

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

IR 22-042

ELECTRIC AND GAS UTILITIES

Investigation of Energy Efficiency Planning, Programming, and Evaluation

Initial Comments of the NH Utilities

I. INTRODUCTION

On August 10, 2022, the New Hampshire Public Utilities Commission (the “Commission”), issued an Order of Notice in the instant proceeding describing its conditional approval of the 2022-2023 New Hampshire Energy Efficiency Plan in Order No. 26,621 (April 29, 2022) and commencing this new docket to review energy efficiency planning. This docket follows on from a series of proceedings and reviews through stakeholder groups, at the Commission, and at the Legislature over the past several years. Each of those proceedings addressed various aspects of the delivery of energy efficiency programming in New Hampshire by 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; and Northern Utilities, Inc. (collectively the “NH Utilities”) under the NHSaves banner.

In this particular instance, and according to the Order of Notice, the Commission conditioned its approval of the 2022-2023 Plan on certain requirements including “future plans meeting the 65 percent electric energy savings threshold on both an annual and lifetime basis, and on the Joint Utilities responding to new reporting requirements throughout 2022 and 2023.” Order of Notice at 1. The Commission further noted that it was opening this proceeding “to review the responses to these reporting requirements, further probe these topics through follow-

up questions, and examine the Joint Utilities development of the 2024–2026 triennial plan (2024–26 Plan).” *Id.* at 2.¹ According to the Commission, this investigation is intended to review:

issues related to RSA 374-F:3, including current and future energy efficiency program offerings based on the Commission’s inquiries into the following topics identified in Order 26,621:

1. The Granite State Test, Total Resource Cost Test, and Discount Rates;
2. Performance Incentive;
3. Impact on New Hampshire Economy;
4. Subsidized Services and Equipment;
5. Market Barriers;
6. Reporting on Spending by Category;
7. Reporting on Low-Income Program Offerings; and
8. Reporting made to other regional or regulatory organizations.

Id. at 3. Stakeholders were encouraged to pre-file comments by September 30, 2022 on the identified topics “so that the presiding officer can address any matters on which there is disagreement” at the prehearing conference the Commission scheduled for October 12, 2022. *Id.* at 4-5.

In line with Order of Notice, below are the initial comments of the NH Utilities in this proceeding. The below comments are intended only as the NH Utilities’ initial considerations in this proceeding, and the NH Utilities would intend to supplement them with additional information and observations should the investigation progress further. Additionally, to the extent the NH Utilities elect not to comment on a particular topic or issue from the Commission’s list in this initial phase, that election should not be presumed to imply that the NH Utilities have no position on that issue or that they agree with the position of any other party or stakeholder.

¹ The NH Utilities have responded to record requests and provided other information on the NHSaves programs on July 31, 2022, August 31, 2022, and September 26, 2022.

II. CONSIDERATIONS ON SCOPE

Before addressing the enumerated issues raised by the Commission in its Order of Notice, the NH Utilities offer two general observations about the scope of this proceeding. First, as of the date of this submission, a Motion for Rehearing of the Order of Notice filed by the NH Utilities on September 9, 2022 remains pending with the Commission. Irrespective of the comments provided here, the NH Utilities continue to support the arguments within that motion. Moreover, in light of the arguments made in that motion it is not clear to the NH Utilities whether this investigation should continue nor what the scope of the investigation is beyond addressing questions on the reporting requirements of Order No. 26,621. By offering these comments, the NH Utilities do not intend to imply that they would waive any rights to address further issues in line with that pending motion.

