

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

ELECTRIC AND GAS UTILITIES

2021-2023 Triennial Energy Efficiency Plan

Docket No. DE 20-092

MOTION FOR REHEARING AND CLARIFICATION OF ORDER NO. 26,621

Pursuant to New Hampshire Code of Administrative Rules Puc 203.07 and RSA 541:3, New Hampshire Electric Cooperative, Inc. (“NHEC”); Public Service Company of New Hampshire d/b/a Eversource Energy; Unitil Energy Systems, Inc.; Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty; Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty; and Northern Utilities, Inc. (collectively, the “NH Utilities”) respectfully request rehearing and clarification of Order No. 26,621 (April 29, 2022) (the “Order”) issued by the New Hampshire Public Utilities Commission (the “Commission”) in the instant docket.

There are two directives in the Order that the NH Utilities will not be able to comply with, and therefore the NH Utilities respectfully request rehearing on those items as described below. The NH Utilities also request clarity or additional information regarding implementation of the Order’s reporting requirements for the 2022 and 2023 programs due to unclear directives. Explanation is requested on those items, as discussed in more detail below. In support of this motion, the NH Utilities state as follows:

I. BACKGROUND AND PROCEDURAL HISTORY

On February 24, 2022, the Governor signed into law HB 549, which enacted RSA 374-F:3, VI-a relative to the structure and use of the System Benefits Charge (“SBC”); added a new section to RSA 374:63, relative to the structure and use of the Local Distribution Adjustment Charge

(“LDAC”); and amended RSA 125-O:5-a, relative to the Energy Efficiency and Sustainable Energy Board. HB 549 set the SBC and LDAC rates for the remainder of 2022 identical to those approved by the Commission for effect January 1, 2020 with subsequent annual increases tied to inflation beginning in 2023. HB 549 required the NH Utilities to file an updated plan on March 1, 2022, relating to the ratepayer-funded energy efficiency programming to be implemented between May 1, 2022, and December 31, 2023. The legislation also prescribed certain standards by which the Commission is to evaluate the NH Utilities’ energy efficiency plans.

On March 1, 2022, the NH Utilities filed a new 2022–2023 Plan (“2022–2023 Plan”), including each utility’s benefit-cost model supporting energy efficiency plans consistent with the 2020 program structure as authorized by HB 549, and based on revenues estimated as a result of the rates set by HB 549. On March 16, 2022, the Commission issued a supplemental notice of adjudicative proceeding, providing a brief statement of HB 549’s legal standards and the NH Utilities’ new filings. In addition, the notice established a procedural schedule leading up to a previously scheduled hearing on the 2022–2023 Plan on April 21, 2022.

On April 19, 2022, the NH Utilities pre-filed the direct testimony of Katherine Peters, Marc Lemenager, John J. Butler, Eric Stanley, Mary Downes, and Carol Woods in support of the 2022–2023 Plan; the New Hampshire Department of Energy (“DOE”) pre-filed the direct testimony of Elizabeth Nixon, Stephen Eckberg, Jay Dudley, and Scott Balise in support of the 2022–2023 Plan, with proposed modifications; the Office of the Consumer Advocate (“OCA”) pre-filed the direct testimony of Courtney Lane and Danielle Goldberg in support of the 2022–2023 Plan, with additional recommendations; and Clean Energy New Hampshire (“CENH”) pre-filed the direct testimony of Christopher Skoglund in support of the 2022–2023 Plan.

On April 21, 2022, the duly noticed hearing was held on the 2022–2023 Plan with the

following parties participating: the NH Utilities, the OCA, CENH, Conservation Law Foundation (“CLF”), the New Hampshire Department of Environmental Services (“DES”), and DOE. All parties testified in support of the Commission approving the 2022-2023 Plan. On April 29, 2022, the Commission issued Order 26,621, which approved the 2022-2023 Plan, but also imposed numerous new reporting requirements. Order No. 26,621 (April 29, 2022) at 33-36.

II. SUMMARY

Relevant to this motion, first, the Order requires the NH Utilities to provide information for program year 2022 by January 31, 2023. *Id.* at 33. The NH Utilities seek rehearing of this reporting deadline as it cannot practically be met. Second, the Order interpreted RSA 374-F:3, VI-a(d)(4) to require each electric utility to plan for at least 65% electric savings on both an annual and lifetime basis, which cannot be complied with without drastic changes to the NHSaves program offerings. This change will have a dramatic impact on the income-eligible and residential programs in future plan periods. For example, the highly-successful Home Performance with Energy Star (“HPwES”) and Home Energy Assistance (“HEA”) programs are primarily weatherization programs, and a majority of the savings from these programs are non-electric savings. In order to meet 65% annual and lifetime electric savings, the amount of weatherization performed within the NHSaves programs would have to be significantly reduced, thus changing the focus of the HEA program and reducing the size of the HPwES program at differing rates across the NH Utilities. Therefore, the NH Utilities seek rehearing of this requirement as unreasonable, unjust and inconsistent with the policy purpose and statutory scheme of RSA 374-F:3, VI-a. Finally, the NH Utilities seek clarification of some of the reporting requirements in the Order.

