price increases are having a disproportionate impact on low-income consumers. D.P.U. 08-4 at 2-3. As Attachment A to the NOI, the Department issued one set of information requests and invited interested parties to respond.¹ During the investigation, the Department solicited two rounds of comments and convened three days of public hearings² on the topics specified in the NOI. Initial comments (“Comments”) were filed by 18 interested persons and reply comments (“Reply Comments”) were filed by 16 interested

¹ Pursuant to 220 C.M.R. § 1.10, the Department on its own motion moves each Company’s responses to the Department’s information requests (i.e., DPU 1-1 through DPU 1-31) into the record as evidence.

² April 8, 2008; April 9, 2008; and April 28, 2008.

persons.³ Twelve parties participated in the public hearings, and raised numerous issues both in the comments and at the hearings.

III. Arrearage Management Programs

A. Introduction

In 2005, the General Court enacted Chapter 140, An Act Relative to Heating Energy Assistance and Tax Relief, also known as the HEAT Law (“Chapter 140”). Chapter 140 requires each gas and electric distribution company to establish an AMP to offer low-income consumers with an arrearage an affordable payment plan with credits toward their accumulated arrearages for compliance with the program. St. 2005, c. 140, § 17. AMPs provide low-income utility consumers an opportunity to have all or a portion of an arrearage forgiven in exchange for payments of an amount and on a schedule designed individually for each participant. In general, income-qualified consumers with a utility bill in arrears must at least make all current payments to remain on the AMP plan. In exchange for compliance with these terms consumers are forgiven all or a portion of the arrearage by the utility company through a credit to the balance in arrears. Currently, most AMPs are administered by CAP agencies on

³ Associated Industries of Massachusetts; The Attorney General of the Commonwealth; Bay State Gas Company; Berkshire Gas Company; Blackstone Gas Company; Cape Cod Times Needy Fund; Cape Light Compact; Department of Housing and Community Department; Division of Energy Resources; Executive Office of Elder Affairs; State Representative Jennifer Flanagan; Medical and Legal Partnership for Children; Municipal Electric Association of Massachusetts; Low-Income Weatherization and Fuel Assistance Network and the Massachusetts Energy Directors Association; National Grid; New England Gas Company; NSTAR Gas & Electric Company; Fitchburg Gas & Electric Company d/b/a Unitil; Unitarian Universalist Fellowship; and Western Massachusetts Electric Company.

behalf of the utility company. The participation of the CAP agencies include consumer referrals for the AMP and income verification of eligible consumers.

Since the inception of AMPs, significant progress has been made in implementing the programs administered by CAP agencies on behalf of the utility companies. However, AMPs have been under-enrolled, perhaps caused in part by the newness of the AMP, and in part because of limited CAP resources (Tr. at 290-291). Concurrently, energy commodity prices have increased. Between 2005 and 2008, the commodity price of electricity in Massachusetts has increased by approximately 66 percent;⁴ the commodity price for natural gas has increased an average of 51 percent.⁵ Consequently, Massachusetts is facing a winter season when the cost of energy for all consumers could be far higher than past winters, at the same time that availability of federal fuel assistance has declined.^{6 7}

The Department considers issues related to AMP enrollment and program design—as well as all matters considered in this proceeding—against the backdrop of increasing energy costs in general, and anticipated high prices through the coming winter in particular. These price conditions call for expansion of the AMPs. It is more important than ever that the

⁴ The percent increase is based upon the approved residential basic service rates in effect for Summer 2005 compared to Summer 2008, taking the percent average change in basic service rates for the six electric distribution companies.

⁵ Source: NYMEX index, gas commodity prices from July 2005 to July 2008.

⁶ <http://www.acf.hhs.gov/programs/ocs/liheap/grantees/approp.html>

⁷ In response to these immediate challenges, Governor Deval Patrick, Senate President Therese Murray, and House Speaker Salvatore DiMasi announced the formation of a task force to help citizens manage high energy costs this winter. See Press Release, Office of the Governor, July 23, 2008.

Commonwealth and its utility companies aggressively pursue opportunities to assist consumers in managing energy costs and provide flexibility for those who are struggling to meet payment obligations.

As described in the NOI, the Department seeks to increase enrollment in the AMPs, thereby increasing the ability of low-income consumers with an arrearage to pay their bills. In the NOI, the Department sought comments on whether AMP eligibility should be changed; whether companies should automatically enroll eligible consumers in AMPs; whether the companies may play a more active role in AMP design and enrollment; and how to maximize participant success.

B. Relevant Statutes, Regulations, and Department Orders

1. St. 2005, c. 140, § 17

Section 17 (a) and (b) of Chapter 140 sets forth distinct requirements for AMPs applicable to jurisdictional electric and gas companies (“companies”) organized pursuant to G.L. c. 164. Subsection (a) requires each company to offer an AMP to “eligible low-income consumers, as defined under chapter 164;” establishes general requirements for all AMPs; and authorizes the Department to set additional requirements. Id. Chapter 140 states that AMPs must offer low-income consumers an affordable payment plan with credits toward an accumulated arrearage to be awarded when the consumer complies with the program. Id. Chapter 140 requires each company to include in its AMP a plan to be coordinated with the low-income weatherization and fuel assistance agencies and services. Id.

Subsection (b) of Chapter 140 contains details regarding the payment plans. It requires that each company offer all low-income consumers with an account in arrears, if utility service has not yet been terminated, a payment plan of no less than four months, with a down payment of no more than 25 percent of the total arrearage. Id. at (b). The remaining arrears balance is divided into equal payments. Id. A company may seek approval from the Department for a payment agreement of less than four months for “good cause shown,” and must inform the consumer of the request. Id. Consumers may seek and obtain a payment plan greater than four months, and the Department may order a payment plan greater than four months. Id. Companies need not seek Department approval for granting a payment plan greater than four months.

2. Implementation of St. 2005, c. 140, § 17

On February 28, 2006, the Department issued an Order adopting the broad standards set forth in Chapter 140. Order Establishing Standards for Arrearage Programs for Low-income Customers, D.T.E. 05-86, at 14. In that Order, the Department noted that although Chapter 140 provides authority for further regulation of down payments, forgiveness credits, and payment terms, the Department would refrain from setting any supplemental requirements until the AMPs operated for an initial period of time to provide for data collection and analysis. Id. at 15. The Department encouraged the development of innovative and cost-effective programs. Id. In accordance with Chapter 140, each company files an AMP annually for the Department’s review, modification or approval no later than February of each year. St. 2005, c. 140, § 17 (a).

After the issuance of D.T.E. 05-86, the Department convened a working group of interested parties so that a method of evaluating AMP effectiveness could be established in cooperation with companies and low-income advocates. Currently, this group, which has become known as the “Best Practices Group,” continues to meet and members of the group actively participated in the public hearings in this proceeding.

C. Enrollment in AMPs

1. Introduction

In the NOI, the Department noted a number of concerns based on initial implementation of the AMPs – in particular the very low enrollment for nearly all AMPs – and highlighted the concern that low enrollment in AMPs may run counter to the intent of the Act. D.P.U. 08-4, at 6-7. Therefore, the Department sought comment on increasing enrollment by establishing company-administered AMPs in addition to the AMPs administered by the CAPs on behalf of the companies. Id. at 7-8. The Department proposed that companies enroll all income-qualified consumers when the consumer reaches a certain level of arrears. Id. at 8. This so-called “automatic enrollment” would increase participation and provide more consumers with the opportunity to avail themselves of AMPs. Id. The Department also proposed that companies take additional actions to assist eligible low-income consumers at the time of enrollment in an AMP, including, but not limited to, notifying consumers of other assistance programs, enrolling consumers in the discount rate, and scheduling energy efficiency audit of their residences. Id.

2. Summary of Comments

a. Support for Automatic Enrollment in AMPs

Berkshire Gas Company (“Berkshire Gas”) supports the concept of automatic enrollment in company-administered AMPs. In fact, Berkshire Gas is the only company that already has an automatic enrollment program. Berkshire Gas automatically enrolls in the AMP all recipients of the low-income discount who are in arrears and receive fuel assistance, with an opt-out provision for those who do not wish to participate (Berkshire Gas Comments at 3-4). Berkshire Gas reports that as a result of its policy, it has achieved the highest enrollment rate of all companies in the state with 15 percent enrollment (*id.* at 1). Berkshire Gas states that the reason for its success is predicated on a design that maximizes enrollment, promotes administrative efficiencies, and encourages positive behavior (Berkshire Gas Reply Comments at 7). The Division of Energy Resources (“DOER”) attributes Berkshire Gas’ high enrollment levels to automatic enrollment (Tr. at 114). DOER suggests that automatic enrollment, rather than requiring a consumer to affirmatively opt-in, should be adopted by other companies (*id.*). DOER suggests that the Department consider making the Berkshire Gas AMP the model program across the state (*id.*).

The Attorney General of the Commonwealth (“Attorney General”) would support statewide automatic enrollment if the benefits of the program outweigh the cost (Attorney General Comments at A-1). The Attorney General states that she might support automatic enrollment on a pilot basis (*id.*). The Low-Income Weatherization and Fuel Assistance Network and the Massachusetts Energy Directors Association (“Network”) also support

automatic enrollment as a pilot program (Network Comments at 5). The Network states that the fundamental cause of the rising non-payment of utility bills by low-income consumers is that they do not have enough money to afford their current energy bills (id. at 4). Therefore, the Network recommends that prior to implementing a change in AMPs, the Department should first facilitate a substantial increase in the discount rate and expand energy efficiency programs for low-income consumers (id. at 4).

b. Opposition to Automatic Enrollment in AMPs

A number of commenters oppose the Department's proposal for automatic enrollment as part of a company-administered AMP for two main reasons. First, these commenters claim that the CAP agencies, not the companies, are in a better position to identify eligible consumers and verify income. Second, they claim that automatic enrollment may undermine successful participation in the AMP. Fitchburg Gas & Electric Company, d/b/a Unitil ("Unitil") states that automatic enrollment undermines the AMP's key design feature which is empowering the customer through a voluntary, self-directed enrollment (Tr. at 253). NSTAR Gas & Electric Company ("NSTAR") states that automatic enrollment allows customers to be passive, and they might not understand why they are being enrolled and the level of participation that the program requires (NSTAR Comments at 9). Also, NSTAR argues that Chapter 140, by directing the Department to set eligibility criteria for AMPs, did not contemplate that every low-income customer with an account in arrears would enroll in an AMP (id. at 8).

D. Eligibility

1. Introduction

Chapter 140 states that companies shall offer an AMP to “eligible, low-income customers, as defined in chapter 164.” St. 2005, c. 140, §17(a). G.L. c. 164, § 1F states that eligibility for the low-income discount rate is established upon verification of receipt of any means-tested public benefit, or verification of eligibility for LIHEAP. Qualified LIHEAP and discount rate recipients have household incomes not exceeding 200 percent of the federal poverty level. In D.T.E. 05-86, every company proposed linking eligibility for AMPs with eligibility for LIHEAP or the low-income discount rate, and the Department endorsed this interpretation of “low-income” as being consistent with the Act. D.T.E. 05-86, at 8. Therefore, consumers with an arrearage are currently eligible for AMPs if they have household incomes not exceeding 200 percent of the federal poverty level. In D.T.E. 05-86, the Department declined to limit eligibility on any other basis, such as whether the consumer’s account was heating or non-heating. Id.

In the NOI, the Department requested comments on changing the eligibility for AMPs to include consumers whose incomes are above 200 percent of the federal poverty level. The Department suggested using another income level, such as 60 percent of median state income, which is the eligibility threshold for certain energy efficiency programs.⁸

⁸ Sixty percent of the state median income is a higher income than an income at 200 percent of the federal poverty level; therefore more consumers would become eligible if the sixty percent eligibility level was adopted for AMPs. The income eligibility for the low-income energy efficiency programs is set forth in individual energy efficiency program plans, which typically are developed through collaborative processes including

2. Summary of Comments

a. Support for Changing Eligibility Requirements

The Network and Cape Light Compact (“Compact”) support changing the income eligibility from 200 percent of the federal poverty level to 60 percent of the state median income (Network Comments at 23; Compact Comments at 7). The Network argues that higher income consumers (those closer to 60 percent of state median income) will be more successful in an AMP because they might have more available income to pay energy bills than those with lower incomes (Network Comments at 23). The Compact states that raising the income eligibility to 60 percent of state median income level would provide consistency among the various low-income programs by aligning eligibility requirements for AMPs with the eligibility requirements for the low-income energy efficiency programs (Compact Comments at 7). The Compact states that consistency could do the following: avoid confusion on the part of the consumer; ease the administrative burden on program administrators keeping track of multiple programs and guidelines; allow for better coordination among the programs; and facilitate consumers taking full advantages of all the benefits available (*id.* at 18). Moreover, the Compact recommends going a step further and expanding the income eligibility requirement to 80 percent of state median income (*id.* at 7).

b. Opposition to Changing Eligibility Requirements

A number of participants oppose changing the current income eligibility guidelines for AMPs primarily because of the potential cost impact on other consumers. Bay State notes that

a variety of energy efficiency stakeholders.

the potential cost of full implementation and the ability of non-low-income consumers to tolerate those costs are unknown (Bay State Comments at 17). National Grid opposes expanding eligibility because the program is too new and recommends further analysis (National Grid Comments at 3). Unitil suggests improving the existing initiative within the current eligibility level, but also states that eligibility levels among programs should be consistent (Unitil Comments in Response to DPU 1-4). Western Massachusetts Electric Company (“WMECo”) states that increasing the AMP eligibility requirement above 200 percent increases the financial burden placed on other customers (WMECo Comments at 10).

