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September 30, 2022

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Daniel Goldner, Chair
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: Docket No. IR 22-042 Electric and Gas Utilities Investigation of Energy Efficiency Planning, Programming, and Evaluation; LISTEN's Pre-Filed Comments on the Proceeding

Dear Chair Goldner:

LISTEN Community Services (LISTEN) submits these initial comments pursuant to the August 10, 2022 Order of Notice issued in this docket. LISTEN reserves the right to add to and/or modify the positions and concerns set forth below. Consistent with the secretarial letter of March 17, 2020, this filing is being submitted electronically. Hard copies of the filing will not follow unless requested.

As stated in its September 14, 2022 filing, LISTEN supports the pending motion for rehearing that the joint utilities filed on September 9, 2022. LISTEN does not think that this investigation docket should proceed until the issues raised in the motion are resolved. LISTEN also believes that the Commission should refrain from scheduling any additional technical sessions until it issues a decision on the utilities' motion and until it clarifies the scope of this investigation given the concerns raised by LISTEN and other stakeholders in their preliminary comments.

LISTEN shares the concerns raised by other stakeholders that the Order of Notice appears to blur the lines between developing the 2024-2026 energy efficiency plan and the review of the plan. Not only does this docket risk being duplicative of the efforts already underway, but it risks violating the rights of the parties to raise certain issues or to make specific arguments in the adjudicative docket once the utilities file the plan in July 2023.

As a practical matter, there is not enough time for this docket to "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." Order of Notice at 2. The work to develop the plan and obtain stakeholder feedback is already underway. The utilities will have to make important choices well in advance of the July 1st deadline in order to meet the deadline. The proposed timeline for developing the plan calls for making certain decisions as early as March 2023. See Proposed Timeline available at <https://www.energy.nh.gov/sites/g/files/ehbemt551/files/inline-documents/sonh/2024-2026-plan-timeline.pdf> (last accessed Sept. 30, 2022).

As others have pointed out, the legislature has determined that the Commission's role is to review and approve or deny the final plan once it is filed with the Commission. LISTEN believes that issuing "non-binding guidance" prior to the review of the 2024-2026 plan would be improper. Any guidance that is issued in advance of the plan filing would be perceived as binding. Why would the utilities risk filing a plan that is inconsistent with the Commission's guidance on a particular topic? Any non-binding guidance would, in effect, predetermine the outcome of the plan before the parties have an opportunity to present their case and build the record in an adjudicative proceeding. The Commission should reserve its judgment about aspects of the plan until it has a chance to review a plan that is properly before it. Any determinations about "changes to current efficiency programming, planning, performance incentives, and evaluation" should be made in an adjudicative docket.

The Order of Notice also states that the Commission will hold a prehearing conference and "will consider the matters listed in Puc 203.15(c) and (d), including the establishment of a procedural schedule governing the remainder of the proceeding and further define the scope of this investigation." Order of Notice at 5. LISTEN respectfully submits that Puc 203.15(c) and (d) govern adjudicative proceedings. Since the Commission has stated that this is not an adjudicative proceeding, LISTEN believes that these rules are not relevant to this proceeding. Puc 203.15(c) specifically covers witnesses, testimony, settlement, and other matters that "aid in the disposition of the proceeding." Puc 203.15(d) governs preliminary positions and discovery, among other topics. Since this is not an adjudicative proceeding, there should be no witnesses, testimony, settlement, or discovery.

To the extent that this docket proceeds, LISTEN believes that the scope should be clearly defined to exclude planning and the issuance of any "guidance." However, LISTEN believes that it would be appropriate for the Commission to ask stakeholders for ideas about additional reporting that could be provided in the future to track outcomes and potential areas for improvement. For example, the Commission could ask the parties for suggestions about additional information that could be reported about the low-income program to determine how well we are serving different low-income customers throughout the state. Some ideas could include tracking the number of customers we serve in different geographic areas of the state or how many low-income renters we are serving compared to low-income homeowners. This inquiry should include feedback about the resources needed to track this data and the frequency with which the data should be reported.

Thank you for considering these comments.

Sincerely,

/s/ Raymond Burke

Raymond Burke, Esq.

New Hampshire Legal Assistance

Attorney for LISTEN Community Services

Cc: IR 22-042 service list via email