

State of New Hampshire  
Public Utilities Commission

DE 07-064

Energy Efficiency Rate Mechanisms

**MOTION FOR REHEARING ON BEHALF OF  
THE WAY HOME**

The Way Home, by and through its undersigned counsel, New Hampshire Legal Assistance, requests rehearing of this matter pursuant to RSA 541:3 and PUC 203.33, and sets forth the following in support of this motion:

**I. Background**

This proceeding was opened to investigate the merits of instituting appropriate rate mechanisms, such as “revenue decoupling”, which would have the effect of removing obstacles to, and encouraging investment in, energy efficiency, and to determine the appropriate procedural approach for implementing such rate mechanisms. Order, page 19.

On March 13, 2008 the Commission requested written comments from the parties regarding the following:

- 1) whether existing rate treatment poses an obstacle to investment in energy efficiency;
- 2) whether a different rate treatment would promote such investment;
- 3) whether these issues should be pursued further in this docket, or through utility-specific rate cases, or as part of rulemaking, or through some other procedure; and
- 4) whether decoupling constitutes an alternative form of regulation under RSA 374:3-a.

## **II. The Order Resolving Investigation**

1. On January 16, 2009 the Commission issued Order No. 24,934 in this docket, entitled Order Resolving Investigation (hereinafter, “Order”).

2. In the Order, the Commission concluded that existing rate design and mechanisms, “as a conceptual matter”, can pose an obstacle to investment in energy efficiency, and that there are different rate mechanisms that could be employed to further promote such investment. Order, page 19.

3. The Commission found that the best approach to implementing such rate mechanisms is on a “company by company basis”. Order, page 19.

4. The Commission ruled that any revenue decoupling model proposed should be in the context of a “rate case”. Order, page 22.

5. The Commission stated that it “will use the results of the energy efficiency study [as described on page 18 of the Order] to assess the potential for additional energy efficiency investment in New Hampshire”. Order, page 22.

6. The Commission ordered that this investigation “is closed”. Order, page 23.

## **III. Reasons For Rehearing**

A.) This Docket Should Not Be Closed At This Time Because Important Questions Remain Unanswered, Resolving Those Questions Now Is In The Public Interest And A More Complete Record Is Needed.

1) *Questions Remain Unanswered.*

In its Order Of Notice in this docket dated May 14, 2007 the Commission asked for responses to a number of questions, including 12 specific questions set forth on pages 2

and 3 of the Order Of Notice. Many of these questions were not addressed in the Commission's January 16, 2009 Order No. 24,934. Such important questions included:

- Should revenue decoupling normalize for weather, number of customers, economic conditions or other variables to reduce customer risk?
- Should a revenue decoupling or other mechanism apply to all customer classes?
- What circumstances should result in true-ups and should true-ups occur by class, customers, or some other elements?
- What alternatives are there (such as real time or critical peak pricing) to revenue decoupling which achieve similar policy goals?

*2) Numerous Parties Support Resolving the Unanswered Questions in this Proceeding.*

Numerous parties, in their April 11, 2008 written comments, recommended that the Commission continue to explore in this docket the important questions raised in the Order of Notice and in the Commission's March 13, 2008 request for additional comments. See for example: ) Unitil. Order, page 6 (#3), b.) Office of Energy and Planning, Department of Environmental Services, and Office of Consumer Advocate. Order, page 10 (#3) (the basic issue of whether throughput-based rates impact investments in energy efficiency should be pursued through this docket), c) The Way Home. Order, page 13 (#3) (undertake a thorough investigation in this docket and include in the investigation analysis of the various implementation strategies), d) Conservation Law Foundation and Campaign For Ratepayer Rights. Order, page 14 (#3) (pursue these issues through this docket to a resolution of the policy questions), e) Wal-Mart. Order, page 15 (#3) (use a generic proceeding to develop decoupling principles)

Moreover, there are other important questions that may merit further exploration in this docket. For example, are the retroactive features of rate adjustment mechanisms allowable? See generally Appeal of Pennichuk Water Works, 120 NH 562, 566 (1980)(holding that temporary rates cannot be made effective for services rendered before a permanent rate request). Will proper consumptive price signals be sent in utilizing rate adjustment mechanisms? These are examples of questions appropriate for discussion in a generic or investigative docket such as this one.

