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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Evaluation of the : Docket No. 03-035-01
HELP Program :
: :
: **AARP’S MEMORANDUM IN**
: **OPPOSITION TO LIGHT AND**
: **TRUTH’S (“L&T”) MOTIONS,**
: **L&T’S PETITION TO REVISIT**
: **SPECIFIC ISSUES, AND IN**
: **RESPONSE TO L&T’S BRIEF**
:

The American Association of Retired Persons (“AARP”) respectfully submits this Memorandum in Opposition to L&T’s: (1) Motion to Dismiss re: \$8.00 surcharge; (2) Motion to Dismiss re: \$18.5 million cap; (3) Motion to Dismiss re: HELP Program Design; (4) Motion to Dismiss re: HELP Reporting Requirements; (5) Petition to Revisit Specific Issues; and (6) in response to L&T’s Brief.

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INTRODUCTION

The Home Electric Lifeline Program (“HELP”), is a rate program designed to lessen electricity rates for low-income Utahns. It does so by adding a slight monthly surcharge (about 12 cents for residential customers) to the rates of customers not recognized as low-income.

In its June 24, 2005 submissions, L&T, without citation to any legal support, mistakenly challenges the Commission’s authority to consider HELP’s \$8.00 monthly charge, the \$18.5 million cap, and the design and reporting requirements. Further, this Commission’s authority to order and regulate HELP is beyond dispute and this Commission so ruled in Docket No. 97-035-10. Finally, HELP is not a program for billing third party providers of merchandise or services. Consequently, Utah Code Ann. § 54-4-37 does not limit or bar HELP. For these reasons L&T’s Motions and Petition should all be denied.

I.

The Commission has Authority to Regulate Public Utilities and Permit Implementation of the HELP Program

A. Utah Code Ann. § 54-4-1 Provides the Commission Authority to Order and Regulate Public Utilities and Permit Implementation of the Help Program.

The Commission has authority to order and regulate HELP pursuant to Utah Code Ann. § 54-4-1. This section provides:

The Commission is hereby vested with power and jurisdiction *to supervise and regulate every public utility in this state*, and to supervise all of the business of every such public utility in this state, *and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction ...*

(emphasis added).

The Utah Supreme Court repeatedly describes the power this statute delegates to the Commission as "broad and sweeping in scope." *Beaver County v. Qwest, Inc.*, 2001 UT 81, ¶¶ 10-11 (quoting *Utah Power & Light Co. v. Pub. Serv. Comm'n*, 107 UT 155, 183, 152 P.2d 542, 555 (1944) (citing and interpreting precursors to current sections 54-4-1 and 54-4-4 of the Utah Code)); *White River Shale Oil Corp. v. Public Serv. Comm'n*, 700 P.2d 1088 (Utah 1985) (holding that the Commission has considerable latitude of discretion to enable it to regulate utilities in the public interest).

In accordance with Utah Code Ann. § 54-4-1, the HELP program is "necessary or convenient" to the Commission to supervise and regulate a public utility. HELP allows the Commission to regulate electrical rates. Docket No. 97-035-10. Specifically, HELP makes electrical rates lower for people designated as low-income by making rates slightly higher, through a surcharge, to people not designated as low-income. *Id.* Therefore, since HELP is necessary and/or convenient to the regulation of a public utility, the Commission, by the broad and sweeping powers provided in the Utah Code Ann. § 54-4-1, has authority to order and regulate HELP.

B. Utah Code Ann. § 54-4-4 Provides The Commission Authority to Fix Rates After a Hearing.

The Commission also has legal authority to order and regulate HELP pursuant to Utah Code Ann. § 54-4-4. The Utah Supreme Court stated that: "[i]n addition to the broad powers" granting the Commission general jurisdiction under Utah Code Ann. § 54-4-1, "the legislature *specifically* outlined rate making as a delegated function exclusive to the Commission" under Utah Code Ann. § 54-4-4. *Beaver County v. Qwest, Inc.*, 2001 UT 81, ¶ 11 (emphasis added). Like Utah Code Ann § 54-4-1, Utah Code Ann. § 54-4-4 provides powers to the Commission which the Utah Supreme Court described as "broad." *Mountain States Tel. & Tel. Co. v. Public Serv. Comm'n*, 754, P.2d 928, 931-932 (Utah 1988). Section 54-4-4 expressly provides: "[t]he Commission may ... establish, after hearing, new rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts, practices, or schedules ..." for utilities. Thus, when the utility program is (1) a rate making program, and (2) follows a hearing, the Commission has authority to order and regulate the program pursuant to the Utah Code Ann. § 54-4-4.

