

July 14, 2017

MAINE PUBLIC UTILITIES COMMISSION
Amendment to Chapter 314 – Statewide
Low Income Assistance Plan

ORDER AMENDING RULE AND
FACTUAL AND POLICY BASIS

VANNOY, Chairman; WILLIAMSON, Commissioner

I. SUMMARY

By this Order, the Commission amends Chapter 314 – Statewide Low Income Assistance Plan.

II. BACKGROUND

In 1991, the Commission approved bill payment assistance programs for low-income customers of each of Maine's three investor-owned utilities.¹ The three programs had different design features and provided different benefit levels. In 1997, the Legislature enacted P.L. 1997, Ch. 316 "An Act to Restructure the State's Electric Industry" (Act). Section 3 of the Act created Chapter 32 of Title 35-A of the Maine Revised Statutes, including a new Section 3214. Title 35-A M.R.S. § 3214 (Section 3214) directed the Commission to oversee the implementation of a statewide financial assistance program for low-income electricity customers.

In response to Section 3214, the Commission initiated a rulemaking in February of 2001 to create a statewide, needs-based assistance program for electricity customers (statewide program). *Public Utilities Commission, Rulemaking to Create the Electric Lifeline Program (Chapter 314)*, Docket No. 2001-00042, Notice of Rulemaking (Feb. 6, 2001). In the Notice of Rulemaking, the Commission stated:

Section 3214(1) articulates a policy which recognizes that electricity is a basic necessity to which all residents of the State should have access We interpret this policy statement, coupled with the other provisions of Section 3214, to require a low-income program that provides comparable benefits for electric customers throughout the State.

Notice of Rulemaking at 4 (internal quotations omitted).

¹ In 1991, the three investor-owned utilities were Central Maine Power Co., Bangor Hydro-Electric Company, and Maine Public Service Co.

The Commission further stated that "Section 3214(2) directs that the low income program 'continue existing levels of financial assistance for low income households and meet future increases in need caused by economic exigencies' The language in the proposed rule mirrors this statutory directive." These two guiding principles (*i.e.*, to continue existing levels of financial assistance while creating a program that provides comparable benefits for electric customers throughout the state) were used by the Commission when designing Maine's statewide program.

To establish the appropriate funding amount for the new statewide program, the Commission proposed to combine the benefit funding amounts included in rates by Central Maine Power Company, Bangor Hydro-Electric Company, and Maine Public Service Company, and then divide this figure by the number of people eligible for the Low Income Home Energy Assistance Program (LIHEAP)² in those service territories to establish a funding amount "per LIHEAP eligible person" in those utilities' service territories. The Commission then multiplied this figure by the total number of LIHEAP eligible persons in the State to establish the total funding amount for benefits for the statewide program.³ The total annual spending amount for administrative costs was calculated in the same manner as the total benefit cost. To ensure that the funding was apportioned to the various utilities based on the "need" that existed in each utility's service territory, the Commission allocated each utility a portion of the overall funding amount by multiplying the percentage of the state's LIHEAP eligible people residing in each utility's service territory by the total benefit funding amount.

The initial proposed Rule contemplated a single and uniform statewide "percentage of income program," called the Electric Lifeline Program (ELP), that would have been implemented and administered by the Maine State Housing Authority in conjunction with Maine's Community Action Agencies.⁴ The proposed ELP would have been funded by contributions from Maine's transmission and distribution utilities; and each of the utilities would have been required to offer the ELP to its eligible customers. The proposed ELP was similar to Central Maine Power Company's low-income assistance program.

Based on concerns expressed by commenters, the Commission decided that Section 3214 did not require a single, uniform statewide program and, while a

² The Low-Income Home Energy Assistance Program (LIHEAP) provides money to help low-income homeowners and renters pay for heating costs. The amount of assistance provided is based on the participant's household size, income level, energy costs, and other factors. People are eligible for assistance if their total household income falls within the income eligibility guidelines established by the federal government, or 60% of the state area median income, whichever is less.

³This calculation established the initial funding for the program at \$5,823,120.

⁴ Under a "percentage of income program," an eligible customer pays a specified percentage of their income, typically around 5%, towards their annual electric bill and the remainder of the customer's bill is paid through a benefit provided by the program.

percentage-of-income program had many advantages, implementing such a program on a statewide basis would be difficult and administratively burdensome. The Commission therefore changed the proposed Rule to allow utilities with existing low-income programs to continue those programs and allowed consumer-owned utilities to develop their own low income assistance programs (LIAPs).

