

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 20-092

ELECTRIC AND GAS UTILITIES

2021–2023 Triennial Energy Efficiency Plan

**Order on 2021–2023 Triennial Energy Efficiency Plan and Implementation
of Energy Efficiency Programs**

O R D E R N O. 26,553

November 12, 2021

In this order, the Commission sets ratepayer-funded and utility-managed energy efficiency rates for 2021 through 2023 in aggregate at a level consistent with the previous Triennial Plan. The Joint Utilities shall identify energy efficiency programs that provide the greatest benefit per unit cost with the lowest overhead and administrative costs within the approved budget and file a program proposal for review and approval by the Commission. The Commission moves the funding requested for the Performance Incentive, over \$20,000,000 in the Triennial Plan Proposal, from the Joint Utilities to the energy efficiency programs; and therefore to ratepayers.

As the Commission held at the outset of restructuring, “the most appropriate policy is to stimulate, where needed, the development of market based, not utility-sponsored and ratepayer-funded, energy efficiency programs.”¹ The Proposal and Settlement before the Commission present a

¹ *Electric Utility Restructuring*, Order No. 22,875 at 79 (March 20, 1998)

stark contrast to those long-held tenets, instead proposing nearly \$400,000,000 in entirely ratepayer-funded and utility-sponsored programs, placing an enormous burden on New Hampshire ratepayers. We view this Triennial Plan as an inflection point, with ratepayer-funded and utility managed energy efficiency programs peaking in 2020 and 2021 and returning to the intended transition to market-based energy efficiency after this triennium within the guidelines provided by the Legislature.

I. BACKGROUND AND PROCEDURAL HISTORY

On September 1, 2020, the following parties filed a proposal (the Proposal) for ratepayer funded energy efficiency programs for 2021, 2022, and 2023:

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

The above-listed Electric Utilities and Gas Utilities are collectively referred to as the Joint Utilities.

The Office of the Consumer Advocate (OCA) notified the Commission of its participation in this docket on behalf of residential ratepayers. See RSA 363:28, II. Clean Energy New Hampshire (CENH), the Conservation Law Foundation (CLF), the Acadia Center, The Way Home, the Department of

Environmental Services (DES), and Southern New Hampshire Services each filed petitions to intervene. The Commission granted all petitions to intervene at the prehearing conference held on September 14, 2020. Hearing Transcript of September 14, 2020 at 11.

On December 3, the Joint Utilities, OCA, CLF, The Way Home, Southern New Hampshire Services, and CENH (collectively, the Settling Parties) filed a settlement agreement (Settlement Agreement) that called for approval of the 2021–23 Proposal with certain modifications. The Acadia Center and DES did not sign the Settlement agreement but filed letters in support. The Department of Energy (formerly Staff Advocates with the Commission) did not join the Settlement Agreement.

The Commission held hearings on the Proposal on December 10, 14, 16, 21, and 22. The Commission held the record open for responses to the Commission's record requests and the filing of Exhibit 25B. Hearing Transcript of December 22, 2020 (12/22/20 Tr.) at 141. Responses to the Commission's record requests and Exhibit 25B were filed on December 22.

On December 29, 2020, the Commission issued Order No. 26,440, maintaining the current System Benefits Charge (SBC) rates and structure of the existing energy efficiency programs until the Commission's issuance of its final order in this proceeding.

On February 19, 2021, the Commission issued Order No. 26,458, granting the motion of the OCA for rehearing of Order No. 26,415, which had declined to designate then Commission employees Elizabeth Nixon and Paul

Dexter as Staff Advocates pursuant to RSA 363:32. On rehearing the Commission granted the OCA's motion and designated Elizabeth Nixon and Paul Dexter as Staff Advocates pursuant to RSA 363:32, II.

The Proposal, Settlement, testimony, exhibits, and other docket filings, except any information for which confidential treatment is requested of or granted by the Commission, are posted at:

<https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-092.html>.

II. SUMMARY OF THE PROPOSAL FILED SEPTEMBER 1, 2020

A. Proposal Plan Targets and Budget

The Proposal significantly expands the programs and spending implemented in the prior plan. The Proposal increases Energy Efficiency (EE) program budgets as seen in the table below with 2018–2020 EE program budgets for comparison:

Table 1: Proposed Energy Efficiency Program Budgets				
	2021	2022	2023	Total
Electric	\$93,582,000	\$115,554,000	\$141,692,000	\$350,829,000
Gas	\$12,038,000	\$13,706,000	\$16,137,000	\$41,882,000

Exh 1. at 32, Table 1-9; 1-10.

Table 2: 2018–2020 Energy Efficiency Program Budgets				
	2018	2019	2020	Total
Electric	\$36,624,000	\$46,911,000	\$62,580,000	\$146,115,000
Gas	\$9,158,000	\$10,029,000	\$10,902,000	\$30,089,000

Exh. 2 at 32-33, Docket DE 17-136; Order No. 26,095 at 5 (January 2, 2018).

1. Proposal Plan Funding

The Proposal seeks to fund electric and natural gas programs through different sources. Exh. 1 at 30–31. For the electric energy efficiency programs, funding is derived from: (1) a portion of the SBC, which is included on the

electric bills of all customers receiving delivery service from a participating utility; (2) a portion of the Regional Greenhouse Gas Initiative (RGGI) auction proceeds; and (3) proceeds obtained by the Electric Utilities from their participation in the regional Forward Capacity Market (FCM). *Id.* In addition, under the Proposal, any unspent funds from prior program years are carried forward to future years, including interest at the prime rate. *Id.*

The Proposal seeks to fund natural gas energy efficiency programs from a portion of the Local Delivery Adjustment Clause (LDAC), which is included on the bills of all gas utility customers, as well as from any unspent funds from prior program years, which are carried forward to future years including interest at the prime rate. *Id.*

The Proposal significantly changed how the SBC and LDAC charges are calculated, allocated, and set, and has increased proposed rates for each year of the proposal. Under the Proposal, the Joint Utilities seek to review actual sales and revenues each year to determine whether the rates approved by the Commission for the following year should apply for collection of the approved budget. *Id.* at 37. Based on this reconciliation, the Joint Utilities request to adjust the charges by up to 10 percent of the approved rate without the need for Commission approval. *Id.*

For the first time in the history of EE programs, the Proposal separates residential and commercial/industrial (C&I) EE program budgets for Electric Utilities and bases its proposed SBC rates applicable to those customer classes on their respective budgets. *Id.* at 38. Currently, the EE portion of the SBC

charge is uniform between customer classes, however, the overall SBC charges are not uniform among utility service territories. The utilities' proposed EE portion of SBC rates are laid out in the tables below:

Table 3: EE Portion of the Electric Utilities' SBC Rates (per kWh)					
		2020	2021	2022	2023
Eversource ²	Residential	\$0.00528	\$0.00651	\$0.00646	\$0.00673
	C&I		\$0.01029	\$0.01498	\$0.02062
Liberty ³	Residential	\$0.00528	\$0.00568	\$0.00864	\$0.00922
	C&I		\$0.00561	\$0.00843	\$0.01061
Unitil ⁴	Residential	\$0.00528	\$0.00615	\$0.00773	\$0.00767
	C&I		\$0.00867	\$0.01070	\$0.01333
NHEC ⁵	Residential	\$0.00528	\$0.00838	\$0.00873	\$0.008530
	C&I		\$0.00906	\$0.01036	\$0.01004

Exh. 4 at 8.

Table 4: EE Portion of the Gas Utilities' LDAC Rates (per therm)					
		2020	2021	2022	2023
Liberty ⁶	Residential	\$0.0640		\$0.0831	
	Commercial	\$0.0426		\$0.0441	
Unitil ⁷	Residential	\$0.0613	\$0.0994	\$0.0985	\$0.1203
	Commercial	\$0.0266	\$0.0367	\$0.0509	\$0.0704

B. Commercial and Industrial EE Programs

The Proposal has four ratepayer-funded C&I EE programs: the Small Business Energy Solutions Program; the Municipal Program; the Large Business Energy Solutions Program; and Eversource's Large Business Energy Rewards Request For Proposals (RFP) Program. Exh. 1 at 52-53.

² Exh. 1 at 38.

³ Exh. 1 at 725.

⁴ Exh. 17 at 19.

⁵ Exh. 1 at 773.

⁶ Exh. 1 at 853-54.

⁷ Exh. 1 at 925.

1. Small Business Energy Solutions Program

The Small Business Energy Solutions Program is described as a “retrofit and new equipment & construction initiative” providing incentives and technical expertise to small businesses. *Id.* at 52. The proposed 2021–23 electric budget is \$68,248,328, while for gas the proposed budget is \$7,810,522. *Id.* at 65.

2. Municipal Program

The Municipal Program is described as providing “technical assistance and incentives to municipalities and school districts to help them identify energy-saving opportunities and implement projects.” *Id.* at 52. The 2021–23 electric budget is proposed to be \$5,871,702. *Id.* at 76. According to the 2021–23 Proposal, natural gas utilities also serve municipalities through the Small and Large Business Energy Solutions programs. *Id.* at 52.

