

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 19-197

Electric and Natural Gas Utilities

Development of a Statewide, Multi-Use Online Energy Data Platform

**Order Denying Motion for Rehearing
and Scheduling a Prehearing Conference**

ORDER NO. 26,607

April 8, 2022

This order grants the electric and gas utilities' joint motion for a prehearing conference to address issues raised by the parties relating to Order No, 26,589 (March 2, 2022) and denies the Office of the Consumer Advocate's motion for rehearing.

I. PROCEDURAL HISTORY

On March 2, 2022, the Commission issued Order No. 26,589 (Order), which approved a settlement agreement (settlement) filed by the parties and established a process for Commission oversight of the statewide Multi-Use Energy Data Platform (data platform). The Office of Consumer Advocate (OCA) filed a motion for rehearing and/or clarification of the Order on March 11, 2022. On March 21, 2022, the Commission issued a procedural order allowing additional time for parties to respond to the OCA motion.

On March 25 and April 1, 2022, the Department of Energy (NHDOE) filed responses to the Commission's procedural order and to the OCA motion. On April 1, 2022, the five New Hampshire electric and natural gas utilities: Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty; 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 Utilities; and Northern Utilities, Inc.

(collectively, the NH Utilities); filed a joint motion to schedule a prehearing conference in order to clarify a number of issues concerning Commission oversight of the data platform development process. The joint motion stated that the NHDOE and the OCA supported the motion. On April 4, 2022, the NHDOE filed a letter listing additional issues for consideration by the Commission at the requested prehearing conference.

II. POSITIONS OF THE PARTIES

A. OCA Motion for Rehearing and/or Clarification

The OCA argued that the Commission exceeded its statutory authority under RSA 378:51–:54 when it issued the Order. According to the OCA, once the Commission approved the settlement, it had no further authority with regard to the data platform, except to either approve or defer the proposed data platform implementation following development of the software needed to create the data platform. In the OCA's view, the split in authority between the NHDOE and the Commission under the amendments to RSA 378:51–:54 transferred most of the responsibility for developing the data platform to NHDOE. The OCA specifically objected to the series of directives contained in the section of the Order dealing with ongoing Commission oversight. It claimed that the settlement resolved all statutory requirements, making any further Commission oversight of the data platform development beyond the Commission's statutory authority.

B. NHDOE Response to OCA Motion

The NHDOE took the position that the statute, as amended, did not limit the Commission's role as the OCA described in its motion. The NHDOE observed that even the settlement contained several provisions indicating that the Commission would be required to adjudicate issues related to the data platform. The NHDOE joined in the

NH Utilities' joint motion for a prehearing conference and provided a list of five additional items from the Order that it maintained required clarification.

1. Request for proposal (RFP) issues, including but not limited to criteria other than "lowest cost" for selecting a successful bid for software development and implementation, or for any other contractor selection, Order at 12, 15-16;
2. Provision of necessary technical leadership as the software design moves toward the RFP process, Order at 14-15;
3. Cost-effectiveness methodologies, Order at 16;
4. Use of a survey to forecast platform usage and the structure of that survey, Order at 15-16;
5. Methods for obtaining information about existing software and associated costs, Order at 15-16.

C. NH Utilities Motion for Prehearing Conference

In their motion for prehearing conference, the NH Utilities stated that they need additional information and clarification to fulfill the various directives of the Order pertaining to the "additional Commission involvement." Generally, the NH Utilities seek clarity regarding the Commission's expectations for these directives. They requested details on the sequence of execution of the additional action items, expected deliverables of each item, and any corresponding filing requirements. Further, they questioned what Commission action, if any, would be required before they could proceed to the next item.

The NH Utilities identified five items for clarification.

1. (Order at 1-2). The NH Utilities seek further detail on this cost-benefit methodology, and clarity on whether it needs to be filed with the Commission and whether Commission action is necessary prior to moving forward with RFP preparation.
2. (Order at 14). The NH Utilities seek clarity on when this additional detail on the registration process, to ensure compliance with current best [privacy and security] practices in the utility industry, would be required, how it should be provided, and if any Commission action will be necessary before proceeding with RFP preparation.

3. A detailed description of the data and functions needed for platform operation. The customer interface should be illustrated in a way that describes the customer or third-party experience with the API. An actual demonstration of the user experience with the Data Platform API would be most helpful. (Order at 15). The NH Utilities seek further information and detail regarding what the Commission would like the parties to submit, how it should be submitted, presented, or filed, and if any Commission action is necessary before proceeding with RFP preparation.
4. (Order at 15). The NH Utilities seek information on whether any Commission action will be necessary after filing the customer survey data before proceeding with RFP preparation. The NH Utilities also submit for the Commission's consideration certain alternatives to the survey that could achieve similar results and save time and expense.
5. The parties should survey existing software, and software under development in other jurisdictions, to determine whether any costs can be saved through licensing existing technology. The parties should report on the status of any development or implementation of a similar data platform in utility service territories outside New Hampshire. (Order at 15-16). The NH Utilities seek additional detail on what the software survey should entail, level of effort that should be expended, if there is any filing requirement included here (i.e., the requested status report), and if Commission action is necessary before proceeding with RFP preparation.