To meet the statutory requirement that the programs "meet future increases in need caused by economic exigencies," the Commission decided to use the price of electricity as a proxy for the "increases in need caused by economic exigencies" and since the promulgation of the Rule the Commission has monitored the collective price of electricity that customers pay across the State on an annual basis. When electricity prices have more than a *de minimis* increase from the time of the last funding adjustment, the Commission increases the overall funding level of the statewide program in an amount commensurate to the increase in electricity prices.⁵ This process has increased the funding level for the statewide program by approximately 35% since the program's inception.⁶ The Commission assesses the funding level each year for the forthcoming program year.

In the April 1, 2015 Order in Docket No. 2015-00019 in which the Commission set the funding for the statewide program for the 2015-2016 program year, the Commission also stated its intention to re-examine the Commission's overall approach to LIAPs:

On March 23, 2015, the Office of the Public Advocate (OPA), [American Association of Retired Persons] and Maine Equal Justice Partners (Commenters) submitted comments that, while supporting the recommendation to maintain the overall funding amount at existing levels for this year, urged the Commission to use the opportunity afforded by the recent reduction in electricity costs for most Maine customers to re-examine its overall approach to Low-Income Assistance Plans (LIAPs). Generally, the Commenters stated that the LIAPs currently in place in Maine and the Commission's annual review of them under Chapter 314, in many cases do not meet the statutory requirement of "meet[ing] the legitimate needs of electricity consumers" who cannot pay their electricity bills in full and "ensur[ing] [an] adequate provision of financial assistance." The Commenters state that the existing LIAP system: (1) does not ensure and does not even address whether, low income Mainers can afford their electricity bills; and (2) misallocates resources to the

⁵ The Commission has never decreased the over funding level of the statewide plan when electricity prices have decreased.

⁶ Current funding for the program is \$7,871,938.

detriment of those least able to pay for electricity. The Commenters offered possible solutions to address what they see as shortcomings, including (1) recalibrating the existing LIAPs to ensure that the amount of the subsidies provided do in fact make consumer's electricity bills affordable or (2) moving to a systems of LIAPs that are based on a percentage of consumers income. Finally, the Commenters requested that the Commission initiate an inquiry into the adequateness of the Maine's LIAP system pursuant to §13 of Chapter 110 of the Commission's rules. The Commenters have raised valid points that should be evaluated fully. Accordingly, we will, in the near future, open a proceeding to comprehensively review the issues raised by the Commenters.

April 1, 2015 Order at 4.

Accordingly, the Commission issued a Notice of Inquiry in Docket No. 2015-00113 on April 30, 2015 (Notice) to obtain information and viewpoints on its overall approach to LIAPs. That notice was followed by a Procedural Order which included the combined questions of the OPA and Commission Staff soliciting information, data, and recommendations particular to LIAPs. The questions were directed to utilities and to all interested persons. Respondents included the Island Institute, OPA, Van Buren Light & Power District, Eastern Maine Electric Co-op, Inc. (EMEC), Central Maine Power, Co. (CMP), and Emera Maine (Emera).

The Island Institute stressed the importance of LIAPs in island communities, where electricity rates can be disproportionately high and acknowledged the promise in the proposed cost of living or percentage of income charge alternatives as an equitable strategy to address the needs of the state.

The OPA asserted that utilizing LIHEAP eligibility to determine eligibility for LIAP "cuts out a significant part of the low-income population who have high electricity costs relative to income" and recommended using Supplemental Nutrition Assistance Program (SNAP) eligibility as the standard.

Van Buren Light & Power District and EMEC, two consumer-owned utilities, both provided data relative to their service territory. EMEC also recommended continuing the current structure and funding amounts under the present LIAPs and noted the existence of other federal, state, and local assistance programs.

CMP and Emera also provided relevant data particular to each utility. CMP, which uses a percentage of income formula to determine benefits, expressed its belief that current funding levels reasonably meet the intent of Section 3214 and that it is appropriate and consistent with Section 3214 to consider electricity prices in determining LIAP funding levels. CMP also agreed that financial assistance solely

through LIAP programs may not be sufficient for all low income customers and recommended a link to conservation programs administered by the Efficiency Maine Trust to reduce usage. Emera does not utilize a percentage of income program, but rather a lump-sum program, and stated its belief that the current methodologies for determining LIAP funding and calibrating lump-sum benefits are appropriate.

