

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**IR 22-061**

**ELECTRIC DISTRIBUTION UTILITIES**

**Investigation of Potential Jurisdictional Conflicts Related to  
Authorization of Pilot Programs Under RSA 362-A:2-b**

**Order on Motion to Commence an Adjudicative Proceeding**

**O R D E R N O. 26,783**

**March 9, 2023**

In this order, the Commission grants the motion to commence an adjudicative proceeding and closes this investigation.

**I. BACKGROUND AND PROCEDURAL HISTORY**

On September 20, 2022, the Commission issued an order of notice announcing the commencement of an investigation concerning potential jurisdictional issues related to recently enacted changes to RSA chapter 362-A. These changes would authorize the Commission to approve pilot projects allowing limited producers of electrical energy to sell energy produced to purchasers other than the franchise electric utility. The order of notice designated the three New Hampshire electric distribution utilities, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource), Unitil Energy Systems, Inc., and Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (collectively, the Electric Utilities) as mandatory participants.

The Office of the Consumer Advocate filed a request to be added to the service list in this docket. Representative Michael Vose filed an email request to participate. Clean Energy New Hampshire filed a letter of participation. Amanda Gokee of the New

Hampshire Bulletin and Andrew Evans filed email requests to be added to the service list in this docket. The New Hampshire Department of Energy (DOE) filed an appearance on December 21, 2022.

On December 2, 2022, the Electric Utilities submitted a joint motion requesting that this docket be suspended and an “adjudicative proceeding,” as defined in RSA 541-A:1, be commenced and conducted consistent with RSA 541-A:31-36. The motion and all other docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are available on the Commission’s website at [www.puc.nh.gov/regulatory/Docketbk/2022/22-061.html](http://www.puc.nh.gov/regulatory/Docketbk/2022/22-061.html).

On December 9, 2022, the Community Power Coalition of New Hampshire (CPCNH) filed a petition to participate in the investigation and indicated its support of the Electric Utilities’ request that this proceeding be conducted as an adjudication. The Commission held a prehearing conference on January 5, 2023, during which the participants reiterated arguments in favor of conducting this proceeding as an adjudication.

On January 12, 2023, Eversource filed a letter on behalf of all the participants in this investigation suggesting a procedure to be followed if this docket were commenced as an adjudicative proceeding.

## **II. MOTION TO COMMENCE AN ADJUDICATIVE PROCEEDING**

In their joint motion, the Electric Utilities argued that the outcome of this proceeding creates the potential for conflict between the Electric Utilities’ compliance with a Commission order and their obligations under Independent System Operator-New England (ISO-NE) transmission operating agreements and ISO-NE tariff requirements. According to the Electric Utilities, this potential for conflict supports conducting the proceeding as an adjudication. Further, the Electric Utilities claimed

that this proceeding is a “contested case,” as defined in RSA 541-A:1, because the legal rights, duties or privileges of the Electric Utilities will be impacted by the Commission’s decision in this proceeding. The Electric Utilities asserted that an adjudication would ensure that the record is robust and complete, and that due process has been fully afforded to all parties. In its support of the motion, the CPCNH argued that the statutory requirement that “the commission shall .... *determine definitively* whether any jurisdictional conflicts exist concerning the use of the distribution or transmission system....,” RSA 362-A:2-b, III (emphasis added), requires an adjudication.

### **III. COMMISSION ANALYSIS**

The Commission has considered the Electric Utilities’ motion and finds that an adjudicative process will promote the orderly resolution of the legal issues related to RSA 362-A:2-b. *See Hampstead Area Water Co., Inc.*, Order No. 25,463 at 5 (February 8, 2013) (stating that in adjudicative proceedings, Commission shall provide parties with opportunity "to respond and present evidence and argument on all issues involved," pursuant to RSA 541-A:31, IV). Accordingly, the Motion to Commence an Adjudicative Proceeding is GRANTED, and this investigatory docket will be closed.

The Commission notes the investigatory phase of this statutory directive provided useful opportunities for the Commission and participants to explore new areas of law and developing trends to better understand the factors which may need to be considered in a subsequent adjudication. Adjudications depend on properly identifying all the issues which need to be explored and ruled upon. When presented with a new legal requirement, an investigation may help to identify and focus issues so that a subsequent adjudication may be conducted more efficiently. *See generally* RSA 374:7 and RSA 365:5 (providing Commission with independent investigatory

authority); RSA 365:19 (facts disclosed during Commission investigations may be made part of the record in subsequent proceedings).


**Based upon the foregoing, it is hereby**

**ORDERED**, that the Electric Utilities' Motion to Commence an Adjudicative Proceeding is GRANTED; and it is

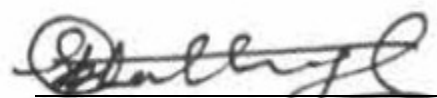
**FURTHER ORDERED**, that an adjudicative proceeding shall be commenced for the purpose of reviewing and resolving the potential jurisdictional issues related to amendments to RSA chapter 362-A; and it is

**FURTHER ORDERED**, that this investigatory docket shall be closed.

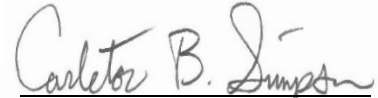
So ordered, this ninth day of March, 2023.



Daniel C. Goldner  
Chairman



Pradip K. Chattopadhyay  
Commissioner



Carleton B. Simpson  
Commissioner

# Service List - Docket Related

Docket#: 22-061

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