STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 20-092

ELECTRIC AND GAS UTILITIES

2021–2023 Triennial Energy Efficiency Plan

Order on Motion for Rehearing and Clarification of Order No. 26,621

O R D E R N O. 26,642

June 21, 2022

I. BACKGROUND AND PROCEDURAL HISTORY

In Order No. 26,621 (April 29, 2022) (Order 26,621), the Commission approved the 2022–2023 New Hampshire Energy Efficiency Plan (2022–23 Plan) as consistent with the directives found in 2022 N.H. Laws, ch. 5 (HB 549). The procedural history of the phase of this docket leading up to the issuance of Order 26,621 is detailed in that Order.

On May 27, 2022, the Joint Utilities filed a Motion for Rehearing and Clarification of Order 26,621 (Motion).

On June 3, 2022, the Office of the Consumer Advocate (OCA) filed a letter in support of the Joint Utilities' Motion.

On June 6, 2022, the Clean Energy New Hampshire (CENH) filed a letter in support of the Joint Utilities' Motion.

Order 26,621, the Joint Utilities' Motion, letters of support, and related docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at:
https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-092.html.

II. POSITIONS OF THE PARTIES

a. Joint Utilities

The Joint Utilities stated that there are two directives in Order 26,621 that they will not be able to comply with, and therefore the Joint Utilities requested rehearing of those directives. The Joint Utilities also requested clarity or additional information regarding implementation of certain reporting requirements for the 2022 and 2023 programs years due to unclear directives.

The first directive the Joint Utilities state that they will not be able to comply with is a general January 31, 2023, reporting deadline related to program year 2022 reporting requirements. The Joint Utilities argued that it is not administratively feasible for them to submit the reports by January 31, 2023, and requested that the deadline be moved to June 1, 2023.

The second directive the Joint Utilities state that they will not be able to comply with is a requirement that, for the future triennial plan filings beginning with program years 2024–2026, each of the electric utilities plan for at least 65 percent electric savings on both an annual and lifetime basis. The Joint Utilities request that the electric savings requirement be determined solely on an annual basis. According to the Joint Utilities, HB 549 should be interpreted to mean the 65 percent requirement is calculated only on an annual basis, and that the Commission erred in holding that the 65 percent threshold applied to both annual and lifetime savings.

In support of this position, the Joint Utilities argued that: 1) HB 549 restored the energy efficiency programming framework, components, and funding to prior structures; 2) that the lifetime savings threshold cannot be met without significant disruption to the structure of existing programs or impermissible cost-shifting; and 3) a factor identified in Order 26,621, where the Commission considered an increase to planned C&I lifetime savings in 2022 over 2021 for the NHEC in its analysis, was erroneous because it was actually attributed to an unplanned budgetary carryforward in that sector. According to the Joint Utilities, the Commission's interpretation would require a programming shift that would change the existing programming structure and may be contrary to RSA 374-F:3, VI-a(a)(2)'s directive ensuring the advantages of energy efficiency across all ratepayer classes; would include the scaling back or discontinuation of certain residential programs; and would create inconsistent program offerings between utilities, preventing the NHSaves programs from providing equitable benefits to customers. The Joint Utilities argued that the Commission's interpretation would cause administrative barriers to Home Performance program vendors in particular. Lastly, the Joint Utilities placed emphasis on the use of the word "planned" in RSA 374-F:3, VI-a(d)(4), concluding that the word "planned" makes the Commission's interpretation inconsistent with the wording of the statute because of the use of annual planning goals in the energy efficiency resource standard approved by Order No. 25,932 (August 2, 2016).

The Joint Utilities also requested clarification of several reporting requirements contained in Order 26,621.

With respect to reporting requirement iii(3), requiring:

> Please comprehensively conduct a study and report on the 2021 and 2022 Plan's long-term impact on the NH economy that quantifies all factors noted in the 2022– 2023 Plan at Bates pages 6 and 7 by properly accounting for discounting that reflects ratepayers' time-preference, and by estimating the energy savings to reflect both the energy intensity and the spillover impacts also associated with future incremental economic activity prompted by the Plan. Submit this study by January 31, 2023.

the Joint Utilities request an extension of the reporting deadline to June 1, 2023, and clarification and guidance, including examples, of what information should be obtained and reported with respect to "energy intensity" and "ratepayers' time-preference," as that is not currently reported information which the Joint Utilities construe as not readily available information.