Comments on these responses were then requested by Commission Staff on November 13, 2015, and received from CMP, Emera, and OPA. CMP reiterated several points made in its response and highlighted recent modifications made to its percentage of income program that resulted in more accepted participants and an increased subsidy. Emera favored maintaining the current LIAP approach, but agreed with other parties to discuss alternate pilot programs and eligibility criteria and to utilize energy efficiency programs to compliment LIAPs.

In its comments, the OPA presented a detailed proposal for reworking LIAP. The OPA recommended a 10.5% increase in the annual LIAP funding level and, for the utilities utilizing a lump-sum rather than percentage of income program payment program, a revision of the lump-sum payments in the utilities' LIAP tariffs to ensure affordability, based on the analysis presented in the OPA's filing.⁷ Finally, the OPA recommended an additional inquiry into eliminating possible systemic barriers that are causing what the OPA calls a participation gap in LIAP.

Due to the comprehensive nature of the OPA's proposal, on January 26, 2016, Commission Staff requested further comments regarding the feasibility of the OPA's reworking of LIAP. Responsive comments were received from Maine Equal Justice Partners (MEJP), the American Association of Retired Persons (AARP), EMEC, CMP, and Emera.

MEJP and AARP both supported OPA's proposal, particularly a further examination of LIAP participation rates and barriers to participation in LIAP. MEJP also stated that the OPA's recommended program is feasible, as demonstrated by CMP, and that the negative impact on customers would be small.

EMEC generally supported providing financial assistance to consumers who are in need, but advised an approach that considers "the totality of all of the available

⁷ OPA's lump sum program analysis determined that for customers with the lowest income levels, the credits they receive are not enough to make their electricity bills affordable, with affordability defined as 4% of a customer's annual household income. Conversely, OPA's analysis showed that customers with higher incomes, but who still qualify for LIAP, often receive more than they need to make their electricity bill affordable, again using 4% of the customer's annual income as a proxy for "affordable." Based on this finding, OPA recommended that the methodology used by utilities to determine lump sum benefit amounts be recalibrated so that funds currently directed to customers who receive more than they need to be able to afford electricity are redirected to those that do not receive enough assistance.

programs." To this end, EMEC suggested requiring participation in energy efficiency measures in order to be eligible for assistance under LIAP. Finally, EMEC corrected data in OPA's proposal particular to itself and requested that utilities be able to implement a separate tariff to recover costs resulting from any increase in the annual assessment amount.

As a revision to lump-sum LIAPs would not affect it, CMP did not oppose the OPA's proposal in this regard. Neither did CMP oppose further inquiry to examine additional issues, such as participation rates. CMP took no position on raising the assessment amount, but noted that such an action would "have a disproportionate impact on CMP's customers, who will see increased costs but no corresponding additional benefits."

Emera supported recalibrating LIAP apportionment to ensure a more equitable distribution, but expressed concern that some customers will lose assistance under the OPA's proposal. Additionally, Emera noted that any increase in assessment will eventually be incorporated in rates, possibly making electricity unaffordable for more customers.

After receiving comments as a part of the Inquiry, the Commission, on December 7, 2016, proceeded to open a rulemaking proceeding to amend Chapter 314. In its Notice of Rulemaking, the Commission proposed to add a section to the Rule to address Lump Sum Benefit Programs (LSBPs).⁸

The Commission proposed to allow for utilities using an LSBP to use a specific model to establish their annual benefit amounts. The proposed model was based on the lump sum recalibration process recommended by the OPA in the Inquiry, but the Commission's proposed model did not increase the funding level of the LIAP. Rather, the proposed model used the OPA's recalibration process to determine the funding amount needed for each income group, and then apportioned the available funding to each income group based on the percentage of the overall funding amount needed by each group. In addition, the proposed Rule allowed the Director of the Consumer Assistance and Safety Division to approve alternative Lump Sum Benefit allocation methodologies. The Commission sought specific comment on the operation of the model in the Notice of Rulemaking.

