

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION

IN RE: OFFICE OF ENERGY RESOURCES :  
PROPOSED LIHEAP ENHANCEMENT CHARGE : DOCKET NO. 4290  
FOR CALENDAR YEAR 2014 :

REPORT AND ORDER

**I. Introduction**

On July 13, 2011, Governor Chafee signed into law the Low Income Home Energy Assistance Program (LIHEAP) Enhancement Plan, R.I. Gen. Laws § 39-1-27.12. The purpose of the LIHEAP Enhancement Plan was to establish a separate fund through imposition of a new surcharge on all electric and gas customers in order to provide additional money to supplement the federal LIHEAP funding.<sup>1</sup> The State receives the federal money to assist low income customers in paying their energy bills. The new law requires the Rhode Island Office of Energy Resources (OER) to develop and recommend to the Public Utilities Commission (PUC or Commission) a monthly LIHEAP Enhancement Charge for each class of electric and natural gas distribution company customer by October 15 of each year for the upcoming calendar year. The charge cannot exceed \$10.00 per year for each customer account and must be designed to collect a minimum of \$6,500,000 and a maximum of \$7,500,000 per year. Upon receipt of the recommendation, the Commission has sixty days to review the recommendation.<sup>2</sup> In accordance with OER's proposals in 2011 and 2012, the PUC approved a rate of approximately \$0.83 per month on each bill to raise revenues just under \$7,500,000 per year in 2012 and 2013.<sup>3</sup> The

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<sup>1</sup> Under the definitions in the law, the only electric and gas company customers affected by the new law are those of The Narragansett Electric Company d/b/a National Grid (National Grid). "As used in this section, 'electric and natural gas distribution company' means a company as defined in subsection 39-1-2(12), but not including the Block Island Power Company or the Pascoag Utility District." R.I. Gen. Laws § 39-1-27.12(f).

<sup>2</sup> R.I. Gen. Laws § 39-1-27.12(b)-(d).

<sup>3</sup> Order Nos. 20699 (issued Apr. 16, 2012) and 20920 (issued Jan. 7, 2013).

PUC's review of the LIHEAP Enhancement Charge for effect January 1, 2014 marks the third year a LIHEAP Enhancement Charge will be in effect.

## **II. OER's Filing**

On October 7, 2013, OER filed with the PUC its recommended LIHEAP Enhancement Charge for calendar year 2014. The OER proposed that the charge should again be \$0.83 per month.<sup>4</sup> OER further proposed that the funds collected from electric and gas customers continue to be deposited into the same single account held by National Grid as in the prior year.<sup>5</sup> The amount of the LIHEAP enhancement credit for individual customers would be determined based on the level of federal LIHEAP funding and the amount available in the LIHEAP enhancement account held by National Grid.<sup>6</sup>

## **III. Discovery and Reconciliation**

In response to data requests propounded by the PUC, National Grid estimated that the proposed LIHEAP surcharge would result in annual revenue of \$7,483,622.<sup>7</sup> With respect to the 2013 LIHEAP surcharge revenues, National Grid projected total revenue from the surcharge to be \$7,446,265 by the end of 2013.<sup>8</sup> According to National Grid, \$2,838,600 had been credited to 18,065 customer accounts between January 2013 and September 2013.<sup>9</sup> An additional five customer accounts received LIHEAP Enhancement Credits between November 1, 2012 and December 31, 2012. The average credit was approximately \$155 for electric accounts and \$158 for gas accounts. The amount available to be credited to customers as of September 30, 2013 was \$8,051,576.<sup>10</sup>

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<sup>4</sup> OER Ex. 1 at 1.

<sup>5</sup> OER Ex. 1 at 2.

<sup>6</sup> *Id.*

<sup>7</sup> PUC Ex. 5 (National Grid's Resp. to COM 1-4).

<sup>8</sup> *Id.* (National Grid's Resp. to COM-1-3).