III. LEGAL STANDARD

Pursuant to RSA 541:3 and 541:4, a party may move for rehearing of a Commission order within 30 days of the order by specifying every ground upon which it is claimed that the order is unlawful or unreasonable. The Commission may grant rehearing or reconsideration where a party states good reason for such relief. *Public Service Company of New Hampshire*, Order No. 25,361 (May 11, 2012) at 4. Good reason may be shown by identifying specific matters that were overlooked or mistakenly conceived by the deciding tribunal, or by identifying new evidence that could not have been presented in the underlying proceeding. *Id.* at 4-5. Within 30 days of the filing of a motion for rehearing, the Commission must grant, deny, or suspend the order or decision complained of pending further consideration, and the suspension may be upon such terms and conditions as the Commission may prescribe. RSA 365:21.

IV. THE NH UTILITIES' REQUEST FOR REHEARING

a. The January 31, 2023 Reporting Deadline is Not Practicable for the NH Utilities

The NH Utilities request reconsideration of the January 31, 2023 reporting deadline as it relates to program year 2022 for the reporting requirements established in the Order at pages 33-36. For the past decade, the NH Utilities have filed a joint utility fourth quarter/Q4 report on the previous year's performance of the NHSaves programs by February 28, and filed final, individual utility reports inclusive of performance incentive calculations by June 1. The fourth quarter report has been considered a draft report, with significant additional data gathering, quality assurance/quality control, financial reconciliation, benefit cost analysis, and lost base revenue calculation on the part of each utility between the end of February and the June 1 annual report filing.

Given the significant amount of data involved, it is not administratively feasible for the NH Utilities to submit the reports delineated in the Commission's Order by January 31, 2023. The quality assurance review of energy efficiency and cost data encompasses dozens of implementation vendors for each utility, and tens of thousands of rows of data containing specific information about all rebates provided during the prior program year, including details about participating customers, projects, and savings assumptions. The NH Utilities must reconcile all expenditures to ensure they are tied to specific projects or are otherwise assigned to the appropriate budget categories; they must summarize both expenses and savings in the benefit cost models, develop lost base revenue schedules, ensure the lost revenues calculated on a monthly basis tie to the reported savings in the benefit cost models reported on an annual basis, and provide adequate time for meaningful management review and sign off. Providing actual data for the 2022 program year by the January 31, 2023 reporting requirement deadline is not possible, and therefore this reporting requirement cannot be complied with. The NH Utilities respectfully request that the deadline for the 2022 reporting requirements be moved to June 1, 2023, consistent with existing energy efficiency reporting practices for reporting actual data.

b. The Requirements of RSA 374-F:3, VI-a(d)(4) Should Only Be Applied On An Annual Basis

The NH Utilities request that the Commission reconsider its determination that RSA 374-F:3, VI-a(d)(4) requires each electric utility to plan for at least 65% electric savings on both an annual and lifetime basis, and instead hold that the requirement be determined solely on an annual basis. The DOE, OCA and NH Utilities are all on record at hearing supporting this interpretation, (April 21, 2022 Afternoon Hearing Transcript at 44, 50, 100) and this is the only interpretation that is reasonable and consistent with the intent of the New Hampshire Legislature as articulated in RSA 374-F:3, VI-a and HB 549.

The fundamental principles of statutory interpretation are well-established. The New Hampshire Supreme Court has often stated:

We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include. We construe all parts of a statute together to effectuate its overall purpose and to avoid an absurd or unjust result. Furthermore, we interpret statutes in the context of the overall statutory scheme and not in isolation. Our goal is to apply statutes in light of the legislature's intent in enacting them and in light of the policy sought to be advanced by the entire statutory scheme.

N. New England Tel. Operations, LLC v. Town of Acworth, 173 N.H. 660, 667 (2020) (internal citations omitted). HB 549 restored the energy efficiency programming framework, components, and funding that were in place in 2020. *See* RSA 374-F:3, VI-a(d)(2). The interpretation of the new statute to mean the 65% requirement is calculated only on an annual basis provides such continuity consistent with the overall purpose of HB 549. However, the Commission's interpretation that the NH Utilities must meet the 65% threshold on both an annual and lifetime basis would require dramatic changes to the NHSaves programs (as described below), and is therefore inconsistent with the purpose of HB 549.

