

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

IR 22-042

ELECTRIC AND GAS UTILITIES

Investigation of Energy Efficiency Planning, Programming, and Evaluation

Order on Motion for Rehearing of Order of Notice

O R D E R N O. 26,698

October 10, 2022

I. Background

On August 10, 2022, the Commission issued an order of notice (Order of Notice) initiating an investigation of ratepayer funded energy efficiency planning, programming, and evaluation. The Commission stated the investigatory docket would examine responses to reporting requirements imposed by the Commission by Order 26,621, as clarified by Order No. 26,642 (June 21, 2022), as well as to “further probe these topics through follow-up questions and examine the Joint Utilities’ development of the 2024–2026 triennial plan.” Order of Notice at 2.

On August 17, 2022, the Office of the Consumer Advocate (OCA) filed a motion for rehearing and/or clarification (OCA Motion) of the Order of Notice, pursuant to RSA 541:3.

On September 7, 2022, the Commission issued Order No. 26,678, denying the OCA’s Motion. On September 9, 2022, the Joint Utilities¹ separately filed a motion for rehearing of the Order of Notice (Joint Utilities’ Motion) pursuant to RSA 541:3.

¹ Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty; New Hampshire Electric Cooperative, Inc.; 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; and Northern Utilities, Inc.

On September 14, 2022, LISTEN Community Services (LISTEN) filed a response to the Joint Utilities' Motion. On September 30, 2022, the N.H. Department of Energy (DOE) made a filing that contained arguments and comments that were responsive to the Joint Utilities' Motion.

The Order of Notice, motions, and other docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at: <https://www.puc.nh.gov/Regulatory/Docketbk/2022/22-042.html>.

II. Summary of the Filings

a. Joint Utilities' Motion

The Joint Utilities requested rehearing of the Order of Notice, such rehearing to limit the scope of this IR docket to the reporting requirements of Order No. 26,621 as modified by Order No. 26,642, and the Commission issuing information requests pertaining to those reports. The Joint Utilities argued that the Order of Notice: 1) conflicts with the explicit language of HB 549 regarding the scope of the Commission's role and obligations relating to energy efficiency programming in New Hampshire, and frustrates the overall purpose of the statute; 2) the Order contravenes RSA Chapter 541-A; and 3) the investigatory authority cited in the Order is superseded by the Department of Energy's enabling statute, RSA Chapter 12-P.

b. LISTEN's Response

LISTEN supported the Joint Utilities' Motion.

c. Department of Energy's Filing

The DOE disagreed with the premise that the Commission lacks investigatory authority, but agreed with the Joint Utilities that the scope of the proceeding impermissibly infringes into energy efficiency planning. According to the DOE, HB 549

limits the role of the Commission to review of energy efficiency plans presented to it, and approval or denial of such plans following review.

The DOE opined that the investigation seems ill-advised and inefficient, in support of this position the DOE offered several arguments:

1. The possibility of impermissible pre-filing influence over future energy efficiency plan filings;
2. The investigation appears duplicative of review processes already underway, facilitated by the Energy Efficiency Committee of the Energy Efficiency and Sustainable Energy Board;
3. The DOE is an active participant in these other review processes, with the objective of guiding the Joint Utilities and other stakeholders to developing and presenting an energy efficiency plan that balances the interests of stakeholders and is compliant with statutory requirements; and
4. Such a parallel investigative proceeding, discussing many of the same issues with many of the same stakeholders as the other processes, is an inefficient use of utility and stakeholder resources.

The DOE stated that if a statewide energy efficiency plan is presented that does not meet its objectives, the DOE will make its views known on the record in future energy efficiency plan review dockets before the Commission.

III. Commission Analysis

The Commission may grant rehearing or reconsideration for “good reason” if the moving party shows that an order is unlawful or unreasonable. RSA 541:3; RSA 541:4; *Rural Telephone Companies*, Order No. 25,291 (November 21, 2011); *see also Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 25,970 at 4–5 (December 7, 2016). A successful motion must establish “good reason” by showing that there are matters that the Commission “overlooked or mistakenly conceived in the original decision,” *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citations omitted), or by presenting new evidence that was “unavailable prior to the issuance of the underlying decision,” *Hollis Telephone Inc.*, Order No. 25,088 at 14 (April 2, 2010).