<sup>9</sup> *Id.* (National Grid's Resp. to COM 1-5).

<sup>10</sup> *Id.* (National Grid Resp. to COM-1-5 and 1-6).

In accordance with Order No. 20920, National Grid filed a preliminary reconciliation of the revenues and expenses of the LIHEAP Enhancement Fund for the period October 2012 through December 31, 2013, with the months of October through December based on estimates. The projected balance in the fund as of December 31, 2013 was approximately \$9,900,000 million. The actual balance on October 1, 2012 was approximately \$3,400,000. While deposits to the account over the period were approximately \$9,300,000, the expenses (LIHEAP Enhancement Credits) were only \$2,800,000.<sup>11</sup>

As a result of National Grid's reconciliation filing, the PUC issued a set of data requests to OER to determine whether the funding level had been set too high.<sup>12</sup> OER still recommended a LIHEAP Enhancement Charge of \$0.83 per month, designed to collect slightly less than \$7.5 million in revenues in order to gain three years of experience with the program prior to changing the funding level. According to OER, there were extenuating circumstances in the first two years of the program administration that would be resolved in the upcoming year. First, because the actual collection amount was unknown in the first year, the LIHEAP enhancement credit for participating customers was set conservatively at \$100. Additionally, the first year of the program, 2012 was a warmer than normal winter. Furthermore, expected 2012 cuts to the LIHEAP funding by the federal government did not materialize. In 2013, after the enhancement credit amount was set, the total number of participating households dropped unexpectedly. However, the state Department of Human Services (DHS) expected participation to rise in 2014. Recognizing there were carryover funds available for use in 2014, OER and DHS recommended adjusting the LIHEAP Enhancement credit to \$450 in order to utilize the federal LIHEAP funds

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<sup>11</sup> National Grid Exhibit 1 at 1.

<sup>12</sup> Under R.I. Gen. Laws § 39-1-27.12, the OER has had the responsibility for proposing the LIHEAP Enhancement Charge since 2011, but under R.I. Gen. Laws § 42-12-1.5, since July 1, 2012, the Department of Human Services has had responsibility for administering the program.

to serve more households. OER and DHS also recommended that the PUC not order the return of any excess funds, but rather, should wait to review the balance of the account when the recommended 2015 LIHEAP Enhancement Charge was filed.<sup>13</sup>

#### **IV. Technical Record Session**

The Commission conducted a Technical Record Session at its offices, on December 16, 2013. OER was represented by Frederick W. Stolle, Esq., National Grid by Thomas R. Teehan, Esq., the Division of Public Utilities and Carriers (Division) by Leo J. Wold, Esq., Assistant Attorney General and the PUC by Cynthia G. Wilson-Frias, Senior Legal Counsel.

Lewis Babbitt, Chief of Program Development at DHS, provided an overview of Rhode Island's recent experience with the federal LIHEAP program, noting that where the 2010 federal funding was \$35 million, the expected funding for fiscal year 2015 is \$20,000,000. In any given winter season, approximately \$22,000,000 to \$27,000,000 in grants are awarded. Mr. Babbitt explained that the LIHEAP Enhancement Fund is helpful in closing the gap, but the federal rules require DHS to provide a similar percentage sized grant to regulated and unregulated heating sources.<sup>14</sup> Therefore, in August of each year, DHS is required to determine the level of grants that will be provided to all participating customers. For this reason, it is very important that DHS has an accurate current balance and projected revenues by August of each year.<sup>15</sup> On behalf of National Grid, Jeanne Lloyd, Manager of Electric Pricing, and Adam Sweeney, Lead Analyst, Low Income Programs, agreed to work with Mr. Babbitt to develop necessary reports he might need in July or August of each year to set the upcoming season's grant levels.<sup>16</sup>

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<sup>13</sup> PUC Exhibit 4 (OER's Resp. to PUC-3-1, 3-5, 3-6 and 3-7).