3) *Resolving the Unanswered Questions Now Is In the Public Interest.*

Pursuing resolution of the policy questions raised in the Order of Notice and in the March 13, 2008 request for written comments is in the public interest for the following reasons:

i) A Generic Proceeding is Essential to Develop Uniform Policy Principles.

The parties and utilities need and would benefit from having standards, guidelines and uniform principles in attempting to develop and evaluate rate mechanism proposals that “appropriately balances risks and benefits among customers and utilities while pursuing legislative policy goals”. Order, page 19. As noted by the Commission, “depending on the specific company proposal, there could be a potential to inappropriately shift risks”... “away from the utility and toward the customer”.

Order, page 19.

The Way Home submits that an investigation docket, such as this docket, or a “generic” docket, as suggested by Wal-Mart, or a rulemaking proceeding as suggested as an option by the Commission in its March 13, 2008 request for comments, are more

appropriate mechanisms for establishing statewide, uniform principles, standards, and guidelines than a utility-specific rate case.

ii.) Uniformity of Treatment and Consistency of Results.

Resolving these important public policy questions in individual rate cases and other individual utility-specific proceedings may lead to inconsistent and unfair results.

iii.) Limitations to Participation in Multiple Rate Cases.

All parties to this proceeding would have the same opportunity to be heard if all issues were considered in this investigation. It is unclear whether all parties to this proceeding would be able to intervene in numerous rate cases and utility-specific proceedings.

More specifically, low income customers and non profit consumer groups are unlikely to be able to afford the time and expense of intervention and involvement in numerous rate cases and utility-specific proceedings.

The opportunity for the public to provide input is reduced when issues of statewide importance are resolved in individual rate cases and utility-specific proceedings.

4) *The Record is Incomplete.*

The parties have not had the opportunity to conduct formal discovery or serve data requests on staff and other parties. There has been no opportunity to file testimony, or reply to comments of other parties or to conduct cross examination.

B.) The Conclusions Reached Are Not Supported By The Record.

1) *The Record is Insufficient to Support All of the Conclusions Reached in this Investigation.*

While “as a conceptual matter” existing rate designs can pose obstacles to investment in energy efficiency (Order, page 19), the record is not clear that this has been the experience in New Hampshire. Similarly, while “there are different rate mechanisms that could be employed to further promote such investment” (Order, page 19), the record does not include evidence that such mechanisms have been successful.

Revenue decoupling mechanisms in this context assume that reductions in sales are due to energy efficiency programs. However, the record in this proceeding does not show that a “rate reconciling adjustment mechanism” (Order, page 21) can successfully identify the “specific sales volume reductions” associated only with “the implementation of energy efficiency programs”. (Order, page 21).

The Commission stated in the Order of Notice:

“At the outset, the Commission seeks an assessment of the evidence supporting the implementation of revenue decoupling or other appropriate mechanisms.

The primary goal in this proceeding is to evaluate the applicability of such mechanisms.” Order of Notice dated May 14, 2007, page 2.

The extent to which the utilities bear the burden of production or persuasion in this investigation is not clear. See generally Wilton Telephone Company, Hollis Telephone, Investigation of Companies, DT 00-294; DT 00-295; Order No. 23,744; 2001 N.H. PUC LEXIS 143, 23-26 (2001) (discussing burden of proof in a proceeding involving alleged noncompliance with a commission order and where the commission initiated an

investigation). Although this investigation is not an investigation involving utility non-compliance with a Commission order, the burden to produce sufficient evidence to support the conclusions reached in the Order has not been met.