The Attorney General states that the Department does not have authority to change the eligibility level (Attorney General Comments at A-2). The Attorney General refers to Section 17 of Chapter 140 that defines eligible low-income customers as those qualifying as low-income pursuant to G.L. c. 164 (id.). The Attorney General also stated that in D.T.E. 05-86, the Department defined “low-income” as consumers who are eligible for either any means tested based public benefit program or low-income home energy assistance programs (id.). The Attorney General therefore argues that the Department, by its own definition of “eligible low-income consumer” in a previous Order, admits that it would require statutory modifications to change income eligibility for AMPs (id.).

Some commenters also argue that changing the current eligibility requirements will drain company resources. Unitil states that the utilities and the CAP agencies do not have the necessary resources to manage even the current programs (Tr. at 291; Unitil Response to

DPU 1-4). Again, Unitil states that the Department should focus on ways to improve the current initiatives within the current eligibility requirements (Unitil Response to DPU 1-4).

E. Program Standardization of AMPs

1. Introduction

Although Chapter 140 grants the Department authority to regulate the down payment, forgiveness credits, and payment terms associated with AMPs, in D.T.E. 05-86 the Department refrained from standardizing these aspects of the programs. D.T.E. 05-86, at 15. The Department stated that it would allow the AMPs to operate for a sufficient period of time to provide an opportunity for data collection and analysis. Id. As indicated above, rather than require uniformity among the AMPs provided by each gas and electric distribution company, the Department convened the Best Practices Group among the utility companies. Id. Each company files an annual AMP, with a unique set of program characteristics and the Department reviews and approves each company's AMP each year. In the NOI, the Department sought comments regarding program standardization based on the best practices of the different AMPs implemented by the companies. D.P.U. 08-4, at 8.

2. Summary of Comments

a. Support for Standardization

A number of commenters, including three investor-owned utility companies support standardization of AMPs.⁹ The Attorney General argues that standardization would allow all citizens of the Commonwealth to access the same level of program benefits (Tr. at 429). Other proponents of standardization claim that it will promote fairness and consistency across service territories (Bay State Reply Comments at 18; Unitil Response to DPU 1-5; WMECo Comments at 11).

b. Opposition to Standardization

Opponents of standardization argue that statewide uniformity of AMPs would be difficult because of regional differences among service territories (Berkshire Gas Reply Comments at 8). Berkshire Gas opposes statewide uniformity of AMPs because each service territory and service type (gas or electric) has distinct demographics and economic issues that are region-specific (id.). Berkshire Gas also argues that because of these different populations, the CAP agencies in each region serve the companies in a different manner (id.). Moreover, Berkshire Gas argues that the Best Practices Group should not be designing AMPs, but only sharing information so that each company can design programs that are best suited for its

⁹ Attorney General's Comments at 2; Bay State Gas Company; Cape Light Compact Comments at 7; Fitchburg Gas & Electric Company d/b/a Unitil; Low-Income Weatherization and Fuel Assistance Network and the Massachusetts Energy Directors Association Comments at 24; and Western Massachusetts Electric Company.

region's particular needs (id.). National Grid argues against standardization because each company uses a different computer system to deliver and track its company specific AMP (National Grid Comments at 4).

F. Analysis and Conclusion

1. Enrollment in AMPs

Chapter 140 requires each company to offer an AMP to eligible low-income consumers. Currently, most companies enroll only those consumers identified by CAP agencies as good candidates for successful completion of the AMP. However, while Chapter 140 reserves a wide range of discretion for the Department with respect to AMP design, standards, and content, in our view it does not provide the authority to restrict AMP opportunities to any subset of consumers that are otherwise eligible (that is, low income and in arrears). The Department interprets the Act to require that companies offer any eligible low-income consumer with an arrearage the opportunity to participate in an AMP. While we recognize that not every eligible consumer may successfully complete an AMP, it is the Department's view that every eligible consumer should be made aware of the AMP and afforded the opportunity to participate.

Therefore, the Department directs every company to develop a company-administered AMP that provides every consumer who is low-income and is in arrears an opportunity to enroll. Such a company-administered AMP should be coordinated with other company-administered low-income programs. Specifically, companies shall also enroll eligible AMP participants in the low-income discount rate and offer them information on fuel

assistance and energy efficiency programs, if they do not do so already. Each company shall continue to coordinate with CAP agencies, as required by Chapter 140, and CAP agencies may continue to assist with screening, enrolling and providing support to AMP participants pursuant to their agreements with the companies.

The Department received numerous comments on whether consumers should be “automatically enrolled” in AMPs. Automatically enrolling every eligible consumer would certainly achieve the Department’s goal of increased participation in AMPs, and we suspect that requiring a consumer to affirmatively opt-in would result in lower participation than automatic enrollment. The Department agrees with DOER and Berkshire Gas regarding the value of automatically enrolling in an AMP all income eligible consumers with a bill in arrears, and the higher level of enrollment of the Berkshire automatic enrollment program is evidence to its effectiveness from the standpoint of successful program administration.¹⁰ On the other hand, many commenters highlighted the value of an affirmative commitment by consumers to improve individual participants’ knowledge of and engagement in completing an AMP payment plan.

In consideration of these comments, the Department will allow companies to determine whether enrollment in the AMP will be “automatic” with an opt-out provision, or whether

¹⁰ While the Department expects that making AMP payment plans available to all eligible consumers will improve program success from the perspective of the number of successful participants, we also recognize that it has the potential to decrease the percentage of participants who successfully complete the program. In order to track both measures of program effectiveness, we expect companies to monitor both changes in the total number of participants, and the percentage of participants who complete payment plans.

enrollment will be “opt-in,” requiring an affirmative act of the consumer. At a minimum, the Department directs companies to send notification of the program’s existence to each consumer whose account is enrolled in the low-income discount rate and is in arrears for an amount and length of time that is specified in the company’s AMP. Allowing companies to select a method of enrollment may create an opportunity in the future to compare enrollment and program success across these two methods.

2. Eligibility

The Department concurs with the Attorney General’s interpretation that Chapter 140 contains plain language establishing eligibility levels, and does not authorize the Department to expand eligibility above 200 percent of the federal poverty level. St. 2005, c. 140, § 17. However, Chapter 140 clearly authorizes the Department to regulate certain specified aspects of AMPs, including down payments, forgiveness credits, and payment terms. Therefore, rather than changing the eligibility for AMPs, the Department will focus on other measures to increase enrollment and improve program success.

3. Program Standardization

Most commenters agree that an affordable bill is an important factor in AMP success. Increasing the dollar amount of the forgiveness credit and the frequency that the credit is applied will make bills more affordable, thereby increasing the chance of participants’ success. The companies currently provide varying dollar amounts of forgiveness credits and on varying schedules. For example, Berkshire Gas caps forgiveness credits at \$3,000 over the participant’s lifetime (Tr. at 419). WMECo places no dollar limit on the amount per customer

that may be forgiven, and therefore may provide up to 100 percent arrearage forgiveness (WMECo Comments at 11). Other companies have capped the forgiveness credits per consumer at a much lower dollar amount. For example, NSTAR caps its forgiveness credit at \$599, while National Grid caps its forgiveness credits at \$1,000 per year (NSTAR Comments at 5; National Grid Comments, Appendix A at 2). Unitil states that programs should be designed to allow for 100 percent arrearage forgiveness (Unitil Response to DPU 1-4).

The companies also apply forgiveness credits to consumer's bills on varying schedules. The Network states that credits should be applied monthly to provide consumers with frequent, positive reinforcement (Network Comments at 24). While most companies apply a monthly credit, the dollar amount varies widely depending on the forgiveness cap. NSTAR allows each participant to receive a monthly credit against the customer's arrearage balance, but the dollar amount depends on the customer's arrearage repayment term, which may be up to 36 months (NSTAR Comments at 5). A consumer who is successfully participating in NSTAR's AMP pursuant to a 36-month payment plan is credited monthly with an amount equivalent to 1/36th of the customer's arrearage (id.).

While many companies include the balance of the arrears in current bills, WMECo creates a stand-alone account for the arrears. (Tr. at 413). WMECo removes the arrearage balance from the consumer's account and places it in a holding account (id.). WMECo then establishes a budget payment plan and every month that the customer successfully makes a budget payment, a portion of the arrearage balance is forgiven (id. at 414). WMECo states that its AMP is successful because the consumer's bill becomes more affordable (WMECo

Reply Comments at 6). WMECO asserts that affordability can only be accomplished by removing the arrearage from the monthly bill (id.).

In D.T.E. 05-86, the Department adopted broad program standards and in doing so authorized companies to develop innovative and cost-effective programs suiting the needs of their service territories. As the Department has noted above, we refrained from setting uniform requirements until the AMPs operated for a sufficient period of time to gather information on program components which encourage successful completion of the AMP. Based on the evidence presented in this proceeding, the Department believes that the companies are now in a position to identify lessons learned from the current AMP, to recognize some of the best practices from the current AMP, and to investigate opportunities to standardize and improve AMPs.

Accordingly, we encourage the Best Practices Group to discuss opportunities to improve program enrollment and consumer success rates through the use of best practices in AMP design. We are particularly interested in the following design elements, and encourage the Best Practices Group to investigate whether and how these should be incorporated into each company's AMP. First, create a stand-alone account for arrears, so that the customer's current bill becomes more affordable and the amount of arrearage is easier to track. Second, allow the consumer to remain in the AMP as long as the current bills are paid. Third, reduce the arrearage by the same amount (e.g., \$100) per month, each time the consumer pays a bill. Fourth, create a consistent cap on the amount of arrearage forgiveness available to each participating consumer. The Department encourages consideration of a forgiveness cap high

enough to provide a strong incentive for consumers to stay on the program. Fifth, establish a standard program term that is defined by the monthly forgiveness amount and the total arrearage forgiveness cap. For example, a \$100 per month forgiveness with a \$3,000 forgiveness cap would lead to a maximum program term of thirty months.

While the Department would like to promote as much standardization across companies as is possible and practical, we understand that there may be valid reasons why some companies may prefer or need to use design elements that are different from other companies. If a company chooses to adopt a design element that is different than what is proposed by the Best Practices Group and adopted by most companies, we expect that company to provide an explanation as to why the different approach is appropriate.

4. Conclusion

In the next AMP plan submitted to the Department for review and approval, each company is directed to propose a company-administered AMP that contains the following features.¹¹ First, the company must provide an opportunity to enroll every consumer who (a) has an arrearage of the size or duration specified in the AMP plan and (b) is known by the company to meet the low-income eligibility criteria because the consumer is enrolled in the low-income discount rate or the account is flagged as protected. Second, the company shall specify whether it will automatically enroll eligible consumers or whether it will require the consumer to opt-in. The process for opting-in should be as simple as possible. Third,

¹¹ Pursuant to D.T.E. 05-86, each company files an arrearage management program plan every year no later than February 28th for the Department's review and approval. D.T.E. 05-86, at 15.

simultaneous with either automatically enrolling a consumer or notifying a consumer of the availability of the AMP, the company shall also provide information on the discount rate, fuel assistance and energy efficiency programs. Fourth, in the AMP plan, each company shall describe the procedures for mailing notices to all residential consumers who have an arrearage, but are not identified as low-income. Such mailings shall provide information on the availability of AMPs and would inform consumers how to identify whether they are eligible for the AMP and how to enroll. Finally, in addition to the company-administered AMP, companies shall continue to work with the local CAP agencies, and allow the CAP agencies to continue to assist with screening and enrollment of consumers pursuant to individual agreements with the companies.

IV. Low-Income Discount Rate

A. Introduction

The Department's investigation posed several questions regarding the low-income discount rate, including the effect of the drastic rise in commodity costs on the current value of the discount rate. D.P.U. 08-4, at 18. The Department sought comments regarding whether the discount should be increased and more specifically, whether companies are offering the discount at the levels that were in effect prior to March 1, 1998 as required by St. 1997, c. 164, § 193. In addition, the Department sought comment on whether the commodity costs should be discounted; how to increase enrollment in the discount rate; and whether the discount should be applied retroactively to consumer accounts. Commenters also addressed

whether the discount rate should be tiered so that the level of the discount correlates to income brackets.

B. Relevant Statutes, Regulations, and Department Orders

Massachusetts General Laws establishes a discount rate for low-income electricity consumers. G.L. c. 164, § 1F(4)(i). Eligibility for the electricity discount rate is based upon a consumer's "receipt of any means tested public benefit" or eligibility for LIHEAP. As stated above, the current eligibility requirement for LIHEAP is 200 percent of the federal poverty level. Chapter 164 explicitly provides that for electricity consumers, the level of the discount be comparable to the low-income discount in effect prior to March 1, 1998. For natural gas consumers, the discount rate and eligibility are established by the Department in 220 C.M.R. § 14.03(2A). The current eligibility requirement for the gas low-income discount rate is also 200 percent of the federal poverty level.¹²

¹² In August 2003, the Department established an automatic enrollment program for the purpose of increasing participation in the low-income discount rate. Low-Income Discount Rate Participation Rate, D.T.E. 01-106-A (2004). The Department directed gas and electric companies to exchange information with the Executive Office of Health and Human Services on a quarterly basis so that every recipient of a means-tested public benefit, who is also the "customer of record," would be automatically enrolled in the discount rate without the usual paper application. The automatic enrollment program established in D.T.E. 01-106, often referred to as "the computer matching program," has resulted in the enrollment of an estimated 90,000 additional low-income consumers. Source: Quarterly Reports provided by gas and electric companies. The Department determined that the appropriate cost recovery mechanism for AMP expenses and the revenue shortfall caused by the discount rate was the Residential Assistance Adjustment Factor (RAAF) . D.T.E. 01-106-C/05-55/05-56; D.T.E. 05-86 at 12-13.