3. Large Business Energy Solutions Program

The Large Business Energy Solutions Program is described as offering “technical services and incentives to assist large C&I customers who are retrofitting existing facilities or equipment, adding or replacing equipment that is at the end of its useful life, or constructing new facilities or additions.” *Id.* at 53. The proposed 2021–23 electric budget is \$105,736,654, while the proposed gas budget is \$10,160,707. *Id.* at 89.

4. Eversource’s Large Business Energy Rewards Program

Eversource’s Large Business Energy Rewards RFP Program is described as encouraging “customers to propose energy efficiency projects through a

competitive solicitation process.” *Id.* at 53. The 2021–23 budget for this encouragement is \$17,781,164. *Id.* at 93.

C. Residential EE Programs

The Proposal has four Residential ratepayer funded programs: the ENERGY STAR® Homes Program; the ENERGY STAR® Products Program; the Home Energy Assistance Program (HEA); and the Home Performance ENERGY STAR® Program.

1. ENERGY STAR® Homes Program

The ENERGY STAR® Homes Program is described as providing incentives and contractor support for residential single-family and multi-family new construction homes. *Id.* at 97. The proposed 2021–23 electric budget for this program is \$10,854,423, while the proposed gas budget for the same time period is \$4,762,071. *Id.* at 118.

2. ENERGY STAR® Products Program

The ENERGY STAR® Products Program is described as helping residential customers overcome the extra expense of purchasing and installing ENERGY STAR-certified appliances, electronics, HVAC equipment and systems, hot water-saving equipment, and lighting. *Id.* at 97. The proposed 2021–23 electric budget for this program is \$31,627,751, while the proposed gas budget is \$4,906,684. *Id.* at 126.

3. Home Energy Assistance (HEA) Program

The HEA Program is described as being a fuel-neutral weatherization program designed to reduce energy use from both electric and gas appliances, lighting,

and HVAC systems. The proposed 2021–23 electric budget for this program is \$69,854,034, while the proposed gas budget is \$7,136,139. *Id.* at 137. Under the Proposal, the per-project incentive cap would be more than doubled from \$8,000 to \$20,000. In addition, the Proposal would allow exceptions to that increased cap. *Id.* at 130.

4. Home Performance ENERGY STAR© Program

The Home Performance ENERGY STAR© Program is described as providing “comprehensive energy-saving services at significantly reduced cost to customers’ existing homes, and covers lighting improvements, space heating and hot water equipment upgrades, weatherization measures, and appliance replacements.” *Id.* at 98. The 2021–23 proposed electric budget for this program is \$29,062,551, while the proposed gas budget is \$4,840,463. *Id.* at 148.

D. Active Demand Reduction programs

The proposed Active Demand Reduction (ADR) program is a ratepayer-funded program described as seeking “to reduce peak demand and capture benefits as quantified in the regional Annual Energy Supply Components (“AESC”) study.” *Id.* at 150. In the Proposal, program offerings include a residential Wi-Fi Thermostat offering from Eversource and Unitil Electric; a residential Battery Storage offering from Eversource; a C&I Load Curtailment from Eversource, Unitil Electric, and Liberty Electric; and a C&I Storage Performance offering from Eversource and Until Electric. *Id.* at 151. The 2021–

23 proposed budget for ADR programs is \$626,372 for residential offerings, and \$4,775,494 for C&I offerings. *Id.* at 157.

E. Behavioral-Based Strategies

The Joint Utilities describe Behavioral-Based Strategies as being designed to make customers aware of their energy consumption to empower and motivate them to adopt energy-efficient behaviors or technologies. *Id.* at 150. The proposed strategies include providing Unitil Electric and Gas customers and Liberty Electric and Gas customers Home Energy Reports (HERs), with energy consumption information and energy-saving information. Over the triennium, the total budget proposal for the electric HER program is \$963,157, and the total budget proposal for the gas HER program is \$651,850. *Id.* at 585. In addition, Eversource proposed a Customer Engagement Initiative, which is a behavioral-based marketing strategy encouraging energy efficiency measures through other residential program offerings. *Id.* at 159-164. Finally, Liberty Gas proposes performing aerial infrared mapping to provide a visual profile of heat loss to help drive customer behavior changes and program participation. *Id.* at 165. The proposed budget for Liberty's aerial mapping is \$460,250 in 2021, \$271,428 in 2022, and \$262,884 in 2023. *Id.* at 861.

F. Energy Optimization

This proposed pilot program is described as minimizing "customers' total energy usage across all energy sources while maximizing customers' benefits" with a focus on conversions from gas heating systems to higher-efficiency heating systems consisting of cold climate air source heat pumps. *Id.* at 177.

The Joint Utilities claim the pilot is necessary to provide “a more comprehensive understanding and experience of the benefits of heat pumps to the electric system, as well as the impact on emissions from [greenhouse gases] and nitrogen and sulfur oxides.” *Id.* Over the triennium, the total budget proposal for the Energy optimization Pilot is \$1,492,259. *Id.* at 585.

G. Financing Mechanisms

The Proposal has multiple financing mechanisms, including low-interest, zero-interest, and on-bill mechanisms. For C&I programs, all utilities offer zero percent on-bill financing to certain customers, and facilitate the use of third-party financing options. Eversource and the NHEC also offer tariffs to municipal customers that allow municipalities to repay upfront costs through charges that are less than or equal to the customer’s estimated savings. *Id.* at 55–56.

For Residential programs, each of the Joint Utilities proposes varying amounts of on-bill financing for the Home Performance program. *Id.* at 101. Additionally, each of the Joint Utilities partners with third-party lenders offering low-interest EE loans residential customers and zero-interest loans for moderate-income residential customers. *Id.* at 102–103.

H. Benefit/Cost Screening

Under the Proposal, the Joint Utilities propose using a new cost-effectiveness screening framework for the EE programs. The framework consists of a complicated series of tests; a primary test, called the “Granite State Test,” and two secondary tests: the “Utility Cost Test,” and the

“Secondary Granite State Test.” *Id.* at 209–211. Energy benefits are evaluated using the “Avoided Energy Supply Cost” (AESC) study.⁸ *Id.* at 44–45. The Joint Utilities propose to file an informational report with information on the results of the AESC study update in 2021, which may result in proposed program changes. *Id.*

I. Performance Incentive

Under the Proposal, the Joint Utilities propose ratepayer-funded performance incentives for themselves of up to 6.875 percent of actual program expenditures. *Id.* at 218. Over the triennium, the total budget proposal for the electric program performance incentives is \$19,289,318, *id.* at 617, and the total budget proposal for gas program performance incentives is \$2,303,525, *id.* at 621. Additionally, the Proposal asks to transition the ADR offerings from demonstration projects to full programs, and include a performance incentive component for achievement of ADR goals at 5.5 percent of actual expenditures, with a threshold for savings and benefits components of 65 percent and maximum performance incentive level of 125 percent. *Id.* Over the triennium, the budget proposal’s cap for performance incentives related to the ADR program is \$109,719 for Unitil Electric, *id.* at 792, \$574,198 for Liberty Electric, *id.* at 701, and \$902,775 for Eversource, *id.* at 633.

⁸ The Commission notes that this study was not performed on a New Hampshire-specific basis and was, instead, performed across all New England States. An updated study is due to be released in 2021. *Id.* at 44–45.

J. Lost Base Revenue

The Proposal maintains the existing practice of allowing Joint Utilities that have not instituted decoupling to collect revenue lost due to decreased energy sales resulting from EE programs. *Id.* at 938–941. Electric utilities collect lost base revenue (LBR) as another component of the SBC, while gas utilities collect LBR as a component of the LDAC. NHEC does not collect LBR, and Liberty Electric only calculated a LBR charge for 2021, based on its intent to implement revenue decoupling in its general rate scheme. *Id.* The Joint Utilities proposed electric LBR rates for electric customers, per kWh, as follows:

<u>2021</u>	<u>Eversource</u>	<u>Liberty</u>	<u>Unitil</u>
Residential	\$0.00065	\$0.00068	\$0.00120
C&I	\$0.00091	\$0.00068	\$0.00129
<u>2022</u>	<u>Eversource</u>	<u>Liberty</u>	<u>Unitil</u>
Residential	\$0.00102	N/A	\$0.00145
C&I	\$0.00159	N/A	\$0.00121
<u>2023</u>	<u>Eversource</u>	<u>Liberty</u>	<u>Unitil</u>
Residential	\$0.00118	N/A	\$0.00186
C&I	\$0.00220	N/A	\$0.00130

Id. at 938, Table 3.

