

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Statewide Low-Income Electric Assistance Program

2021-2022 Program Administrative Budgets

Docket No. DE 21-133

Motion to Schedule Prehearing Conference

NOW COMES the Office of the Consumer Advocate (“OCA”), a party to this docket, and moves pursuant to RSA 541-A:31, V(b); N.H. Code Admin. Rules Puc 203.15(a); and Rule Puc 203.07 for the Commission to schedule a prehearing conference in the above-captioned proceeding. In support of its motion, the OCA states as follows:

This docket concerns the Electric Assistance Program (“EAP”), first authorized by the Commission in 1997 as part of its plan for the transition to a restructured electric industry mandated by RSA ch. 374-F. *See* Order No. 22,514 (Feb. 28, 1997) in Docket No. DR 96-150. Owing, presumably, to the several years of intense federal litigation the issuance of the plan triggered, the EAP was not formally launched until 2000, when the Commission issued its order approving the recommendations of its Low Income Working Group as to the design and operation of the program. *See* Order No. 23,573 (2000) in Docket No. DE 23,573. Since that time, the EAP has existed as the state’s program for helping residential customers

experiencing difficulties with affording their monthly electric bills, via a program funded by all ratepayers as a part of the System Benefits Charge authorized by RSA 541-F:3, VI.

Since that time, the state's electric utilities (including the mostly deregulated New Hampshire Electric Cooperative ("NHEC")) have worked with the other entities represented on the EAP Advisory Board to develop annual utility-specific budgets for the program. The practice was for the utilities to submit their budgets during the summer in anticipation of Commission approval by the beginning of the winter heating season (and the beginning of the EAP budget year) on October 1.

Consistent with this practice, Until Energy Systems, Inc. submitted its budget on July 29, 2021, followed by Public Service Company of New Hampshire d/b/a Eversource Energy and Granite State Electric Corp. d/b/a Liberty on July 30, and the NHEC on August 2. On August 20, 2021, the state's community action agencies ("CAAs"), which qualifies applicants to the EAP, jointly submitted their 2021-2022 budgets. The Commission opened the instant docket to consider these filings.

All of this occurred in the atmosphere of general regulatory confusion engendered by the advent on July 1, 2021 of the new Department of Energy ("Department") and the contemporaneous downsizing and mission-refinement of the Commission, all pursuant to what is commonly referred to as the biannual "budget trailer bill," Chapter 91 of the 2021 New Hampshire Laws. Unlike past years, the

Commission did not routinely schedule a hearing to review the budgets.

Accordingly, the utilities jointly filed a formal petition for approval of the budgets, pursuant to Rules Puc 202.01(a) and Puc 203.06, on September 29, 2021. On September 29, 2021, the Department filed a letter (addressed on August 20, 2021 by the Department's director of consumer services to the Department's interim commissioner) noting that the EAP Advisory Board had met on August 19 and unanimously recommended approval of the budgets.

On September 30, 2021, the Commission issued Order No. 26,530 approving the proposed budgets – but only for the first two months (October and November). As to the remainder of the 2021-22 budget year, the Commission ruled that it “must develop a more complete record” and would “establish a process for [the Department], the utilities, and other interested parties to analyze the budgets.” Order No. 26,530 at 2. The Commission asked the Department to “conduct its usual review and analysis of the proposed budgets” within 40 days, *id.*, somewhat inexplicably in light of the letter previously filed by the Department. The Commission also stated that responses from other parties would be entertained within ten days of the Department's filing, that there would be a “subsequent order convening an adjudicative proceeding,” and that its final order “will provide for any needed adjustments to the proposed budget and set budget levels for the remainder of the budget cycle.” *Id.*

On October 4, 2021, the Department filed yet another communication from

its director of Consumer Services, this time addressed directly to the Commission, noting that the “Department of Energy *Staff*” recommends approval of the proposed 2021-2022 EAP budgets. *See* October 4, 2021 Memorandum from Amanda O. Noonan to Public Utilities Commission (tab 15) at 1 (emphasis added). The utilities jointly filed a letter on October 5 reiterating their support for the budgets. The Office of the Consumer Advocate did likewise by letter on October 6, at the same time urging the Commission not to treat this docket as a contested administrative proceeding but, rather, to approve the budgets forthwith, by order *nisi* if necessary.

Ignoring these requests, the Commission issued an Order of Notice on November 30, 2021, signed by the chairman (as the Commission’s only currently sitting member) commencing an adjudicative proceeding and scheduling an evidentiary hearing for March 9, 2022 to consider the one issue the order identified as outstanding: “whether the proposed EAP budgets for the 2022-2021 program year are consistent with RSA 374-F:4, VIII (a) and (c) and are reasonable.” Order of Notice (putatively, tab 19) at 2-3. The Commission also indicated that “the interim budget approval granted in Order No. 26,530 is extended until a final order is issued in this matter.” *Id.* at 3.

This turn of events raises a raft of issues and questions, including: (a) whether the order of notice is *ultra vires* in light of RSA 363:16 (providing in relevant part that “[a] majority of the commission shall constitute a quorum to issue orders”), (b) why the Department of Energy (as opposed to its “Staff”) has not

complied with the Commission's request to indicate its position on the proposed budgets, (c) whether the order of notice invokes the appropriate legal standard by which the budgets must be reviewed, (d) whether there should be written, prefiled direct testimony in advance of the hearing, as is customary in adjudicative proceedings at the Commission, and if so by whom, on what schedule, and whether there should be any prehearing discovery, (e) what standard and burden of proof applies when the Commission institutes an adjudicative proceeding on its own motion, (f) what if any "process for [the Department], the utilities, and other interested parties to analyze the budgets" as referenced in Order No. 26,530, the Commission now contemplates adopting, (g) whether the Commission anticipates the possibility of altering, amending, spending, annulling, setting aside, or otherwise modifying any previous EAP-related orders pursuant to RSA 365:28 and, if so, whether the Commission was required to so state in its order of notice, and (h) potentially other issues yet to be identified.

Rule Puc 203.15(a) states that "[i]n order to facilitate proceedings and encourage informal disposition, the presiding officer *shall*, upon motion of any party . . . schedule one or more prehearing conferences." (Emphasis added.) In light of the foregoing, the Office of the Consumer Advocate, a party to this proceeding, hereby moves that the Commission schedule a prehearing conference to consider the issues described above and any others as contemplated by the rule and the corresponding provision of the Administrative Procedure Act, RSA 541-A:31, V(b).

WHEREFORE, the OCA respectfully request that this honorable Commission:

- A. Grant the motion and schedule a prehearing conference in this proceeding..

Sincerely,



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Certificate of Service

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included on the Commission's service list for this docket.



Donald M. Kreis