<sup>14</sup> Tr. at 8-10, 14-15 (Dec. 16, 2013).

<sup>15</sup> *Id.* at 12-13, 18-19, 53.

<sup>16</sup> *Id.* at 54-56.

Mr. Babbitt explained that in the past, particularly without historical data, DHS has had a difficult time predicting and tracking the fund balance. This led to a conservative approach in setting the LIHEAP Enhancement credit level, with more reliance placed on the federal funds. With two years of data available, it became clear that National Grid collects an average of \$619,000 per month from the LIHEAP Enhancement charge. Mr. Babbitt explained that this data, together with anticipated reports from National Grid, will allow DHS to more effectively use the funds.<sup>17</sup> In addition, DHS has a new software system, capable of following new federal regulations that require more granular data on LIHEAP recipients' usage. The goal is to provide the LIHEAP grants efficiently with customized grants based on customer usage patterns.<sup>18</sup> Mr. Babbitt opined that because of the challenges that persisted through the first two years of the program, including problems with data collection, processing of LIHEAP applications, and the departmental transition from OER to DHS, it was not an appropriate time to make serious changes. It would be better, he contended, to wait until the end of the 2013/2014 program year, the first during which the program would be free of prior problems. That would create a better foundation for the decision of whether the LIHEAP enhancement charge and funding level should be changed.<sup>19</sup>

Discussing the grant level for the 2014/2015 winter season, Mr. Babbitt explained that in order to maximize the effect of the LIHEAP Enhancement Fund and stretch the federal funds, DHS would be changing the ratio of federal to enhancement dollars. For both electric and gas customers, the enhancement credit would be larger than the federal grant. He explained that participating customers would receive approximately the same total amount as in prior years, but

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<sup>17</sup> *Id.* at 17-19.

<sup>18</sup> *Id.* at 25-27.

<sup>19</sup> *Id.* at 62-63.

with different labels.<sup>20</sup> National Grid's Manager Low Income and Consumer Advocacy, Adam Sweeney, agreed that as long as National Grid knew what the enhancement credit should be, their system could properly apply the funds.<sup>21</sup>

Addressing the accrual of the fund balance during the first two years of the program, Mr. Babbitt agreed that the fund should not continue to accrue a large balance.<sup>22</sup> He noted that he would be uncomfortable if the fund were to go negative and, to avoid that, would design future LIHEAP Enhancement credits to leave a balance of approximately \$1,000,000 at the end of each winter season. National Grid would continue to accrue revenue in the fund over the summer months, allowing the fund to grow for use during the following winter season.<sup>23</sup> The result would be a design different from that contemplated at the start of the LIHEAP Enhancement Charge, when there was a decision not to require interest to accrue on the fund balance.<sup>24</sup>

Jeanne Lloyd, National Grid's Manager of Electric Pricing, explained that it was originally anticipated that there would be times during the year when the fund balance would be negative and other times when it would be positive. Therefore, the interest would have accrued in favor of customers in some months and National Grid in others. She further explained that National Grid does not keep the funds in a special interest bearing account. Instead, the funds are commingled with National Grid's general operating funds.<sup>25</sup> She did concede that if DHS administers the LIHEAP Enhancement fund in the way Mr. Babbitt described, there would always be a positive fund balance.<sup>26</sup> She also explained that National Grid maintains other

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<sup>20</sup> *Id.* at 19-20.

<sup>21</sup> *Id.* at 49, 61-62.

<sup>22</sup> *Id.* at 63.

<sup>23</sup> *Id.* at 70-73.

<sup>24</sup> *Id.* at 64, 68.

<sup>25</sup> *Id.* at 64-65.