HELP satisfies these two requirements. First, HELP is a utility rate making program. It makes electrical rates lower for people designated as low-income by making rates slightly higher, through a surcharge to people not designated as low-income. Docket No. 97-035-10. Second, the Commission held two hearings for HELP on March 4, 1999, Docket No. 97-035-01, and May 24, 2000. Docket No. 97-035-10. Although "hearing," as mentioned in the Utah Code Ann. § 54-4-4, is not expressly defined in the statute, the Utah Supreme Court defined such a "hearing" in *Mountain States Tel. & Tel. Co. v. Public Serv. Comm'n*, 105 Utah 266, 271, 145 P.2d 790 (1944). In *Mountain States* (1944), the court presented guidelines necessary at a hearing: "[c]ommon sense dictates that at such a hearing the legislature intended that there be evidence adduced which would be reasonably calculated to resolve the issues presented for determination. Common sense likewise requires a holding that the findings required by statute be made in accordance with the evidence so presented." *Id.*

The Commission followed these guidelines. At the initial March 4, 1999 hearing, the Commission considered a proposal for HELP. Docket No. 97-035-01. The Commission set four criteria to determine if the program was in the public interest: (1) there should be a real and

unmet need, (2) the program should target only low-income households, (3) the benefits should offset negative impacts, and (4) the program should be easy and inexpensive to administer. *Id.* at lines 86-94. The Commission heard evidence on each of these criteria and found in favor of each. Docket No. 97-035-10. However, the Commission still had concerns and ordered a task force to study the concerns surrounding the program and gather more information. Docket No. 97-035-01. The task force investigated six issues:

(1) a proposed cap on the total amount the program would raise and spend annually; (2) how to calculate charges, and on which users; (3) targeting eligible customers; (4) experience of other statutes; (5) proposed measurements and standards by which [the Commission] could judge the success of the program; and (6) any future studies which might be appropriate.

Docket No. 97-035-10 lines 40-46.

The task force presented their findings in a detailed “Report to the Utah Public Service Commission” on December 17, 1999. *Id.* At the second May 24, 2000 hearing, based on the information found by the task force, the Commission decided that there was now sufficient evidence and that the evidence supported implementing HELP. *Id.* Therefore, since HELP is a rate making program and the rate making program was instituted after a proper hearing, the Commission has legal authority to order and regulate HELP pursuant to the broad powers provided in the Utah Code Ann. § 54-4-4.

C. The Utah Supreme Court Has Recognized The Commission’s Authority To Order And Regulate HELP.

Finally, the Utah Supreme Court has tacitly recognized the Commission’s authority to implement lifeline programs like HELP. In *Mountain States Tel. & Tel. Co. v. Public Serv. Comm’n*, a lifeline program similar to the one at issue here was challenged. 754 P.2d 928 (Utah 1988). It must be noted that L&T, in their “Brief of Light and Truth,” misconstrues this case. They suggest that *Mountain States* (1988) holds lifeline programs as outside the Commission’s statutory authority. L&T is plainly wrong. The Commission had implemented a fund-pooling mechanism that was held illegal, but the Utah Supreme Court took care to point out that neither the Commission’s authority to establish a lifeline rate nor the basic administrative structure of the program was being challenged. *Id.* at 929-930. Indeed, the Court expressly recognized that the Commission had “broad discretion in establishing rates for public utilities” under the Utah Code Ann. § 54-4-4. *Id.* at 931-932. **II.**

HELP IS NOT A THIRD PARTY BILLING PRACTICE LIMITED OR PROHIBITED BY UTAH CODE Ann. § 54-4-37

HELP is not unlawful or contrary to Utah Code Ann. § 54-4-37 for numerous reasons. Section 54-4-37 applies only to third-party providers of services or merchandise. See subsections (1)(d) (“A subscriber means a person who authorized a charge from a third party provider of service or merchandise”); and 8(c) (“If an account holder informs the public utility that a third party service or merchandise charge is ... disputed”).