With respect to reporting requirement v(1):

> For 2021 and 2022, please conduct an analysis quantifying, in terms of net present value, the market barriers listed in Tables 2.1 and 3.1 of the proposed EE Plan (Bates Pages 27, 28, 49, and 50). Please provide this analysis in live excel spreadsheets with all assumptions clearly stated, justified, and referenced. Do not link to spreadsheets that are not also provided or include hard-coded numbers without a reference to where the figure originated from.

the Joint Utilities request clarification as to what the Commission seeks in terms of quantifying cost or value of a market barrier, or in the alternative, that the Commission modify or rescind this reporting requirement. According to the Joint Utilities, market barriers are conditions that prohibit or inhibit the marketplace from implementing a given energy efficiency solution and do not have a readily identifiable cost, and the reference to net present value suggests there should also be a lifecycle cost of the market barrier, which, to the knowledge of the Joint Utilities, does not exist.

b. Office of Consumer Advocate

The OCA's letter generally supported the part of the rehearing request related to the requirement the Joint Utilities meet the 65 percent threshold on both an annual and a lifetime basis. The OCA stated that such an interpretation would have a negative impact on residential programs and is inconsistent with legislative intent.

c. Clean Energy New Hampshire.

CENH's letter generally supported the positions of the Joint Utilities and the OCA in seeking rehearing of the Commission's interpretation RSA 374-F:3, VI-a(d)(4). CENH stated such an interpretation would require each electric utility to plan for at least 65 percent of program-related energy savings to come from reductions in electricity consumption rather than fuels such as oil and propane because it will have a negative impact on the funding and programs available to residential electric customers, resulting in inconsistent program offerings throughout the state and, prevent the NHSaves programs from providing equitable benefits to customers, and is inconsistent with longstanding practice for calculating efficiency plan's goals.

III. COMMISSION ANALYSIS

The Commission may grant rehearing or reconsideration for "good reason" if the moving party shows that an order is unlawful or unreasonable. RSA 541:3; RSA 541:4; *Rural Telephone Companies*, Order No. 25,291 (November 21, 2011); *see also Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 25,970 at 4–5 (December 7, 2016). A successful motion must establish "good reason" by showing that there are matters that the Commission "overlooked or mistakenly conceived in the original decision," *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citations omitted), or by presenting new evidence that was "unavailable prior to the issuance of the underlying decision," *Hollis Telephone Inc.*, Order No. 25,088 at 14 (April 2, 2010). A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Public Service Co. of N.H.*, Order No. 25,970, at 4–5 (citing *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *Freedom Energy Logistics*, Order No. 25,810 at 4 (September 8, 2015)).

a. Reporting Requirements

With respect to reporting requirements, we agree that good cause has been shown to grant rehearing and/or clarification. We accept the Joint Utilities' assertion that it is not reasonably practicable to meet the January 31, 2023, reporting deadline relating to requested information for program year 2022. However, we also note that the Commission considers it to be essential to receive and review these reports prior to the filing and evaluation of the next triennial plan, due July 1, 2023, pursuant to RSA 374-F:3, VI-a(d)(5). The Joint Utilities' proposed deadline of June 1, 2023, does not provide the Commission and other interested persons adequate time to review these reports. As such, we grant the Joint Utilities' motion in part, and modify the reporting deadline for 2022 program year information to March 31, 2023.

With respect to the request for clarification of reporting requirement iii(3), we clarify the intent of the question. This study and reporting requirement calls for sensitivity analysis using a range of discount rates to demonstrate: 1) the impact of time-preference on benefits and costs, and 2) to account for the impact of economic activity resulting from quantifiable cost savings that will result in future energy consumption. The Joint Utilities may reference the response to reporting requirement i(2), as well as other discount rates, to provide a range of discount rates to account for time-preference. With respect to energy intensity, we refer the Joint Utilities to footnote 16 in Order 26,621 for reference to the concept of energy intensity, and the U.S. Energy Information Administration's calculated energy consumption per chained dollar figures for New Hampshire and other regional states.[1] The utilities may also pursue other sources that report energy intensities to better capture New Hampshire realities. As indicated in reporting requirement iii(3), sensitivity analysis should be performed on each of the quantifiable financial impacts the utilities presented in the 2022–2023 Plan, while noting the Commission is also interested in the overall impact. To the extent that any particular financial impact cannot be reasonably estimated,

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[1] *See, e.g.,* U.S. ENERGY INFO. ADMIN., *Total Energy Consumption Estimates, Real Gross Domestic Product (GDP), Energy Consumption Estimates per Real Dollar of GDP, Ranked by State, 2019*, last visited June 17, 2022, available at https://www.eia.gov/state/seds/sep_sum/html/pdf/rank_use_gdp.pdf. The last column of this one-pager lists state-wide energy intensities across the United States.

please provide an explanation why. The deadline for this study is modified to March 31, 2023, as described herein above.

