

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 20-092

ELECTRIC AND GAS UTILITIES

2021–2023 Triennial Energy Efficiency Plan

**Order Addressing Motions on the Composition of the Commission and
Motions for Rehearing, Clarification, and/or Stay
of Order No. 26,553**

O R D E R N O. 26,560

January 7, 2022

I. Introduction

This order consolidates and addresses a series of motions filed by parties to this docket, following the Commission’s issuance of Order No. 26,553 (November 12, 2021) on the 2021–2023 Triennial Energy Efficiency Plan. Among other things, Order No. 26,553 established energy efficiency rates for the System Benefits Charge and Local Delivery Adjustment Charge, rejected the proposed settlement and energy efficiency plan that would have cost New Hampshire ratepayers nearly \$400 million over the course of the triennium, and discontinued the utility performance incentive and carryforward beginning January 1, 2022. The order further required the utilities to file new budgets and program proposals consistent with the Commission’s order.

The various moving parties in this case have filed motions for rehearing and clarification of numerous aspects of Order No. 26,553, a request for a full commission and appointment of a special commissioner, and a motion for disqualification of one of the Commissioners. The utilities have provided the required budgets, and the Commission grants an extension until March 31, 2022, for submission of a new energy efficiency program proposal.

The Commission's specific rulings on these motions follow. Of particular note, however, the parties' motions for rehearing are premised, in significant part, upon a characterization of Order No. 26,533 as *reducing* the energy efficiency budget. Contrary to that characterization, *see, e.g., LISTEN Cmty. Servs.'s Mot. for Reh'g*, at 2, when comparing the budget for the 2021–23 Triennium to 2018–2020 Triennium, the rates established in Order No. 26,533 will result in an *increase* of \$4–8 million in energy efficiency program funding.¹ Also, when comparing 2021 to 2020, Order 26,533 results in an estimated increase of \$4 million in program funding.

For these, and the other reasons explained in greater detail below, the parties' requests for rehearing and reconsideration are hereby denied, in part.

II. Procedural History

a. Background

On November 12, 2021, the Commission issued Order No. 26,553 (Order 26,553 or Order), addressing the 2021–2023 New Hampshire Statewide Energy Efficiency Plan and implementation of energy efficiency programs for the remainder of the 2021–2023 triennium. That Order set out a detailed history of the proceedings in this docket. Among other directives, Order 26,553 established energy efficiency System Benefit Charge (SBC) and Local Delivery Adjustment Charge (LDAC) rates for the remainder of the 2021–2023 triennium. Order 26,553 also modified aspects of the structure and oversight of the energy efficiency programs as proposed (Plan or

¹ Based on the Joint Utilities Dec 15, 2021 filing, the Commission estimates \$180 million for gas and electric programs in the 2021–2023 Triennium compared to \$176 million for the 2018–2020 Triennium budget. When the 2022–2023 Triennium gas and electric programs are compared to the 2018–2020 actuals of \$172 million, the increase in program spending is approximately \$8 million. The Commission used 5.12% to estimate the 2021 plan year performance incentive payment.

Proposal) by the Settling Parties,² and required further filings from the energy efficiency program administrators on the programming to be implemented in 2022 and 2023.

b. Post-Order Filings

On December 3, 2021, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty and Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty filed a motion for immediate stay and, in the alternative, clarification of Order No. 26,553.

On December 6, 2021, the Commission issued an expedited order clarifying that, because the specifics of programming were not finalized by Order 26,553, the Joint Utilities could continue to rely on Order No. 26,440 (December 29, 2020) for authority to continue offering previously authorized energy efficiency programming until programming for 2022 and 2023 is finalized.

On December 10, 2021, the 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; Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty; and Northern Utilities, Inc. (together, the “Joint Utilities”) filed a Motion for a Full Commission and Appointment of Special Commissioner(s).

On December 10, 2021, the Joint Utilities, the Office of the Consumer Advocate (OCA); Clean Energy New Hampshire; Conservation Law Foundation; and Southern New Hampshire Services (altogether, the “Joint Movants”) filed a motion for rehearing,

² The Settling Parties to the Plan consisted of Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities, 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 Utilities, Northern Utilities, Inc., the Office of the Consumer Advocate, Conservation Law Foundation, The Way Home, Southern New Hampshire Services, and Clean Energy New Hampshire

clarification, and stay of Order No. 26,553 pursuant to RSA 541:3 (Joint Movants' Motion).

