

STATE OF NEW HAMPSHIRE
SUPREME COURT

Appeal of the Office of the Consumer Advocate

Case No. 2022-0051

Supplemental Pleading in Support of Motion for Stay

NOW COMES the Office of the Consumer Advocate (“OCA”), appellant in this Rule 10 proceeding, and files this pleading in support of its Motion for Stay filed on January 26, 2022 (contemporaneously with its Notice of Appeal).

1. The purpose of this pleading is to make the Court aware that on January 31, 2022, the Public Utilities Commission (“PUC” or “Commission”) issued Order No. 26,573 and, in it, made determinations that are germane to the OCA’s request for a stay. A copy of Order No. 26,573 is appended to this pleading.

2. As the Court is aware, the purpose of the OCA’s Motion for Stay was to restore New Hampshire’s utility-delivered, ratepayer-funded energy efficiency programs to their *status quo ante* – i.e., to the status they enjoyed prior to the issuance of Order No. 26,553 by the Commission on November 12, 2021. Order No. 26,553 is the focus of this appeal because the Commission in that Order rejected the proposed 2021-2023 Triennial Energy Efficiency Plan and repudiated the Energy Efficiency Resource Standard (“EERS”) under

which the utilities have been operating their energy efficiency programs since January 1, 2018. The Commission ordered a drastic reduction in the energy efficiency charges that pay for most of the EERS programs, effective January 1, 2022, which has had an immediate and deleterious effect on the programs to the detriment of the ratepayers who use them or are planning to use them. Thus, the rate effects are the principal reason the OCA seeks a stay, to give the Court time to consider Order No. 26,553 on its merits.

3. The Order issued by the Commission on January 31 omits any mention of the pendency of this appeal and, indeed, expresses an intention to move ahead with implementing the November 12 Order the OCA seeks to challenge via appellate proceedings. Specifically, over the objection of the OCA and other parties, the Commission approved a procedural schedule intended to “expedite the approval of a Program Proposal,” i.e., proposed energy efficiency programs covering the triennium ending December 31, 2023, “by the May 1 deadline” previously imposed by the Commission.

4. If allowed to move forward, the procedural schedule approved by the Commission would impose a series of looming deadlines on utilities, the OCA, and other parties, requiring many hours of work by all concerned on an energy efficiency plan whose very basis this Court is being asked to review. All of these costs will be recovered from ratepayers, who should not be required to fund efforts that may prove to have been useless at best.

For the above reasons, the OCA respectfully requests that this honorable Court consider the attached Commission Order 26,573 as part of the pending Motion for Stay and take into account the likely effects of this subsequent Order.

Respectfully submitted,

OFFICE OF THE CONSUMER ADVOCATE
By its Attorneys,



Dated: February 1, 2022

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CERTIFICATE OF SERVICE

I hereby certify that consistent with Supreme Court Rule 26 and Supplemental Supreme Court Rule 18, on February 1, 2022, I served the foregoing Supplemental Pleading electronically and by conventional service to those parties listed in the Court's electronic docket file for this case.



Dated: February 1, 2022

Donald M. Kreis

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 20-092

ELECTRIC AND GAS UTILITIES

2021–2023 TRIENNIAL ENERGY EFFICIENCY PLAN

**Order on Further Procedural Schedule and LISTEN Community Service’s Petition
for Intervention**

O R D E R N O. 26,573

January 31, 2022

In this order, the Commission establishes a procedural schedule for the Joint Utilities’ energy efficiency program proposal for energy efficiency programming to be implemented between May 1, 2022 and December 31, 2023.

I. BACKGROUND AND PROCEDURAL HISTORY

On November 12, 2021, the Commission issued Order No. 26,553, addressing the 2021–2023 New Hampshire Statewide Energy Efficiency Plan and Implementation of Energy Efficiency Programs for the remainder of the 2021–2023 triennium. That order set out a detailed history of the proceedings in this docket. Among other directives, Order No. 26,553 established energy efficiency System Benefit Charge (SBC) and Local Delivery Adjustment Charge (LDAC) rates for the remainder of the 2021–2023 triennium. Order No. 26,553 also modified aspects of the structure and oversight of future energy efficiency programming and required further filings from the Joint Utilities¹ by December 15, 2021, including a proposal for programming to be implemented in 2022 and 2023 (Program Proposal).