With respect to reporting requirement v(1), we clarify the intent of the question and extend its reporting deadline. The focus of this question is to attempt to comprehensively enumerate the end-users' costs of addressing the market barriers identified by the Joint Utilities, as opposed to performing a benefit-cost analysis on each identified market barrier. We also acknowledge that not all responses to market barriers are readily quantifiable. We clarify that reporting responsive to this question should identify and enumerate the present costs of addressing these market barriers. The Joint Utilities should quantify all quantifiable costs (such as costs for marketing, rebates, stocking, etc.) or provide a narrative explanation of the non-quantifiable responses to each identified market barrier. For the purposes of the instant reporting requirement, even if life-cycle costs would be necessary to compare alternative options or perform a benefit-cost analysis, we seek identifiable cost information to evaluate current practices, therefore clarify that reporting should be limited to costs and measures occurring within the identified programming year. The 2021 program year reporting deadline is modified to August 31, 2022. The 2022 program year reporting deadline is modified to March 31, 2023, as described herein above.

b. Planned Electric Energy Savings

We next turn to the final sentence of RSA 374-F:3, VI-a(d)(4), "In no instance shall an electric utility's planned electric system savings fall below 65 percent of its overall planned energy savings." We do not find that good cause has been shown to grant rehearing of our interpretation. In Order 26,621, we determined that the 65 percent planned electric energy savings minimum threshold is applicable to both annual and lifetime planned savings. The Joint Utilities, supported by the OCA and

CENH, argued that the Commission interpretation is unreasonable, unjust and inconsistent with the policy purpose and statutory scheme of RSA 374-F:3, VI-a.

At the outset, we do not agree with the textual interpretation put forward by the Joint Utilities and deny rehearing on that basis. The Joint Utilities argue that the use of the word “planned” in the last sentence of 374-F:3, VI-a(d)(4) links a prior planning process from the energy efficiency resource standard, approved by Order No. 25,932 (August 2, 2016), to the present statutory directives. We first note that express statutory reference to energy efficiency resource standard framework approved by Order No. 25,932 was removed from RSA 374-F:3, VI by HB 549.

Reading the statutory text, we find that the phrases “in no instance” and “overall planned energy savings” unambiguously support our conclusion that the 65 percent electric system savings threshold applies to both annual and lifetime planning scenarios. Both of these planning horizons are regularly calculated and reported on in the context of energy efficiency program planning and evaluation, lifetime figures are a component of cost effectiveness analysis, and lifetime savings are given greater weight in after-the-fact evaluations. No ambiguity arises from the word “planned” to justify a deeper dive into the intent of the legislature or reference to past Commission practice.

Although we deny rehearing on the plain text of the statute, we nonetheless briefly address the policy purpose and statutory scheme of RSA 374-F:3, VI-a. As was clearly stated in Order 26,621, we believe that HB 549’s changes to RSA 374-F provide financial stability to energy efficiency programming while also directing the Commission to oversee ratepayer-funded energy efficiency programming so that it meets the General Court’s policies and purposes. *See* Order 26,621 at 19–20. Among these, HB 549 directed that programming and incentives be optimized to deliver ratepayer savings as funding allows, and that the Commission consider whether programming offerings have been appropriately prioritized among and within customer classes. *See id.,* RSA 374-F:3, VI-a(d) and RSA 374-F:3, VI-a(d)(4). These directives are furthered by the sentence at issue, which states that "[i]n no instance shall an electric utility's planned electric system savings fall below 65 percent of its overall planned energy savings." Such a directive ensures that programming be optimized and appropriately prioritized to deliver savings to each electric utility's ratepayers.

Based upon the foregoing, it is hereby

ORDERED, that the Joint Utilities Motion for Rehearing and Clarification is GRANTED IN PART and DENIED IN PART as discussed herein; and it is

FURTHER ORDERED, that the reporting requirements and associated reporting requirement deadlines are modified and clarified as discussed herein; and it is

FURTHER ORDERED, that the request for rehearing related to the interpretation of RSA 374-F:3, VI-a(d)(4) is DENIED.

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

Daniel C. Goldner Chairman	Pradip K. Chattopadhyay Commissioner	F. Anne Ross Special Commissioner

Service List - Docket Related

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