On December 10, 2021, the New Hampshire Department of Energy (Energy) filed a motion for rehearing and/or clarification of Order No. 26,553 pursuant to RSA 541:3 (Energy Motion).

On December 13, 2021, LISTEN Community Services (LISTEN) filed a motion for rehearing, clarification, and stay of Order No. 26,553, and joining the Joint Movants' Motion. LISTEN also filed a letter stating that it joined the Joint Utilities' request for a Full Commission and Appointment of Special Commissioner(s). Due to the similarity between LISTEN's motion and that of the Joint Movants, the Commission finds it administratively efficient to assume without finding that, for the purposes of this order, LISTEN is a "person directly affected" by the Order pursuant to RSA 541:3.

On December 14, 2021, the Commission issued Order No. 26,556. Order 26,556 suspended a number of filing requirements relating to programming while the Commission fully considered the motions for rehearing, clarification and/or stay of Order 26,553. Order 26,556 also reaffirmed the expedited order issued December 6, 2021.

On December 14, 2021, Commissioner Chattopadhyay filed a memorandum into the instant docket disclosing his prior affiliation with the Office of the Consumer Advocate and stating that he determined that mandatory disqualification was not required under any of the applicable statutory standards.

On December 15, 2021, the Joint Utilities made compliance filings in this docket consisting of overall budgets for energy efficiency programming for each year of the 2021–2023 triennium pursuant to Order 26,553. These budget proposals,

estimating revenues based on the rates established by the Order, show an overall increase to the budget as compared to the budgets approved for the first triennium of the Energy Efficiency Resource Standard of between \$4-8 million in energy efficiency funding.

On December 17, 2021, the Office of the Consumer Advocate filed a Motion for Disqualification of Commissioner Chattopadhyay.

Order 26,553, Order 26,556, the various motions, and other docket filings, with the exception of 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>.

III. Motion for Disqualification of Commissioner Chattopadhyay

a. Position of the Office of the Consumer Advocate

The OCA requested that either the Commission, or Commissioner Chattopadhyay individually, disqualify Commissioner Chattopadhyay from further participation in the instant matter.

b. Commission Analysis

Concurrently with this order, Commissioner Chattopadhyay issues a separate order denying the OCA's motion for his disqualification.

IV. Motion for a Full Commission and Appointment of Special Commissioner(s)

a. Positions of the Parties

The Joint Utilities, joined by LISTEN, requested a full Commission pursuant to RSA 363:17. The Joint Utilities posited that due to the significance of the issues presented in this docket and the risks associated with proceeding with two commissioners, including a possible deadlock or an unforeseen event that disqualifies one commissioner, that a full Commission is necessary going forward.

In addition, the Joint Utilities requested that the Commission apply to the Governor and Executive Council under RSA 363:20 for the appointment of one or two Special Commissioners, one who is an attorney licensed to practice law in New Hampshire to substitute for Commissioner Simpson, and a second Special Commissioner if Commissioner Chattopadhyay recuses himself.

b. Commission Analysis

As noted above, Commissioner Chattopadhyay has not recused himself in this matter; therefore, a majority of the Commission is present to issue this order and a majority of this Commission intends to be available for any future actions or proceedings in this matter.³ In addition, pursuant to RSA 363:20, the Commission applied to the Governor for the appointment of a special commissioner to replace Commissioner Simpson in this matter. The request for a special commissioner is an additional step to ensure that either majority of the Commission or a full Commission will be available for any future actions or proceedings in this matter.