The discount for low-income consumers is administered by the utility companies by reducing the distribution portion of a consumer's bill. The amount of the discount rate has been set in individual rate cases for each of the electric and gas utilities. Consequently, the level of the discount is inconsistent among companies, currently ranging from roughly twelve to twenty-one percent of total electric or gas bills.

C. Summary of Comments

1. Bay State Gas Company

Bay State would support an increase in the amount of the low-income discount, provided that any increase is balanced against the rate impact on non-low-income customers (Bay State Comments at 20). Bay State opposes applying the low-income discount to the commodity portion of the bill because distortions in the commodity price make it difficult for Bay State to compete with other fuels, and consequently would discourage beneficial system growth (Bay State Comments at 20). Bay State also states that any increase in the discount must be included in the costs that Bay State recovers through the Residential Assistance Adjustment Factor ("RAAF") (Bay State Comments at 21). Bay State explains that the company might retroactively apply the discount rate to some customer accounts by giving customers credit for the discount on previous bills, and determines whether to do so on a case-by-case basis (id. at 21). However, Bay State does not agree with any policy that would result in a large number of retroactive adjustments, as it would pose administrative difficulty (id.).

2. Berkshire Gas Company

Berkshire Gas states that it would consider increasing its discount to the customer charge portion of the bill, as long as such an increase is treated consistently by all companies and the resulting costs are recoverable through the appropriate adjustment clause (Berkshire Gas Comments at 7-8). Berkshire Gas is strongly opposed to discounting the commodity portion of the bill (Berkshire Gas Comments at 8; Tr. at 80). Berkshire Gas argues that discounting the commodity portion of the bill would require the company to have additional cash available to cover the costs of the discount on the commodity to ensure the supplier gets paid (Berkshire Gas Comments at 8). Due to the volatility of the commodity portion, this could result in a significant cash outlay (*id.*). Berkshire Gas is also concerned that a tiered rate structure would lead to greater administrative costs, which must be borne by all customers (Tr. at 87).

Berkshire Gas states that the current eligibility level is appropriate (Berkshire Gas Comments at 7). Berkshire Gas is concerned that changing the eligibility would result in significant increases in costs to its non-low-income customers, especially in light of the demographics of the service territory, which includes 3,000 heating and 300 non-heating low-income consumers. (Berkshire Gas Comments at 7; Tr. at 79; Berkshire Gas Reply Comments at 2). In addition, Berkshire Gas is concerned about the administrative costs of increasing eligibility (Berkshire Gas Reply Comments at 2). Berkshire Gas argues that energy costs for all customer classes be strongly considered before increasing the low-income discount or creating multi-tier levels of discounts that correspond to customer income brackets

(Berkshire Gas Comments at 8-9; Berkshire Gas Reply Comments at 4). Specifically, Berkshire Gas argues that any increase in the RAAF will have disproportionate impact on large commercial and industrial customers (Berkshire Gas Reply Comments at 3; Tr. at 79)

Berkshire Gas avers that enrollment would increase by expanding the computer-matching program to include more means-tested programs (Berkshire Gas Comments at 8; Berkshire Gas Reply Comments at 4). Berkshire Gas also opposes any retroactive application of the low-income discount as it would be costly and difficult to implement (Berkshire Gas Comments at 9).

3. Blackstone Gas Company

Blackstone Gas Company notes that any increase in the eligibility will increase costs, which must be recovered from other customers (Blackstone Gas Comments at 1). Blackstone Gas Company also states that any additional costs from the expansion of the low-income programs must be fully recoverable by a company (Blackstone Gas Comments at 2).

4. Cape Light Compact

The Cape Light Compact believes that the discount rate eligibility should be expanded to include consumers at 60 percent of the state median income level, at a minimum, and, ideally, 80 percent of the state median income level (Cape Light Compact Initial Comments at 9-10; Cape Light Compact Reply Comments at 4). The Compact also avers that the Department has the discretion to increase the eligibility level without legislative action (Cape Light Compact Comments at 10; Cape Light Compact Reply Comments at 4).

The Compact supports a tiered approach to the low-income discount level (Cape Light Compact Comments at 10-11; Cape Light Compact Reply Comments at 4). The Compact also supports a discount on the commodity portion of the bill, if it is possible (Cape Light Compact Comments at 11). The Compact also states that the discount should be applied retroactively to the date of application (Cape Light Compact Comments at 12; Cape Light Compact Reply Comments at 5).

5. National Grid

National Grid states that the Department should restore the value of the low-income discount that the company provided prior to March 1, 1998 (National Grid Comments at 2; Tr. at 25). National Grid recommends that recovery of the incremental discount should be through the Default Service Adjustment Provision for electric companies and through the Local Distribution Adjustment Clause for gas companies (National Grid Comments at 2).

National Grid does not think it is appropriate to expand the eligibility for the low-income discount because it will impose higher costs on all ratepayers (National Grid Comments, Appendix A at 5). National Grid also states that an expansion in eligibility will increase the administrative costs of verifying customer income (National Grid Comments, Appendix A at 6; Tr. at 41). National Grid states that eligibility cannot be increased without a legislative change on the electric side and a change to Department regulations on the gas side (National Grid Comments, Appendix A at 6).

For electric customers, National Grid adjusts no more than 150 low-income customers bills each year bills by retroactively applying the discount (National Grid Comments, Appendix

A at 8). Customer bills are adjusted for no longer than the past 16 months and the adjustment is recovered through the RAAF (National Grid Comments, Appendix A at 8). For gas customers, National Grid retroactively adjusts customer bills back to the beginning of the heating season (November 1st) for those qualifying for the discount based upon enrollment in LIHEAP (National Grid Comments, Appendix A at 8; Tr. 63-64).

6. New England Gas Company

New England Gas Company believes that the Department must balance expanding the availability and scope of discount rates with the cost impacts on non-low-income customers (New England Gas Company Comments at 3). New England Gas Company states that the demographics of its service territory are such that an increase in the eligibility level could result in a majority of customers qualifying for the discount (New England Gas Company Comments at 4; New England Gas Company Reply Comments at 2). New England Gas Company supports increasing the low-income discount if the cost burden is spread across the entire state (New England Gas Company Comments at 2).

7. NSTAR

NSTAR agrees with the concept of expanding the availability and scope of low-income discount rates as long as the Department can balance the benefit of such policies with the cost impacts on non-low-income customers (NSTAR Comments at 9-10). NSTAR points out that any expansion to eligibility for electric customers will require a legislative change, but also acknowledges that no legislative action is required for gas customers (NSTAR Comments at 10). NSTAR also states that expansion of eligibility may increase the administrative burden

on NSTAR as it may be difficult for NSTAR to identify those customers who qualify (NSTAR Comments at 11).

NSTAR is willing to discuss tiered low-income discount rates, but expressed concern that a tiered approach to low-income rates could create confusion among consumers; would require additional consumer education; and would make income verification more difficult (NSTAR Reply Comments at 3; Tr. at 85-86). In addition, NSTAR is concerned that a tiered rate structure would lead to significant programming costs to modify its billing system (Tr. at 86). NSTAR proposes that the bill impacts from expansion of the low-income discount be capped for the average residential customer (NSTAR Comments at 13). NSTAR is not in favor of applying the low-income discount to the commodity portion of the bill (NSTAR Reply Comments at 3).

NSTAR also commented on the creation of a statewide pool to pay for the low-income discount. NSTAR believes that such a pool can only be created through legislative action (NSTAR Reply Comments at 5). However, NSTAR argues against a statewide pool because it is unfair for the ratepayers of one utility to pay the costs of another utility through distribution rates (NSTAR Reply Comments at 5). Finally, NSTAR does not favor retroactive applicability of the discount rate because of the administrative burden that it would impose upon NSTAR (NSTAR Comments at 12; NSTAR Reply Comments at 3).

8. Unitil

Unitil recommends a multi-tiered low-income discount rate similar to the tiers that Unitil's New Hampshire affiliate offers its low-income customers (Unitil Comments at 3;

Unitil Reply Comments at 2; Tr. at 52). Unitil notes that New Hampshire's multi-tiered discount was established by the New Hampshire State Legislature (Tr. at 60). Such a multi-tiered approach would increase the level of the discount and expand the discount to include the commodity portion of the bill (Unitil Response to DPU 1-10). However, Unitil only supports this approach if the costs of the increased levels of the low-income discount are distributed evenly across the state (Unitil Comments at 3; Unitil Reply Comments at 1-2; Tr. at 9).

Unitil believes that changing the eligibility would be beneficial, however, the rate impacts on all customers should be considered before any increase is implemented (Unitil Response to DPU 1-4). Unitil also states that it does not support increasing the eligibility beyond the current level as it would require additional administrative resources (Unitil Reply Comments at 2). In addition, Unitil states that enrollment in the low-income discount rate could be increased through the development of a clearinghouse that would identify customers who qualify for the low-income discount and provide that information to the companies (Unitil Response to DPU 1-11).

Unitil states that customers newly identified as eligible for the low-income discount rate should have the rate applied retroactively to November 1, which is the beginning of the winter heating season (Unitil Response to DPU 1-12; Tr. at 63). Unitil points out that the retroactive application of the discount rate would ensure that the consumer receives the benefit from the start of the heating season (Unitil Response to DPU 1-12).

9. WMECo

WMECo notes that currently 27 percent of their customers qualify for low-income rates and that the costs of these programs are borne by all WMECo customers (WMECo Comments at 4; Tr. at 77-78). WMECo states that the eligibility requirement for low-income discount rates should not be changed (WMECo Comments at 14). WMECo avers that no changes should be made to the eligibility requirements of the various programs until the impact of any change is quantified (WMECo Reply Comments at 3). WMECo states that changing the eligibility will place an increased burden on all customers (WMECo Comments at 14). WMECo notes that the eligibility cannot be changed without a statutory amendment (WMECo Comments at 14).

WMECo's discount is approximately 94 percent of the distribution portion of the customer bill (Tr. at 75). WMECO states that additional increases in the discount could result in a credit to the distribution portion of the bill for its low-income customers, further increasing the costs burden on all customers (WMECo Comments at 14-15). Therefore, WMECo opposes increasing the discount amount (WMECo Comments at 15). WMECo also opposes extending the discount to the commodity portion of the bill (WMECo Comments at 15). WMECo argues that discounting the commodity portion of the bill will cause a revenue shortfall because while basic service customers pay a fixed price, WMECo must pay basic service suppliers for the variable price of basic service (WMECo Comments at 15). WMECO states that the revenue shortfall will increase costs for all customers (WMECo Comments at 15).

WMECo recommends requiring customers whose accounts are protected pursuant to the Department's regulations at 220 C.M.R. 25.00 to enroll in the discount rate (WMECo Comments at 16). WMECo also states that the computer-matching program should be used to remove customers who are no longer eligible to receive the low-income discount rate (WMECo Comments at 18).

In addition, WMECo recommends against offering the discount retroactively to newly identified eligible customers (WMECo Comments at 16). WMECo states that retroactively billing eligible low-income customers increases administrative costs for little benefit (WMECo Comments at 17).

10. The Network

The Network argues that a larger low-income discount, including a discount on the commodity portion of the bill, is needed (Network Comments at 9, Tr. at 19). The Network argues that G.L. c. 164 does not cap income eligibility for the discount rates, but only establishes a floor that the discount rate cannot fall below, and that the discount level must be comparable to those in existence as of March 1, 1998 (Network Comments at 10-11; Tr. at 35-36). The Network recommends that the Department change the eligibility for the discount to 60 percent of state median income (Network Comments at 12, 26; Tr. at 40-41).

The Network states that the level of the discount should be uniform across all companies and that the companies should offer a tiered discount, tied to a consumer's income (Network Comments at 9, 27). The first tier would include consumers with a household income of up to 150 percent of the federal poverty level (*id.* at 12). These consumers would

be entitled to a 65 percent discount off the total bill, including the commodity portion (id.). The second tier includes consumers with a household income from 150 percent to 200 percent of the federal poverty level (id.). These consumers would receive a 40 percent discount off the total bill, including the commodity portion (id.). The final tier includes consumers from 200 percent of the federal poverty level to 60 percent of the state median income level (id.). These consumers would be eligible for a 25 percent discount off the total bill, including the commodity portion (id.). The Network estimates the cost of the three tiered program to be \$1 dollar per month for the average customer (id. at 13).

The Network recommends making internet applications available so that applying for the low-income discount is easier (Network Comments at 10). The Network also recommends allowing consumers to submit the applications via facsimile (id.). The Network also recommends expanding the existing computer-matching program to include more means-tested programs (Network Comments at 28).