The Commission held two hearings on the proposed Rule. The first hearing was held on January 11, 2017. Participating in the January 11, 2017 hearing were the OPA, the Island Institute, and Maine Equal Justice Partners (MEJP). In advance of that hearing, the OPA submitted modifications to the Commission's proposed model, and the OPA gave a detailed explanation of its model and how that model differed from the one proposed by the Commission. The Island Institute and MEJP both expressed their support for a stable program to provide assistance to low-income consumers in Maine.

⁸ The Commission also proposed to make various non-substantive editorial changes to several sections of the Rule.

At the suggestion of the OPA, the Commission convened a second public hearing in this rulemaking. The second hearing was noticed in accordance with the procedures in the Maine Administrative Procedures Act, 5 M.R.S. § 8001 *et seq.*, and was held on March 3, 2017. The OPA, the Maine Community Action Association (MCAA), Emera Maine (Emera), and the Houlton Water Company (Houlton) all participated in the hearing. The second hearing was structured as a workshop to explore revisions the OPA made to its model as a result of the discussions at the previous public hearing.

The Comment deadline for this rulemaking was March 24, 2017.⁹ Emera, Houlton, and the OPA all filed comments. In its comments, Emera expressed its concern about the poverty guideline tiers contained in the OPA model insofar as those tiers differ from the tiers currently used by Emera, and in particular the OPA's proposed "capping" of benefits at 150% of poverty, as opposed to Emera's 230% of poverty cap. Emera's concern was whether this change could "negatively affect the reduced-benefit tier customers' ability to keep up with their bills and potentially increase Emera Maine's bad debt." Emera suggested a phased-in approach to mitigate the impact of the change.

Houlton in its comments provided information on how the OPA's proposed model would affect its customers. Houlton also suggested that any model provided by the Commission reflect each utility's average customer usage or average LIAP customer's usage for each utility's customer group.

In its comments, the OPA provided further explanation of certain aspects of its model. Among the items suggested by the OPA were the following:

- The OPA supported having each utility provide specific information that would be "sufficient to calculate a residential customer's kwh rate." The OPA further recommended that rates used in the model should include all costs for electricity, including the customer charge, supply costs and any other fixed charges.
- The OPA suggested increasing the annual estimated usage in the model. According to the OPA, this "would ensure that the affordability calculations more accurately reflect actual usage by LIAP participants."
- The OPA pointed out that its model assumed an average household size of 2 individuals to reflect the average household in Maine. This number is based on US Census Bureau data which shows an average household size in Maine of 2.3 individuals. The OPA further stated that using a higher household size would "increase the corresponding income levels and decrease the subsidy level available to a LIAP customer."
- The OPA suggested making use of the model mandatory for all utilities. This approach is necessary to allow the reapportionment framework of the OPA's model to function properly.

⁹ The original January 27, 2017 comment deadline in the Notice of Rulemaking was changed after the Commission scheduled the second public hearing.

IV. DISCUSSION OF RULE PROVISIONS

Each section of the amended Rule, as adopted by the Commission, is discussed below.

A. Section 1: General Provisions and Definitions

1. Section 1(A): Scope of Rule

The Commission is amending Section 1(A) the Rule to make a minor, non-substantive change. The Commission did not receive any comments regarding this Section of the Rule.

2. Section 1(B): Definitions

In addition to minor, non-substantive changes to Section 1(B) of the Rule, the Commission is amending his Section to include a definition for the term "Lump Sum Benefit Program." The Commission did not receive any comments regarding this Section of the Rule.

B. Section 2: Purpose of the Statewide Low-Income Assistance Plan and LIAPs

The Commission is not amending Section 2 of the Rule. The Commission did not receive any comments regarding this Section of the Rule.

C. Section 3: Creation and Implementation of LIAPs

1. Section 3(A): Creation and Implementation of the LIAPs

In addition to a minor, non-substantive change to Section 3(A) of the Rule, the Commission is amending this Section to eliminate superfluous date references. The Commission did not receive any comments regarding this Section of the Rule.

2. Section 3(B): Review and Approval by Commission

In addition to a minor, non-substantive change to Section 3(B) of the Rule, the Commission is amending this Section to eliminate superfluous date references. The Commission did not receive any comments regarding this Section of the Rule.