V. Motions for Rehearing and/or Clarification of Order No. 26,553

a. Positions of the Parties

i. Rehearing and/or Stay

The parties seeking rehearing and/or Stay of Order 26,553 have presented five distinct arguments: 1) that notice in this matter was inadequate; 2) that certain changes to program administration and oversight are retroactive in nature; 3) that a perceived departure from precedent is unreasonable; 4) that the Commission

³ We note that a request for the full commission pursuant to RSA 363:17 is not a request for three commissioners, but a request for a quorum of the commission to preside over a matter, rather than a single commissioner or designee. See RSA 363:17 (“No hearing . . . shall be held or conducted *by a single commissioner* if any party whose interests may be affected shall . . . file a request in writing that the same be held or conducted *by the full commission, or a majority thereof.*”) (emphasis added); see also *In re Bell Atl. N.H.*, Order No. 23,179 at 3 (Mar. 30, 1999), *In re Pub. Serv. Co. of N.H.*, Order No. 17,222 at 10 n.9 (Sept. 21, 1984).

misapplied or failed to cite to applicable legal standards; and 5) that the Order lacked evidentiary support. The Commission addresses in its analysis, below, these five arguments and the specific theories raised by the parties.

ii. Clarification

In addition to or in the alternative to moving for rehearing, the Joint Movants, joined by LISTEN and separately by Energy, seek clarification of certain aspects of the Order. Each request for clarification is summarized and addressed by the Commission, below.

b. Commission Analysis

i. Rehearing and/or Stay

The Commission may grant rehearing for “good reason” if the moving party shows that an order is unlawful or unreasonable. RSA 541:3; RSA 541:4; *Rural Tel. Cos.*, Order No. 25,291 (November 21, 2011); *see also Pub. Serv. Co. of N.H. 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 Tel. 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. *Pub. Serv. Co. of N.H.*, Order No. 25,970, at 4–5 (citing *Pub. Serv. 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)).

1) Adequacy of Notice

The statutory standard for notice in an adjudicative proceeding is found in RSA 541-A:31, III. RSA 541-A:31, III requires notice consisting of, among other things: (1) a statement of the legal authority under which the hearing is to be held, (RSA 541-A:31, III(b)); (2) a reference to the particular sections of the statutes and rules involved, ((RSA 541-A:31, III(c)); and (3) a short and plain statement of the issues involved ((RSA 541-A:31, III(d)). The notice provided in this matter included references to RSA 374-F:3, VI (which incorporates by reference Order No. 25,932 and its framework of authorities); RSA 374-F:3, X; RSA 125-O:23; and the just and reasonable standard applicable to rates and charges under RSA 374:2.

The various objections to the notice provided by the Commission are unavailing and do not state good cause for rehearing. The September 8, 2020, notice in this matter was broad and included whether proposed Plan programs were reasonable, cost-effective, and in the public interest, as well as whether the proposed rates are just and reasonable and comply with Commission orders. Additionally, the hearings in this matter were not limited to consideration of the settlement agreement filed by certain parties, as noted at the outset of hearings by then Chairwoman Martin. Hearing Transcript of December 10, 2020, morning session, at 8 (“We’re here this morning in Docket DE 20-092 regarding the 2021 to 2023 Statewide Energy Efficiency Plan.”). *See also*, Order of Notice dated September 8, 2020 (“The filing raises, inter alia, issues related to whether the proposed Plan programs offer benefits consistent with RSA 374-F:3, VI; whether the proposed Plan programs are reasonable, cost-effective, and in the public interest consistent with RSA 374-F:3, X; whether the proposed programs will properly utilize funds from the Energy Efficiency Fund as required by RSA 125-O:23;

and whether, pursuant to RSA 374:2, the Electric Utilities' and Gas Utilities' proposed rates are just and reasonable and comply with Commission orders.”).

The Joint Movants' attempt to apply RSA 365:28 as a separate notice requirement is equally unpersuasive. RSA 365:28 relates to amending or modifying past Commission orders and requires notice commensurate to that provided in the original proceeding. The Order at issue here addressed requests for Commission action in this matter, entered new directives establishing rates and setting guidelines, and established procedures for future energy efficiency programming going forward. It did not amend or modify a past Commission order and RSA 365:28, therefore, does not apply.

To the extent that the parties' motions may be read to assert a deficiency of *constitutional* due process, no such process is due here. A party claiming a violation of constitutional due process rights must, as a threshold matter, show a fundamental right or liberty interest at stake. *In re R.H.*, 174 N.H. 332, 364, (2021); *Petition of Bagley*, 128 N.H. 275, 280, (1986). The various arguments relating to due process do not establish that a fundamental right or liberty interest in future ratepayer-funded energy efficiency programming exists, or that the requested rates or a presently effective rate are constitutionally protected. As such, we decline to further address any constitutional due process arguments.