The Network favors retroactively applying the discount rate for varying lengths of time, depending on the circumstances of the individual consumer (Network Comments at 28-29). The Network proposes retroactive application of the discount: to November 1 for fuel assistance customers; to the application date for those customers seeking the discount independently; or for up to one year for customers demonstrating that they were income-eligible for a period longer than one year (Network Comments at 29).

Finally, the Network supports a collaborative approach to resolving many of the low-income issues raised in this docket (Tr. at 70-71).

11. Associated Industries of Massachusetts

Associated Industries of Massachusetts (“AIM”) states that any increase in the low-income discount must consider the rate impacts on other customers, especially those large commercial and industrial customers with high usage (AIM Comments at 4-5; AIM Reply Comments at 3; Tr. at 73). AIM argues that the Department should not act until a more complete record can be accumulated concerning the cost of the current low-income program, the potential cost of the existing program should all eligible participants take advantage of it, and the potential costs of expanded programs and the effect this cost shifting will have on other rate classes (AIM Reply Comments at 4).

12. Attorney General

The Attorney General states that Chapter 164, § 1F(4)(i) precludes a change in the eligibility for electric rates (Attorney General Reply Comments at 12). The Attorney General refutes the Network’s position and points to the plain language of the statute (id.). The phrase “eligibility does not exceed 200 percent” in the statute establishes the eligibility cap for electric low-income programs (id. at 13). In addition to capping the benefit, the Attorney General argues that the Legislature also included a safety valve provision which would only allow eligibility for Massachusetts low-income programs to be increased if the federal eligibility standards or its successor program get increased (id.).

The Attorney General recommends that the Department make the low-income discount uniform across the state (Attorney General Initial Comments at 11; Tr. at 29). Such uniform discounts could include a tiered system (Attorney General Comments at 11-12). The Attorney

General states that phasing in the revised discount levels may be necessary in order to address rate continuity issues (Attorney General Comments at 13). In addition, the Attorney General states that any changes made to the low-income discount level must include an analysis of the rate impact that such an increase will have on all customers (Attorney General Comments at 14). At this time, the Attorney General does not endorse any specific level of increased funding for low-income discounts until further investigation is completed (Attorney General Comments at 14-15; Tr. at 48-49).

Regarding enrollment of eligible low-income customers, the Attorney General recommends that the Department consider expanding the computer-matching program and consider adding a computer-matching system with federal benefit agencies (Attorney General Comments at A-5). Finally, the Attorney General supports the retroactive application of the low-income discount for a period of no more than one year, or the date that a customer became eligible, whichever is more recent (Attorney General Comments at A-5-6).

13. DOER/DHCD

DOER/DHCD supports a tiered approach to low-income discount rates (DOER/DHCD Comments at 3). DOER/DHCD also states that any increase in the low-income discount should be balanced against the rate impacts on other utility customers (DOER/DHCD Comments at 3). DOER/DHCD also argue that discount levels should be consistent across utilities (DOER/DHCD Comments at 3). Finally, DOER/DHCD state that any change to the eligibility criteria would require a statutory change (DOER/DHCD Comments at 3).

D. Analysis and Conclusion

Although there is some support among the parties for changing the discount eligibility, the Department concurs with several parties, including the Attorney General, that a statutory change to G.L. c. 164, § 1F would be necessary, and that changing the income eligibility level is beyond the Department's jurisdiction. The plain language of the statute, specifically the phrase "eligibility does not exceed 200 percent" clearly establishes the eligibility for the electric low-income discount (See Attorney General Reply Comments at 13). The Legislature did not provide the Department with authority to amend the specified eligibility requirement in G. L. c. 164, § 1F.

Nevertheless, the Department does have the authority to enforce G.L.c. 164, § 1F. Section 1F states, "The Department shall require that distribution companies provide discounted rates for low-income customers comparable to the low-income discount rate in effect prior to March 1, 1998." Id. Thus, the Department interprets G.L. c. 164, § 1F as requiring distribution companies to provide a discount rate with a percentage discount off the bill to achieve the 1998 discount level. The Department recognizes that companies may not achieve the 1998 discount level by solely reducing the distribution portion of the bill. In such instance, the companies should reduce the distribution rate of the bill to zero. Companies are directed to file the adjusted low-income discount rate with the Department by October 15, 2008, which will take effect after Department review and approval. The Department directs each distribution company to provide bill impacts for the adjusted low-income discount rate. This analysis should include the bill impacts on all rate classes.

As indicated above, the Department is not requiring companies to discount charges other than the distribution rate in order to achieve the 1998 discount level. The Department directs the companies to work with the Best Practices Group to develop recommendations on how other portions of the bill could be reduced to achieve the 1998 discount level, if appropriate. This proposal should be filed with the Department no later than December 1, 2008, and must include bill impacts for each consumer class, accompanied by supporting documentation of all inputs and assumptions used in the analyses.

The Department also directs companies to work with the Best Practices Group to consider some of the concepts that were proposed in this docket, such as developing tiered discount rates, applying the low-income rate retroactively, and expanding the existing computer matching program. With regard to tiered discount rates, while the Department supports the concept of varying the rate based on need, we are constrained by G.L. c. 164, § 1F. The Department cannot direct companies to provide a discount greater than the 1998 discount level prescribed by statute, nor can we direct companies to offer a discount rate to consumers whose incomes are above 200 percent of the federal poverty level. Nevertheless, the Department will consider proposals that seek to provide tiered discounts that operate within the above statutory constraints, are practical from a program administration standpoint, and are supported by analyses of associated rate and bill impacts.

With regard to retroactive application of the low-income discount rate, the Department concurs with the Attorney General that, if companies propose such application, it should be limited for a period of no more than one year or the date the consumer became eligible,

whichever time period is less (Attorney General Comments A-5-6). If the companies apply the discount retroactively, it should be limited to consumers who are enrolled on the low-income discount after November 1, 2008. Any consumer enrolled prior to November 1, 2008, cannot avail themselves of the new discount rate retroactively.

Finally, we note that previously the Department determined that the Residential Assistance Adjustment Factor (“RAAF”) was the appropriate cost recovery mechanism for the revenue shortfall caused by the discount rate. Low-Income Discount Rate Participation, D.T.E. 01-106-C/05-55/05-56. At this time, we see no reason to adopt a different recovery mechanism to recover the costs associated with any expansion or modification of the low-income discount rate.

V. Statewide Cost Recovery

A. Introduction

As stated above, the Department previously determined that the appropriate cost recovery mechanism for AMP expenses and the revenue shortfall caused by the low-income discount rate was the RAAF. D.T.E. 01-106-C/05-55/05-56; D.T.E. 05-86 at 12-13. Each company recovers the incremental costs associated with low-income programs through the RAAF. Therefore, consumers within each company’s service territory bear the cost of low-income programs within that service territory. Some participants in this proceeding suggest that costs of these programs should be shared on a statewide basis, that is, spreading the costs uniformly across the state.

B. Summary of Comments

1. Support for Sharing Costs Statewide

Commenters supporting a system of sharing costs and benefits on a statewide basis typically serve geographic areas with a greater number of consumers eligible for low-income assistance programs. Unitil supports a statewide cost sharing approach to spread additional costs associated with low-income programs across a larger base, including the higher income areas of the Commonwealth (Unitil Reply Comments at 1). Unitil argues that because income levels differ widely by region, many consumers do not contribute as much in their rates to support low-income program costs as other consumers (id. at 2). Specifically, Unitil states that in North Central Massachusetts, existing consumers already face a significant cost burden from supporting the low-income program costs (id.). At this time, imposing additional costs on these consumers would be difficult when all consumers are struggling to pay rising utility bills (id.).

2. Opposition to Sharing Costs Statewide

Commenters opposing statewide cost sharing argue that it is inequitable for consumers of one service territory to pay distribution rates that fund programs serving other service territories (NSTAR Reply Comments at 5). In addition, NSTAR and the Attorney General believe that a statewide fund would require legislative action (NSTAR Reply Comments at 5; Attorney General Reply Comments at 11). However, the Attorney General states that the Department should adopt a statewide fund for programs administered by gas companies only if the Legislature authorizes a statewide fund in an effort to promote uniformity among

low-income programs (Attorney General Reply Comments at 10-11 at 12). The Attorney General believes that pooling ratepayer funds has drawbacks including reducing a company's incentive to keep administrative costs low and to work with low-income consumers to manage utility bills (id. at 11).

C. Analysis and Conclusion

The Department supports, in principle, sharing the costs of low-income programs on a statewide basis to more evenly spread the expense among all consumers, and to address the unique and difficult circumstances of consumers of companies characterized by small service territories and high low-income populations. Statewide cost sharing would ease the burden on consumers residing in more economically depressed regions. The Department notes that several companies stated that changing the eligibility would have significant bill impacts on their customers because a large percentage of residential customers may qualify as low-income (New England Gas Comments at 2; New England Gas Reply Comments at 1-2; Unitil Comments at 2). These companies argue that if the costs were spread uniformly among all customers in the state, the burden that customers in those service territories would have to bear would be significantly reduced (New England Gas Reply Comments at 2; Unitil Comments at 2; Unitil Reply Comments at 1-2). However, as noted by several parties, this proposal likely requires legislation and would take additional time to implement. Therefore, the Department directs companies to continue to recover costs associated with their low-income programs through their RAAF. On a going-forward basis, the Department recommends that the Best Practices Group consider the potential benefits of and mechanisms for a statewide pool to fund

the low-income discount, and access the steps that would be required for proposing legislation to establish such a fund.

VI. Service Termination

A. Introduction

In the NOI, the Department sought comments on whether and how we should clarify, modify or expand our service termination regulations (220 C.M.R. 25.00). The Department also asked whether additional regulations are necessary to address the rights of consumers whose service has been terminated and the rights of tenants who are at risk of losing service because the landlord is in arrears. The comments raised several other issues, including whether the regulations should limit the length of the protection period.

B. Relevant Statutes and Regulations

The Department's regulations offer service protection to consumers with a financial hardship under certain circumstances. 220 C.M.R. § 25.01 defines "financial hardship" as the inability to pay an overdue bill and such consumer meets the income eligibility requirements for LIHEAP.¹³ Regulations prohibit termination of service or refusal to restore service if a consumer is unable to pay because of a financial hardship and one of the following conditions is present: someone in the home is seriously ill; a child under twelve months of age lives in the home and service has not been terminated prior to the birth of the child; or the service provides

¹³ Pursuant to Department regulations, the consumer need only meet income-eligibility requirements for LIHEAP, and need not actually receive LIHEAP.

heat and the termination will occur during the heating season which runs from November 15 through March 15. 220 C.M.R. § 25.03.¹⁴

G.L. c. 164, §124E states that no gas or electric company shall shut off service to any household where all of the residents are 65 years of age or older without written permission from the Department. In accordance with the statute, the Department promulgated 220 C.M.R. § 25.05, which prohibits gas and electric companies from terminating service to households where it is certified that all residents are 65 years or older, regardless of income, without written permission from the Department. 220 C.M.R. § 25.05(3).

The Department may order a company to resume electric or gas service if the company has not complied with the proper procedure for terminating service. 220 C.M.R. 25.02(3). However, the Department's regulations do not establish a procedure for consumers seeking to reinstate service after the company has followed the proper procedure.

Chapter 140 sets a clear, maximum payment of no more than 25 percent of the balance owed that may be required of a consumer who is in arrears to maintain service (St. 2005, c. 140, § 17(b)). The Act does not set a comparable maximum payment for a consumer whose service has been terminated, and would like to reestablish service.

C. Summary of Comments

Overall, panelists and interested parties agree that amending service termination regulations is secondary in importance to improving the discount rate, AMPs, and other

¹⁴ G.L.c. 164, § 124F prohibits companies from shutting off service between November 15 and March 15th when the consumer is suffering a financial hardship and the service is used to heat the residence. In recent years, many companies voluntarily extended the winter protection period to mid-April.

financial assistance to the benefit of low-income consumers because lower, more affordable bills will result in fewer service terminations (Bay State Comments at 22). Unitil suggests that year-round financial assistance is necessary (Unitil Response to DPU 1-13). The Compact concurs that financial assistance is key to preventing service termination (Cape Light Compact Comments at). National Grid observed that few changes to service terminations regulations were suggested in the responses to the Department's information requests because changes are anticipated in the discount rate and AMPs (Tr. At 128-129). National Grid notes that the service termination section of the NOI received less attention than the discount rate and AMP sections because some parties want to "wait and see" what the effect of changes in the discount rate and AMPs are before recommending amendments to the termination regulations (Tr. at 129). In fact, National Grid suggested that the Department "wait and see" the effect of any changes in the discount rate and AMPs prior to changing service termination regulations. (id.)

1. Length of Service Protection Period

Commenters note that under some circumstances the Department's regulations do not limit how long a consumer may be protected from service termination (NSTAR Comments at 14; Tr. at 129; Tr. at 242). Some commenters conclude that for consumers with protected accounts, no incentive exists for making payments toward their utility bills (New England Comments at 5). New England Gas Company notes that service termination is the only tool a company has to provide an incentive for payment and that this incentive does not apply to protected accounts. (id. at 5). Unitil recommends setting a time limit on account protection

for a financial hardship because it would encourage more consumers to make payments toward their bills during the protection period (Unitil Response to DPU 1-14). WMECO suggests that a minimum payment during the protection period should be required (WMECO Comments at 18). WMECO also suggests that if service termination is a possibility, then the company should make certain that the consumer is enrolled in all other assistance available, such as fuel assistance or AMPs (id. 18).