Second, and as noted in the above-referenced Motion for Rehearing, certain of the issues identified in the Order of Notice as being subject to investigation here were conclusively decided by the Legislature when it passed House Bill 549 (“HB 549”) in 2022. HB 549 largely canceled the findings and rulings in Order No. 26,553 (November 12, 2021), which attempted to significantly roll back the energy efficiency programs in New Hampshire, but the issues from Order No. 26,553 appear to have resurfaced in the Order of Notice for this investigation. As one example, the first item on the Commission’s enumerated list for this docket refers to the “Granite State Test, Total Resource Cost Test, and Discount Rates,” but HB 549 makes clear that for “future plan offerings, the commission’s review of the cost effectiveness shall . . . use the Granite State Test as the primary test, with the addition of the Total Resource Cost test as a secondary test.” In light of this legislative mandate, it is unclear to the NH Utilities what the Commission is intending to review, or what the Commission believes it has authority to review, relative to cost-

effectiveness tests and their attendant discount rates. Other items enumerated by the Commission in the Order of Notice have been similarly preempted by the Legislature's passage of HB 549.

Further, in that the Commission has only provided a list of issues it intends to review, but has not sought to define or delimit its investigation of those items, it is not clear from the Order of Notice what the Commission understands its scope of authority to be relative to each issue, or to the NHSaves programs more broadly. The Commission's expansive review to date, despite the Legislative restrictions, has already required the NH Utilities to devote substantial time and resources to responding to data requests, preparing comments, constructing scoping reports with third party vendors, and preparing for additional technical sessions and hearings. Those expenditures of time and resources have an opportunity cost by drawing the NH Utilities away from attending to existing programs and developing future programs.

In the view of the NH Utilities, resources would be better spent on the legislative requirements relating to the NHSaves programs. However, should this investigation continue (and it is not clear that it should), the Commission must significantly narrow and refine its areas of inquiry to address legislative preemption and so that the NH Utilities are not prevented from fulfilling their legislative mandate of preparing and filing the next triennial energy efficiency plan due to undue administrative burden created by this investigation. Any investigation should focus only on those areas within the Commission's purview rather than issues within the ambit of the Legislature or another state agency, and the Commission should define the issues or matters intended for review as opposed to relying upon a broad listing of potential topic areas.

III. SPECIFIC QUESTIONS

Beyond these more general comments and concerns, the NH Utilities offer the below

observations in response to some of the issues described in the Commission’s Order of Notice. As noted above, the NH Utilities do not intend to comment on each area identified by the Commission at this time, but the decision by the NH Utilities not to comment is not intended to foreclose the NH Utilities from commenting in the future.

a. Issue 1 - The Granite State Test, Total Resource Cost Test, and Discount Rates

Beyond the above clarification that the matter of which cost-effectiveness test to use has been conclusively determined by the Legislature, the NH Utilities note that the issue of testing and evaluating the cost-effectiveness of energy efficiency programs in New Hampshire is not a new, or unstudied, area. As documented on the Commission’s own website,² the issue of the appropriate cost-effectiveness tests was recently studied in an extensive effort by a dedicated working group spanning a significant period. That work involved the input and assistance of numerous stakeholders as well as outside experts in the field. The result of that process was the development of the Granite State Test (“GST”) as the preferred test for evaluating the cost-effectiveness of the NHSaves programs. *See* October 31, 2019 B/C Working Group Recommendations Regarding New Hampshire Cost-Effectiveness Review and Energy Optimization through Fuel Switching Study.³ Notably, the GST retains the long-standing practice of utilizing a “low-risk” discount rate as recommended in the “NH Cost Effectiveness Review” prepared by Synapse Energy Economics. *See* October 14, 2019 New Hampshire Cost-Effectiveness Review at 43-44.⁴ Following the extensive stakeholder review and development, the GST was presented to the Commission along with a recommendation that it become the

² https://www.puc.nh.gov/EESE%20Board/EERS_Working_Groups.html

³ Available at: https://www.puc.nh.gov/Regulatory/Docketbk/2017/17-136/LETTERS-MEMOS-TARIFFS/17-136_2019-10-31_STAFF_FILING_WORKING_GROUP_REC.PDF

⁴ Available at: https://www.puc.nh.gov/Regulatory/Docketbk/2017/17-136/LETTERS-MEMOS-TARIFFS/17-136_2019-10-31_STAFF_NH_COST_EFFECTIVENESS_REVIEW.PDF

primary test for cost-effectiveness evaluation, but that other tests would be used as secondary tests for specific purposes. *See* October 31, 2019 B/C Working Group Recommendations at 4-6. Accordingly, any issues relating to the “Granite State Test, Total Resource Cost Test, and Discount Rates” have been studied and resolved recently by numerous stakeholders, before being codified in law by the Legislature.