2) Applicability of Order 26,553

We do not agree that the Order unlawfully made retroactive changes to programming components, including in the areas of evaluation, measurement and verification (EM&V) activities, performance incentives, carryforwards, or benefit cost testing. The Order made no retroactive changes to these aspects of ongoing energy efficiency programming in New Hampshire. The Order clearly states that performance

incentives are to be eliminated prospectively, effective December 31, 2021, *see* Order at 41; that carryforwards are to be eliminated prospectively and following reporting to the Commission, *see* Order at 42; that EM&V work is to be phased out over the course of 2022 with new expenses to be approved by the Commission, *see* Order at 46; and that the changes to benefit cost testing are to be applied prospectively to the new programming filings required by the Order. *See* Order at 39.

We do not agree with the Joint Movants' arguments that carryforwards should be continued. Requiring annual reconciliation ensures accountability for ratepayer funds, that benefits flow to ratepayers in a timely manner in exchange for their contributions, and that the Commission meets its duties as a regulator.

With respect to overspending carryforwards, however, we find that the Joint Movants have stated good cause for rehearing because NHEC does not have shareholders and the Joint Movants' argument that the rates could potentially be confiscatory was not addressed in the Order. We therefore order that, in the event NHEC, a member-owned utility, has an overspending carryforward, it shall file an explanation by April 30th following the applicable plan year that outlines the circumstances that led to the overspending and a verified statement that it will not use future SBC funds to cover the deficit. For investor-owned utilities, overspending carryforwards shall be addressed under a prudence standard on a case-by-case basis following the 2021 and 2022 plan years. In the event that an investor-owned utility incurs an overspending carryforward as identified in the March 31 annual filings required by the Order, that utility may file a separate explanation and cost recovery proposal by April 30th following the plan year. The explanation and cost recovery proposal shall be subject to an adjudicative proceeding and will be assessed under traditional prudence standards.

3) Applicability of Prior Orders

We do not agree that the arguments relating to the applicability of prior orders support rehearing. With respect to the arguments that the judicial doctrine of *stare decisis* applies or that the Commission violated RSA 365:28, both miss the mark. The doctrine of *stare decisis* does not apply because the Commission is an administrative agency vested only with statutory authorities and is “not disqualified from changing its mind....” *Appeal of Pub. Serv. Co. of N.H.*, 141 N.H. 13, 22, (1996) (quoting *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 417, (1993)).

RSA 365:28 is a specific statutory authority relating to the alteration of past Commission orders and bears no relation to issuing a decision on the merits within a properly noticed adjudicatory proceeding. Here, the parties have proposed significant changes to prior approved energy efficiency plans, and the Commission’s order is based on an adjudicative review and hearing on those proposed changes. To the extent that LISTEN’s argument under RSA 365:28 can be read to dispute the Commission’s interpretation of past orders, the result is the same as the analysis relating to the Joint Movants’ arguments that the Commission misinterpreted legal standards, *infra*, and is unavailing. The Commission issued an order rejecting a new proposal based on its interpretation of the applicable standards, and no prior orders were modified or altered.

4) Application of Statutory Standards

We find the arguments relating to the application, interpretation, or perceived omission of statutory standards are unpersuasive and do not state good cause for rehearing. In the Order, although the Commission focused on those areas where it determined the Plan proponents did not meet their burden, it did not neglect to identify or consider any applicable statutory standards. With respect to the policy