K. Technical Reference Manual

The Joint Utilities created a Technical Reference Manual (TRM) that documents how the Joint Utilities propose to calculate savings from the installation of EE measures by providing methods, formulas, and assumptions for estimating energy, peak demand, and other resource impacts from EE measures. *Id.* at 241. In the Proposal, the Joint Utilities will update the TRM on an annual basis, and in advance of any program plan or update filing. *Id.* at

219. Updates would take into account savings assumptions, incorporate results from New Hampshire evaluations, identify changes in federal equipment standards, reference neighboring states' evaluations, and update relevant savings algorithms. *Id.* The Joint Utilities propose to update the TRM in coordination with the Evaluation, Measurement, and Verification (EM&V) Working Group. *Id.* at 220.

III. POSITIONS OF THE PARTIES

The Proposal and Settlement Agreement address an array of programmatic topics including: the proposed plan targets and budgets; changes to the SBC and LDAC rates; modifications to plan programs and pilots; utility performance incentives; evaluation, measurement and verification (EM&V); savings assumptions; recovery of lost revenue; plan updates, reporting requirements, and mid-term modifications; and stakeholder involvement in future planning and review. The Settling Parties supported the Joint Utilities' continuing role as the program administrator, continuation of existing programs, and a three-year planning cycle. The Acadia Center and Department of Environmental Services did not join the Settlement Agreement. However, they expressed their support for the submitted Settlement Agreement in written correspondence and/or at the hearing. Exh. 15 at 1-3; 12/22/20 Tr. at 56. Energy opposed the Settlement.

A. Plan Targets, Budgets, and Rates

1. Settlement Agreement

In the Settlement Agreement, the parties proposed electric energy savings targets of 4.5 percent of 2019 electric sales, which they estimate equates to cumulative annual MWh savings of 476,616 achieved from 2021–23. Exh. 14 at 4. The Settlement Agreement also proposes a gas energy savings target of 2.8 percent of sales, or an estimated 706,065 annual MMBtus from 2021–23. *Id.*

The Settlement Agreement modifies Eversource’s budget as set forth in the Proposal from \$272.5 million to \$258.2 million by reducing the C&I budget by \$17.6 million, increasing the residential sector budget by \$7.4 million, and reducing the income-eligible program budget by \$4.1 million. *Id.* at 5. The table below shows the SBC rates proposed by the Settling Parties in their Settlement Agreement, as compared to the rates initially proposed by the Electric Utilities.

Table 6: Proposal and Settlement Agreement SBC Rate Comparison (per kWh)							
		2021		2022		2023	
		Proposal	Settlement Agreement ⁹	Proposal	Settlement Agreement	Proposal	Settlement Agreement
Eversource ¹⁰	Residential	\$0.00866	\$0.00986	\$0.00898	\$0.01070	\$0.00941	\$0.01185
	C&I	\$0.01270	\$0.01215	\$0.01807	\$0.01587	\$0.02432	\$0.01994
Liberty ¹¹	Residential	\$0.00719	\$0.00803	No rate proposed	\$0.01014	No rate proposed	\$0.01072
	C&I	\$0.00712	\$0.00836		\$0.00993		\$0.01211
Unitil ¹²	Residential	\$0.00885		\$0.01068		\$0.01165	
	C&I	\$0.01146	\$0.01145	\$0.01341	\$0.01340	\$0.01613	\$0.01612
NHEC ¹³	Residential	\$0.00838*	\$0.00761*	\$0.0087343*	\$0.00848*	\$0.008534*	\$0.00825*
	C&I	\$0.00906*	\$0.00818*	\$0.0103636*	\$0.01050*	\$0.010046*	\$0.01000

* Rate reflects only the EE portion of the SBC rate.

⁹ The Settlement Agreement requested 2021 rates be made effective as of January 1, 2021. Exh. 14 at 4

¹⁰ Exh. 1 at 38, Exh 14 at 33.

¹¹ Exh. 1 at 725, Exh 25B at 1.

¹² Exh. 17 at 19, Exh 14 at 34.

¹³ Exh. 1 at 773, Exh 14 at 35.

No Modifications to the LDAC rates proposed in the Proposal were included in the Settlement Agreement. Rather, the Settling Parties proposed that any necessary changes to account for collection adjustments or true-ups over the course of the 2021–23 triennium shall be filed for review and approval by the Commission. Exh. 14 at 13.

2. Energy

At the hearing, Energy expressed agreement with the Settlement’s treatment of the funding structure, and with the requirement for Commission approval of any SBC or LDAC changes for over/under recoveries during the term. Exh. 8 at 32; Hearing Transcript of December 21, 2020 (12/21/20 Tr.) at 111–112.

Energy expressed concern that Eversource’s C&I customers would experience rate and bill increases approximately twice that of other C&I customers. Exh. 8 at 35. Energy opined that the resulting C&I rates, with specific emphasis on Eversource’s C&I Rate, would not be reasonable because they fail to embrace rate gradualism¹⁴. Energy further represented that the rates would not strike the proper balance between short-term impacts and long-term energy savings. 12/21/20 Tr. at 112–113, 127–128. Energy

¹⁴ “Rate gradualism” is the concept of progressively changing rates over time to mitigate shock to customers that has been cited to by this Commission on multiple occasions. *See, e.g., Development of New Alternative Net Metering Tariffs*, Order No. 26,026 at 33 (June 23, 2017). Gradualism was embraced by all parties to the settlement agreement approved by Order No. 25,932, which contained the provision that “The Settling Parties agree that the savings goals balance the goals of capturing more cost effective energy efficiency and benefits to ratepayers with the goal of gradually increasing funding for efficiency while minimizing the impacts on all ratepayers.” Exh. 1 at 8, Docket DE 15-137.

recommended revision of the customer budgets to better balance short-term rate impacts with the long-term goal of achieving cost-effective energy efficiency. Exh. 8 at 35. Energy also recommended that future SBC and LDAC rate changes should not be pre-approved. *Id.* at 36–37.

B. Program Changes

1. Settlement Agreement

The Settlement Agreement proposes adjustments to certain programs. Exh. 14 at 14. The Settlement Agreement increases by 1,200 the number of ratepayer-funded electric baseboard to heat pump conversions. *Id.* In advance of implementing the proposed Energy Optimization pilot, the Joint Utilities propose soliciting feedback through the proposed Stakeholder Advisory Council,¹⁵ making an informational filing with the Commission, and to EM&V working group oversight. *Id.* Prior to offering any electric vehicle managed charging measure as a part of active demand management, under the Settlement Agreement, the Joint Utilities would solicit feedback through the Stakeholder Advisory Council and make an informational filing with the Commission. *Id.* For Eversource, the Settlement Agreement proposes shifting funds from its RFP program to the Large Business Energy Solutions program. *Id.* at 15.

¹⁵ The Stakeholder Advisory Council proposal is discussed in greater detail in Section H-1 below.

2. Energy

Energy proposed changes to ADR weighting, stating that it should be deducted from the Value/Net Benefits component and not diminish the weighting of summer and winter peaks. Exh. 6 at 11. Additionally, Energy recommended the Joint Utilities develop and propose a performance incentive based on a percentage of shared savings associated with the ADR pilot to encourage the use of ADR resources to target monthly peaks. *Id.* at 12.

Regarding the HER program, Energy recommended an independent evaluation be included in the EM&V plan in 2021. Exh. 7 at 5. Regarding Liberty Gas's AIM program, Energy recommended ample implementation time for customers to learn about the program and opt out. *Id.* at 7. Energy noted that Liberty's aerial infrared mapping is not cost effective in its first year. *Id.* at 8.

Regarding the HEA program, Energy expressed concern about the significant increased spending limit per household from \$8,000 to \$20,000, recommending a new cap at \$12,000. *Id.* at 10-11.

Energy also made recommendations relating to the Energy Optimization pilot, including that any customers installing heat pumps be included in the study so the relationship between reduced fuel use and increased electricity consumption can be evaluated. Energy recommended requiring the utilities to receive Commission authorization before moving from a pilot to a full program. Exh. 8 at 38. Regarding the ADR program, Energy recommended the utilities provide monthly peak load reduction data for pilots, that residential ADR

programs and C&I battery storage and thermal programs remain pilots, and that utilities be required to seek Commission approval to add new technologies (such as electric vehicles) to ADR programs. *Id.* at 39.

C. Performance Incentives

1. Settlement Agreement

The Settlement Agreement did not modify the performance incentive framework presented in the 2021–23 Proposal.

2. Energy

Energy expressed concern with the Proposal’s performance incentive methodology. Exh. 6 at 5. Energy opposed changing the minimum threshold percentage requirement for the Lifetime Savings component, Annual Savings component, and the Value Savings component from 75 percent to 65 percent. *Id.* Energy also recommended the performance incentive specific to Eversource for the SmartStart Program be eliminated or phased out based on the maturity of the program and the potential for double counting of benefits. *Id.* at 13.

