STATE OF NEW HAMPSHIRE

CONSUMER ADVOCATE
D. Maurice Kreis

ASSISTANT CONSUMER ADVOCATE
Pradip K. Chattopadhyay

TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-1172

Website:
www.oca.nh.gov

OFFICE OF CONSUMER ADVOCATE
21 S. Fruit St., Suite 18
Concord, NH 03301-2441

November 5, 2019

Ms. Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: Docket No. IR 15-296
Investigation into Grid Modernization

Dear Ms. Howland:

Please treat this letter as the response of the Office of the Consumer Advocate (OCA) to the memorandum filed by Commission Staff in the above-referenced docket on October 31, 2019.

As an initial matter, it is necessary to correct a misimpression that the Staff memorandum may convey about the OCA's general position with respect to grid modernization. The OCA does *not* believe that consensus on grid modernization is beyond reach. Rather, the OCA's position is that – more than four years into this informal investigation – there are fundamental differences in approach among the stakeholders which the Commission must invoke its contested case rules to resolve. The adjudicative process can and frequently does bring parties together, but it does so in a manner that is respectful of the due process and statutory rights of parties.

What the Commission cannot do is determine the rights and obligations of parties on an entirely informal basis, particularly on a matter as consequential as a reformulation of how the Commission will require electric utilities to comply with RSA 378:37 et seq., New Hampshire's least-cost-integrated resource planning (LCIRP) statute. In the context of adjudicative proceedings, the OCA stands prepared to negotiate in good faith with utilities and other stakeholders in order to advance the interests of residential utility customers and come as close as we can to achieving the vision of integrated distribution planning (IDP) – essentially, LCIRP 2.0 -- described in the testimony we filed on September 6, 2019.

Beyond that, we offer the following additional observations in response to the Staff Memorandum.

1. According to the Staff Memorandum, "Stakeholders agreed that customer data would be dealt with in a separate Commission docket pursuant to SB 284," i.e., Chapter 286 of the 2019 New Hampshire Laws. Staff Memorandum at 2. As you know, the OCA was the principal champion of SB 284 at the General Court. As such, we are well aware that the legislation requires the Commission to open an adjudicative proceeding to develop the parameters that will guide the achievement of the bill's purpose, which is the creation of a statewide multi-use utility data platform. We expect the data platform docket to address today's lack of access by customers, third parties, and regulators to standards-based energy data that utilities currently maintain, as a normal business practice, inside closed non-interoperable data silos.

   The advent of grid modernization in New Hampshire will be accompanied by unprecedented higher volumes of valuable and granular energy data. A key benefit of implementation a standards based multi-use data platform is to enable and support many of the major new initiatives being addressed in dockets such as the grid modernization investigation. As utilities develop grid modernization plans, and these plans include projects requiring significant energy data management components, the utility should no longer assume a traditional data silo approach is the best option. As utilities develop grid mod plans and project propsals, the Commission should require the utilities to first consider the feasibility of reusing existing functionality of SB284 data platform instead of automatically designing, building and maintaining numerous new data repositories as is the practice today.

   In light of these challenges, the Commission must take care to let no issues related to data fall through the cracks. If the Commission determines that all-data-related issues will be addressed in the SB 284 docket, and none will be addressed in IR 15-296, the Commission should be mindful that it is thereby expanding the scope of the SB 284 docket beyond the four walls covered by the instructions in the bill.

2. According to the Staff Memorandum, "[t]he Stakeholders agreed that utilities should allow Stakeholder input before commencing the IDP process, and also once the utility has an initial IDP proposal, before filing it with the Commission." Staff Memorandum at 5 (also noting that "[t]he Stakeholders did not agree on the specifics of how any input provided would be incorporated into the IDP"). This comment proceeds from a profoundly flawed premise – that it is up to the utilities to "allow" anyone other than their own management to participate in their capital planning processes. Managers of utilities have one duty and one duty alone: to advance the interests of shareholders so as to maximize the return they receive on their investment. The whole purpose of the LCIRP statute – which has not been repealed and which the PUC cannot use this docket to repeal by implication – is to assure that other voices and other imperatives, particularly the voices and interests of customers – have a material influence on how the utilities deploy their capital.