Low income Utahns’ benefitted by HELP are not third party service or merchandise providers and rate payers are not billed for services or merchandise provided by low income Utahns. Further, low income Utahns’ are not “billing aggregators,” “a public utility,” “a provider of service and merchandise,” a “biller for services or merchandise,” or a “verifier of a subscriber’s authorization” as set forth in Utah Code Ann. § 54-4-37.

Consequently, because low income Utahns' do not directly provide services or merchandise to the rate payer, Utah Code Ann. § 54-4-37(e)'s proscription of charging an account holder for services not ordered or knowingly authorized does not apply to HELP. Neither does § 54-4-37. Stated another way, because L&T fails to identify a third-party service or merchandise it doesn't want, its assertion that HELP violates § 54-4-37 is nonsense.

III.

HELP Is In The Public Interest

The Commission earlier found that HELP was in the public interest. In the initial hearing on March 4, 1999, the Commission considered the lifeline rate which became HELP. Docket No. 97-035-01. The Commission set four criteria: (1) there should be a real and unmet need, (2) the program should target only low-income households, (3) the benefits should offset negative impacts, and (4) the program should be easy and inexpensive to administer. *Id.*

Under this definition, HELP serves the public interest. First, without HELP there is a real and unmet need. The energy burden (the percentage of income paid to energy costs), when last checked, was 3% for median income households in Utah, but for low-income families it was four times that at 12%. For those who are dependent on Supplemental Social Security (SSI), the burden is seven times as great and represents over one fifth of the families total income at 21%. For families dependant on Utah's family Employment Program, the burden is even higher at 23%. Even L&T concedes that HELP addresses the real and otherwise unmet "needs of the poor that have been demonstrated in the proceedings of the program." L&T Evaluation of the HELP Program, p 23.

The second criteria established by the Commission is that HELP only target low-income families. HELP has met this criteria. In the Home Electronic Lifeline Program, Year 2 Report, the Division of Public Utilities audited 80 applications and confirmed "that applicants were approved in accordance with Commission eligibility requirements."

HELP is also easy and inexpensive to administer. The Commission allowed PacifiCorp to charge administrative costs up to \$40,000.00. Both charges were "well below the amount authorized by the Commission for administrative cost" at \$19,120 and \$2,573.39, respectively.

The Division of Public Utilities found that HELP met each of these three criteria, but said it could not find evidence that positive impacts outweigh negative impacts. The Report compared present conditions with conditions existing prior to ordering HELP. All other things being equal, straight comparisons would be fine. However, as is often the case, all other things have not been equal. As the Division repeatedly noted, Utah entered a recession after HELP was implemented. The recession makes comparisons problematic at best because the recession likely offset improvements made. Impressively, despite the recession, HELP still succeeded on three of the public interest criteria initially set by the Commission, but whether the benefits of HELP outweighed the negatives is inconclusive because pre-recession data is being compared to the recessionary HELP years. **CONCLUSION**

Clearly, Utah Code Ann. §§ 54-4-1 and 54-4-4 provide this Commission authority to order and regulate HELP and this Commission so

ruled in docket No. 97-035-10. HELP is also not a program for billing third party providers of merchandise or services. Consequently, Utah Code Ann. § 54-4-37 does not limit or bar HELP. For these reasons L&T's Motions and Petition should all be denied.

DATED this ____ day of July, 2005.

Dale

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Attorney for AARP

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **AARP'S MEMORANDUM IN OPPOSITION TO LIGHT AND TRUTH'S ("L&T") MOTIONS, L&T'S PETITION TO REVISIT SPECIFIC ISSUES, AND IN RESPONSE TO L&T'S BRIEF** in the Matter of the Evaluation of the HELP Program Docket No: 03-035-01 was distributed and transmitted electronically (e-mail) on the ____ day of July, 2005 to the following:

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