D. Evaluation, Measurement, and Verification

1. Settlement Agreement

The Settling Parties proposed that the Evaluation, Measurement, and Verification (“EM&V”) working group authorized in connection with the 2018–2021 triennium should continue through 2023. Exh. 14 at 9. The Settling Parties stated the working group should consist of representatives of the Joint Utilities, Energy representatives, a consultant chosen by Energy (paid for out of EERS funds), and include a representative of other stakeholders as chosen by

the Stakeholder Advisory Council (which the Settlement Agreement recommends forming). *Id.* The EM&V working group would be require hiring a consultant that would guide, facilitate and help bring to consensus the entire working group. Hearing Transcript of December 14, 2020 (12/14/20 Tr.) at 22. In the event the EM&V working group is unable to reach consensus on any issues after consulting with the consultant, pursuant to the Settlement Agreement, any working group member could seek a Commission determination on a specific issue or refer policy matters (as opposed to technical matters) to the Stakeholder Advisory Council, which in turn could “address the issue as appropriate.” Exh. 14 at 9.

2. Energy

Energy recommended the EM&V Working Group use its consultant to resolve any disputes between the stakeholders, and if they do not agree with the consultant’s resolution, the Commission should resolve remaining disputes. Exh. 8 at 40. Energy supported the settlement provisions relating to the EM&V Working group, assuming Energy continues to have the right to supervise the billing of the EM&V consultant. 12/21/20 Tr. at 197–200. Energy supported the consultant’s role in resolving non-consensus issues, but recommended the Commission not adopt the ten-day period proposed in the Settlement Agreement. *Id.*

E. Savings Assumptions

1. Settlement Agreement

The Settlement Agreement proposes a Non-Energy Impacts adder for the secondary cost-effectiveness test. Exh. 14 at 6. For natural gas utilities, the adder is for residential and C&I sectors. *Id.* For electric utilities, the adder would be 25 percent for the residential sector (excluding the income-eligible program), and 10 percent for the C&I sector. *Id.*

Net-to-gross adjustments are used to account for the fact that some customers would have implemented EE measures without incentives or make EE investments due to the influences of the program without directly participating in programs. The Settlement Agreement proposes applying a net-to-gross factor to C&I lighting of 94 percent in 2021, 89 percent in 2022, and 84 percent in 2023. *Id.* at 7. The EM&V working group would also be charged with identifying additional measures to which net-to-gross factors should be applied. *Id.*

Realization rates are used to account for the difference between predicted and actual energy savings. The Settlement Agreement proposes applying new realization rates to certain programs. Under the Settlement Agreement, realization rates would be set at 90 percent for C&I, custom large business, small business, and municipal program electric non-lighting measures; and 87 percent for C&I custom large business and small business program gas measures. *Id.* at 8. Additionally, a New Hampshire-specific C&I impact evaluation of the Large Business Energy Solutions program would be

completed by the end of the first quarter of 2022, and a C&I custom impact evaluation would be completed triennially. *Id.*

The Settling Parties propose applying the 2018 AESC values to 2021 and the 2021 AESC values to 2022 and 2023. *Id.* at 12. Under the Settlement Agreement, the Joint Utilities would file amended attachments and benefit cost models to account for the AESC update by September 1, 2021. *Id.*

2. Energy

For Non-Energy Impacts in the “Secondary Granite State Test,” Energy recommended the gas utilities use a 15 percent adder for residential and C&I programs (excluding the low-income programs), and that the electric utilities use a 25 percent adder for residential programs (excluding the low-income programs) and a 10 percent adder for C&I. Exh. 8 at 31–32. At hearing, Energy expressed agreement with the settlement’s treatment of non-energy impacts. 12/21/20 Tr. at 111–112.

Energy agreed with the Settlement Agreement’s treatment of net savings assumptions, with an exception for a subset of C&I lighting. 12/21/20 Tr. at 129. Energy recommended incorporation of a net savings figure for C&I downstream lighting offerings, such as non-networked TLEDs, that is similar to the midstream lighting offerings. Exh. 8 at 22–23.

Energy recommended that a realization rate of 85 percent for C&I custom gas programs and 85 percent for C&I custom non-lighting electric programs be applied for planning purposes until the completion of the large C&I impact evaluation planned for 2021–23 can be completed. *Id.* at 24–25.

Energy recommended the Commission consider a transition to the use of industry standard practice (ISP) baselines, as informed by the results of the pending evaluation. Exh. 8 at 23. At hearing, Energy expressed agreement with the settlement's treatment of the pending ISP evaluation. 12/21/20 Tr. at 111-112.

Energy advocated for an evaluation of the HER and AIM programs. Exh. 7 at 13. Energy expressed support at hearing for the Settlement Agreement's treatment of the planned behavioral program evaluations. 12/21/20 Tr. at 111-112.

F. Lost Base Revenue

1. Settlement Agreement

The Settling Parties proposed a method for calculating planned and actual Lost Base Revenue (LBR) with six criteria. The utilities collecting LBR shall:

- 1) employ the terminology set forth in the LBR working group report of August 29, 2018;
- 2) adhere to a quarterly reporting requirement;
- 3) apply 100 percent of the calculated monthly savings using the paid date;
- 4) cease accruing lost base revenues in the first month following the effective date of any decoupling mechanism;
- 5) use the average distribution rate in effect at the time of the triennial plan filing, or as updated by Commission order during the term, for planning purposes, while using the actual rate in effect at the time of the reconciliation filing for reconciliation purposes; and
- 6) determine carrying costs on LBR over and under recoveries using the prime rate, compounded monthly.

Exh. 14 at 10.

2. Energy

Energy highlighted inconsistencies in the approaches taken by different utilities in calculating LBR during the first month of a new measure's installation and recommended one-half of the calculated monthly savings be used consistently in such circumstances. Exh. 8 at 15–16. In cases where decoupling has not been implemented, Energy recommended installations installed prior to and during the test year should not be factored into the LBR. *Id.* at 16. Energy recommended that for planning purposes in calculating LBR the utilities use the distribution rate in effect at the time of the filing and for reconciliation purposes the utilities use the rates in effect for the installation period. *Id.* Energy recommended that the utilities use and apply the prime interest rate to the cumulative LBR balance. *Id.* Energy also incorporated recommendations made in an LBR working group report supporting the utilities plan to use average distribution rates calculated by sector and further recommended that for EE measures that increase electric energy usage be subtracted from LBR. *Id.* Last, Energy opined that ADR program results should not be included in LBR calculations because the purpose of the ADR program is to reduce peak load and shift load, not reduce distribution or customer peaks. *Id.* at 16–17.

G. Plan Updates, Reporting, and Mid-Term Modifications

1. Settlement Agreement

The Settlement contained modifications to the updating, reporting, and mid-term modification terms contained in the 2021–23 Proposal. Exh. 14 at 11.

As a preliminary matter, the Settling Parties state that Commission approval of the 2021–23 Proposal shall constitute the adoption of a plan for the entire three years. *Id.* The Settling Parties proposed that certain mid-term modification triggers and review and oversight by the Commission contained in the 2021–23 Proposal be removed and transferred to the Stakeholder Advisory Council. *Id.*

2. Energy

Energy recommended greater oversight by the Commission than the Settlement Agreement provides. Regarding planning structure, Energy recommended the utilities file with the Commission any changes to savings and cost-effective analysis based on recent studies or changes in assumptions, including filing updates resulting from the anticipated spring 2021 AESC study update within a few months of the completion of the study. Exh. 8 at 35–36. Energy further recommended that the utilities file annual updates to the cost-effectiveness analysis when assumptions change, and that the notification requirements remain the same as in the 2018–20 plan. *Id.* at 36–37. Lastly, regarding future planning, Energy recommended that the planning and stakeholder engagement structure used to develop plans and plan modifications should allow full and forthright participation of all potential participants in the litigated process, including Energy. *Id.* at 40. Energy recommended that the next three-year plan be proposed by April 1, 2022, and presented to the Commission no later than July 1, 2023. *Id.*

H. Planning and Review - Stakeholder Advisory Council

1. Settlement Agreement

The Settlement Agreement proposed a Stakeholder Advisory Council to serve as the stakeholder forum throughout the implementation of the 2021–23 Proposal and as the stakeholder forum associated with planning additional ratepayer-funded programs beginning in 2024. Exh. 14 at 15. The initial members of the Stakeholder Advisory Council would consist of a representative of each of the Joint Utilities, Commission Staff now with the Department of Energy, the Office of the Consumer Advocate, and each intervenor in Docket DE 20-092. *Id.* The Stakeholder Advisory Council would make decisions on leadership and operation by consensus, and admit new members under identified circumstances. *Id.* at 16. The Stakeholder Advisory Council would be required to hire an outside facilitator, contracted with by a utility for up to \$150,000 per year, which cost would be recovered as an administrative EERS program expense and ultimately from ratepayers. *Id.* The Settlement Agreement establishes a timeline for the development of the ratepayer funding programs beginning in 2024, with a goal to present a final plan to the Commission in 2023, and, if an increase to the SBC charge is to be pursued, presentation of such increases to the Commission during the second half of 2022 for introduction at the legislature in 2023. *Id.*

2. Energy

Energy supported the proposed Stakeholder Advisory Council but noted that such groups have been overseen by the Commission in the past, and

recommended the Commission oversee the Council as a part of the instant docket. 12/21/20 Tr. at 146–147. Energy supported the hiring of an outside consultant. *Id.* at 147–148.