D. Section 4: Required Design Features of a LIAP

1. Section 4(A): Eligible Customers

The Commission is amending Section 4(A) the Rule to make a minor, non-substantive change. The Commission did not receive any comments regarding this Section of the Rule.

2. Section 4(B): LIAP Administration

The Commission is not amending Section 4(B) of the Rule. The Commission did not receive any comments regarding this Section of the Rule.

3. Section 4(C): Native American Participation in LIAP

The Commission is not amending Section 4(C) of the Rule. The Commission did not receive any comments regarding this Section of the Rule.

4. Section 4(D): Transfer of Certification Information

The Commission is not amending Section 4(D) of the Rule. The Commission did not receive any comments regarding this Section of the Rule.

5. Section 4(E): Benefit Levels

The Commission is not amending Section 4(E) of the Rule. The Commission did not receive any comments regarding this Section of the Rule.

6. Section 4(F): Lump Sum Benefit Program

The Commission is amending the Rule to add Section 4(F). Section 4(F) allows for utilities using a Lump Sum Benefit Program to use a specific, Commission-created model to establish their annual benefit amounts.¹⁰ The model is largely based on the OPA's recommended lump sum recalibration process as put forward in the Inquiry, and further developed in during the rulemaking process, and is largely similar to the model proposed by the Commission in the Notice of Rulemaking.

The Commission's model does not increase the funding level of the LIAP. Rather, the Commission's model uses a recalibration process similar to that suggested by the OPA to determine the funding amount needed for each income group, and then allocates the utility's apportionment amount to each income group based on the

¹⁰ The Commission is attaching the model to the Rule as Appendix A.

percentage of the overall funding amount needed by each group.¹¹ Use of the Commission's model is not mandatory, but is intended as a "safe harbor" for utilities that do not want to create their own lump sum benefit programs. Utilities are, however, free to develop such programs and the Rule as amended will allow the Director of the Consumer Assistance and Safety Division to approve alternative lump sum benefit allocation methodologies.

The Commission's approach does, however, differ from the approach suggested by the OPA in one important way: the Commission's model does not attempt to reapportion assumed "unused" funds. A reapportionment model runs the risk of creating a situation where, based on actual participation, one utility does not have sufficient funds to reapportion to another utility. Such a circumstance could skew the funding for several utilities and result in a situation where a particular utility does not have sufficient funding to cover all the eligible participants. Because the Commission's model allocates each utility's pre-determined apportionment amount to each income group based on the percentage of the overall funding amount needed by each group, the potential for under-funding is minimized.

To avoid the underfunding problem with OPA's model, the Commission would have to abandon the current apportionment process and instead require that all funds be remitted to MSHA at the beginning of each program year, including those funds historically spent by the utilities in their own service territory, instead of requiring only the utilities whose assessment exceeds its apportionment remit that difference to MSHA. While this may help to ameliorate the underfunding problem, it would not totally eliminate it. Additionally, CMP provides approximately 75% of the funding for the Statewide Plan each year, with a significant portion being re-distributed to other regions in the state. CMP, as stated earlier, does not operate a lump sum program. The use of OPA's model could result in the need to increase the total funding level for the Statewide Plan, 75% of which would be paid by CMP, and yet CMP's customers would not in any way benefit from the funding increase. We find this to be an unacceptable result.

In the Commission's model, each utility is responsible for distributing its apportioned funds to its eligible customers; one utility does not have to rely on the receipt of funds that have been reapportioned from another utility. In addition, by having each utility responsible for spending its own apportionment, and only its own apportionment, utilities are provided with the flexibility to design their own lump-sum program. Utilities may use the Commission "safe harbor" model if they choose, but may also tailor a model to their specific circumstances. For example, Emera in its comments stated that it uses different poverty ranges than the OPA's suggested model. Under the Commission's amended Rule, Emera will, if it chooses, be able to continue using different poverty ranges. The Commission's model, does, however, adopt the OPA's

¹¹ The Commission is attaching a detailed description of how the model works to the Rule as Appendix B.

recommendation that rates used in the model include all costs for electricity, including the customer charge, supply costs and any other fixed charges.

The Commission's model also addresses Houlton's concerns by requiring individual utilities to use utility specific information. The model requires utilities to enter their specific residential rate (including supply charges and all fixed costs), and the average usage for their low-income customers.

