

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DOCKET NO. IR 20-089

Investigation into Effects of the COVID-19 Emergency on Utilities and Utility Customers

**RESPONSE AND JURISDICTIONAL OBJECTIONS OF NEW HAMPSHIRE
ELECTRIC COOPERATIVE, INC. CONCERNING STAFF RECOMMENDATIONS
DATED NOVEMBER 13, 2020**

New Hampshire Electric Cooperative, Inc. (“NHEC”) hereby respectfully submits its response and jurisdictional objections regarding the Staff’s November 13, 2020 recommendations concerning the creation of certain regulatory assets, the accounting and regulatory treatment of those assets, and the future ratemaking treatment of those assets, as those recommendations are intended to be apply to NHEC.

Introduction

The comments which follow express NHEC’s legal objections to the recommended application to NHEC of proposed Commission conditions and authority concerning NHEC’s accounting and rate decisions (the “Regulatory Asset Recommendations”). As NHEC’s comments will demonstrate, the Regulatory Asset Recommendations, if adopted, would be beyond the Commission’s statutory authority relative to NHEC and therefore would be invalid as applied.

At the outset, however, it should be clear that NHEC’s jurisdictional objections to the Regulatory Asset Recommendations do not extend to those aspects of this docket which are within the Commission’s RSA 363-B (termination of service) jurisdiction and which are the subject of the Agreement concerning customer collections and disconnections, filed in this docket and to which NHEC is a party. Likewise, NHEC’s jurisdictional objections are not intended to

signal any general disagreement or lack of commitment to the underlying purposes and objectives of the Governor's Emergency Order #3.

While New Hampshire law does not authorize the application of the Regulatory Asset Recommendations to NHEC, neither New Hampshire's statutory framework, the Commission's existing rules, nor NHEC's policies or practices limit NHEC's voluntary cooperation in, communications about, or coordination with, the Commission's ongoing efforts in connection to Emergency Order #3 and the issues identified by the Commission in Order No. 26, 343. Indeed, since its membership deregulation vote and filing of a Certificate of Deregulation more than twenty years ago, such constructive cooperation, operating within the limits of the appropriate jurisdictional framework, has been, from NHEC's vantage point, a hallmark of its relationship with the Commission. Regardless of the inapplicability of the Regulatory Asset Recommendations, NHEC fully intends to continue with and build upon this track record of constructive cooperation.

Emergency Order #3

Emergency Order #3 created a service disconnection/discontinuance moratorium applicable to, "All providers of electric, gas, water, telephone cable, VOIP, internet, and deliverable fuels service in the State of New Hampshire..." See, Emergency Order #3, Paragraph 2 (underscoring added). Obviously, the all-inclusive scope of Emergency Order #3 encompassed many entities and industries which are not public utilities and are not subject to Commission regulation under existing law. While Emergency Order #3 is applicable to both regulated and non-regulated entities alike, the order does not expand the scope of the Commission's existing statutory authority so as to encompass jurisdiction over non-public utility entities. Rather, Emergency Order #3 expressly provides that the Commission, "*shall provide assistance and guidance to the public*

utilities in implementing,” the order. *Id.* at Paragraph 4 (underscoring added). The order likewise provides that the Commission has authority to enforce the order as, “*provided by current law.*” *Id.* at Paragraph 5.

Thus, Emergency Order # 3 provides a significant implementation and enforcement role for the Commission, but expressly does not override or expand the statutory boundaries of the Commission’s jurisdiction.

Commission Order No. 26,343 and Order of Notice

Shortly after the issuance of Emergency Order #3 the Commission issued Order No. 26,343 implementing the emergency order as it applies to, “*public utilities as defined in RSA 362,*” and also as to NHEC. The order outlined the statutory basis of the Commission’s jurisdiction and distinguished the statutory sources of its the broad and generalized authority over the public utilities from the narrow source of its limited authority over NHEC as follows:

The Commission issues this order to provide guidance and direction to public utilities, as defined in RSA Chapter 362, regarding implementation of the provisions of Emergency Order #3. The Commission has broad regulatory and enforcement authority over public utilities’ service, facilities, equipment, operations, rates, service terms and conditions, customer relations, and customer complaints, under Title XXXIV of the New Hampshire Revised Statutes Annotated, including, without limitation, RSA 374:1 and 3 and RSA 365 and 378, and the Commission’s rules adopted pursuant to its general and specific rulemaking authority and in compliance with RSA 541-A. In addition, the Commission has jurisdiction under RSA 362:2, II, RSA 363-B, and the Commission’s rules over termination of service by the New Hampshire Electric Cooperative, Inc., a rural electric cooperative with a certificate of deregulation on file pursuant to RSA 301:57.