NSTAR notes that 275 customers are responsible for \$4 million in overdue balances, and that the majority of these customers have had protected service and have made no payments for several years (NSTAR Comments at 14). According to NSTAR, their bills may be as high as \$400 per month, yet these consumers have no incentive to reduce energy usage (Tr. at 139). NSTAR acknowledges that these are not typical customers, but attributed this very large amount of unpaid bills to a very small number of customers (NSTAR Comments at 14). NSTAR states because protected consumers cannot be terminated they have no incentive to pay their bills nor reduce energy usage and, as a result, a small number of consumers are responsible for a very large amount of unpaid bills (NSTAR Comments at 14).

2. Winter Moratorium

The winter protection period runs from November 15 through March 15. 220 C.M.R. § 25.03(1)(a)(3). In recent years, most companies have complied with the Department's request that they voluntarily extend the winter protection period beyond March 15. During the 2007-2008 heating season, in response to the Department's request, companies

agreed to postpone service terminations until May 1, 2008. (See Letter to Companies from Chairman Paul Hibbard, dated February 12, 2008).

Although the winter protection period provides account protection for a defined time period, some commenters state that the winter moratorium results in the accumulation of large arrearages because there is no incentive for consumers with protected accounts to pay their utility bills during this period (Bay State Comments at 19, WMECO Comments at 18, NSTAR at 14). As a result, at the end of the moratorium, consumers must pay large arrearages or face the threat of service termination (NSTAR Comments at 14-15; WMECo Comments at 18). Unitil further explains that some customers do not seek fuel assistance until after the winter moratorium has ended and their service is in jeopardy of termination (id.). Unitil notes that at the end of the winter moratorium, the fuel assistance benefit is no longer available to eligible customers (id.).

3. Recommended Changes

WMECO suggests defining the term “serious illness,” as used in regulations at 220 C.M.R. 25.03, and providing guidance as to what constitutes a serious medical condition (Tr. at 135-136). The Department’s regulations do not define “serious illness”, but rather accept certification of a serious illness by a certified medical physician or local board of health as conclusive evidence of the existence of the condition. 220 C.M.R. § 25.03. The Attorney General cautioned that Department regulations should not require excessive disclosure of a person’s medical condition in order to obtain the protection (Tr. at 138).

The Network states that because of the increased number of foreclosures on rental income properties, more tenants are facing the loss of utility service if the landlord is responsible for the bill and does not pay it (Network Reply Comments at 5). Both Unitil and the Network suggest that the Department amend its regulations at 220 C.M.R. § 25.04, and direct companies to notify the local board of health when the companies send a termination notice to a landlord account (id.; Tr. at 131-132) Id.

The Executive Office of Elder Affairs (“Elder Affairs”) notes that qualifying elders should not be excluded from the protection provided by 220 C.M.R. § 25.05 when minor grandchildren reside with them (Elder Affairs Reply Comments at 2). Protection from service termination is available pursuant to § 25.05 when all residents of the home are 65 years or older. Therefore, pursuant to the Department’s current regulations, persons over 65 years with minor child in the household would not be eligible for service protection because all persons in the home are not 65 years or older.

4. Reinstating Service After Termination

The Department’s regulations do not address the rights of consumers whose service has been terminated. WMECO states that service termination is an essential tool for the collection of arrearages and reduction of bad debt (WMECO Comments at 19). Bay State concurs that without the “tool” of service termination, bad debt write-offs will grow, and that the termination process is expensive for the company (Bay State Comments at 19, 22). Similarly, NSTAR states that terminations are a last resort, and are expensive because of the letters, telephone calls and multiple notices required in the termination process (NSTAR Comments

D.P.U. 08-4

at 13). NSTAR states that if the Department facilitates service restoration to terminated accounts, bad debt will increase (NSTAR Comments at 15). NSTAR recommends that the Department not relax its service termination regulations (*id.* 15). Unutil recommends that the Department provide clear and concise rules to address the rights of consumers when service has been terminated in addition to existing rules for residential customers (Unutil Response to DPU 1-15).

The Attorney General recommends filing legislation to amend G.L. c. 164, § 124G, so that the Department, rather than utility companies, deems what constitutes a satisfactory payment for restoring terminated service (Attorney General Comments at A-6). Further, the Attorney General supports measures that would reduce the discretion of utility companies, and increase equitable treatment of consumers (Attorney General Comments at A-6).

D. Analysis and Conclusion

As an initial matter, the Department sought comments from interested parties regarding what additional action may be taken to reduce service terminations. Overall, commenters agreed that amending service termination regulations is secondary in importance to improving financial assistance for low-income consumers, such as the discount rate and AMPs. Numerous participants stated that enhancing consumers' resources and enabling payment of the bill is preferable to broadening shut-off protections. Commenters stated that service protection may have the unintended consequence of allowing consumers to accumulate large arrearages and delay payments. As a result, the Department received fewer recommendations on changes to service terminations than recommendations related to AMPs and the discount rate. The

D.P.U. 08-4

Department notes that many of the recommendations would not expand protections for low-income consumers, the stated purpose of this NOI. Therefore, the Department will not address those recommendations at this time.

Through a future proceeding, the Department intends to address several issues raised in this proceeding that would expand protections for low-income consumers: the rights of consumers 65 years or older when minor grandchildren reside with them; notification to the local board of health when a company sends a termination notice to a landlord account; and establishment of a more uniform process for companies to reinstate service after a termination for non-payment of an account. The Department anticipates opening such a docket in the near future.

VII. Energy Efficiency

A. Introduction

In the NOI, the Department noted that energy efficiency programs not only help reduce low-income consumers' electric and gas bills, but also help reduce the cost of the low-income discount rate, make it easier for participating customers to maintain bill payments, reduce participating consumers' arrearages if they do not make bill payments, and help reduce company bad debt. D.P.U. 08-4, at 12. We encouraged energy efficiency Program Administrators¹⁵ to actively identify low-income consumers, and to serve as many eligible consumers as possible. We solicited comments on whether opportunities exist to increase

¹⁵ By "Program Administrators," we are referring to the Massachusetts electric distribution companies, gas distribution companies and municipal aggregators that implement the energy efficiency programs funded by the system benefits charge.

D.P.U. 08-4

enrollment in low-income energy efficiency programs, including opportunities to better coordinate and integrate the energy efficiency programs with other low-income services provided by electric and gas companies.

B. Summary of Comments

Most of the comments that the Department received with regard to energy efficiency address three issues: (1) the amount of funding available for low-income energy efficiency programs, (2) coordination of energy efficiency programs with other low-income services, and (3) the eligibility for low-income energy efficiency programs. Most of the commenters agree that limited funding represents the most significant barrier to increasing participation in low-income energy efficiency programs (Network Reply Comments at 8; Tr. at 503, 509). Most low-income energy efficiency programs are fully subscribed, and without additional funding there is little more that the Program Administrators can do to increase energy efficiency services to low-income customers (National Grid Comments at 11; NSTAR Reply Comments at 4).

Most of the commenters also agree that the low-income energy efficiency programs are currently well-coordinated with other low-income services offered by electric and gas companies (Network Comments at 39; Tr. at 565). Parties do not raise any concerns regarding the current practices, nor did they offer any recommendations for improving current practices.

There is less agreement with regard to changing the eligibility for low-income energy efficiency programs. Many commenters recommend maintaining the current eligibility threshold (i.e., 60 percent of state median income) (Bay State Gas Comments at 26; WMECo

Comments at 21). Several commenters also recommend that the eligibility threshold for the energy efficiency programs should be the same as the threshold for the AMP and the low-income discount rate (Cape Light Compact Comments at 7; Unitil Reply Comments at 2-3; Tr. at 519-520). Other commenters recommend that the eligibility threshold for the low-income energy efficiency programs be increased to 80% of the state median income (Cape Light Compact Reply Comments at 6).¹⁶

C. Analysis and Conclusion

We note that since the comments and reply comments were submitted in this proceeding, the Green Communities Act was enacted into Law. (St. 2008, c. 169) This Act requires, among other things, energy efficiency Program Administrators to identify and implement all cost-effective energy efficiency resources available, and to dedicate a certain portion of energy efficiency program funding to low-income efficiency programs.¹⁷ Consequently, the Department expects that the most significant issue limiting the implementation of low-income energy efficiency programs – program funding – will be addressed by the Program Administrators in their future energy efficiency plan filings.¹⁸

¹⁶ This would make the eligibility threshold equal to that used by the US Department of Housing and Urban Development for its weatherization program, which the Massachusetts low-income energy efficiency programs are frequently coordinated with (Network Comments at 39).

¹⁷ Electric Program Administrators are required to dedicate 10 percent of efficiency program funds to low-income customers, and gas Program Administrators are required to dedicate 20 percent of program funds to low-income customers.

¹⁸ Electric and gas Program Administrators have already made proposals to increase the budgets for their low-income energy efficiency programs for the remainder of 2008. See Department of Public Utilities Letter dated July 25, 2008 and the Hearing Officer

In Sections III.F.1 and IV.D above, the Department directs the electric and gas companies to continue to coordinate the enrollment of customers across arrearage management programs, low-income discount rates, and low-income energy efficiency programs. Based on the comments received from the parties, we conclude that no further directives on this issue are necessary from the Department at this time. Nonetheless, we encourage the members of the Best Practices Group to consider new approaches to the coordination and integration of low-income energy efficiency services as new ideas or opportunities arise over time.

In Sections III.F.2 and IV.D above, the Department concludes that it cannot change eligibility for either the arrearage management programs or the low-income discount rates, because eligibility is statutorily established. In contrast, low-income energy efficiency program eligibility is not set by statute, but is established in the energy efficiency planning process with input from a variety of energy efficiency stakeholders.

At this time, the Department refrains from addressing changes to the eligibility level for the low-income energy efficiency programs. While it would be ideal to have the same eligibility level for the AMPs, the low-income discount rate, and low-income energy efficiency programs, this would result in less consumers being eligible for the low-income energy efficiency programs and thus would deprive some needy consumers of this important service. Similarly, the Department recognizes that broadening eligibility might provide additional efficiency services to deserving consumers. However, such a change is best implemented as part of the energy efficiency planning process, with input from the energy efficiency

stakeholders. Any Program Administrator that wishes to broaden eligibility for low-income energy efficiency programs should make a proposal to do so in future energy efficiency plan filings with the Department, along with justification as to why such a change is appropriate. Any such proposal should recognize the value of applying consistent income eligibility levels for low-income energy efficiency programs across all the Program Administrators in the state.

VIII. Directive to the Companies

The Department is acutely aware of the difficulty that paying for energy expenses causes all residents of the Commonwealth, but especially recognizes the annual challenge this poses to low-income consumers. Given the rapidly rising energy crisis, the Department anticipates that the plight of low-income consumers will only worsen in the next winter season. Therefore, each gas and electric distribution company shall submit a proposal to the Department by Wednesday, October 15, 2008. Specifically, each company's filing must contain adjusted discount rate tariffs that restore the discount level that was in effect prior to March 1, 1998, to the extent possible by reducing the distribution portion of the bill. The proposed tariff should provide a percentage discount on the bill similar to the low-income discount rate that was in existence on February 28, 1998. In order to evaluate the reasonableness and accuracy of the proposals, the Department requests that the proposals contain supporting rationales and data.

No later than February 28, 2009, each gas and electric distribution company shall submit its annual proposed AMP plan to the Department. In its filing, each gas and electric distribution company shall propose a company-administered AMP that affords all eligible

consumers the opportunity to enroll either through automatic enrollment with an opt-out provision or, at a minimum, notify consumers of the existence of its AMP and allow them to affirmatively opt-in.

The Department directs the companies to continue participating in the Best Practices Group and to convene, discuss and make recommendations on further standardizing AMPs, specifically with regard to creating stand-alone accounts, the conditions required for a consumer to remain within the AMP, the amount of forgiveness provided each month, the cap on the total forgiveness offered, and the program term. We also direct the companies to work with the Best Practices Group to make recommendations with regard to the low-income discount rates, particularly with regard to introducing tiered discount rates, expanding the computer-matching program, and applying the low-income discount rate retroactively. The Department directs the Best Practices Group to report its recommendations no later than December 1, 2008.

The Department directs the companies to provide, for all proposed changes to low-income programs, the bill impacts for each consumer class, accompanied by complete and supporting documentation of all inputs and assumptions used in the analyses. These analyses should also include estimates of potential benefits (in total dollars and bill impacts), such as the reduction in arrearages that could result from the proposed changes.