¹ The Joint Utilities consist of: Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty, New Hampshire Electric Cooperative, Inc., 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.

In response to motions filed between December 3 and 13, 2021 for rehearing and clarification of Order No. 26,553, requesting a full commission and appointment of a special commissioner, and for disqualification of one of the Commissioners, the Commission issued Order No. 26,556 (December 14, 2021) and Order No. 26,560 (January 7, 2022). Among other things, Order No. 26,556 suspended the December 15, 2021 Program Proposal filing deadline.

Order No. 26,560 directed the Joint Utilities to file a proposed procedural schedule with the Commission by January 21, 2022. The Commission directed that the proposed procedural schedule provide for the submission of a Program Proposal for the remainder of the 2021–2023 triennium no later than March 31, 2022, for programming effective May 1, 2022, upon Commission approval. The deadline for objections to the proposed procedural schedule was January 28, 2022.

The Joint Utilities filed a proposed procedural schedule for the presentation of a Program Proposal, to which the New Hampshire Department of Energy (Energy) assented, on January 21, 2022. On January 25, 2022, the Office of the Consumer Advocate (OCA) filed a letter in opposition to the Joint Utilities' proposed procedural schedule. LISTEN Community Services (LISTEN), which petitioned for intervention, filed a letter opposing the Joint Utilities' proposed procedural schedule on January 26, 2022.

The Joint Utilities' proposed procedural schedule and other docket filings, with the exception of any information for which confidential treatment is requested or granted by the Commission, are posted at:

<https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-092.html>.

II. LISTEN COMMUNITY SERVICE'S PETITION FOR INTERVENTION

In its petition, LISTEN stated that it is a customer of Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty, as well as an organization, which represents clients who are eligible for various energy efficiency programs at issue in this docket. LISTEN argued that both it and its clients have an interest in this proceeding and will be directly affected by the Joint Utilities' proposed energy efficiency Program Proposal. No responses to LISTEN's petition for intervention were filed.

LISTEN's petition to intervene is granted, based on a finding that the standard for intervention in RSA 541-A:32 has been met. *See* N.H. Admin. R., Puc 203.17.

III. JOINT UTILITIES' PROPOSED PROCEDURAL SCHEDULE

A. POSITIONS OF THE PARTIES

1. Joint Utilities

The Joint Utilities proposed the following procedural schedule:

- 1) March 31, 2022 - Joint Utility filing
- 2) April 5, 2022 - Technical Session, 9:00 a.m.
- 3) April 12, 2022 - Responses to Data Requests posed during the Technical Session
- 4) April 19, 2022 - Testimony of Non-Utility Parties
- 5) April 25 and 26, 2022 - Hearing Dates
- 6) May 1, 2022 - Commission Order

The Joint Utilities represented that Energy assented; that the OCA, Southern New Hampshire Services, LISTEN, and Conservation Law Foundation did not assent; and that Clean Energy New Hampshire did not provide its position.

2. Office of the Consumer Advocate

The OCA generally opposed the procedural schedule, construing the pace of the schedule as accelerated and arguing that due process and fundamental fairness were implicated. The OCA requested the restoration of 2020 rate levels and programming until 2024. The OCA specifically stated that 19 days between the Joint Utilities' filing and the non-utility party testimony deadline was insufficient. The OCA also stated that it was unavailable for the April 25, 2022 hearing date due to a mandatory conflict.

3. LISTEN Community Services

LISTEN largely agreed with the OCA's letter, while also specifically noting that the Joint Utilities' proposed procedural schedule does not contemplate settlement discussions. LISTEN Community Services also noted that legislation is pending that would require different evaluation criteria be applied, and argued that efforts to draft a new plan at ratepayer expense could be duplicative if the proposed legislation is enacted.

