

DE 10-188  
Core Energy Efficiency Programs

CLOSING STATEMENT  
On Behalf of The Way Home  
Regarding the Home Performance With Energy Star Program Proposal

July 9, 2012

Submitted by  
New Hampshire Legal Assistance

## CLOSING STATEMENT ON BEHALF OF THE WAY HOME

The Way Home supports the utilities' proposal to make the fuel neutral Home Performance With Energy Star program (HPwES) permanent.

### I. Introduction

Commission Staff takes the position that the proposed HPwES program is "unfair." The Way Home respectfully disagrees.

In Order No. 24,930, dated January 5, 2009, in DE 08-120, the Commission held that it is not precluded as a matter of law from authorizing the use of System Benefits Charge (SBC) revenues for energy efficiency programs such as the fuel neutral pilot program. Order, page 19.

In support of its ruling, the Commission cited RSA 374-F:3, VI, which states that SBC revenues may be used to fund public benefits "related to" the provision of electricity (emphasis original). The Commission said that there is "no question" that electric efficiency measures ancillary to the Home Energy Solutions (HES) program, such as the Energy Star appliance rebate and Energy Star lighting programs, "relate to" the provision of electric service. Order, page 19.

The Commission further noted that RSA 374-F:3, X concerns "energy efficiency," not just "electrical efficiency." The Commission said that the statute calls for "reducing market barriers to investments in energy efficiency," and provides that "utility sponsored energy efficiency programs should target cost-effective opportunities that may otherwise be lost due to market barriers." Order, page 20. The Commission pointed out that "Running programs that attempt to isolate and target energy efficiency to a single fuel source, such as electricity, may in itself be a market barrier when energy efficiency measures delivered as a comprehensive package . . . may be the overall most cost-effective approach to achieving energy efficiency and conservation of all fuel sources." Order, page 20.

### II. Statutory Construction

#### 1. Staff's Limited Focus

The Core energy efficiency programs are authorized by the electric restructuring statutes in RSA chapter 374-F. RSA 374-F:3, which is entitled "Restructuring Policy Principles," contains numerous legislative policy principles. In formulating its position regarding "fairness" of the proposed HPwES program, Staff focuses on one policy principle set forth in RSA 374-F:3, VI, which is entitled "Benefits For All Consumers." The first two sentences of RSA 374-F:3, VI say that (1) restructuring should benefit all consumers "equitably" and not benefit one customer class to the detriment of another, and (2) costs should not be shifted "unfairly" among customers. Staff concludes from this that the proposed fuel neutral HPwES program is unfair to certain residential customers.

There are at least two problems with Staff's conclusion. First, there are other provisions in RSA 374-F:3, VI that must be read in conjunction with the two sentences that Staff focuses on. Second, there are other important restructuring principles in RSA 374-F:3 that need to be considered. These other policy principles are set forth in RSA 374-F:3, VIII and RSA 374-F:3, X.

## 2. Principles of Statutory Construction

It is a fundamental principle of statutory construction that all provisions of a statute should be read "... in the context of the overall statutory scheme and not in isolation." In re Union Telephone Co., 160 N.H. 309, 317 (2010). If possible, provisions must be read "...in harmony with the overall statutory scheme." Soraghan v. Mt. Cranmore Ski Resort, Inc., 152 N.H. 399, 405 (2005).

A second principle of statutory construction is that words in a statute should be given their commonly used meaning unless the statute specifies otherwise. RSA 21:2. We should "...first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning." In re Union Telephone Co., at 317.

A third principle of statutory construction is that the "[t]he legislature is presumed to know the meaning of words, and to have used the words of a statute advisedly." Pennichuk Corp. v. City of Nashua, 152 N.H. 729, 735 (2005).

Lastly, the reader can "...neither consider what the legislature might have said nor add words that it did not see fit to include." In re Appeal of Verizon New England, Inc., 153 N.H. 50, 60 (2005).

## 3. The Big Picture

### A. RSA 374-F:3, VI

Staff reads the first two sentences of RSA 374-F:3, VI in isolation. RSA 374-F:3, VI also provides that the system benefits charge applied to the use of the distribution system "may be used to fund public benefits related to the provision of electricity." (emphasis added) The legislature could have said may be used to fund public benefits "solely for" the provision of electricity. The legislature did not do this. The two sentences that Staff focuses on in Roman VI must be read in conjunction with the third sentence of Roman VI which expressly says "related to" the provision of electricity.

B. RSA 374-F:3, X

The two sentences of RSA 374-F:3, VI that the Staff points to cannot be read in isolation from other Restructuring Principles in RSA 374-F:3.

RSA 374-F:3, X says that restructuring should be designed to reduce market barriers to investments in “energy efficiency.” As noted by the Commission on page 20 of Order No. 24,930, this sentence does not say electric energy efficiency. The legislature could have inserted the word “electric” before the words “energy efficiency,” but did not.

RSA 374-F:3, X also says that utility sponsored energy efficiency programs should “target cost-effective opportunities that may otherwise be lost due to market barriers.” Staff’s focus on the first two sentences of RSA 374-F:3, VI must be read in conjunction with RSA 374-F:3, X. The record shows that Staff’s limited focus, if adopted, would result in cost-effective opportunities that would be lost if the HPwES program were limited to electric savings only.

C. RSA 374-F:3, VIII

Staff fails to consider RSA 374-F:3, VIII, entitled “Environmental Improvement.” Among other things, this Principle states that increased competition in the electric industry should be implemented in a manner that “supports and furthers the goals of environmental improvement.”

The record shows that the proposed HPwES program does support and further the goals of environmental improvement set forth in New Hampshire’s Climate Action Plan, as well as other state environmental policy goals. See Ex. 43, OEP Response to Staff 5-7.

D. Staff’s Narrow Focus Is Inconsistent With The Restructuring Statute As A Whole

There are two ways to read RSA 374-F:3, VI: either very narrowly, as Staff appears to do, or more broadly, in keeping with the goals of other Restructuring Principles and New Hampshire’s energy and environmental policies.

The Way Home submits that RSA 374-F:3, VI should be read in conjunction with other Restructuring Principles, so as to give effect to all the words that the legislature included in this chapter. To do otherwise, as Staff proposes, would result in a HPwES program that provides only a small amount of energy savings and fails to capture cost-effective opportunities that would otherwise be lost due to market barriers.

Reading RSA 374-F:3 in a broader context would not result in a HPwES program that is “unfair.” Indeed, as the Commission noted in Order No. 24,930,

We find it consistent with the purpose of RSA 374-F to broadly construe our authority to approve utility sponsored energy efficiency programs in the state of New Hampshire. Order, page 20.

#### 4. Conclusion

The Way Home believes that the comprehensive whole house model of the proposed HPwES program is an effective way of obtaining maximum energy savings and an effective way of targeting cost-effective opportunities that might otherwise be lost due to market barriers. The Way Home recommends that the Commission approve the utilities' joint petition to make the fuel neutral HPwES program permanent.

Respectfully submitted on behalf of  
The Way Home

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July 9, 2012

#### Certification of Service

I certify that on this date the original and 7 copies of this document were filed with the Commission and that copies were sent electronically to the Commission and to all parties to this proceeding.

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July 9, 2012