statements raised by the Joint Movants (under RSA 378:37 and regarding the State's 10-year energy strategy), neither was functionally omitted because both are covered by the statutory standards contained in RSA 374-F:3, X ("Utility sponsored energy efficiency programs should target cost-effective opportunities....") and RSA 378:38, which specifically incorporates the policy contained in RSA 378:37, were cited to in the Order at 29. The Joint Movants also failed to show that they were prejudiced by a lack of citation to these sources because the Commission applied these same standards from another source. Moreover, even if prejudice were shown, the lack of supply side and renewable energy comparisons in the context of this proceeding make citation to the least cost planning subchapter of RSA 378 unavailing. *See* RSA 378:39. The second policy document cited by the Joint Movants merely reiterates that the policy of this state is to maximize cost-effective energy efficiency. Page 10 of the 2018 10 Year Energy Strategy at 12⁴ sets a policy nearly identical to that contained in RSA 378:37, namely to "Maximize cost-effective energy savings." The citation to page 39 of the 10-year policy is unavailing, as it is followed on page 40 with a policy statement that "New Hampshire should continue to coordinate and develop energy efficiency programming to achieve cost effective savings." The Order does not disturb the current role of the Energy Efficiency & Sustainable Energy Board to coordinate energy efficiency programming, nor does it reduce the funding to the NHSaves programming over the course of the 2021–2023 Triennium when compared to the 2018–2020 Triennium. As shown by the Joint Utilities' budgetary filings on December 15, 2020, the rates established by the Order actually increase revenues for energy efficiency programming

⁴ Available at <https://www.nh.gov/osi/energy/programs/documents/2018-10-year-state-energy-strategy.pdf> (last accessed Dec. 22, 2021).

by \$4–8 million dollars during the 2021–2023 Triennium when compared to the 2018–2020 Triennium.

We also find no error in the Order’s conclusion that, under *Appeal of Algonquin Gas Transmission*, 170 N.H. 763, 774 (2018), the overarching purpose of the statute here is met. (See, e.g., RSA 374-F:1, I “The most compelling reason to restructure the New Hampshire electric utility industry is to reduce costs for all consumers of electricity by harnessing the power of competitive markets”). With respect to the various arguments that the Commission misapplied or failed to apply applicable least cost planning standards, we apply the same interpretation used in *Algonquin*, and conclude that RSA 378:37-40’s overarching purpose is to meet energy needs at the “lowest reasonable cost.”

We find the argument that the Commission invented a least-cost requirement in Order 25,932 to be misguided. The legal framework to establish and finance energy efficiency measures is premised in large part on the least-cost statutory framework. See *Order 25,932* at 47–49. Order 25,932 relied on evidence that compared the cost of energy efficiency to delivered energy, *id.* at 51, granted utilities authority to spend only to the extent that the Commission finds such spending to be just, reasonable, and least-cost, *id.* at 59, and contained only two ordering clauses, one of which related to least-cost planning and a supply side modeling study, *id.* at 65. We further note that in closing arguments on this matter, then Staff of the Commission explicitly argued that the Commission should issue an order that “better adheres to the concepts of least-cost planning and just and reasonable rates, as the statutes provide.” Hearing Transcript of December 22, 2020 at 97. No party went on to argue that the Proposal was least-cost or refuted the argument that least-cost principles applied or were not properly balanced.

Simply put, the regulatory scheme does not require the Commission to approve programming or set rates as presented, without modification, and the Joint Movants' arguments do not make a showing that the Commission's rejection of the Plan and Settlement Agreement was unlawful or unreasonable.

5) Evidentiary Support

The various objections to the Order based on arguments that the Commission failed to adequately weigh the evidence are not persuasive and do not establish good reason for rehearing. The objections do not present new evidence, but rather restate evidence that the Commission weighed, and request a different result. Such arguments are not a basis to grant rehearing. *See Public Service Co. of N.H.*, Order No. 25,970, at 4–5.

6) Stay

Finally, the parties sought a stay of the Order pending the outcome of their motions before the Commission. Because this order resolves all pending motions, no stay is required. The motions for a stay of the Order are, therefore, denied as moot.

ii. Clarification

We have reviewed the motions and find various requests for clarification to be reasonable and appropriate. We address those requests as follows:

- 1) The Joint Movants request clarification relating to the definitions of “commensurate” and “equitable” benefits. Energy also requests clarification relating to the allocation of budgets between customer sectors and programs.

We clarify that unless specifically overruled by the Order, previous standards established by Commission order still apply. With respect to ensuring that equitable and commensurate benefits are available to all ratepayers under the rates established by the order, the Joint Utilities should focus on demonstrating that average customers

will see a long-term reduction in bills over the life of the energy efficiency measures they are paying for. Diminishing returns associated with increasing any incentive level should also be addressed in a meaningful way so that programming portfolio can be maximized and all ratepayers will see tangible benefits over the lifetime of the energy efficiency measures. The analysis relating to denial of rehearing based on the statutory standards discussed above should be considered together with this clarification.