<sup>26</sup> *Id.* at 69.

accounts that accrue interest. They accrue interest at the customer deposit rate, which is the ten-year treasury rate.<sup>27</sup>

## **V. The Division's Filing**

On December 18, 2013, the Division submitted its comments regarding OER's filing. The Division recommended the PUC approve the lower LIHEAP Enhancement Charge, \$0.73 per month, designed to collect at least \$6.5 million. In support of its recommendation, the Division pointed to the \$8 million balance in the LIHEAP Enhancement Fund as of September 30, 2013, with a projected balance of almost \$10 million on December 31, 2013.<sup>28</sup> The Division also took issue with OER's decision to increase from \$150 to \$450 the funding level from the LIHEAP Enhancement Fund in 2014.<sup>29</sup> The Division argued that this was inappropriate because the LIHEAP Enhancement fund was intended to replace the anticipated loss of federal LIHEAP funding on a dollar for dollar basis. According to the Division, OER had not explained why, after two years of spending less than \$3,000,000 annually from the Enhancement Fund, it could be appropriate to increase the funding to households by over 200%.<sup>30</sup> Finally, the Division recommended that the PUC order National Grid, going forward, to accrue interest on the fund balance.<sup>31</sup>

## **VI. Commission Findings**

At an Open Meeting held on December 20, 2013, the PUC considered the evidence in the record and voted unanimously to require National Grid to accrue interest on the funds collected through the LIHEAP Enhancement charge in the same manner as other interest-bearing accounts. When the LIHEAP charge was first implemented, those involved anticipated that there might be

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<sup>27</sup> *Id.* at 65, 67.

<sup>28</sup> Letter from Leo Wold, Esq. to Luly Massaro, 12/18/13 at 1-2.

<sup>29</sup> *Id.* at 2.

<sup>30</sup> *Id.* at 2-3.

<sup>31</sup> *Id.* at 3.

funds carried over from one winter season to another, but that the carryover would be fairly small. It was assumed that some amount would accrue between September and December, but then between January and August, the fund might actually be negative.<sup>32</sup> However, in the first two years of the program, the size of the fund has been fairly consistent, with a large positive balance, much higher than had been anticipated. In addition, as Mr. Babbitt had explained, it would be problematic if the fund were to carry a negative balance in the future. Therefore, as the LIHEAP Enhancement Fund, which is held by National Grid, is comprised of ratepayer funds to be used solely for the benefit of ratepayers, the fund should accrue interest on behalf of ratepayers at the customer deposit rate, in the same manner as other interest-bearing accounts.

The PUC also voted, two to one to approve a LIHEAP Enhancement charge at the low end of \$0.73 per month. The majority expressed concern with the level of the balance that had accrued. Whereas the law anticipates revenues and expenses between \$6.5 million and \$7.5 million each year, less than \$3 million had been spent in each of the first two years of the program. As a result, an amount of just under \$10,000,000 was available for the winter of 2013/2014, even before any additional revenues are collected. Reducing the LIHEAP Enhancement Charge to \$0.73 per month will still result in over \$6.5 million in additional revenues in 2014. It was never intended that the LIHEAP Enhancement Fund should accrue such a large balance as it currently has. Moreover, there is no need to fund it at the highest statutory level. Funding at the lowest level will still result in a balance higher than contemplated by the statute because it will be added to the current balance.

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<sup>32</sup> See Tr. 11/30/11 at 16, 31, 43-45, 59-61, 87, discussing the mismatch of the LIHEAP Enhancement charge with the winter period, the fact that National Grid will be expected to collect approximately \$600,000 per month, but will be applying most of the LIHEAP Enhancement credits by May, and that OER will endeavor to carry over a certain amount of funds for the following winter season.

Mr. Babbitt made several points as to why the first two years of the program were not reflective of a normal year, including enrollment delays, reduced enrollments, and lack of sufficient information from National Grid. He also pointed to changes that have been made, including the new software system. Furthermore, he now has a better handle on the level of revenues collected each year and will receive additional reports from National Grid. Now that DHS will have administrative control of the fund for an entire year together with the necessary information, the winter of 2013/2014 should result in appropriate use of the fund. The PUC will again have the opportunity to review the level of the expenditures and balance of the fund in the fall of 2015. At that time, it may reevaluate the appropriate funding level for the future. OER and DHS will have another opportunity to file for the rate they believe will be appropriate for 2015. At that time, the PUC will review the proposal based on the information gathered in 2014.