IX. Motion of the Massachusetts Energy Directors Association and Low-Income Weatherization and Fuel Assistance Network

On May 28, 2008, the Low-Income Weatherization and Fuel Assistance Network and the Massachusetts Energy Directors Association (“Network”) filed a Motion (“Network’s Motion”) requesting that the Department authorize and direct: A collaborative approach among the parties with a mandate to develop a proposal that can be adopted quickly for enhancing the low-income discount rate; an interim AMP protocol to be in effect until a decision on the low-income discount rate is effective; and the continuation and expansion of the Best Practices Group for AMPs (Network’s Motion at 2-3). The Network stated that the Department can act relatively quickly on these measures in order to increase protections for low-income consumers by making their bills more affordable (*id.* at 1). Thirteen interested parties filed responses to the Network’s Motion.¹⁹

Through this Order, the Department grants the Network’s Motion in part and denies it in part. The issues raised in the Department’s investigation, specifically enhancing the discount rate and AMP, are ripe for a collaborative approach and most, if not all, parties to the proceeding agree that such a cooperative, on-going process will build upon the success of each company. Given the widespread support for a collaborative approach, the Department grants

¹⁹ Associated Industries of Massachusetts; The Attorney General of the Commonwealth; Bay State Gas Company; Berkshire Gas Company; Cape Light Compact; The Energy Consortium, TEC; Greater Boston Real Estate Board; Massachusetts Food Association; National Grid; NSTAR; Retailers Association of Massachusetts; Fitchburg Gas & Electric Company d/b/a Unitil; and Western Massachusetts Electric Company.

D.P.U. 08-4

the Network's Motion as to a discount rates collaborative and the continuation of the AMP Best Practices Group.

However, the Department denies the Network's Motion requesting an interim AMP. The Network requested establishing an interim AMP to be in effect until a decision on the low-income discount is reached (Network Motion at 1-2). In this Order, the Department has reached a decision on the discount rate by directing that companies revise the low-income discount rate to the level in effect on the total bill as of March 1, 1998. Therefore, an interim AMP is unnecessary. The Department also denies the interim AMP because it was developed by the Network and Bay State Gas Company only ("Bay State"). Adoption of an interim AMP developed by only a few participants contradicts the collaborative approach emphasized by participants in this proceeding, including the Network and Bay State.

X. ORDER

Accordingly, it is

ORDERED: That each gas and electric distribution company provide all low-income consumers with an account in arrears the opportunity to participate in an arrearage management program; and it is

FURTHER ORDERED: That each gas and electric distribution company shall file, no later than February 28, 2009, an arrearage management program plan that includes a company-administered program, with either automatic enrollment of eligible consumers or, at a minimum, a procedure for notifying all consumers in arrears of the existence of the arrearage management program; and it is

FURTHER ORDERED: That each gas and electric distribution company enroll arrearage management program participants in the low-income discount rate; and it is

FURTHER ORDERED: That each gas and electric distribution company refer eligible arrearage management program participants to local energy efficiency programs; and it is

FURTHER ORDERED: That each gas and electric distribution company shall file, no later than October 15, 2008, the revised low-income discount rate; and it is

FURTHER ORDERED: That each gas and electric distribution company continue participating in the Best Practices Group to discuss and make recommendations to the Department regarding arrearage management programs and the low-income discount no later than December 1, 2008; and it is

FURTHER ORDERED; That each gas and electric company comply with all directives contained in this Order.

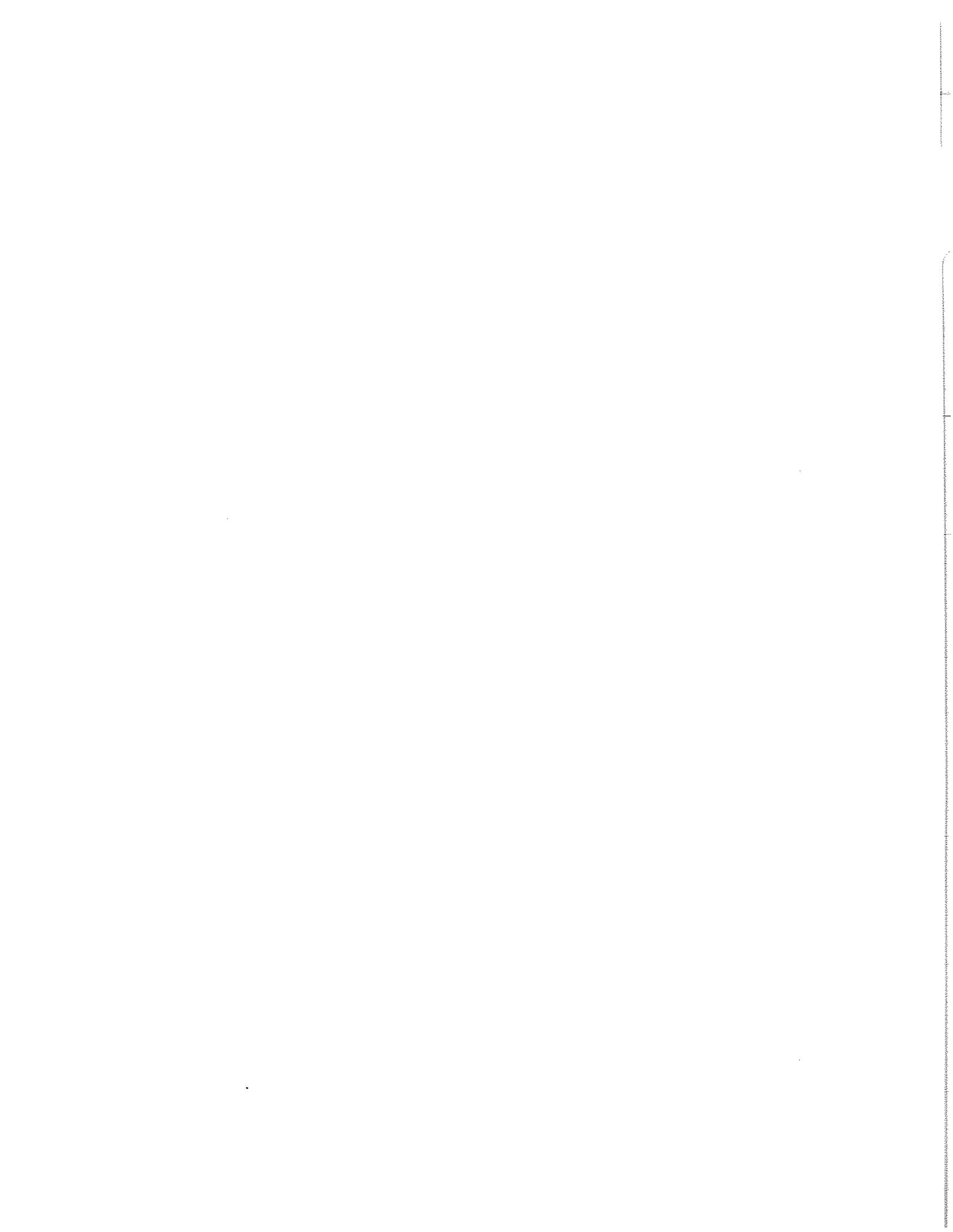
By Order of the Department,

/s/
Paul J. Hibbard, Chairman

/s/
W. Robert Keating, Commissioner

/s/
Tim Woolf, Commissioner

cc: Service List



STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 08-097

Statewide Low-Income Electric Assistance Program

2008-2009 Program Year Budgets and System Benefits Charge

Order Approving Budgets and Increase to the System Benefits Charge

ORDER NO. 24,903

September 30, 2008

APPEARANCES: Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Alexandra E. Blackmore, Esq. for Granite State Electric Company d/b/a National Grid; Gary M. Epler, Esq. for Unitil Energy Systems, Inc.; Mark W. Dean, Esq. for New Hampshire Electric Cooperative, Inc.; Alan Linder, Esq., of New Hampshire Legal Assistance, for The Way Home; Shannon Nolin, Program Director of the Low-Income Electric Assistance Program, for the Community Action Agencies; Rorie E.P. Hollenberg, Esq., of the Office of Consumer Advocate, on behalf of residential utility ratepayers; and Edward N. Damon, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

The Commission opened this docket to review and consider (i) the 2008-2009 program year budgets and sales forecasts filed by Public Service Company of New Hampshire (PSNH), Unitil Energy Systems, Inc. (Unitil), Granite State Electric Company d/b/a National Grid (National Grid), New Hampshire Electric Cooperative (NHEC), Community Action Program Belknap—Merrimack Counties, Inc., the lead agency for the New Hampshire community action agencies (Community Action Agencies), and the State of New Hampshire Office of Energy and Planning (OEP) in connection with the statewide low-income electric assistance program (EAP) established pursuant to *Statewide Low-Income Electric Assistance Program*, Order No. 23,980 87 NH PUC 349 (2002), (ii) the EAP Advisory Board's recommendation that the Commission increase the low-income portion of the system benefits charge from 1.2 mills to 1.5 mills per

kilowatt hour effective October 1, 2008, the start of the 2008-2009 EAP program year, pursuant to RSA 374-F: 4, VIII(c), and (iii) the status of implementation of the various EAP programmatic recommendations approved in *Statewide Low-Income Electric Assistance Program*, Order Nos. 24,795 (2007) and 24,820 (2008). Among the issues to be considered is the justness and reasonableness of the proposed rate increase and the proposed budgets. The electric utilities identified above were made mandatory parties to this proceeding and participation by the members of the EAP Advisory Board was requested.

Between July 25, 2008 and August 1, 2008, the electric utilities filed their proposed budgets and forecasted sales for the 2008-2009 program year. The Community Action Agencies filed their proposed budget on July 28, 2008 and OEP filed its budget on August 1, 2008. Unitil also filed an updated sales forecast on September 15, 2008.

On August 8, 2008, the Office of Consumer Advocate (OCA) notified the Commission of its participation in the docket on behalf of residential ratepayers consistent with RSA 363:28. New Hampshire Legal Assistance petitioned to intervene on behalf of The Way Home on September 17, 2008.

On August 13, 2008, the EAP Advisory Board recommended to the Commission that the funding level be increased from 1.2 mills to 1.5 mills per kilowatt hour due to higher costs in electric rates, increases in the number of households needing assistance, and a shifting of the participation levels within the discount tiers. On September 4, 2008, the Commission issued an order of notice scheduling a hearing. On September 22, 2008, Staff filed a memorandum recommending that the Commission approve the 2008-2009 EAP program year budgets as filed. At the hearing on September 23, 2008, the Commission granted The Way Home's petition to intervene.

II. HEARING RECORD

A panel of three witnesses, Gil Gelineau, the Manager of Marketing Support for PSNH, Amanda Noonan, Director of Consumer Affairs at the Commission, and Shannon Nolin, EAP Program Director, testified regarding the three matters set forth in the order of notice. Three exhibits were introduced into evidence.

A. RECOMMENDATION TO INCREASE THE LOW-INCOME PORTION OF THE SYSTEM BENEFITS CHARGE

Mr. Gelineau discussed the Advisory Board's recommendation that the Commission increase the low-income portion of the system benefits charge from the existing level of 1.2 mills to 1.5 mills, effective October 1, 2008. He stated that the Commission previously set three key EAP objectives: (1) provide benefits to approximately 30,000 customers, (2) minimize the waiting list, and (3) target the greatest benefit to those customers most in need.¹

When the Advisory Board met in July 2008, approximately 28,000 customers were enrolled in the EAP, with a waiting list of approximately 3,000 households, compared to a waiting list of approximately 1,200 households in October 2007. Since July, the waiting list has increased from approximately 3,000 households to a current level of approximately 4,200 households, a number which is expected to increase.

Mr. Gelineau stated that the Advisory Board considered the projections of funding levels and concluded that the EAP would only support approximately 25,000 households in the future, resulting in a waiting list of 6,000 households. This means that two of the three program objectives would not be met, namely, the number of customers benefited and the size of the waiting list. According to Mr. Gelineau, the third objective, targeting benefits to customers most

¹ See *Statewide Low-Income Electric Assistance Program*, Order No. 24,820 (January 30, 2008). In that order, the Commission approved a fourth outcome, balancing the need for electric assistance with the need for administrative efficiency, but that outcome is not implicated by the Advisory Board's recommendation.

in need, appears to be satisfied because within each discount tier the annual average benefit keeps customers' electric bills to approximately 4% to 5% of household income, a criterion established by the Commission in 2006.

The Advisory Board discussed the reasons why the EAP outcomes were not being achieved and why demand for EAP services is expected to increase in the future. First, electric rates have increased approximately 10% over the prior year. Second, there has been a shift in the number of customers in the smaller discount tiers to the larger discount tiers such that the average person enrolled in the EAP is receiving a higher discount. Both factors put pressure on the EAP in terms of its funding and ability to serve the requisite number of customers. The Advisory Board also considered the fact that energy prices have generally increased over the past year – heating oil prices are up approximately 71%, propane is up 32%, and gasoline is up 50% – and that applications for the federal fuel assistance program are up more than 30%, while the number of households being served is up approximately 20% compared to last year. Regarding the sources of the increased demand for EAP services, Ms. Nolin stated that the Community Action Agencies are seeing increases in the number of working, two-parent households seeking assistance.

The Advisory Board considered three solutions to the problem. First, the discount levels could be changed, but it concluded that aspect of the EAP is still working. Second, the number of participants served could be reduced, but it believed that would be contrary to EAP participation goals, which are already not being met. Third, the low-income portion of the system benefits charge could be increased from the existing level of 1.2 mills per kilowatt hour to the maximum of 1.5 mills permitted under RSA 374-F: 4, VIII(c). The Advisory Board calculated that an increase to 1.5 mills would generate about \$3.3 million in additional program

revenues, allowing the EAP to serve a total of approximately 34,000 households, including the existing 28,000 customers enrolled in the EAP, and the waiting list of approximately 3,000 households, with the ability to serve an additional 3,000 households in anticipation of increased demand this winter.