Finally, the Commission is amending this section to require that the changes discussed above will take effect on October 1, 2018, to coincide with the 2018 – 2019 LIAP year. Utilities will need to file terms and conditions to implement these changes by May 1, 2018 pursuant to section 3(B).

7. Section 4(G): Enrollment¹²

The Commission is amending Section 4(G) the Rule to make minor, non-substantive changes. The Commission did not receive any comments regarding this Section of the Rule.

8. Section 4(H): Statewide Low-Income Assistance Plan Funding¹³

The Commission is amending Section 4(H) the Rule to make a minor, non-substantive change. The Commission did not receive any comments regarding this Section of the Rule.

9. Section 4(I): Relationship to Energy Management Services¹⁴

The Commission is not amending Section 4(I) of the Rule. The Commission did not receive any comments regarding this Section of the Rule.

10. Section 4(J): Impact on Means-Tested Assistance Programs¹⁵

The Commission is not amending Section 4(J) of the Rule. The Commission did not receive any comments regarding this Section of the Rule.

¹² Section 4(G) of the Rule was Section 4(F) prior to the amendments adopted in this Order.

¹³ Section 4(H) of the Rule was Section 4(G) prior to the amendments adopted in this Order.

¹⁴ Section 4(I) of the Rule was Section 4(H) prior to the amendments adopted in this Order.

¹⁵ Section 4(J) of the Rule was Section 4(I) prior to the amendments adopted in this Order.

11. Section 4(K): Continuing Applicability of Chapter 815¹⁶

The Commission is amending Section 4(K) of the Rule to eliminate a reference to a Commission Rule that is no longer in effect. The Commission did not receive any comments regarding this Section of the Rule.

12. Section 4(L): Benefits Provided to Customers Using Oxygen Pumps and Ventilators¹⁷

The Commission is amending Section 4(L) of the Rule to make minor, non-substantive changes and to eliminate superfluous date references. The Commission did not receive any comments regarding this Section of the Rule.

E. Section 5: Statewide Low-Income Assistance Plan Funding

1. Section 5(A): Creation of a Statewide Low-Income Assistance Plan Fund

The Commission is not amending Section 5(A) of the Rule. The Commission did not receive any comments regarding this Section of the Rule.

2. Section 5(B): Transmission and Distribution Utilities' Funding Obligation for the Statewide Low-Income Assistance Plan for LIAP Program

The Commission is not amending Section 5(B) of the Rule. The Commission did not receive any comments regarding this Section of the Rule.

3. Section 5(C): Modifications to Assessment Level

In addition to a minor, non-substantive change, the Commission is amending Section 5(C)(1) of the Rule to change mandatory language in this Section to permissive language. In addition, the Commission is amending this Section to allow for the annual adjustment of the Lump Sum Benefit Allocation Model. The Commission did not receive any comments regarding this Section of the Rule.

¹⁶ Section 4(K) of the Rule was Section 4(J) prior to the amendments adopted in this Order.

¹⁷ Section 4(L) of the Rule was Section 4(K) prior to the amendments adopted in this Order.

4. Section 5(D): Apportionment of Funds

The Commission is amending Section 5(D) of the Rule to make a minor, non-substantive change. The Commission did not receive any comments regarding this Section of the Rule.

5. Section 5(E): Transfer of Funds

The Commission is not amending Section 5(E) of the Rule. The Commission did not receive any comments regarding this Section of the Rule.

F. Section 6: Statewide Low-Income Assistance Plan and LIAP Administration Role of the MHSA

The Commission is amending Section 6 of the Rule to make minor, non-substantive changes. The Commission did not receive any comments regarding this Section of the Rule.

G. Section 7: Obligations of Transmission and Distribution Utilities

The Commission is amending Section 7 of the Rule to make minor, non-substantive changes. The Commission did not receive any comments regarding this Section of the Rule.

H. Section 8: Waiver

The Commission is amending Section 8 of the Rule to make a minor, non-substantive change. The Commission did not receive any comments regarding this Section of the Rule.

V. ORDERING PARAGRAPHS

In light of the foregoing, the Commission

O R D E R S

1. That Chapter 314 – Statewide Low Income Assistance Plan, is hereby amended as described in the body of this Order and as set forth in the amended Rule attached to this Order;
2. That the Administrative Director shall file the amended Rule with the Secretary of State;