Further, in evaluating the recommendation to use the GST, the Commission noted that the test’s development “was informed by an extensive review of state policies as defined by statute, interpreted by Commission precedent, and guided by the state energy strategy.” Order No. 26,322 (December 30, 2019) at 8. Further, the Commission stated “As the primary determinant of whether to include a program in the portfolio, we appreciate that the benefits and costs within the GST are based on a review of New Hampshire’s existing statutes and policies.” *Id.* Based upon its review of the GST and its conclusion that the GST “will improve energy efficiency program screening”, the Commission adopted the GST as the primary cost test for the state. *Id.* at 9. When the Commission then sought to move away from the GST less than two years later, *see* Order No. 26,553 (November 12, 2021) at 39, the Legislature made clear in HB 549 that the GST must be used in New Hampshire.

Thus, even beyond the legislative requirement to employ specific cost-effectiveness tests, the substantial stakeholder involvement in the development of the GST, along with its recent vintage and alignment with New Hampshire law and policy, make clear that it is the proper test for the NHSaves programs. Though the GST may evolve over time, the NH Utilities observe no justification for revisiting or revising the cost-effectiveness test at this time in this investigation. Instead, the Commission must rely upon the GST as directed by the Legislature, and must use other tests only as secondary tests, and, therefore, should forego continued inquiry

on this issue at this time.

b. Issue 2 – Performance Incentive

As with the above issue pertaining to cost-effectiveness test, the issue of appropriate performance incentives is addressed by both HB 549 as well as a recent and extensive stakeholder review and analysis as documented on the Commission’s website. *See* footnote 2 above. HB 549 provides that to the extent changes to performance incentives are proposed as part of a future NHSaves plan filing, the Commission is to “promptly review and approve by order” those proposals. This obligation to promptly review and approve the performance incentive filings demonstrates that the Legislature has reached two conclusions: first, performance incentives should be included as part of the NHSaves planning and delivery; and second, the Commission’s scope of authority relative to performance incentives is to “promptly review and approve” proposals relating to them. HB 549 does not state (or fairly imply) that the Commission has some extensive or continuing authority to further investigate or revise the performance incentive framework.

Also, similar to the cost-effectiveness evaluation, a working group with broad stakeholder engagement recently reviewed best practices for the design of performance incentives as part of energy efficiency delivery in New Hampshire. On July 31, 2019, the then-Commission Staff presented a consensus report and recommendations to the Commission on the calculation and inclusion of performance incentives in future energy efficiency plans. *See* July 31, 2019 New Hampshire Energy Efficiency Calculation of Performance Incentive Beginning in 2020.⁵ Those performances incentives, as calculated in line with the report and recommendations, were reviewed and approved by the Commission as part of its plan approval

⁵ Available at: https://www.puc.nh.gov/EESE%20Board/EERS_WG/20190913-EERS-WG-PI-FINAL-REPORT.pdf

in 2019. Order No. 26,323 at 10, 12, 15. More detailed information on that report and the performance incentive implemented from it were provided in the NH Utilities' most recent record request responses on September 26, 2022, in this proceeding. Since the time of the report and recommendations, there has been a continuing review of the performance incentive calculations, and it may be that further refinements are necessary or advisable. In the view of the NH Utilities, however, any refinements should be evaluated as part of a broad stakeholder process consistent with past practice, rather than through a Commission-directed investigation, at least in part because such investigation is not within the Commission's purview under HB 549 and may be less efficient than the stakeholder process.

c. Issue 5 – Market Barriers

Should this investigation continue, and should the Commission further investigate market barriers, the NH Utilities offer the below comments in the hope of guiding and focusing any evaluation of market barriers in this docket. Historically, efforts to overcome market barriers through the NHSaves program have been substantially focused on helping customers identify appropriate energy efficiency opportunities and connecting those customers with vendors and service providers, as well as working to overcome up-front cost barriers to energy efficiency investments.