The Advisory Board estimated that the customer impact from increasing the low-income portion of the system benefits charge would be an increase to the monthly bill of a residential electric customer using 600 kwh of approximately 18 cents, or \$2.16 annually, a \$7.50 annual increase for an average small business customer, and a \$3,400 annual increase for the average large commercial/industrial customer.

Mr. Gelineau stated that due to circumstances peculiar to PSNH, it is requesting a waiver of the Commission's rule² requiring that rate changes be implemented on a service rendered basis, so that PSNH's change to its system benefits charge rate could be implemented on a bills rendered basis instead. He explained that although its new customer billing system is capable of performing service rendered billing, it is currently set up to operate on a bills rendered basis and testing still needs to be done for service rendered billing adjustments. He stated that PSNH did not anticipate the billing change when it installed the system and the system is in lock down mode until mid-October when the other operating companies will be moved onto the system. Ms. Noonan indicated that the Commission could accommodate PSNH's requested waiver without creating technical problems in the administration of the EAP and, because of the small bill impacts resulting from the rate increase, without materially disadvantaging customers of PSNH or the other utilities.

² See N.H. Code of Admin. Rules Puc 1203.05 (b) and (c).

B. EAP BUDGETS FOR 2008-2009 PROGRAM YEAR

Ms. Noonan discussed the proposed budgets of the electric utilities, the Community Action Agencies and OEP for the upcoming EAP program year. The utility budgets consist of incremental EAP expenses for things such as the production and printing of educational materials, including posters and brochures, customer service, legal services and IT/computer support. OEP's budget is based on its periodic evaluation functions, including a process evaluation every three years to determine whether the EAP has met the level of need within the limits of the available system benefits charge funds, whether the EAP conforms to the program design guidelines, and whether it operates efficiently, and on its on-going involvement in Advisory Board meetings and related discussions. The Community Action Agencies' budget is directly related to the administration of the EAP and includes expenses for such matters as client outreach, intake, application processing, and monitoring and compliance reporting.

Overall, the 2008-2009 program year budgets are 1.57% lower than the 2007-2008 program year budgets. When the one-time software development costs that were part of the 2007-2008 EAP budget are removed, the on-going administrative costs for the 2008-2009 program year are slightly (1.64%) higher than the ongoing administrative costs for the prior program year, as shown below.

Proposed EAP Utility Budgets 2008-2009 Program Year

	Utility and OEP Administrative Costs	CAA Administrative Costs	Total
PSNH	\$35,800	\$1,185,285	\$1,221,085
NHEC	\$ 3,500	\$ 143,550	\$ 147,050
NG	\$ 3,149	\$ 101,555	\$ 104,704
UES	\$ 5,200	\$ 166,384	\$ 171,584
OEP	\$20,510	\$ 0	\$ 20,510
Total	\$68,159	\$1,596,774	\$1,664,933

**Proposed EAP Utility Budgets
2008-2009 Program Year as Compared to 2007-2008 Program Year**

	Utility/OEP Admin. Costs 07-08	CAA Admin. Costs 07-08	Total 07-08	Utility/OEP Admin. Costs 08-09	CAA Admin. Costs 08-09	Total 08-09	Percentage Change
PSNH	\$35,450	\$1,207,911	\$1,243,361	\$35,800	\$1,185,285	\$1,221,085	-1.79%
NHEC	\$ 6,000	\$ 103,477	\$ 109,477	\$ 3,500	\$ 143,550	\$ 147,050	34.32%
NG	\$ 5,372	\$ 92,362	\$ 97,734	\$ 3,149	\$ 101,555	\$ 104,704	7.13%
UES	\$ 5,200	\$ 161,713	\$ 166,913	\$ 5,200	\$ 166,384	\$ 171,584	2.80%
OEP	\$20,510	\$ 0	\$ 20,510	\$20,510	\$ 0	\$ 20,510	0.00%
Total	\$72,532	\$1,565,463	\$1,637,995	\$68,159	\$1,596,774	\$1,664,933	1.64%

The EAP Advisory Board met to review and discuss the budgets on August 21, 2008. The discussion focused primarily on the Community Action Agencies' portion of the overall budget. Their proposed budget represents an increase of 2% over the 2007-2008 program year. According to Ms. Noonan, the budget increase is driven primarily by increased travel costs related to outreach, the need to replace aging computer equipment used to take EAP applications, an increase in the cost of providing health care benefits to employees, and increases in heating costs and rent. No objections to the budgets were raised at the Advisory Board meeting. Ms. Noonan noted that the overall utility budgets have decreased and there is no change in the OEP's budget. Based on her review and analysis, Ms. Noonan concluded that the proposed 2008-2009 EAP program year budgets are reasonable and recommended that the Commission approve them as filed.

Ms. Noonan and Ms. Nolin agreed that increasing the low-income portion of the system benefits charge would not materially affect the Community Action Agencies' budget. Thus, all additional revenues would go toward EAP benefits.

C. EAP ADMINISTRATIVE EFFICIENCY IMPROVEMENTS

Ms. Nolin addressed the status of the implementation of the EAP administrative efficiency improvements mandated by the Commission in Docket No. DE 07-009, which investigated ways of streamlining EAP administrative processes.³ Ms. Nolin reported that all the efficiency improvements have already been implemented or are in progress.

Regarding the items in progress, automation of the utility enrollment process is still under consideration but it has not been accomplished, in part because recent system conversions at two utilities precluded such changes from being made up to now. For similar reasons, automation of the enrollment removal process has been delayed pending final completion of the conversions. Ms. Nolin stated that the Community Action Agencies are on a working group that is part of an initiative sponsored by the Department of Health and Human Services called the "Front Door Access Project," which is investigating technologically efficient ways of sharing welfare enrollment information.

Encryption of the electronic data being sent from the utilities to the Community Action Agencies has been implemented and data transmission from the Community Action Agencies to the utilities is being accomplished by a secure hyperlink. Discussions have also taken place regarding the cost effectiveness of the extra step of encrypting e-mail communications from the Community Action Agencies to the utilities, a step beyond what the Commission required.

The Community Action Agencies are to enter into three service level agreements in connection with their computer systems. According to Ms. Nolin, two agreements are in place for system management and hardware support. An agreement for software support is not currently in place because the former software vendor terminated its relationship with the

³ See *Statewide Low-Income Electric Assistance Program*, Order No. 24,795 (October 24, 2007) and Order No. 24,820 (January 30, 2008).

Community Action Agencies. Another vendor is currently working on a time and materials basis and the Community Action Agencies expect to issue a request for proposals for a software agreement within the next quarter.

Finally, Ms. Nolin stated that the periodic reporting contemplated by the monitoring and evaluation manual is being done. The accuracy of the information regarding timely payment, complete payments, partial payments and no payments still needs to be verified by reconciling it against information possessed by the utilities. Simple ad hoc reports are also generated. She stated that all the specified periodic reports and ad hoc reporting are expected to be in place by next fall.

III. POSITIONS OF THE PARTIES AND STAFF

A. PSNH

PSNH stated that all parties agree with the Advisory Board that the recommended increase in the low-income portion of the system benefits charge is necessary to achieve the goals of the EAP and the rate impact is minimal. PSNH requested that the Commission grant its waiver request in order to allow the rate adjustment to become effective October 1 on a bills rendered basis. PSNH also stated that the proposed budgets are reasonable, noting that they are very little changed from last year.

B. NHEC

NHEC fully supported the recommended increase in the low-income portion of the system benefits charge. Stating that it does not take lightly the prospect of increased electric rates, given current energy costs, NHEC provided some historical context for the Commission's consideration.

NHEC noted that three years ago, the Legislature held a special session to pass a law augmenting the EAP on an emergency basis. A year ago, similar issues were before the Commission. At that time, NHEC recommended raising the low-income portion of the system benefits charge to 1.5 mills per kilowatt hour because the cost of energy and economic conditions warranted it. The Commission did not adopt NHEC's recommendation, opting instead to fine tune the discount tiers so that although the average program benefit was reduced, the program could continue to meet the affordability goal of limiting electric bills to 4%-5% of income. In addition, over the last year the Commission approved a number of program refinements in order to achieve greater efficiencies. NHEC concluded that past efforts to make the program as efficient as possible in order to avoid a rate increase for as long as possible have been successful, but under current circumstances there are no remaining alternatives to approving the recommended increase in the low-income portion of the system benefits charge, if program goals are to be achieved.

C. National Grid

National Grid supported the Advisory Board's recommendation to increase the low-income portion of the system benefits charge in view of recent increases in heating costs, gasoline and other household expenses, and the increase in the number of households on the EAP wait list. National Grid also maintained that increasing EAP funding is consistent with the goals established for the EAP in Docket No. 06-079, in terms of the number of customers that can be served and the benefit levels that can be provided. Finally, National Grid expressed its support for the 2008-2009 EAP program year budgets.

D. Unitil

Unitil joined in the comments of the other electric utilities in favor of the Commission's approval of the Advisory Board's recommendation to increase the low-income portion of the system benefits charge.

E. Community Action Agencies

The Community Action Agencies supported the recommendation of the Advisory Board to increase the low-income portion of the system benefits charge.

F. The Way Home

The Way Home supported the recommendation of the Advisory Board to increase the low-income portion of the system benefits charge. The Way Home stated that the ever growing number of applications demonstrates the need to increase low income charge in order to achieve the goals established by the Commission in prior orders. The Way Home also supported the proposed budgets of the utilities, the Community Action Agencies and OEP, pointing out that all parties and Staff have worked to streamline the EAP. According to the Way Home, the Community Action Agencies have done their utmost to implement the recommendations and the action steps set forth in prior Commission orders and are continuing to fully implement all the action steps.

G. OCA

OCA supports the Advisory Board's recommended increase in the low-income portion of the system benefits charge. OCA takes no position on the budgets and it looks forward to working with the other members of the Advisory Board on the implementation of the administrative efficiency improvements.

H. Staff

Staff supported the Advisory Board's recommended increase in the low-income portion of the system benefits charge and stated that the proposed budgets as filed are reasonable. Staff joined in the The Way Home's commendation of the Community Action Agencies in continuing to make progress on the administrative efficiency action steps outlined in prior orders.

IV. COMMISSION ANALYSIS

The Advisory Board and the parties to this docket unanimously recommend that we increase the low-income portion of the system benefits charge from the existing level of 1.2 mills per kilowatt hour, which was approved by the Commission on November 1, 2000, to 1.5 mills per kilowatt hour, the maximum level permitted under RSA 374-F: 4, VIII(c). The record reflects that the Advisory Board carefully and thoroughly analyzed the situation, and the evidence introduced at hearing clearly demonstrates that there is a compelling basis for raising the low income charge.

As set forth in prior orders, the EAP is intended to serve approximately 30,000 households and to minimize the waiting list for program enrollment. Since there are currently about 28,000 households enrolled, and a waiting list of 4,200 households, the EAP is not meeting program objectives. Moreover, recent trends show that it will be increasingly more difficult to achieve program objectives inasmuch as electric rates have increased and the number of customers in the smaller discount tiers has shifted to the larger discount tiers, such that the average person enrolled in the EAP is receiving a higher discount. In addition, non-electric energy prices are increasing and demand for the services provided by the federal fuel assistance program is up, which is indicative of the difficult economic circumstances faced by low-income customers. Furthermore, the Community Action Agencies are witnessing an increased need for

EAP services, including increases in the number of working, two-parent households seeking EAP assistance.

As NHEC recounted, this is not the first time that changes related to the EAP have been considered, and that historical background informs our decision today. Notably, the Legislature held a special session three years ago and passed a law augmenting the EAP on an emergency basis; it is apparent that the difficult economic circumstances facing low-income customers in 2005 have hardly improved since then. Two years ago, similar issues were before us but we were able to find reasonable alternatives to raising the low income charge, without jeopardizing program objectives. We were able to fine tune the discount tiers so that, although the average program benefit was reduced, the program could continue to meet the affordability goal of limiting electric bills to approximately 4%-5% of household income. In addition, we approved a number of program refinements in order to achieve further administrative efficiencies and help ensure that program funds are being spent in the most cost-effective way. More recently, the Legislature passed, and Governor Lynch signed on September 24, 2008, a bill approving measures related to low income assistance programs for the upcoming winter.

The Advisory Board considered a range of alternatives but concluded, for good reason, that changing the discount tiers would undercut the aspect of the EAP that is still working – targeting the greatest benefit to those customers most in need and maintaining affordability of electric bills – while lowering the number of program participants would be contrary to EAP participation goals. Instead, it concluded that it was the appropriate time to raise the low income portion of the system benefits charge from the 1.2 mills per kilowatt hour level set by the Commission in 2000 to the 1.5 mills per kilowatt hour level permitted by the Legislature.

We are mindful that raising the low income portion of the system benefits charge represents a rate increase for a typical residential customer using 500 kwh monthly of 15 cents, or \$1.80 annually, while the annual bill impact for an average small business customer would be approximately \$7.50. However, when considering that the approximately \$3.3 million that would be made available for EAP benefits would serve an additional 6,000 customers, the bill impacts are reasonable. Furthermore, we find that the need for assistance is growing and that the objectives of eliminating the waiting list and serving 34,000 customers are sound. We also find that the best way to achieve these objectives is to raise the low income portion of the system benefits charge. Accordingly, we will adopt the Advisory Board's recommendation.