As stated at the April 21 hearing, outside of legislatively mandated funding allocations for municipal and income-eligible programs, the NH Utilities keep all funding obtained from each rate category within its respective sector, meaning all remaining C&I funding is invested in C&I projects and all remaining residential funding is invested in residential projects. The residential sector program offerings achieve electric savings as well as significant fuel neutral MMBtu savings. The C&I sector programs, outside of the statutorily directed Municipal program, represent the larger opportunity and achievement of electric savings. The two sectors combined must meet any portfolio level electric savings threshold. And while on an annual basis, the electric utilities can meet the requirement that 65% of overall planned energy savings be attributed to

electric system savings, that threshold cannot be met on a lifetime basis without significant disruption to the structure of existing programs, and without impermissible cost-shifting. Although the Commission found in the Order that NHEC's planned increase in C&I program funding showed that NHEC was targeting more C&I savings to reach the 65% lifetime savings threshold, that finding cannot provide support for the Commission's interpretation, as it overlooks that NHEC's increase in its C&I funding is a singular event due to carryover funds from a prior program year, rather than part of a viable overall strategy to achieve a 65% lifetime savings threshold. Under the legislatively determined SBC rate structure, none of the NH Utilities are able to increase their C&I funding to achieve higher levels of electric savings in future years without changing the sector funding allocation (*i.e.*, diverting funds from other rate categories to C&I), which would create impermissible cost shifting and subsidization among customer classes. *See* RSA 374-F:3, VI. However, as discussed below, the inability of the NH Utilities to increase electricity savings by ramping up C&I program funding is not the only factor that limits the ability to achieve the 65% lifetime savings threshold.

The 2022-2023 Plan illustrates that the residential suite of programs achieves relatively lower electric savings per dollar invested than C&I programming, but that those residential programs deliver substantial amounts of beneficial non-electric savings, driving down the achievement of electric savings proportionate to *all* energy savings over the life of installed measures. Requiring 65% of lifetime energy savings to come from electricity-saving projects would thus necessitate lower levels of residential programming, major changes to residential program offerings, or the elimination of certain residential programs entirely. Nothing in RSA 374-F:3, VI-a reveals an intent to eliminate residential programming or to reallocate residential program funds to C&I programs in order to achieve greater lifetime savings. Rather, the purpose

of HB 549 was to restore energy efficiency funding and programming to 2020 levels. *See* RSA 374-F:3, VI-a(d)(2). The Commission’s interpretation would require a programming shift contrary to the current structure of NHSaves, and contrary to RSA 374-F:3, VI-a(a)(2) that states the SBC is to “fund [p]rograms that promote and describe the consumer advantages of energy efficiency across all ratepayer classes”, and would include the scaling back or discontinuation of certain residential programs altogether by one or more of the NH Utilities. This shift would create inconsistent program offerings throughout the state to the detriment of New Hampshire residents statewide, and consequently prevent the NHSaves programs from providing equitable benefits to customers. Such inconsistency would also cause administrative barriers to Home Performance vendors who operate in more than one service territory and who must keep track of different offerings or rebate levels. To apply an interpretation of RSA 374-F:3, VI(d)(4) that would result in such fundamental upheaval of the NHSaves programs is an unjust and unreasonable result which must be reconsidered.

In addition to producing an unjust and unreasonable result, the Commission’s interpretation of the 65% requirement is inconsistent with the wording of the statute which states that “in no instance shall an electric utility’s **planned** electric system savings fall below 65 percent of its overall **planned** energy savings.” RSA 374-F:VI-a(d)(4) (emphasis added). Since the creation of the EERS framework in Docket No. DE 15-137 via Order No. 25,932, the NH Utilities established annual electricity and natural gas savings goals against baseline annual utility sales. The approved 2022-2023 Plan contains an aggregated electric annual savings goal of 1.62% using 2019 kilowatt-hour sales as a baseline, comprised of specific annual savings goals of 0.84% in 2022 and 0.78% in 2023. These planned energy savings for each year of the triennial period are reflected within the respective plans. Also, while the savings achieved will continue into future

planning periods, lifetime savings are not incorporated into goals of subsequent plans. For example, these goals in the 2022-2023 Plan do not include the electric savings still persisting from the 2018-2020 Triennial Plan or from 2021's accomplishments. Therefore, reconsideration of the statutory interpretation that the NH Utilities must plan for 65% of annual and lifetime electric savings is warranted, and the Commission should find instead that the 65% threshold means annual savings only.

V. THE NH UTILITIES' REQUEST FOR CLARIFICATION

The NH Utilities request clarification on several of the reporting requirements established in the Order to be able to comply with those requirements.