Because the NHSaves programs are required to be cost-effective, the plans, including their budget categories and tracking, are organized around programs rather than in response to particular market barriers. Further, and as stated in the reporting delivered by the NH Utilities to the Commission on August 31, 2022, market barriers are inter-related, constantly evolving and not reducible to a measurable cost. Some barriers, such as imperfect information on the part of customers, or buildings' structural and physical limitations to being weatherized or

otherwise capable of new efficiency equipment, do not lend themselves to a cost-benefit analysis. That the Legislature and the Commission have limited the NH Utilities to certain kinds of energy savings (kWh vs. MMBtu, for example) further complicates the assignment of costs to barriers associated with energy efficiency given the inter-relationship of energy-using appliances, heating, and electrification. Accordingly, at present it is not clear to the NH Utilities what the Commission seeks to understand related to market barriers or the interventions the NH Utilities have or could design to overcome them. Ultimately, if the Commission's goal in this investigation is to address market barriers to further the adoption of energy efficiency, the NH Utilities would require additional information about the particular market barriers in which the Commission is most interested, whether the NHSaves programs are capable of being adjusted to address those barriers while maintaining cost effectiveness, and whether such adjustments would require the input and expertise of outside consultants, if an investigation reveals that such adjustment is reasonable or advisable.

d. Issue 6 – Reporting on Spending by Category; Issue 7 – Reporting on Low-Income Offerings; Issue 8 - Reporting made to other regional or regulatory organizations

The NH Utilities support providing meaningful and useful reporting and have worked collaboratively and deliberately with the Commission and other stakeholders to periodically improve upon information provided on both a quarterly and annual basis, and to be responsive during the annual fiscal audit of each utility's energy efficiency programs. In light of the limited information in the Order of Notice, however, it is not clear to the NH Utilities what issues or concerns the Commission understands require examination relative to reporting requirements. In general, the NH Utilities take the position that the current manner and degree of reporting – which has been developed over time through significant stakeholder processes –

is transparent, consistent, and sufficient and that there is no cause for significant reevaluation or revision to the current reporting requirements. Therefore, the NH Utilities do not see a compelling reason to expend significant resources on further evaluating reporting requirements in this proceeding.

To the extent the Commission intended to refer to the reporting requirements created in Order No. 26,621 on these topics, the NH Utilities are prepared to answer questions on those reports. Regardless of the NH Utilities willingness to respond to questions on reporting requirements, it is not clear the extent to which the Commission may seek to apply the results of inquiries on this topic to modify or impact the NH Utilities' planning process, or the energy efficiency programs themselves. Clarity is required on the scope of the Commission's inquiry because attempts to modify the planning for the NHSaves programs may contravene the mandate of HB 549 that it is the role of the NH Utilities to design and develop the energy efficiency triennial plans.

e. 2024-2026 Energy Efficiency Plan

Lastly, and as addressed in the Motion for Rehearing of the Order of Notice, the NH Utilities maintain that the Commission must not pursue its intent to “open this investigatory proceeding to . . . examine the Joint Utilities development of the 2024–2026 triennial plan (2024–26 Plan) . . . [to] aid the Commission in its role ensuring that the 2024–26 Plan comports with the standards and policy priorities of RSA 374-F.” Order of Notice at 2. HB 549 assigns the role of plan development to the NH Utilities. While the Commission is responsible for reviewing and approving (or rejecting) completed plans submitted to the Commission, the planning obligation is outside the scope of the Commission's responsibilities. To the extent the Commission intends to ensure the 2024-2026 Plan “comports with the standards and policy

priorities of RSA 374-F”, the time to do that is during the adjudication of the 2024-2026 Plan following its submission to the Commission for review. To do otherwise would not only be contrary to law, but disruptive and possibly obstructive to the well-established, complex, and labor-intensive processes of the NH Utilities and the numerous stakeholders with whom the NH Utilities collaborate in developing the NHSaves plans.