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April 1, 2022

Daniel C. Goldner, Chair
New Hampshire Public Utilities Commission
21 South Fruit Street
Concord, NH 03301-2429

Re: DE 19-197, Electric and Natural Gas Utilities, Development
of a Statewide, Multi-Use Online Energy Data Platform
DOE Response Regarding 2021 Statutory Amendments

Dear Chair Goldner:

The Commission requested that the Department of Energy (DOE) respond to the Office of Consumer Advocate (OCA)'s *Motion for Rehearing and/or Clarification*, which raises "an issue regarding the extent of the Commission's authority, in relation to the authority of the [DOE] . . . over the [data platform] under RSA 378:51-54, as amended." Commission Procedural Order (March 21, 2022). On March 25, 2022, the DOE filed a letter indicating its anticipation that it would file a motion for rehearing and/or clarification by April 1, 2022, with the expectation that the motion would address the issue with respect to which the Commission seeks a DOE response. The DOE has instead decided to join the joint utilities' Motion to Schedule a Prehearing Conference filed today with the assent of other settling parties. Accordingly, the DOE is filing this letter to provide its response regarding the statutory interpretation issue.

In 2021, the legislature amended RSA 378:50-54 to replace numerous references to "commission" with references to "the department of energy." *See* 2021 N.H. Laws Chapter 91 (House Bill 2-FN-A-Local), Section 292:91. In particular, the Department is directed to "require electric and natural gas utilities to establish and jointly operate a statewide, multi-use, online energy data platform" meeting certain specified requirements, to "defer the implementation of the statewide, multi-use, online energy data platform" under certain circumstances, and to "adopt additional rules pursuant to RSA 541-A as necessary to implement this section." RSA 378:51, I, III, and IV.

As noted by the OCA in its Motion, Order No. 26,589 (March 2, 2022) does not discuss or analyze the effects of those statutory amendments, aside from a passing reference to "DOE staff" in footnote 2 on page 6. That is so even though the settlement agreement was signed and filed by the parties and heard by the Commission prior to the effective date of those amendments. The OCA argues that, now that the Commission has issued an order addressing the determinations required to be made under RSA 378:51, II based on

the record adduced through the May 5, 2021 hearing, its work is substantially complete and, in almost all respects, “regulatory authority over the Statewide Data Platform now rests with the Department of Energy.” OCA Motion at 5-6. According to the OCA, the Commission’s “work on these subjects is now done even if, as is reasonable in the circumstances, additional work on these subjects is necessary” and that “the power to oversee the Statewide Data Platform and its development, once delegated to the Commission, [has] now been transferred to the Department.” *Id.* at 6.

The Department believes that the legislative intent underlying the 2021 statutory amendments must be given effect, but that the OCA’s view of the Commission’s future role may be overly limited. In fact, there will be multiple future points at which the Commission will have the opportunity to adjudicate and determine issues relevant to development and implementation of the statewide data platform.

Most significantly, the Department is required to defer data platform implementation “if the commission determines that the cost of such platform to be recovered from customers is unreasonable and not in the public interest.” RSA 378:51, III. Presumably, any such determination by the Commission would be made based on the record established through a fully litigated adjudicative proceeding, which may be in this or a new and separate docket.

In addition, the terms of the settlement agreement itself include several provisions that contemplate future adjudication by the Commission of relevant issues. And the governance council structure contemplated by the settling parties provides for Commission adjudication of certain disputes where a council member disagrees with actions to be taken by the council with majority approval.

The DOE does believe, however, that, once the Commission has made the adjudicative determination provided for under RSA 378:51, III, responsibility for any further establishment and implementation of the statewide data platform lies with the DOE, to be effected through its broad rulemaking authority under RSA 378:51, IV. (DOE “may adopt additional rules pursuant to RSA 541-A as necessary to implement this section.”).

In view of the multiple additional opportunities for future Commission adjudication, the DOE does not agree that the Commission’s ongoing role in this proceeding is as limited as the OCA asserts in its Motion.

Pursuant to current Commission policy, this filing is being made electronically only.

Sincerely,

Mary E. Schwarzer

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Staff Attorney/Hearings Examiner

cc: Docket Service List