A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Public Service Co. of N.H.*, Order No. 25,970, at 4-5 (citing *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *Freedom Energy Logistics*, Order No. 25,810 at 4 (September 8, 2015)).

We have already identified in our Order of Notice statutory authorities for the Commission to conduct this investigation. The Commission—and any other administrative agency—has functions beyond those prescribed by New Hampshire’s Administrative Procedure Act (RSA chapter 541-A) (APA). The APA does not preclude the Commission’s exercise of its statutory investigative authorities. As a definitional matter, nonadjudicative processes are contemplated by the APA, encompassing agency procedures and actions other than those occurring within an adjudicative proceeding. See RSA 541-A:1, X. Decisions, other than final adjudicative orders, are clearly acknowledged by the APA, including an agency’s decision to investigate matters. See RSA 541-A:1, XI. Agency policies, other than rules and orders, are understood to exist and must be made available in writing. See, e.g., 541-A:16, II(a) (referring to “written statements of policy or interpretations, other than rules, formulated or used by the agency in the discharge of its functions”); RSA 541-A:16, II(b) (referring to declaratory rulings); RSA 541-A:29 and :29-a (providing for agency actions without convening an adjudicative proceeding); and RSA 541-A:38 (promoting informal resolution of matters outside an adjudicative proceeding). As such, we deny rehearing requests premised on the argument that the APA prohibits explicit statutory investigatory authorities.

We acknowledge, as the Joint Utilities observed, that Order No. 26,678 contained an erroneous reference to a DOE-specific investigatory authority, RSA 365:4. That statute authorizes the DOE to investigate complaints alleging that a utility violated any provision of law, rule, terms and conditions of its franchises or charter, or

any order of the commission. Without disturbing the determination reached in Order No. 26,678, that order is amended to remove reference to RSA 365:4. *See* RSA 365:28.

Finally, we address the remaining arguments made by various participants to this proceeding that this IR docket is duplicative, unnecessary, and does not further the statutory scheme laid out in RSA 374-F:3. The purpose of this investigation is to educate the Commission and its advisors, as well as to engage stakeholders in an open, overarching, and collaborative process that is free of certain procedural constraints that exist in adjudicative dockets. As with any investigative docket, results may take the form of a non-binding report, procedural or operational changes on the part of the Commission, a decision by the Commission to initiate one or more rulemaking or adjudicative dockets, a report with information that may benefit legislators, or some combination of the above.

The Commission agrees that it will be required to review statewide triennial energy plans filed by the Joint Utilities and any annual updates to those plans through an adjudicative proceeding within a statutorily defined timeframe. RSA 374-F:3, VI-a(d)(5) *et seq.* These adjudicative proceedings will, of course, be self-contained, and the Commission's decisions will be based upon the record presented in those proceedings. Nevertheless, exercising the Commission's investigatory authorities provides a means for the Commission to stay informed, *see* RSA 374:4, thereby honing the Commission's inquiry in its adjudicative dockets and enabling efficient, expeditious decisions.

As stated in the Order of Notice at pages 1 and 2 and Order No. 26,678 at 5, the Commission reviews the Joint Utilities' statewide triennial energy plans and any annual updates to ensure they are: 1) optimized to deliver ratepayer savings as made possible by funding; 2) appropriately prioritize program offerings among and within

customer classes; and 3) adequately designed to address state policy principles related to market barriers. Thus, the Commission investigation of various aspects of these plans is in furtherance of its charge as elocuted in HB 549 (2022 N.H. Laws, ch. 5) and the Commission's broader role overseeing public utilities.

With that said, we welcome further elaboration of arguments relating to the scope and procedural schedule in this investigation so that our investigation does not impede or frustrate the development of the next triennial plan. These are topics the Commission has already announced will be discussed at a prehearing conference on October 12, 2022. The Joint Utilities' motion for rehearing of our decision to investigate this matter is denied.

Based upon the foregoing, it is hereby

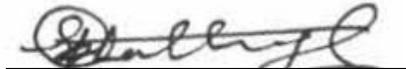
ORDERED, the Joint Utilities' Motion for Rehearing is DENIED; and it is

FURTHER ORDERED, that Order No. 26,678 (September 7, 2022), is amended to remove reference to RSA 365:4.

By order of the Public Utilities Commission of New Hampshire this tenth day of October, 2022.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner

Service List - Docket Related

Docket# : 22-042

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