IV. COMMISSION ANALYSIS

Energy efficiency plays a role in reducing consumption of electricity and gas. However, as the Commission held at the outset of restructuring, “the most appropriate policy is to stimulate, where needed, the development of market based, not utility-sponsored and ratepayer-funded, energy efficiency programs.” *Electric Utility Restructuring*, Order No. 22,875 at 79 (March 20, 1998). *See also*, Order 23,574 at 10-11 (November 1, 2000) (“[t]he benefits of a retail electric market will not be fulfilled without a competitive wholesale market and a vibrant, unsubsidized energy efficiency market”); Order 25,059 at 10 (December 31, 2009) (“a transition from utility-sponsored to market-based demand-side management programs is an important policy objective”). The Proposal and Settlement before us present a stark contrast to those long-held tenets, instead proposing nearly four hundred million dollars of ratepayer-funded energy efficiency that is entirely utility-sponsored.

As explained in greater detail below, the record presented in this docket does not establish by a preponderance of the evidence that the proposed increases are just, reasonable, and in the public interest. In fact, the record does not even establish by a preponderance of the evidence that the EE program spending and related rates at their current levels are just, reasonable and in the public interest. Based upon the record and applicable law, the

Commission cannot conclude that the 2021–2023 Triennial Energy Efficiency Plan Proposal of the Joint Utilities, as well as the Settlement Agreement filed by the parties relating to the approval of that Proposal is just, reasonable and in the public interest. Specifically, the Commission has determined that, under the standards laid out below, the Settling Parties have not met their burden to prove by a preponderance of the evidence that the Settlement Agreement or Proposal meet applicable standards with respect to (1) the proposed EE program spending and resulting rate increases, (2) benefit-cost testing, (3) the LBR calculation, (4) the Performance Incentives, (5) the year-to-year budget carryforwards, (6) HEA program caps, (7) Behavioral Strategies, (8) EM&V, (9) the proposed Stakeholder Advisory Council, and (10) Commission oversight of the programs. The Commission, therefore, rejects the Settlement Agreement and Proposal in their entirety other than as specifically set forth herein and directs the Joint Utilities to prepare and submit a proposal of EE programs (“Program Proposal”) including only programs that are consistent with this order.

A. Standard of Review

We review EERS triennial plans for conformity with the laws underlying the establishment of an EERS. The Commission has historically relied upon its authority in RSA 374:2 (public utilities to provide reasonably safe and adequate service at just and reasonable rates); RSA 378:7 (Commission required to determine and fix the utility’s just and reasonable or lawful rates); RSA 378:28 (permanent utility rates shall only include a just and reasonable return on

plant, equipment, or capital improvements which the PUC finds are prudent, used, and useful); RSA 374:1 and RSA 374:4 (Commission required to keep informed of utilities' operations and their provision of safe and adequate service); RSA 374-F:3, X (restructured electric market should "reduce market barriers to investments in energy efficiency and provide incentives for appropriate demand-side management and not reduce cost-effective customer conservation" and "utility sponsored energy efficiency programs should target cost-effective opportunities that may otherwise be lost due to market barriers"); RSA 378:38 (electric and natural gas utilities are required to file least cost integrated resource plans); RSA 378:39 (utilities required to prioritize energy efficiency and other demand-side management resources when supply or resource options have equivalent financial costs). See Order No. 26,095 at 17 (January 2, 2018).

The applicable standard of review for a settlement agreement, pursuant to N.H. Admin. R., Puc 203.20(b), is whether the settlement results are just and reasonable and serve the public interest. Because it must review any settlement agreement for compliance with this standard, the Commission's role is distinct from that of the adjudicator in typical civil litigation. Even when all parties join a settlement agreement, the Commission cannot approve it without independently determining that the results comport with the applicable underlying standards. *EnergyNorth Natural Gas Inc. d/b/a National Grid NH*, Order No. 25,202 at 18 (March 10, 2011). Underlying standards in this matter include RSA 374-F:3, VI; RSA 374-F:3, X; RSA 125-O:23; and RSA 374:2.

When the Commission rejects a settlement agreement, it may order the settling parties to renegotiate those provisions that fail to meet the standard, or it may reach its own conclusion as to those matters and issue a final order pursuant to RSA 363:17-b.

Legal basis for EERS Framework

RSA 374-F:3, VI, requires benefits for all consumers, and authorizes the SBC in furtherance thereof:

Restructuring of the electric utility industry should be implemented in a manner that *benefits all consumers equitably and does not benefit one customer class to the detriment of another*. Costs should not be shifted unfairly among customers. A nonbypassable and competitively neutral system benefits charge applied to the use of the distribution system *may* be used to fund public benefits *related to the provision of electricity*. Such benefits, *as approved by regulators*, may include, but not necessarily be limited to, programs for low-income customers, energy efficiency programs. . . [P]rior approval of the New Hampshire general court shall not apply to the energy efficiency portion of the system benefits charge if the increase is authorized by an order of the [public utilities] commission to implement the 3-year planning periods of the Energy Efficiency Resource Standard framework established by commission Order No. 25,932 . . .

(Emphasis added). Order No. 25,932 (August 2, 2016) is a 65-page order that establishes an EERS “framework within which the Commission’s energy efficiency programs shall be implemented” Order No. 25,392 at 1. Among other things, Order 25,392’s framework requires the Commission’s advance approval of program spending. *Id.* at 59. It further requires that such spending will only be approved to the extent that it is just, reasonable, and least cost. *Id.*

RSA 374-F:3, VI gives the Commission broad discretion regarding approval of the benefits to be provided by the SBC, including energy efficiency

programs. This statutory framework and the Commission's subsequent orders clearly establish the Commission's regulatory role in approving any proposed EERS programs. Regardless of any agreement that may be reached by the parties to a Commission proceeding, RSA 374-F:3, IV requires an independent review by the Commission to ensure that proposed programs are just, reasonable, and least cost. Order 25,392 identified both avoided energy supply and cost-effectiveness tests to inform whether the total costs of energy efficiency are less than the costs of supply. *Id.* at 50–51.

RSA 374-F:3, X, provides specific guidance relating to energy efficiency:

Restructuring should be designed to *reduce market barriers* to investments in energy efficiency and provide incentives for appropriate demand-side management and not reduce cost-effective customer conservation. Utility sponsored energy efficiency programs *should target cost-effective opportunities that may otherwise be lost due to market barriers.*

(Emphasis added). RSA 125-O:23, directs that certain RGGI auction proceeds be used for specific low-income and municipal energy efficiency programs, with the remainder to all-fuels energy efficiency programs “distributed among residential, commercial, and industrial customers based upon each customer class's electricity usage to the greatest extent practicable.” RSA 374:2, requires that all charges demanded by a utility be just, reasonable, and lawful.

Finally, the Commission has long held that gradualism is “an important principle in sound ratemaking.” *Dev. of New Alternative Net Metering Tariffs &/or Other Regul. Mechanisms & Tariffs for Customer-Generators*, Order No.

26,029 at 53 (June 23, 2017); *accord Hampstead Area Water Co.*, Order No. 24,626 at 8 (May 26, 2006).

B. Application to the Proposal and Settlement Agreement

We find that the Settling Parties failed to establish that the 2021–23 Proposal as modified by the Settlement Agreement: 1) provides benefits to all consumers and does not benefit one customer class to the detriment of another pursuant to RSA 374-F:3, VI; 2) is consistent with Order 25,932’s substantive framework; 3) reduces market barriers consistent with RSA 374-F:3, X; 4) has fuel-neutral energy efficiency programs that are evenly allocated among residential and C&I customer classes pursuant to RSA 125-O:23; and 5) results in just, reasonable and lawful charges under RSA 374:2 that are least cost and in the public interest. We therefore reject the Settlement Agreement and Proposal as set forth herein.

We are mindful of the policy goals of the statutory requirements, including RSA 374-F:3, X, summarized and elaborated by the Commission in Order 23,574 (November 1, 2000). In that order, the Commission cited to order 22,875 for the propositions that:

The most appropriate policy is to stimulate, where needed, the development of market-based, not utility sponsored and ratepayer funded, energy efficiency programs, a principle that the Legislature incorporated into RSA 374-F.

[...]

We believe that efforts during the transition toward market-based DSM programs should focus on creating an environment for energy efficiency programs and services that will survive without subsidies in the future.

Order 23,574 at 10-11 (November 1, 2000). We agree that “the benefits of a retail electric market will not be fulfilled without a competitive wholesale market and a vibrant, unsubsidized energy efficiency market.” *Id.* at 11.

The evidentiary record in this matter established that residential electric non-participant utility customers will not receive economic benefits commensurate with the costs they would be required to pay. Exh. 4 at 37, 39, 43. Non-participant small C&I customers are, similarly, not expected to see benefits commensurate with the costs they would be required to pay. *Id.* at 38, 40, 44. The large difference in proposed SBC rates for residential and C&I customers highlights the fact that C&I customers fund programs that produce the majority of lifetime kWh savings, while residential customers fund a suite of programs that do not produce the same economic benefits to ratepayers.¹⁶ This appears to be due in part to the residential suite of programs containing all fuel-neutral EE programs, where most of the projected benefits do not relate to electric energy consumption.¹⁷ Exh. 1 at 28, Table 1-4.