See, page 2 (underscoring added).

This description of the Commission’s more limited, RSA 363-B based, statutory jurisdiction relative to NHEC in the instant docket is consistent with its characterization of that limited jurisdiction in the June 4, 2020 Order of Notice. Footnote 1 of that document, which is a caveat

to a preceding itemization of issues to be addressed in this docket, reads as follows:

NHEC is subject to limited regulation by the Commission and certain of the issues specified, as well as many of the requests for information listed below, may not be applicable to NHEC. See RSA 362:2, II. NHEC is, however, subject to many provisions of the Commission's rules regarding utility customer relations, including restrictions on service disconnections. See N.H. Admin. R., Puc 1201.02. NHEC shall address at least the first four requests for information listed herein, and is encouraged to address the remainder.

See, Order of Notice, page 2 (IR 20-089, June 4, 2020).

Accordingly, in both Order No. 26,343 and the Order of Notice initiating this docket the Commission has recognize the limited nature of its jurisdiction concerning NHEC as to the subject matter of this docket and has identified the service disconnection provisions of RSA 363-B and the related service disconnection provisions the Commission's 1200 rules as the source of its authority relative to NHEC.

NHEC agrees with the Commission's jurisdictional analysis. In June 2000, following a RSA 301:57 vote of the NHEC membership, NHEC filed a Certificate of Deregulation with the Commission. Accordingly, pursuant to RSA 362:2(II), NHEC is not a "public utility" for the purposes of Title XXXIV (PUBLIC UTILITIES), except with respect to those limited statutory exceptions specifically enumerated in RSA 362:2(II). Other than RSA 363-B (Termination of Certain Utility Services), none of the authorizing statutes cited by the Commission in the Order No. 26,343 or the June 4, 2020 Order of Notice fall within the RSA 362:2 (II) enumerated exceptions.

The Regulatory Asset Recommendations

Unlike the issues concerning customer collections, service disconnections, and late charges which were raised by Emergency Order #3 and which have been addresses in the Agreement

concerning customer collections and disconnections, filed in this docket and to which NHEC is a party, the Regulatory Asset Recommendations do not fall within the any statutory exception to NHEC's deregulated status. Each of the eight recommendations for a Commission order are focused on elements of and implementation of traditional regulated retail ratemaking, rather than service termination. See, Staff Recommendations, pages 5-6 (November 13, 2020). Each recommendation deals with the creation of regulatory assets, requirements for the accounting and rate base treatment of those regulatory assets, as well as reserving the Commission's authority relative to future prudence reviews and other ratemaking related matters relevant in the context of the, "next rate case" or "when the utility seeks recovery." *Id.*

None of the subject matter covered by the Regulatory Asset Recommendations is within the Commission's statutorily limited jurisdiction regarding NHEC. None of this subject matter has been the raised in any previous Commission order or docket involving NHEC since its filing of a Certificate of Deregulation more than twenty years ago. There is no statutory basis for their recommended insertion into this docket.

Conclusion

For the reasons set forth above, NHEC respectfully objects to the recommended application to NHEC of the Regulatory Asset Recommendations' proposed imposition of Commission conditions and authority concerning NHEC's accounting and rate decisions. The Regulatory Asset Recommendations, if adopted, would be beyond the Commission's statutory authority relative to NHEC and therefore would be invalid as applied to NHEC.

Respectfully submitted on December 4, 2020,

New Hampshire Electric Cooperative, Inc.

By its attorney,

A handwritten signature in blue ink, appearing to read 'MS', with a long horizontal flourish extending to the right.

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