B. COMMISSION ANALYSIS

The Commission appreciates the arguments of the OCA and LISTEN, which both highlight the fact that the Joint Utilities' proposed procedural schedule does not provide for party or stakeholder involvement until after March 31, 2022. Although the proposed procedural schedule meets the minimum requirements of Order Nos. 26,556 and 26,560, the lack of opportunities for party involvement during the remainder of February and March is not reasonable, especially when we consider that the Joint Utilities' deadline to file a new Program Proposal has already been extended from the original deadline of December 15, 2021, as originally set by Order No. 26,553.

Although we acknowledge the arguments that pending legislation may change the Program Proposal, we decline to modify the schedule or other parameters of prior orders in this docket based on pending legislation. This legislation will have no legal effect, until its language is finalized and it is passed by the legislature and signed by the Governor.

There are, however, critical intermediary steps that can be taken by the Joint Utilities, and that can be subject to discovery, which will expedite the approval of a Program Proposal by the May 1, 2022, deadline and increase opportunities for involvement and transparency. These steps will also decrease the risk for duplicative work being performed at ratepayer expense. This includes the filing of a report on all cost-effective programming options prior to proposing a specific suite of programming in the Program Proposal.

We therefore direct the Joint Utilities to file a report, based on the updated Avoided Energy Supply Costs, of all cost-effective energy efficiency programming options under the Granite State Test, as well as all cost-effective programming options under the Total Resource Cost test, by March 1, 2022. This report shall be subject to one round of discovery, with data requests due by March 11, 2022, and responses to data requests due by March 25, 2022. The addition of this step will aid the Commission in evaluating the Joint Utilities' Program Proposal under current law and will not duplicate efforts if legislation should be enacted. The reminder of the Joint Utilities' proposed procedural schedule is hereby approved, with the exception of the proposed hearing dates. Hearings will be scheduled on April 21 and 22, 2022, beginning at 9:00 a.m. each day.

As such, the procedural schedule in this matter is entered as follows:

- 1) March 1, 2022 – Joint Utility filing report on cost-effective programming

- 2) March 11, 2022 – Data Requests to Joint Utilities on March 1 report
- 3) March 25, 2022 – Joint Utilities’ responses to March 11 Data Requests
- 4) March 31, 2022 - Joint Utility filing Program Proposal
- 5) April 5, 2022 - Technical Session, 9:00 a.m.
- 6) April 12, 2022 - Responses to Data Requests posed during the Technical Session
- 7) April 19, 2022 - Non-Utility Parties filing pre-filed written Testimony
- 8) April 21 and 22, 2022 - Hearing Dates
- 9) May 1, 2022 – Commission Order

Based upon the foregoing, it is hereby

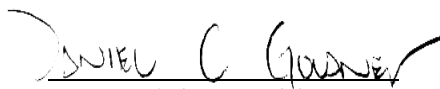
ORDERED, that LISTEN Community Service’s Petition to Intervene is GRANTED; and it is

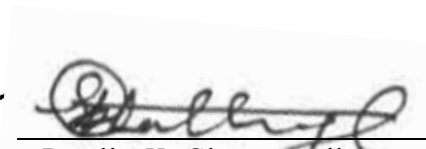
FURTHER ORDERED, that the procedural schedule proposed by the Joint Utilities, as modified herein, is APPROVED; and it is

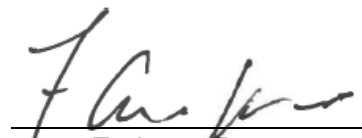
FURTHER ORDERED, that the Joint Utilities shall submit a report on all cost-effective programming options by March 1, 2022 in live excel spreadsheets, as discussed herein; and it is

FURTHER ORDERED, that all prior orders in this matter remain in full force and effect unless directly modified herein.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of January, 2022.


Daniel C. Goldner
Chairman


Pradip K. Chattopadhyay
Commissioner


F. Anne Ross
Special Commissioner

Service List - Docket Related

Docket# : 20-092

Printed: 1/31/2022

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