The evidentiary record in this matter also fails to establish that the suite of EE program offerings is least cost. The Joint Utilities do not demonstrate the selected energy efficiency programs were evaluated on a similar basis to supply-side resources or market purchases. Rather, the market potential study

¹⁶ See Exh. 1 at 584 (Proposal’s residential program budget of \$141,398,758 projected lifetime savings of 741,591,853 kWh, as compared to Proposal’s C&I program budget of \$179,856,684 projected lifetime saving of 5,631,884,304 kWh).

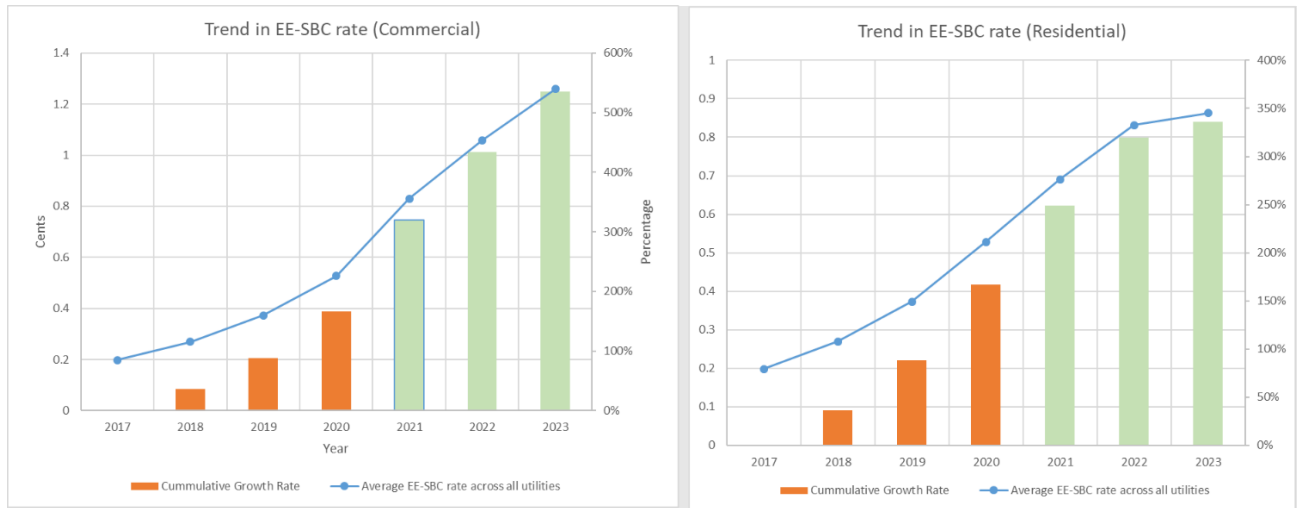
¹⁷ Pursuant to RSA 125-O:23, RGGI auction proceeds are directed to low-income fuel neutral programs, such as HEA

required Order 25,932 to be utilized in the Joint Utilities' future Least Cost Integrated Resource Plans was introduced into evidence as a part of Exhibit 36, and was referenced during testimony multiple times for the proposition that higher savings scenarios would occur under higher spending modes. Hearing Transcript of 12/10/20, a.m., at 60, 78–79, 82; 12/16/20 Tr. at 67, 76–77. Because the record does not contain direct comparisons of cost of energy savings to supply alternatives, or information on how the program portfolios were maximized to achieve economic benefits, we find that the least cost showing requirement in from Order 25,392's framework has not been adequately demonstrated, and that the market potential study does not, on its own, justify an escalation in EE programing.

C. Application to EE Portion of SBC rates

We have carefully reviewed the proposed spending plans and the modeling assumptions provided in support of the proposed nearly \$400,000, 000 in spending. As Energy pointed out, the transition to an EERS in 2018 resulted in rapidly increasing budgets and rates with significant rate impacts to ratepayers. *See* Exh. 8 at 10. In 2017, the Energy Efficiency portion of the SBC charge was 0.198 cents/kWh. Upon implementation of the EERS, in 2018, the rates jumped to 0.275 cents/kWh, .373 cents/kWh in 2019, and 0.528 cents/kWh in 2020, a 167% increase in only 3 years. In the current Proposal, the proposed rates surge further to 1.259 cents/kWh for C&I customers and

.863 cents/kWh for residential customers by 2023, representing cumulative 536% and 336% increases since 2017, respectively.¹⁸



We find that such drastic increases, unequally allocated between rate classes, are not reasonable and are inconsistent with the principle of gradualism in ratemaking. The Settling Parties have, moreover, failed to show that these increases provide equitable benefits to all consumers. The focus and intent of RSA Ch. 374-F and least cost planning is the minimization of consumer costs for energy supplies and services. *See Appeal of Algonquin Gas Transmission*, 170 N.H. 763, 774 (2018) (“Pursuant to its plain language, and reading the statute as a whole, we discern that the primary intent of the legislature in enacting RSA chapter 374-F was to reduce electricity costs to consumers.”)

¹⁸ The EE portion of the SBC charge was same across all utilities until 2020. The proposed Triennial EE portion of the SBC charges are for the first time different across the electric utilities. The noted 2023 EE portion of the SBC charges is the simple average of the EE portions of the SBC charges proposed by the electric utilities in the Proposal as modified by the Settlement Agreement. The cumulative growth rates for the 2021-23 Triennial years are shown in green bars to differentiate them from growth rates that are historical.

As already noted above, the Commission is obligated under RSA 374-F:3, VI to conduct its own independent analysis of EE programs, regardless of what the parties may have agreed to. Because the Settling Parties have failed to demonstrate by a preponderance of the evidence that their proposed increases are reasonable, just, and in the public interest, the Commission authorizes energy efficiency program spending at an overall level consistent with the 2018–20 Plan. While the overall level of the 2021–23 plan will be similar to the 2018–20 plan, consistent with the Commission’s longstanding preference for gradualism in ratemaking, the rates set by the Commission below will descend gradually year-on-year until they return to a reasonable level, and transition toward market-based programs following the schedule laid out below.

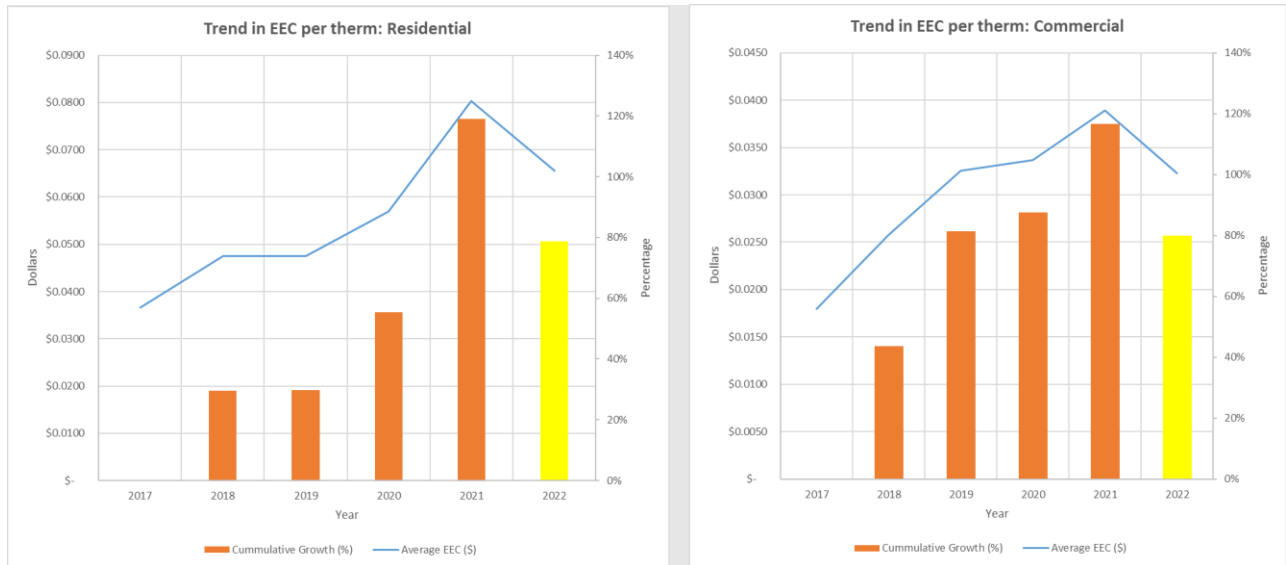
In addition, the Settling Parties failed to establish that the proposed different SBC rates for residential and C&I rate classes are appropriate, and do not unreasonably benefit one class at the expense of the other. As a result, the Commission sets maximum SBC rates that are the same across residential and C&I rate classes, as has always been the case. The Commission hereby sets the maximum Energy Efficiency portion of the SBC rate for all rate classes to 0.528 cents/kWh in 2021, 0.373 cents/kWh in 2022 and 0.275 cents/kWh in 2023. To the extent any of the Joint Utilities lack sufficient Commission-approved programs to fund with SBC rates, they shall reduce their charged SBC rates accordingly.