Accordingly, it is hereby

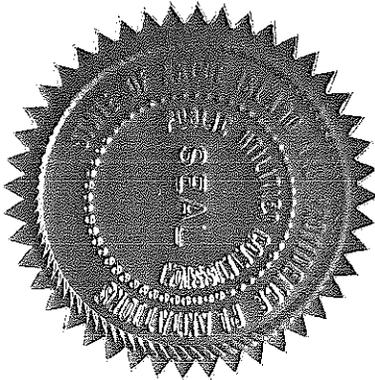
(21405) ORDERED:

1. The Office of Energy Resources' recommendation that the LIHEAP Enhancement Charge shall be set at \$0.83 per month for each customer for the calendar year 2014 is hereby rejected.
2. The LIHEAP Enhancement Charge for calendar year 2014 shall be \$0.73 per month for each customer, with the term "customer" defined as any person taking service from a[n] electric or gas distribution company at a single point of electricity or gas delivery or electric or gas meter, with the maximum total annual LIHEAP Enhancement Charge to any "customer" capped at ten dollars (\$10) and as such is hereby approved for bills rendered on and after January 1, 2014.

3. The Narragansett Electric Company d/b/a National Grid Tariff R.I.P.U.C. No. 2143 is hereby approved on bills rendered on and after January 1, 2014.
4. The Narragansett Electric Company d/b/a National Grid Tariff RIPUC NG-GAS No. 101B is hereby approved on bills rendered on and after January 1, 2014.
5. The Narragansett Electric Company d/b/a National Grid shall include an explanatory statement on customers' bills regarding the LIHEAP Enhancement Charge.
6. The Office of Energy Resources shall file with the Public Utilities Commission the LIHEAP Enhancement Credit amount at the time it is determined.
7. The Narragansett Electric Company d/b/a National Grid shall work with the Department of Human Services to develop appropriate reports that provide the Office of Energy resources with an account balance or reconciliation no later than July 2014 and shall provide the Public Utilities Commission with the schedule and template within sixty days of the issuance of this Order.
8. The Narragansett Electric Company d/b/a National Grid shall file a reconciliation of the LIHEAP Enhancement Fund within two weeks of the Office of Energy Resources' filing to recommend the 2015 LIHEAP Enhancement Charge.
9. Narragansett Electric Company d/b/a National Grid shall comply with all other instructions contained in this Order.

EFFECTIVE AT WARWICK, RHODE ISLAND ON JANUARY 1, 2014 PURSUANT TO AN OPEN MEETING DECISION ON DECEMBER 20, 2013. WRITTEN ORDER ISSUED MARCH 26, 2014.

PUBLIC UTILITIES COMMISSION



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\*Margaret E. Curran, Chairperson

  
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Paul J. Roberti, Commissioner

  
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Herbert F. DeSimone, Jr., Commissioner

\*Chairperson Curran dissented from the majority order to the extent that it reduced the LIHEAP Enhancement charge from \$0.83 to \$0.73. Because the year 2014 will be the first where the Department of Human Services will have complete control over the program as well as functional new software for administering the program, Chairperson Curran would have retained the \$0.83 charge for 2014. There would be a subsequent review of the fund balance at the end of 2014. At that time, the Commission could again consider reducing the charge if the Department of Human Services had not utilized the funds in an efficient manner.

NOTICE OF RIGHT TO APPEAL: Pursuant to R.I. Gen. Laws § 39-5-1, any person aggrieved by a decision or order of the PUC may, within seven days from the date of the order, petition the Rhode Island Supreme Court for a Writ of Certiorari to review the legality and reasonableness of the decision or order.