   Presently, stakeholder input into a utility LCIRP is limited to the reactive process of critiquing utility filings during the adjudicative proceedings the Commission most commence to consider LCIRPs once they are filed. This has proven to be ineffective, not

only because the Commission has limited its review of LCIRPs to the planning process employed by the utilities (as distinct from the substance of what is planned) but also for the very practical reason that it is all but impossible for an alternative vision to interrupt the momentum an LCIRP once it has been approved by management and officially submitted to the Commission.

The alternative vision advanced by the OCA is hardly radical or revolutionary. It is comparable to the stakeholder collaboration that the utilities have welcomed, and the Commission has blessed, in the context of the Energy Efficiency Resource Standard. It ironic that in the present context the utilities are so resistant to adjudication of new LCIRP standards here while so insistent on post-facto adjudication as the only avenue of influence for stakeholders once an individual IDP has been filed.

3. According to the Staff Memorandum, the Department of Environmental Services (DES) seeks "opportunities to modify the utility business model/cost recovery such that 'throughput incentive' or 'infrastructure bias' is minimized and distributed generation, demand response, and energy efficiency investments are given greater value." Staff Memorandum at 5 n.8. "DES further suggests there may be opportunities to modify the existing regulatory models to achieve the same result and recommends a more complete discussion of opportunities to better align utility interests with overall rate reductions and improved environmental benefits, which it believes may impact the overall capital budgeting process." *Id.* The OCA agrees with these observations and objectives. But inter-departmental comity, such as what might impel the PUC to respond favorably to the policy suggestions of a fellow state agency, is no substitute for the adjudicative and rulemaking processes that are the only lawful means for a quasi-judicial agency such as the PUC to alter the rights and obligations of parties. Regardless of the process the PUC uses to forge integrated distribution planning out of the LCIRP requirements, the Commission's ability to reinvent utility regulation, recharacterize the so-called utility 'compact,' and embrace a new vision for the state's electric distribution grid is not limitless. This is the reason the OCA has focused in its testimony on opening up the distribution planning process to public scrutiny and risk-informed decisionmaking.

4. According to the Staff Memorandum, non-utility stakeholders "continue to request an adjudicative process leading to a Commission order, but do not have suggestions for the time-line or specific process needed." Staff Memorandum at 6. This implies unreasonable expectations of those parties, including the OCA, which believe adjudication is the only permissible next step. The Administrative Procedure Act (APA), and the Commission's Puc 200 rules, lay out a specific process for adjudication that begins with a prehearing conference at which the arc of such a proceeding is defined – almost always by agreement of the parties. "Follow the APA and the procedural rules" is the only 'suggestion' the Commission should need from stakeholders in these circumstances.

5. The attached spreadsheet, prepared by our consultants, reflects our suggestions with respect to baseline data and capabilities. We believe these suggestions merit

consideration. Additionally, we urge the Commission to require the utilities to update their information annually as part of any LCIRP 2.0 (or IDP) initiative.

6. Finally, the Staff Memorandum states that "[a]ll stakeholders expressed an interest in moving forward to resolve the outstanding issues as quickly as possible." The OCA does not share this view. As we have repeatedly observed, there is no fire. Deployment of distributed energy resources in New Hampshire is, for better or worse, still in a nascent state and thus there is no crisis driving the process of grid modernization in the Granite State. Our official sense of impatience, four years into this docket, is grounded in the belief that it is time to stop relying on informal processes that do not yield consensus but that consume the resources of participants. More meetings, more working groups, and more 'stakeholder engagement' outside of the contested case proceedings contemplated by the APA favor those parties that have proven themselves willing to do whatever it takes to vindicate the interests of return-maximizing shareholders. This is unfair.

Beyond the observations above, regarding specific statements in the Staff Memorandum, the Office of the Consumer Advocate reaffirms and adopts by reference the positions it has previously taken. We refer in particular to our letter of April 8, 2019 (providing detailed comments on the March 2019 "Staff Recommendation on Grid Modernization) and our written testimony of September 6, 2019) (describing in detail our vision for Integrated Distribution Planning). We continue to believe that our approach to the question of grid modernization is both right as a matter of public policy and correct as a matter of law, unlike other suggestions that have been tendered in this proceeding to date.

We earnestly hope the next issuance from the Commission is an Order of Notice commencing an adjudicative proceeding. Please feel free to contact me if there are any questions or concerns about the foregoing.

Sincerely,

D. Maurice Kreis
Consumer Advocate

cc: Service List (via e-mail)