D. Application to EE Portion of LDAC rates

The LDAC rates in the 2021–23 Proposal were implemented pursuant to Order Nos. 26,419 (October 30, 2020), 26,420 (October 30, 2020), and 26,421 (October 30, 2020) before hearings began in this matter, subject to reconciliation following a decision here. The Joint Utilities asserted in the 2021–23 Proposal that “the LDAC rate itself is considered and approved in Liberty Gas’s and Unitil Gas’s utility-specific cost-of-gas filings.” 2021–23 Proposal at 37. We disagree with the Joint Utilities’ assertion that the EE portion of the LDAC is considered and approved in cost-of-gas filings. Cost of Gas proceedings are expedited dockets with a primary purpose of reviewing changes to commodity costs. The utility request and ultimate determination by the Commission regarding the EE portion of the rates is made in this docket. A reduction to LDAC charges in this docket could be reconciled through subsequent cost-of-gas filings. We note that the EE charge (EEC) within the LDAC is traditionally updated in COG filings for effect on November 1 of each year, therefore EEC rates are not implemented on a calendar year basis.

The average LDAC rates across utilities, while not rising as rapidly as the SBC rates, still shows high growth from 2017, cumulatively 79% for Residential and 80% for C&I since 2017.¹⁹

¹⁹ The yearly figures in the graphs are the simple averages of the EECs for EnergyNorth and Northern for the respective years. The 2022 figures are shaded in yellow as they represent proposed EECs by the Gas Utilities for effect November 1, 2021, in DG 21-130 and DG 21-131.



As with the SBC rates, we find that such large increases are not supported by the record, are not reasonable, and are inconsistent with the principles of gradualism in ratemaking.

Keeping in line with the established principles of just and reasonable rates, including gradualism, the Commission sets the maximum EE portion of the LDAC rate for the Gas Utilities at a level consistent with the prior Triennial Plan. We set the rates for December 1, 2021 through October 31, 2023, on a downward trend to more reasonable rates. Beginning December 1, 2021, the maximum EE portion of LDAC rates for the Gas Utilities is hereby set at \$0.0476 per therm for Residential customers and \$0.0326 for C&I customers. Beginning Nov 1, 2022, the maximum EE portion of LDAC rates for the Gas Utilities are set at \$0.0475 per therm for Residential customers and \$0.0258 for C&I customers. To the extent either of the Gas Utilities lack sufficient Commission-approved programs to fund with LDAC rates, they must reduce their charged LDAC rates accordingly.

E. Benefit-Cost Testing

The Commission finds the “Granite State Test” is overly dependent upon subjective factors such that any desired outcome could potentially be obtained from its application. As such, it cannot be solely relied upon for benefit-cost testing. Further, the Granite State Test and its growing complexity cannot be expected to be reasonably understood by the general public. At the level of spending that is contemplated, the ratepayers are entitled to a fully objective and understandable measure of the cost-effectiveness of the proposed programs. Going forward, including for identification of programs to be submitted in the Program Proposal as directed by this order, the Parties are therefore also required to calculate and report benefit-cost using the Total Resource Cost (TRC) test that was historically used until the Granite State Test was recently established.

F. Lost Base Revenue

The Commission has weighed the evidence presented by the Settling Parties and by Energy with respect to LBR and finds that, as the Settling Parties agree, the utilities collecting LBR should apply consistent methods for calculating planned and actual LBR. We note that the Settlement Agreement incorporates several of Energy’s recommendations,²⁰ and we approve those

²⁰ Exh. 14 at 10 lists six methods the Settling Parties agree to implement to calculate planned and actual LBR: “(1) employ the terminology set forth in the LBR working group report of August 29, 2018 to ensure that the methods used for actual LBR collections are consistent, (2) continue to file quarterly reports with the Commission, using a consistent format, (3) apply 100 percent of the calculated monthly savings using the paid date, which is on average two months after the install date, to account for the fact that not all installations are made on the first day of each month; (4) cease accruing lost base revenues in the first month following effective date

provisions of section F of the Settlement Agreement that are not inconsistent with Energy's recommendations, and further direct that LBR should: (1) include consistent calculation of LBR during the first month of a new measure's installation based on one-half of the calculated monthly savings; (2) where LBR is collected following a rate case where decoupling is not implemented, installations prior to and during the test year should not be factored into the LBR; (3) relating to average distribution rates used in calculating LBR, the distribution rate in effect at the time of the filing should be used, and for reconciliation purposes, the utilities should use the rates in effect for the installation period; (4) set and apply the prime interest rate to the cumulative LBR balance; (5) be consistent with the utilities plan to use average distribution rates calculated by sector; (6) discount "found revenues" from EE measures that increase electric energy usage, and (7) ADR program results should not be included in the LBR calculation as the purpose of that program is to reduce peak load and shift load, not reduce distribution or customer peaks.

G. Performance Incentives

The Commission initially allowed performance incentives on a *temporary* basis for:

...utility-sponsored programs that would either not be provided by the market or programs that will help the

of any decoupling mechanism approved by the commission, (5) use the average distribution rate in effect at the time of the triennial plan filing, or as updated by Commission order during the term, for planning purposes, while using the actual rate in effect at the time of the reconciliation filing for reconciliation purposes, and (6) determine carrying costs on LBR over and under recoveries using the prime rate, compounded monthly."

transition to non-subsidized energy efficiency programs. The utility must demonstrate that the program for which it seeks incentive payments offers customers extraordinary benefits and will enhance the move toward either non-subsidized DSM programs or market-based energy efficiency. These benefits should be over and above what would accrue to ratepayers with prudent utility management.

Order No. 23,574 at 20 (November 1, 2000). Upon reviewing the record, the Commission has determined, taking into account the implementation of rate mechanism options including Decoupling, LBR, and LRAM, as well as the maturity of programs that yield measurable savings, that Performance Incentives are no longer just and reasonable and in the public interest in the context of ratepayer funded EE.

Because the parties have not demonstrated that the existing Performance Incentives meet the applicable standards, including RSA 378:7, 378:28, 374-F:3, and 378:39, we order that the Performance Incentives be eliminated effective December 31, 2021. We direct that the Performance Incentive funding that would have otherwise accrued to the utilities shall be redirected in its entirety to fund additional Energy Efficiency programs. As indicated in the 2021–23 Proposal, the original performance incentive budget for this triennium was in excess of \$20,000,000, we therefore expect this directive to result in significant increased funding for EE programs. As indicated above, the utilities already receive LBR, LRAM, or Decoupling, and receive administrative costs²¹

²¹ Internal utility costs associated with program design, development, regulatory support, and quality assurance (including employee labor, benefits, expenses, materials, and supplies); external costs associated with program administration (including contractors and consultants used in support of program design, development, regulatory support, and quality assurance);

and are thus sufficiently compensated. As a result of eliminating the cost, management, administration, and complexity of the Performance Incentive, the benefits will accrue to the ratepayer.

H. Year-to-Year Budget Carryforwards

Year-to-year budget carryforwards do not properly balance the ratepayer's interest in paying the lowest rates possible because they result in ratepayer funds being held without commensurate benefits accruing to ratepayers in a timely manner. We therefore do not agree with the Settling Parties that benefits accrue to the public by its continuation. In fact, quite the opposite, year-to-year budget carryforwards result in ratepayer funds being held by Joint Utilities instead of being returned to the ratepayer.²²

Where the actual amount collected is greater than the amount spent during any given year, the difference shall be returned to the ratepayer via bill credit by March 31 of the following year, where there is not a specific statutory obligation to carry forward funds. The Utility's shall submit a report in the instant docket by March 31 following the program year showing any carryforward. If the Utility has spent more than the budget, or actual amount

service costs such as technical audits, employee and contractor labor to install measures, expenses, materials, and supplies; internal implementation services costs associated with delivering programs to customers (including labor, benefits, expenses, materials, and supplies); marketing, advertising, trade shows, toll-free numbers, and NHSaves website costs; and evaluation costs for EM&V activities including labor, benefits, expenses, materials, supplies, consultants, contractors, and tracking systems. Exh. 1 at 33.

²² We note the Joint Utilities' rebuttal testimony states that uniform funding rates between sectors and utilities would likely result in larger annual carryforwards. See Exh. 13 at 17. Any increased likelihood of potential carryforwards resulting from more uniform EE charges does not displace our conclusion that ratepayer funds should be returned to ratepayers in a timely manner.

collected, in any program year, whichever is less, the cost shall be borne by the Utility's shareholders.