PSNH has requested that we waive our rule requiring that rate changes be implemented on a service rendered basis. Essentially, the company-wide conversion of Northeast Utilities' billing systems, which include PSNH's new billing system, has not yet progressed far enough to allow for PSNH to reliably make the rate change on a service rendered basis. We find that PSNH has presented sufficient reasons for granting the waiver in this instance and that any impact on customers of other utilities is negligible. We will therefore grant the request.

We will also approve the 2008-2009 EAP program year budgets, which we find to be reasonable and consistent with budgets presented and approved in past years. Overall, excluding one-time software development costs that were part of the 2007-2008 EAP budget, the on-going administrative costs for the 2008-2009 program year are slightly (1.64%) higher than the comparable administrative costs for the prior program year, but the increased amount is reasonable and expectable.

Finally, we are pleased that the efficiency improvements contemplated by prior orders have already been implemented or are in the process of being completed. It is essential that close

attention be paid to such matters, now and in the future, to assure that EAP program dollars are spent wisely.

Based upon the foregoing, it is hereby

ORDERED, in accordance with the Advisory Board's recommendation, that the low-income portion of the system benefits charge be increased from the existing level of 1.2 mills per kilowatt hour to 1.5 mills per kilowatt hour, effective October 1, 2008; and it is

FURTHER ORDERED, that the above described increase shall be made on a service rendered basis, except that with respect to PSNH the rate change may be made on a bills rendered basis; and it is

FURTHER ORDERED, that the 2008-2009 EAP program year budgets are approved as filed.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of September, 2008.

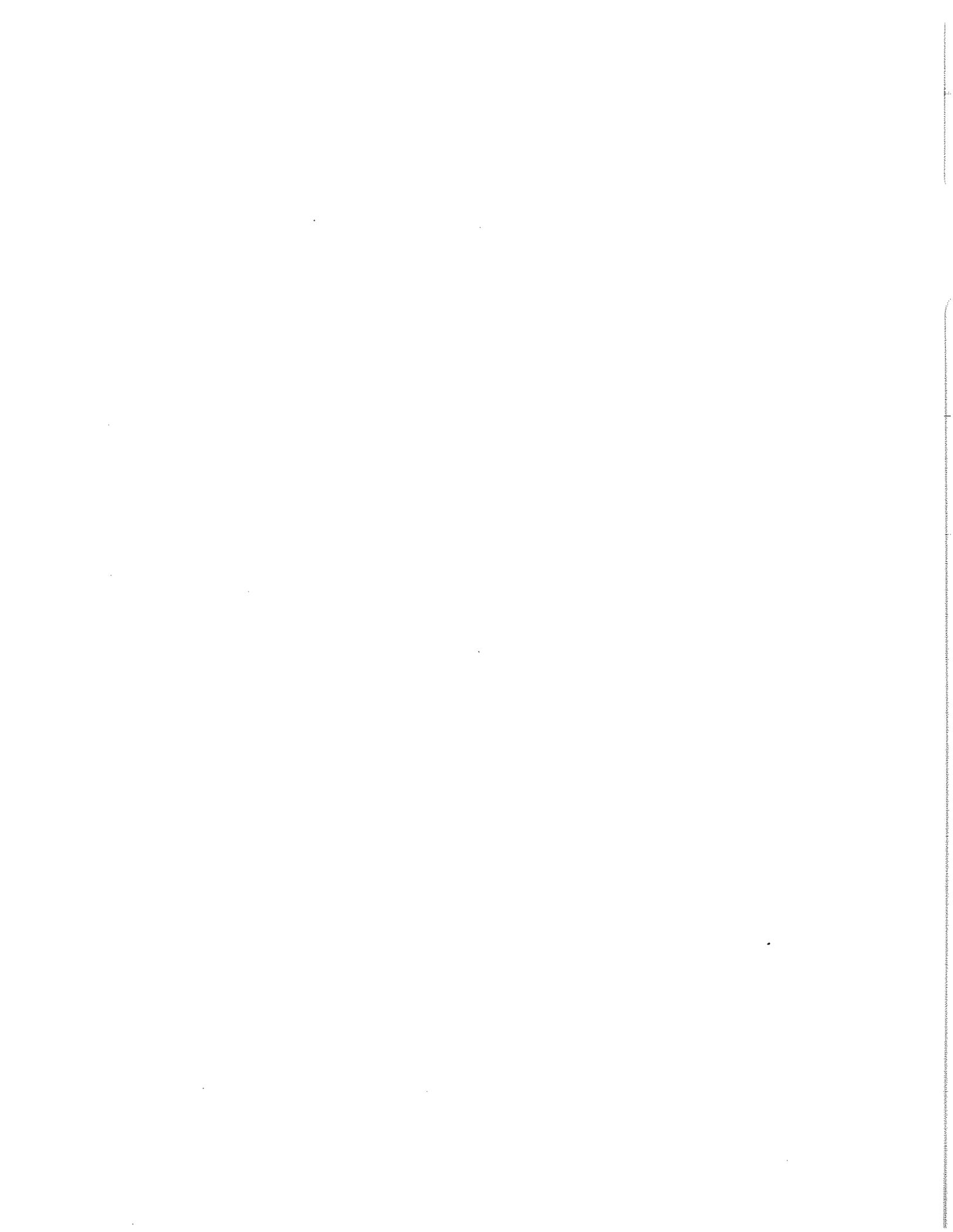
Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Kimberly Nolin Smith
Assistant Secretary



STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2008-106

August 28, 2008

MAINE PUBLIC UTILITIES COMMISSION
Investigation to Consider Modifications to
the Overall Assessment Amount, as well as
Individual Utility Assessment and Apportionment
Amounts Contained in Chapter 314

ORDER SETTING
FUNDING LEVEL

REISHUS, Chairman; VAFIADES, and CASHMAN, Commissioners

I. SUMMARY

In this Order, we set the overall funding amount for the Statewide Low-Income Assistance Plan (Statewide Plan) at \$7,871,938 an increase of \$905,621 over the existing level of \$6,966,317 based on the estimated increase in statewide residential electricity rates since the funding amount was last increased April 2006. We also waive the requirements of Chapter 314 §5(C)(1) to allow the funding level to be reset after March 1, 2008.

II. BACKGROUND

On July 31, 2001, in Docket No. 2001-42, the Commission adopted Chapter 314, which established the standard design, administration and funding mechanism for the Statewide Plan to make electric bills more affordable for qualified low-income customers. Chapter 314 requires each of Maine's transmission and distribution (T&D) utilities to create and maintain a Low Income Assistance Program (LIAP) for its customers. Chapter 314 creates a central fund to finance the Statewide Plan and apportions the fund to each T&D utility based on the percentage of Low Income Home Energy Assistance Program (LIHEAP)¹ eligible households residing in that utility's service territory. Chapter 314 further provides that the Maine State Housing Authority (MSHA) will administer the Plan and the individual LIAPs. The Commission by Order dated April 25, 2006 in Docket No. 2006-97 increased the LIAP funding to reflect estimated statewide increases in residential electricity rates since the programs inceptions.

¹ The LIHEAP program is a federal program that offers energy assistance to people that fall within the established poverty guidelines. The LIHEAP programs are also administered by MSHA. A T&D utility customer must be LIHEAP eligible to qualify for a LIAP benefit.

III. DISCUSSION

A. Overall Funding Level for the Statewide Plan

Chapter 314 § 5(C) states that the Commission will monitor the needs of Maine's low-income electric customers and evaluate annual LIAP funding and expenditure levels and program design features and will by March 1 of each year adjust the overall assessment, as well as each utility's assessment, as necessary to ensure that the assistance provided by the LIAPs is consistent with the provisions of 35-A M.R.S.A. § 3214. In accordance with Chapter 314 § 8, we waive the requirement that adjustments be made by March 1 of each year to allow us to make the changes discussed below.

In response to recent economic conditions, the Commission believes it is appropriate to reevaluate the decision made earlier this year to not change the LIAP funding. Advisory Staff calculated the cumulative change in electric rates for residential customers since the last change in the LIAP fund. Staff determined that weighted average of residential rates have cumulatively increased by approximately 13% since March 2006 change.² Staff calculated the 13% by determining the approximate change in total residential rates (T&D and Energy) for each T&D utility and then weighting those changes based upon the number of residential customers residing in each T&D utility's service territory. The following table shows the percentage change by territory, the weighting and the weighted change.

T&D Utility	Percentage Increase	Percentage of Residential Customers	Weighted Percentage Increase
CMP	12.7%	77.52%	9.8%
BHE	6.9%	14.45%	1.0%
MPS	28.2%	4.37%	1.2%
EMEC	27.0%	1.52%	0.4%
FIE	3.0%	0.23%	0.0%
HWC	40.2%	0.57%	0.2%
KLP	23.3%	0.77%	0.2%
MEW	0.00%	0.32%	0.0%
SIE	58.4%	0.08%	0.0%
VBL	30.3%	0.17%	0.1%
Total			13.0%

² The percentage increase was calculated using total residential rates, including both T&D charges and supply charges, for each T&D from the last change in March 2006 through 2007. For CMP, BHE and MPS the Standard Offer Rates effective March 2008 were used in the above calculation. Staff contacted the Consumer Owned Utilities (COU's) to determine the current standard offer rate and used information from the 2007 annual reports as reflected on the Commission's web page to determine the T&D portion of the rates except for SIE and KLP where the information from the latest rate changes were used. We also kept the rate change for MEW at zero as the change produced using the 2007 information did not appear to be accurate. For the rates available on the web, see <http://www.maine.gov/mpuc/industries/electricity/tanddutilitystat.htm>.

Because residential customers' rates for total electric service have increased substantially since the LIAP fund was established and funding for the Statewide Plan has remained constant it is appropriate to increase the total funding amount for the 2008-2009 program year. The last change in the LIAP fund was based on the increased cost of electricity and we believe it is appropriate to calculate any current increase in the same manner. Accordingly, on August 5, 2008, we issued a Notice of Investigation proposing an increase in the overall funding amount for the Statewide Plan of 13%, reflecting the weighted average increase in total electricity price since the last LIAP funding change, starting with the 2008 – 2009 program year. This would result in a funding increase of \$905,621 over the \$6,966,317 current level for a revised total funding amount of \$7,871,938.

We received comments from the following:

Office of the Governor
Office of Public Advocate (OPA)
Central Maine Power Company (CMP)
Maine Equal Justice Partners
City of Bangor, Department of Health and Community Services
Maine State Housing Authority
Maine Women's Lobby

Of the seven comments received, all supported an increase. The Office of Public Advocate (OPA) commented that the increase should reflect the Standard Offer rates that will be set next March, stating that the Commission should "make informed estimates for what residential Standard Offer prices will result from the bid processes . . . and reflect these estimates in both the overall funding level and the allocation of LIAP funds. Central Maine Power (CMP) indicated that the Staff calculation did not take into account the decreases in its Transmission & Distribution rates since 2007, which would reduce the increase in its rates from 12.7% to 7.6% and recommended taking those reductions into consideration when setting the funding level.

We have reviewed the comments and have determined that while both the OPA and CMP have made good points, we can best serve the low-income population by balancing the needs of the low-income customers while not increasing the funding level to be burdensome to other ratepayers. Using the 2007 T&D rates with the existing Standard Offer Rates best provides that balance. Therefore, we increase the funding level by 13% or \$905,621 to a total fund level of \$7,871,938 effective for the program year beginning October 1, 2008. The T&D utilities should adjust their individual LIAP programs accordingly.

B. Individual Utility Assessment Amounts

We have recalculated the individual utility assessment amounts using the proposed overall assessment amount of \$7,871,938 and using the process contained in Chapter 314. Under this process, the percentage of the State's residential customers residing in each T&D utility's service territory is multiplied by total assessment amount of \$7,871,938 to establish each utility's assessment amount. For consistency reasons, we used

Appendix A

Table 1: Assessment of Statewide Low-Income Assistance Plan Funds for Program Year 2008 – 2009

Company	% of Residential Customers	Total Assessment
Central Maine Power	77.427	\$6,094,968
Bangor Hydro-Electric	14.477	1,139,653
Maine Public Service	4.428	348,533
Eastern Maine Electric	1.540	121,199
Fox Island Electric	.237	18,659
Houlton Water Co.	.568	44,769
Kennebunk Light & Power	.758	59,715
Madison Dept of Electric Works	.321	25,271
Swans Island Electric	.073	5,727
Van Buren Light & Power Dist.	.171	13,445
Totals	100.00	\$7,871,938

Table 2: Apportionment of Statewide Low-Income Assistance Plan Funds for Program Year 2008 – 2009

Company	% of LIHEAP Clients	2008– 2009 Program Year Apportionment
Central Maine Power	65.48	\$5,154,545
Bangor Hydro-Electric	18.64	1,467,329
Maine Public Service	9.97	784,832
Eastern Maine Electric	3.04	239,307
Fox Island Electric	.15	11,808
Houlton Water Co.	.97	76,358
Kennebunk Light & Power	.35	27,552
Madison Dept of Electric Works	.74	58,252
Swans Island Electric	.04	3,149
Van Buren Light & Power Dist.	.62	48,806
Totals	100.00	\$7,871,938