*2) The Link Between Decoupling and Energy Efficiency Has Not Been Clearly Established.*

Decoupling, by itself, does not encourage investment in energy efficiency. “While it [decoupling] can remove disincentives for utilities to promote energy efficiency, decoupling is not designed to create an incentive for energy efficiency.” See “Decoupling for Electric and Gas Utilities Frequently Asked Questions (FAQ)”, National Association of Regulatory Utility Commissioners (NARUC), September 2007, page 3.

*3) Shifting of the Risk to Customers.*

Revenue decoupling mechanisms can result in a “guarantee” of a certain level of revenue to the utility. See The National Association of State Utility Consumer Advocates (NASUCA) Decoupling Resolution, June 12, 2007, page 1 (copy attached to Initial Comments Of The Way Home dated April 11, 2008).

Decoupling can also result in a shifting of the risk from the utility and its investors to customers. Order, page 22. The record does not show how residential rate payers, and particularly low income and elderly customers, will be protected from an unwarranted shifting of the risk if a revenue decoupling mechanism is adopted.

The record does not support a finding that a revenue decoupling mechanism would result in just and reasonable rates pursuant to RSA 378:5 and RSA 378:7. See Order of Notice, page 3.

C.) Formal Rulemaking May Be Necessary To The Extent That Certain Guiding Principles Set Forth In The Order Constitute Statements of General Applicability.

A “Rule” is defined in the Administrative Procedure Act to include “regulation, standard, or other statement of general applicability adopted by an agency to...(b) prescribe or interpret an agency policy, procedure or practice requirement binding on persons outside the agency...” RSA 541-A:1, XV. The Commission’s Order of Notice invited comment on the advisability of rulemaking concerning revenue decoupling. Order of Notice, page 1.

The Order states that “[T]here appear to be three primary rate mechanism options: (1) performance incentives, (2) rate design and (3) reconciling rate adjustment mechanisms”. Order, page 20. The Order then sets forth guiding principles in evaluating proposals presented under each of the three options. Order, pp. 20-23. For example, the Commission states: “Therefore, any revenue decoupling model should be in the context of a rate case so that the utility’s return on equity (ROE) can be thoroughly analyzed. Order, page 22. The Commission further states: “We will use the results of the energy efficiency study to assess the potential for additional energy investment in New Hampshire.” Order, page 22. And: “We will also consider appropriate utility incentives to the extent that energy efficiency spending has not occurred.” Order, page 22.

All of the above statements appear to be statements of general applicability binding on persons outside the Commission. Such statements may be subject to rulemaking once the issues are explored in more detail in this investigatory docket or a generic proceeding.

See generally Public Service Company of New Hampshire, Request for Approval of 2008 Energy Service Rate, DE 07-096, Order No. 24,814, at 31, 2007 NH PUC LEXIS 90



(2007)(the Commission deferred reporting requirements for competitive energy suppliers to rulemaking because the requirements were to be generally applied).

A similar situation presented itself in the Commission's investigation into the implementation of the Energy Policy Act of 2005. See Investigation Into Implementation of the Energy Policy Act of 2005, DE 06-061, Order No. 24,819, 2008 NH PUC LEXIS 4 (2008). In that investigation, the issue of statements of general applicability was raised. There, the Commission created one or more dockets, as well as working groups, to further explore various issues, and it recognized that the rulemaking "...option is available if it appears that a rule of general applicability is the appropriate means of implementation". Order No. 24,819, pp. 22-23. Similarly, the Commission may, in this proceeding, wish to consider rulemaking after the remaining issues in the docket are explored and the above statements in the Order have been further developed.

#### **IV. Notice To Parties**

Undersigned counsel provided advance copies of this Motion to all parties and requested the parties' positions with respect to the relief requested herein. Positions of parties who responded are set forth below:

WHEREFORE, The Way Home respectfully requests that the Commission grant rehearing in this matter and grant such other relief as is reasonable and just.

Respectfully submitted,

The Way Home,  
By Its Attorney,

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Certification Of Service

I certify that on this date this Motion was filed with the Commission and copies served by email to the Commission and all parties to this docket.

New Hampshire Legal Assistance

\_\_\_\_\_  
Alan Linder  
Attorney for The Way Home

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Date