

**STATE OF NEW HAMPSHIRE**  
**before the**  
**PUBLIC UTILITIES COMMISSION**

DOCKET NO. IR 22-061

Electric Distribution Companies

Investigation of Potential Jurisdiction Conflicts Related to Authorization of Pilot Programs under  
RSA 362-A:2-b

**MOTION TO COMMENCE AN ADJUDICATIVE PROCEEDING**

Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”), Unitil Energy Systems, Inc. (“Unitil”), and Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (“Liberty”) (together, the “NH Electric Utilities”) submit this joint motion to the New Hampshire Public Utilities Commission (the “Commission”) pursuant to Puc 203.07 requesting that Docket IR 22-061 be discontinued and an adjudicative proceeding as defined by RSA 541-A:1 be commenced and conducted consistent with RSA 541-A:31-36. As set forth below, the Commission’s September 20, 2022 Order of Notice (the “Order of Notice”) indicates, and SB 321—the law pursuant to which this docket was opened—requires, that this docket will result in determinations regarding whether jurisdictional conflicts exist concerning the use of the distribution and transmission systems, the NH Electric Utilities’ transmission owners operation agreement, and open access transmission tariff (“OATT”) with ISO New England (“ISO-NE”). To ensure that the due process rights of the Companies are preserved and that the record in this proceeding is sufficient to reach a definitive determination on the specific questions detailed in the Commission’s Order of Notice and as required by SB 321 of 2022, this docket should be designated as an adjudicative proceeding instead of an investigation.

## I. Introduction

Docket IR 22-061 was initiated in response to SB 321 which revised RSA 362-A to allow the Commission to consider pilot programs that would permit limited producers of electrical energy to sell the energy they produce to one or more purchasers other than the franchise electric utility. Prior to the Commission's consideration of such pilot programs, however, the Commission was directed to "open a docket to *determine definitively* whether any jurisdictional conflicts exist concerning the use of the distribution or transmission system, including a determination about whether the activities allowed by this chapter would require a utility to violate its transmission owners operators agreement or require a recalculation of any ISO-NE open access transmission tariffs, and whether such projects produce avoided transmission cost savings" (emphasis added). This determination will necessarily reach conclusions regarding the NH Electric Utilities' legal rights, duties, or privileges, making this a contested case under RSA 541-A:1, and it should be made based on a fully developed record that includes sworn testimony, the right to cross-examine witnesses, discovery and hearings, as necessary. An adjudication allows for development of a complete record and ensures due process for the mandatory and intervening parties.

In support of this motion, the NH Electric Utilities state as follows:

1. RSA 541-A:1 defines a contested case as "a proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after notice and an opportunity for hearing."
2. Pursuant to RSA 541-A:31, I, the Commission "shall commence an adjudicative proceeding if a matter has reached the stage at which it is considered a contested case..." (emphasis added).

3. The outcome of this docket will determine whether the Commission has jurisdiction to allow pilot programs pursuant to RSA 362-A to move forward. If such pilot programs are permitted to move forward, the NH Electric Utilities will be obligated to facilitate such pilot programs even if the NH Electric Utilities do not agree that these pilot programs are consistent with the terms of ISO-NE's transmission operating agreements and tariffs and interpret these pilots to infringe upon FERC jurisdiction. So by definition this proceeding will result in an impact to the legal rights, duties, or privileges of the NH Electric Utilities making this proceeding a contested case that must be conducted as an adjudicative proceeding.
4. The outcome of this proceeding also creates the potential for conflict between the NH Electric Utilities' compliance with a Commission order and the NH Electric Utilities obligations under ISO-NE tariff requirements. This potential for conflict between the NH Electric Utilities' obligation to comply with the Commission's order in this proceeding and the potentially conflicting obligation to comply with ISO-NE tariff requirements further supports conducting the proceeding as an adjudication to ensure that the record is robust and complete, and that due process has been fully afforded to all parties.
5. Commission investigations generally do not include sworn testimony, or opportunities for cross-examination and discovery as is permitted for an adjudicative proceeding. Instead, investigations typically rely on less formal filings (e.g., comments) without an opportunity for cross-examination. Conducting this proceeding as an investigation therefore has the potential to deprive the NH Electric Utilities of their full due process rights.
6. Pursuant to RSA 541-A:31(VI), designation of this docket as an adjudication will allow for development of a robust record. This will not only ensure that the NH Electric Utilities'

due process rights are protected but will also ensure that the Commission is able to establish a complete record for purposes of reaching its final decision.

7. Therefore, by this motion, the NH Electric Utilities have demonstrated good reason for the Commission to convert this proceeding from an investigation to commence an adjudication. It is clear from the Order of Notice that this proceeding is a contested case as defined by RSA 541-A:1 because the legal rights, duties or privileges of the NH Electric Utilities will be impacted by the Commission's decision in this proceeding—a definitive decision that has been legislatively mandated by SB 321. It is also clear that the less formal process typically used by the Commission for purposes of conducting an investigation will be insufficient to develop the record necessary for this proceeding. For these reasons, the NH Electric Utilities respectfully request that the Commission commence and adjudication that affords the parties with all of the due process rights set forth in RSA 541-A:31.


WHEREFORE, the NH Electric Utilities respectfully request that the Commission:



- A. Grant this motion and suspend this docket to commence an adjudicative proceeding;
- B. Set a procedural schedule for this docket that allows for sworn testimony, discovery, and hearings to address the issues set forth in the Order of Notice; and
- C. Grant such further relief as is just and equitable.

Respectfully submitted,

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.

\_\_\_\_12/01/2022\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

\_\_\_\_\_  
12/01/2022  
Date

\_\_\_\_\_  
  
Jessica A. Chiavara