I. HEA Program Caps

The HEA program is currently capped at \$8,000 per project. The Proposal seeks not only to increase that cap to \$20,000 per project, but also to allow for exceptions to the cap. The Settling Parties have not shown by a preponderance of the evidence that such an increase is just and reasonable as is required of all EE program spending. Moreover, exceptions to this cap will result in unequal benefits to program participants. These proposed changes cannot be considered just and reasonable and are therefore rejected.

J. Behavioral-Based Strategies

The parties failed to meet their burden with respect to the aerial heat mapping program. The Parties may propose cost effective consumption data provision programs to be funded through the EE program when they resubmit their proposed programs, but those programs may not include the aerial mapping program.

K. Program Oversight

Since the establishment of the EERS program, Commission oversight has been key to "ensur[ing] that the programs and spending of ratepayer funds are just, reasonable, and least cost." Order No. 25,932 at 59. It is, moreover, the Commission's ultimate duty to determine whether utility rates and charges are just, reasonable, and lawful. RSA 374:2, Puc 103.01(d). As explained below, the

Commission is not permitted to abdicate its statutory responsibility for oversight as requested.

The Proposal and Settlement Agreement propose significantly reducing regular oversight by the Commission despite requesting a massive rate increase and significant additional burden to the ratepayers. This proposal is not reasonable. In light of the significant ratepayer funding provided in the current plan and approved by this order, a reduction in oversight is not reasonable or appropriate. The Commission will, therefore, continue to directly oversee the implementation of the 2021–23 plan and related programs to ensure they are just, reasonable, lawful and cost-effective, including a detailed review of administrative costs, requiring that any proposed pilot program receive Commission Approval to commence, and further requiring that any existing pilot program receive Commission approval to transition to a regular program. With respect to the 2021 AESC update and the Technical Reference Manual updates, we direct the Joint Utilities to file a copy of any AESC update released in 2021 into the instant docket.

We find the expenses associated with the NHSaves program to be of particular concern. The Proposal lists six categories of expenses: 1) Internal Administrative costs; 2) External Administrative costs; 3) Customer Rebates and Services; 4) Internal Implementation Services; 5) Marketing; and 6) Evaluation. Exh. 1 at 33. The sum of administrative costs (\$9,549,829), implementation services (\$22,138,735), marketing (\$10,718,460), and EM&V (\$15,892,143) totals \$58,299,167, more than 15 percent of total expenses.

Exh. 2 at 352. Ratepayer funding spent on these expenses reduces funding for EE programs that directly benefit ratepayers.

The Commission will closely monitor the total of these expenses and costs going forward to ensure such costs are kept to a minimum. To that end, the Joint Utilities shall file annually, by March 31, financial information for the prior calendar year for the Commission to review the programs. The Joint Utilities shall provide calculations on program expenditures, broken down by categories including, but not limited to, internal administrative costs, costs associated with external consultants, and costs paid to subsidiaries.

Additionally, in the same filing, the Joint Utilities shall provide calculations on the corresponding dollar savings per unit of energy estimated to have been produced by each program during the prior program year. This information shall be broken out by participating and non-participating ratepayers, by ratepayer class (Residential or Commercial & Industrial). The calculations on savings should be for gross savings, with the expenditures on each program listed separately. With the filing, the utilities shall provide all supporting documentation, in live excel formats, on the discount rates used each year to model these savings going forward, the estimated future prices of energy, as well as any additional assumptions used in these calculations. Finally, the Utilities shall include a written narrative for each of the calculations, explaining what market barriers would prevent the funding of each program if the EE portion of the SBC did not fund them.

L. Evaluation, Measurement, and Verification

The Settling Parties proposed that the EM&V working group and related spending authorized in the 2018 through 2020 Plan should continue through 2023. Exh. 14 at 9. We note that spending related to EM&V has risen to an unreasonable level of nearly \$16 Million dollars. Exh. 2 at 352. According to the Proposal, this spending includes any studies identified by the EM&V Working Group and the Strategic Evaluation Plan, the AESC Study, ISO certification of utility demand resources, third-party consultants, updating and maintaining the TRM, program research, professional associations, utility tracking system upgrades and maintenance, quarterly and annual reporting, program modeling software, and other miscellaneous spending. Exh. 1 at 234. The EM&V working group shall submit a plan, including scope and cost, for review and approval to the Commission in advance of any costs being incurred related to EM&V during this triennium. We require spending to be significantly reduced in any EM&V proposal for 2022 and for all EM&V work to be completed by Dec 31, 2022.

M. Stakeholder Advisory Council

With respect to the specific request for the Commission to authorize a Stakeholder Advisory Council, we note that the EESE Board and its EERS stakeholder group currently fill this role. We understand that one of the reasons for the request to create the Council related to distinctions between roles of Commission Staff and other stakeholders in the development of EERS proposals and ongoing evaluation of program implementation. The concerns

regarding roles have been eliminated by the creation of the Department of Energy. Further, the EESE Board was created by the Legislature. The Commission will not supplant its role and authority here. We also note that while the majority of costs come from the C&I sector in the Proposal and Settlement Agreement, the Stakeholder Advisory Council as proposed does not have a single C&I representative proposed. Accordingly, we find that the need for and structure of the proposed Stakeholder Advisory Council is not supported by the record and we therefore do not approve the request.

N. Other matters

The Proposal and Settlement Agreement contain only ratepayer-funded programs, despite the clear mandate in 374-F:1, I to “harness the power of competitive markets,” and 374-F:3, X to remove market barriers. We also note that the EERS framework included a requirement that private funding be pursued and utilized to the greatest extent possible. Order 25,932 at 58. The Joint Utilities’ Program Proposal must include programs that are not solely ratepayer funded, programs that reduce market barriers, and a benefit/cost analysis using both GST and TRC.

The Joint Utilities and stakeholders shall calculate annual budgets for the remainder of the 2022 and 2023 triennium based on the rates established herein. In so doing, the Joint Utilities are directed to identify the programs which provide the greatest energy efficiency savings at the lowest per unit cost with the lowest overhead and administrative costs for further implementation, taking care to ensure statutory compliance with the specific directives

contained in RSA 125-O:23 and submit that Program Proposal to the Commission for review and approval. The Joint Utilities Program Proposal shall include, in live spreadsheet formats, all calculations relied upon, including the discount rate utilized, to determine which programs provided the greatest energy efficiency savings at the lowest per unit cost. These Program Proposals shall be filed by December 15, 2021.

Based upon the foregoing, it is hereby

ORDERED, that the Joint Utilities' request for approval of the proposed 2021–2023 New Hampshire Statewide Energy Efficiency Plan is hereby DENIED; and it is

FURTHER ORDERED, that the Settling Parties' request for approval of the 2021–2023 New Hampshire Statewide Energy Efficiency Plan as modified by that Settlement Agreement, is hereby DENIED as set forth herein; and it is

FURTHER ORDERED, that the System Benefits Charge rates established as set forth herein above are hereby approved for 2021, 2022, 2023; and the Energy Efficiency Portion of the LDAC rates established herein are hereby approved for effect December 1, 2021 and November 1, 2022, respectively; and that the Utilities shall file annotated and clean versions of their compliance tariffs within 30 days of this order, and it is

FURTHER ORDERED, that the Utilities collecting LBR shall recalculate their LBR rates in accordance with the Energy methodology adopted in this order, and it is

FURTHER ORDERED, that the Joint Utilities shall file their updated 2021 Energy Efficiency budgets, as well as their 2022 and 2023 Energy Efficiency budgets using the rates established in the body of this order, and shall include all program and cost items larger than \$500,000 in live spreadsheets, by December 15, 2021; and it is

FURTHER ORDERED, that for approval of 2022 EE program spending, the Joint Utilities shall submit their Program Proposal within the proposed budget as set forth herein above, including proposed spending by program and each program's corresponding benefit/cost calculations, in live spreadsheets as outlined in this Order, by Dec 15, 2021; and it is

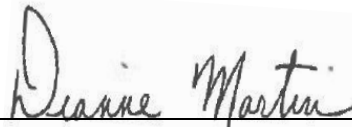
FURTHER ORDERED, that the Joint Utilities shall file annually, by March 31, financial information for the prior calendar year adequate for the Commission to review budgeted verses actual funding, budgeted verses actual spending, including each program and overhead expenditures, and corresponding program energy savings, as outlined in this order, using summary tables and live spreadsheets; and it is

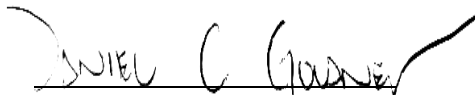
FURTHER ORDERED, that carryforwards are eliminated except where there is a specific statutory obligation to carry forward funds: and it is

FURTHER ORDERED, that the Joint Utilities shall submit program oversight filings by March 1 of each calendar year as discussed in the body of this order; and it is

FURTHER ORDERED, that the EM&V Working Group shall submit a plan as described herein above in advance of incurring any EM&V costs, as discussed in the body of this order.

By order of the Public Utilities Commission of New Hampshire this twelfth day of November, 2021.


Dianne Martin
Chairwoman


Daniel C. Goldner
Commissioner

Service List - Docket Related

Docket# : 20-092

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