III. COMMISSION ANALYSIS

The Commission may grant rehearing for “good reason” if the moving party shows that an order is unlawful or unreasonable. RSA 541:3; RSA 541:4; *Rural Tel. Cos.*, Order No. 25,291, at 9 (November 21, 2011); *see also Pub. Serv. Co. of N.H.*, 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) (quotations and citations omitted), or by presenting new evidence that was “unavailable prior to the issuance of the underlying decision,” *Hollis Tel., 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. *Pub. Serv. Co. of N.H.*, Order No. 25,970, at 4–5 (citing *Pub. Serv. 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)).

The OCA does not present any new evidence in its motion. Instead, the OCA argues that the Commission misinterpreted its role pursuant to RSA 378:51-:54. The provisions referencing the NHDOE and the Commission regarding the data platform are quoted below:

378:51 Online Energy Data Platform Established. –

I. The **department of energy** shall require electric and natural gas utilities to establish and jointly operate a statewide, multi-use, online energy data platform. The data platform shall:

- (a) Consist of a common base of energy data for use in wide range of applications and business uses.
- (b) Adhere to specific and well-documented standards.
- (c) Provide a user-friendly interface.
- (d) Adhere to a common statewide logical data model that defines the relationships among the various categories of data included in the platform.
- (e) Allow for sharing of individual customer data consistent with the opt-in requirements for third-party access specified in RSA 363:38.
- (f) Protect from unauthorized disclosure the personally identifying information of utility customers in a manner that advances applicable constitutional and statutory privacy rights, including the protections of RSA 363:38.
- (g) Provide for the voluntary participation of municipal utilities and deregulated rural electric cooperatives in data sharing and the operation of the online energy data platform, subject to terms, conditions, and cost sharing which are reasonable and in the public interest.

II. The **commission** shall open an adjudicative proceeding within 90 days of the effective date of this subdivision, to which all electric and natural gas utilities shall be mandatory parties, to determine:

- (a) Governance, development, implementation, change management, and versioning of the statewide, multi-use, online energy data platform.
- (b) Standards for data accuracy, retention, availability, privacy, and security, including the integrity and uniformity of the logical data model.
- (c) Financial security standards or other mechanisms to assure compliance with privacy standards by third parties.

III. The **department of energy** shall defer the implementation of the statewide, multi-use, online energy data platform pursuant to paragraph

I if the **commission** determines that the cost of such platform to be recovered from customers is unreasonable and not in the public interest.

IV. The **department of energy** may adopt additional rules pursuant to RSA 541-A as necessary to implement this section.

(Emphasis added.)

378:54 Cost Recovery. –

The utilities may:

I. Impose reasonable charges to third parties for access to data via the multi-use, online energy data platform; and

II. Otherwise recover costs from customers in a timely manner as approved by the **commission**.

(Emphasis added.)

The Commission oversight described in the Order is designed to assist the Commission in making determinations concerning the elements of RSA 378:51, II(a), (b) and (c) as the data platform development progresses. The Commission oversight is also designed to develop a record for findings relating to whether the costs of the data platform are reasonable and in the public interest, as required by RSA 378:51, III. Accordingly, the Commission denies the OCA motion for rehearing of the Order.

The parties have raised valid questions concerning various requirements set out in the Order. We therefore grant the NH Utilities' motion for prehearing conference. The prehearing conference will address the open issues identified by the OCA, the NH Utilities, and the NHDOE summarized above. We grant the OCA's request for clarification to the extent that, after hearing from all parties on the issues raised during the prehearing conference, the Commission will provide such clarification as is necessary.

Based upon the foregoing, it is hereby

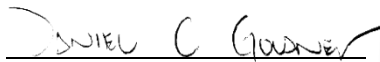
ORDERED, that the motion for rehearing is **DENIED**; and it is

FURTHER ORDERED, that the motion for clarification is **GRANTED** in part, as discussed herein; and it is

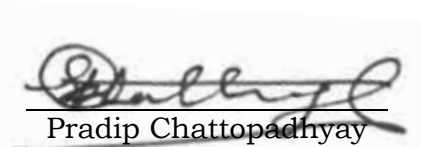
FURTHER ORDERED, that the motion for prehearing conference is **GRANTED**; and it is;

FURTHER ORDERED, that the Commission will hold a prehearing conference, at its offices located at 21 S. Fruit St., Suite 10, Concord, New Hampshire, on June 3, 2022, at 9:00 a.m., at which each party should be prepared to address any of the issues set forth in the parties' pleadings and summarized above. Three hours will be allotted for this conference.

By order of the Public Utilities Commission of New Hampshire this eighth day of April, 2022.



Daniel C. Goldner
Chairman



Pradip Chattopadhyay
Commissioner



F. Anne Ross
Special Commissioner

Service List - Docket Related

Docket# : 19-197

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