1. Pages 34-35, reporting requirement iii(3): the NH Utilities' request that the reporting deadline for this item be extended to the above-requested general reporting deadline for program year 2022 of June 1, 2023 so that the outside support can be procured to develop the required "assessment of the long-term impact of the NHSaves programs on the NH economy". The NH Utilities expect to be able to comply with a June 1, 2023 deadline pending clarification and confirmation of what the Commission seeks with this reporting requirement. Further quantifying and studying the economic impacts noted in the Executive Summary of the 2022-2023 Plan (Bates 6-7)—impacts that include how customers re-invest savings realized from energy efficiency and how NHSaves promotes workforce opportunities and reductions in air pollutants and greenhouse gases—is anticipated to require the services of an outside consultant. The NH Utilities seek clarification on what the Commission intends from the required study, including, if possible, examples of similar analyses that may have been conducted in other jurisdictions. The Order asks that the study "quantif[y] all factors . . . by properly accounting for

discounting that reflects ratepayers' time-preference, and by estimating the energy savings to reflect both the energy intensity and the spillover impacts also associated with future incremental economic activity prompted by the Plan.” Order No. 26,261 at 35. Currently, energy intensity is not a metric employed by the NH Utilities in the context of the NHSaves programs, nor is “ratepayers' time-preference” readily available information (and possibly not available at all), nor is it a consistent measurement across the customer base, and so the NH Utilities would need further guidance on what information should be obtained and how. The NH Utilities request clarification from the Commission as to the information it requires for the study before they can create a scope of work, hire a consultant, and conduct the study as required.

2. In support of this new reporting requirement, the NH Utilities will likely draw upon existing research as well as guidance related to undertaking a study of economic impacts from energy efficiency programs, as described in the Synapse Report on NH Cost Effectiveness Review (Appendix B: Economic Development Impacts). Further context is provided by the [ACEEE State Policy Toolkit: guidance on Measuring the Economic Development Benefits of Energy Efficiency](#), and the EPA's documentation on “[Estimating the Economic Benefits of Energy Efficiency and Renewable Energy](#)”. As explained by Synapse in its report: “Estimating the local-level economic impacts of energy efficiency programs involves projecting likely changes in the flow of goods, services, and income, and then estimating the resulting economic benefits measured by the key economic indicators discussed above. There are a variety of methods and models used for this purpose with varying degrees of complexity from simple and less costly rules-of-thumb factors to

more detailed and costly econometric models.”¹ Therefore, the NH Utilities seek clarification to most efficiently invest what could be substantial ratepayer dollars in such research to meet the needs of the Commission.

3. Page 35, reporting requirement v(1): the Order asks for the net present value of market barriers identified in the 2022-2023 plan. However, market barriers are conditions that prohibit or inhibit the marketplace from implementing a given energy efficiency solution and do not have a readily identifiable cost. Further, the reference to net present value suggests there should also be a lifecycle cost of the market barrier, which, to the knowledge of the NH Utilities, does not exist. Also, multiple market barriers are present in the same market and have interacting effects (e.g., first-cost market barrier is exacerbated by but not entirely distinct from a lack of access to capital), so even if market barriers had quantifiable value it would not be feasible to quantify the cost of *each* market barrier in isolation. Therefore, the NH Utilities request clarification as to what the Commission seeks in terms of quantifying cost or value of a market barrier, or in the alternative, that the Commission modify or rescind this reporting requirement. If the Commission does not rescind this reporting requirement, the NH Utilities note that the July 31, 2022 requirement likely cannot be complied with, though that cannot be confirmed until the requirements of this item are further clarified.

¹ Docket No. DE 17-136, Synapse Energy Economics: *New Hampshire Cost Effectiveness Review: Application of the National Standard Practice Manual to New Hampshire*, page 77 (October 14, 2019): <https://www.puc.nh.gov/regulatory/Docketbk/2017/17-136.html> (Docket entry No. 154).

WHEREFORE, the Moving Parties respectfully request that the Commission:

- A. Grant rehearing of the issues identified in this Motion for the reasons set forth in Section IV, above, which are that the Commission's decision establishes a deadline that is not able to be complied with; that the parts of the decision are not in accordance with New Hampshire law; and the Commission rendered conclusions that are unsupported or contradicted by the evidentiary record;
- B. Provide clarification of the issues identified in Section V, above, that arise from the Order and impact the NH Utilities' ability to comply with the new reporting requirements; and
- C. Grant any such further relief as may be just and reasonable.

Respectfully submitted,

The NH Utilities: New Hampshire Electric Cooperative, Inc.;
Public Service Company of New Hampshire d/b/a Eversource
Energy; Unitil Energy Systems, Inc.; Liberty Utilities (Granite
State Electric) Corp. d/b/a Liberty; Liberty Utilities (EnergyNorth
Natural Gas) Corp. d/b/a Liberty; and Northern Utilities, Inc.;

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY



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