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September 30, 2022

Daniel C. Goldner, Chairman  
New Hampshire Public Utilities Commission  
21 South Fruit Street  
Concord, NH 03301

Re: IR 22-042; Electric and Gas Utilities; Investigation of Energy Efficiency Planning, Programming, and Evaluation; Department of Energy's Response to NH Utilities Motion for Rehearing and Pre-Filed Comments of the Department of Energy on this IR Proceeding

Dear Chairman Goldner:

On September 9, 2022, the NH Utilities (Utilities) filed a Motion for Rehearing of Order of Notice (Motion). In the Order of Notice (OON) issued August 10 in this matter, the Commission requested pre-filed comments on this IR docket. This letter is the Department of Energy's (DOE or Department) response to the utilities Motion and DOE's pre-filed comments on this IR:

#### Powers to Investigate

In the Motion at 10, the Utilities state that the Department's enabling statute and RSA 365:4 shift investigatory authority from the Public Utilities Commission (Commission or PUC) to the DOE. The Department does not read the shift in investigatory powers as broadly as the Utilities appear to. RSA 12-P allows the DOE to investigate all matters before the PUC (just as PUC Staff did prior to the creation of the DOE) in connection with DOE's appearances before the PUC and to provide a complete record for PUC consideration. DOE does not read RSA 12-P to mean that DOE's authority to investigate is to the exclusion of PUC investigations, except in the limited cases, for example, customer complaints brought under RSA 365:1, as discussed below.

Some statutory provisions cited by the PUC in its Order of Notice remain unchanged by RSA 12-P and the creation of the DOE. *See, e.g.*, RSA 365:15 (Commission may require utilities to answer questions); RSA 365:19 (Commission may investigate matters going to hearing); RSA 378:5 (Commission may investigate reasonableness of proposed rate increases).

Many other statutory provisions were expanded to allow both PUC and DOE to investigate. *See, e.g.*, RSA 365:5 (granting DOE power to make independent inquiry into

a broad range of utility matters); RSA 374:4 (granting the DOE the power/duty to keep informed); and RSA 378:7 (giving DOE power to motion for investigations into rates). Extension of these powers to the DOE does not by necessity diminish the powers of the PUC.

The utilities cite RSA 365:4 as shifting the power to investigate exclusively to the DOE, which it does. However, this specific statute applies only to customer complaints against utilities, which is not what is at issue in this IR docket.

In the DOE's view, many broad powers to investigate still lie with the PUC. This view is supported by the recently opened IR dockets into step adjustments and energy commodity procurement, where no utility party has questioned the PUC's authority to institute those investigations.

### Scope of and Need for This EE IR

While DOE does not agree that an IR docket into Energy Efficiency (EE) is necessarily beyond the scope of the PUC's investigatory authority, the OON appears to expand this EE IR docket beyond investigation and potentially into EE planning. The OON states that the PUC will "examine the Joint Utilities development of the 2024–2026 triennial plan" and that the IR docket "may serve as a starting point for other dockets to address specific issues or areas of concern in advance of the Joint Utilities' filing of the 2024–26 Plan on July 1, 2023." OON at 2. Like the Utilities (see Motion at 2-3) the DOE shares the view that HB 549 sets the appropriate role of the PUC with respect to EE Plans - that is, the PUC will review, and approve or deny, an EE Plan once it is presented. Examining the development of the next Plan and addressing specific areas of concern before the Utilities file the next Plan with the PUC for review seems ill-advised and inefficient.

First, the opportunity for pre-filing influence over the EE Plan is in plain view, thus potentially thwarting the rights of parties to the EE Plan docket. And even if no influence is exerted, the EE IR appears duplicative of what is already underway, as facilitated by the EE Committee of the Energy Efficiency and Sustainable Energy (EESSE) Board. The DOE is an active participant in that process, as it was as PUC Staff in past EE Plan filings. DOE's objective in that process is to guide the utilities towards developing and presenting an EE Plan for PUC review that balances the interest of all stakeholders including ratepayers and utility shareholders, and is compliant with underlying statutory requirements. If the Plan presented does not meet those objectives, DOE will make its views known on the record in the EE Plan docket, as PUC Staff did in DE 20-092 concerning the 2021-2023 EE Plan. In the DOE's view, a parallel IR proceeding, discussing many of the same issues with many of the same stakeholders is an inefficient use of utility and stakeholder resources. Plus, HB 549 allows for five months of review time for the 2024-2026 EE Plan (nearly double the time allotted to past EE Plan reviews), thus allowing the PUC significant opportunity for inquiry into the EE Plan after it is filed.

## Commissioner Attended Technical Sessions

The DOE participated in the Commissioner attended technical session concerning the benefit/cost model used for screening EE offerings held on September 29<sup>th</sup>. DOE does not object to that technical session because the PUC asked questions about the benefit/cost assumptions, calculations, and model, and the utilities answered those questions. All stakeholders refrained from trying to persuade another stakeholder to take a particular position in the upcoming EE Plan docket.

As the time for filing the next EE Plan approaches, however, the DOE suggests that such technical sessions cease so that the stakeholders (primarily the utilities) can focus their attention on finishing the EE Plan for filing on July 1, 2023, as required by HB 549. After the 2024-2026 Plan filing, the Commission can ask specific questions on the filing submitted for approval, instead of focusing on the 2022-2023 Plan, which it already approved.

Consistent with the Commission's current practices, this letter is being filed only in electronic form.

Sincerely,

*/s/ Paul B. Dexter*

Paul B. Dexter  
Staff Attorney/Hearings Examiner

cc: Service List