- 2) Both the Joint Movants and Energy request clarification on the implementation of the benefit-cost tests.

We reiterate that the Total Resource Cost (TRC) test is to be performed in addition to the Granite State Test (GST) so that the results of the GST can be compared to the results of the TRC test. *See Order at 47* (directing that programming proposals must include “a benefit/cost analysis using both [the Granite State] and [Total Resource Cost]” tests). The Commission will review the assumptions and results of both tests in order to validate the program choices.

- 3) The Joint Movants and Energy request clarification regarding the Commission directive that EM&V spending is to be “significantly reduced” in the program proposal, and to be completed by the end of 2022, with emphasis on EM&V activities being necessary to participate in the ISO New England forward capacity market.

The Order is unequivocal that EM&V shall be phased out by the end of 2022. However, we clarify that where verification activities are required to maintain funding streams and regulatory compliance, the Joint Utilities shall provide, for Commission review and approval, a plan that includes required tasks and costs for each such task. Reasonable, supported estimated consulting costs and contractor costs shall be provided, as well. This plan and analysis shall be provided no later than March 1, 2022.

- 4) The Joint Movants request clarification of the concept of “found revenues” as used in the order relating to Lost Base Revenue.

The Commission adopts the definition of “found revenues” as articulated by then Commission Staff in Exhibit 8 at Bates page 16, namely that “found revenues” are derived from measures that increase energy usage, such as with the energy optimization program.

- 5) The Joint Movants request clarification of how performance incentive budgets are to be “redirected” to energy efficiency programs.

No clarification is needed, this is an argument of semantics. The result of the Order is that no part of the budget going forward will be directed to performance incentives. As a result, the overall percentage of the budget going toward direct ratepayer benefits through energy efficiency measures will increase.

- 6) Joint Movants request clarification on what threshold criteria for programs or proposals would meet the just and reasonable standard.

The just and reasonable standard is broad and encompasses multiple factors, however a proposal consistent with the guidance and directives in the instant order, with the statutory requirements relating to low-income programming, and with the rates established in the Order, would meet the just and reasonable standard in this instance.

- 7) The Joint Movants request clarification as to whether the prior Commission requirement for the electric utilities to produce at least 55% of their savings as kWh savings still exists.

The Commission clarifies that the Order did not modify this requirement.

- 8) The Joint Movants state that non-electric and non-gas savings are not referenced in the Order, and that clarification is needed on how to value these savings, particularly in light of the concerns relating to benefit-cost testing.

The Commission clarifies that the GST and TRC tests both quantify non-electric and non-gas savings, and those tests should be used to demonstrate quantifiable

savings that are not a direct economic benefit to ratepayers. Direct economic benefits should be clearly separated and distinguished from non-direct economic benefits so that these are visible to the general public.

- 9) The Joint Movants request clarification as to what constitutes a program that would qualify under the Commission's definition of "not solely ratepayer funded".

The Plan proponents made no showing whatsoever that they pursued separate government funding, grant funding, non-profit partnerships or funding, voluntary tariff offerings, or any other conceivable source of funding other than the status quo of direct or indirect ratepayer funding. At the very least, the Plan proponents must show that they exhausted all practical options to procure funding from sources other than ratepayers. *See* Order No. 25,932 at 58 ("Private funding should continue to be used to the greatest extent possible to fund the EERS programs"); *see also* RSA 125-O-a, I(j) (the Energy Efficiency & Sustainable Energy Board shall "[i]nvestigate potential sources of funding for energy efficiency...").

- 10) The Joint Movants state that clarification is required as to the criteria to be applied to determine the lowest per-unit cost, and what criteria should be used in evaluating which programs will qualify as the lowest per-unit cost.

The Commission refers the Joint Movants to the previous clarifications regarding quantifiable economic benefits accruing to ratepayers. In addition, modeling that demonstrates that energy efficiency is a least-cost option compared to supply-side alternatives, including renewable energy sources, should be applied in the evaluation of programs for lowest per-unit costs. As in previous clarifications, the GST and TRC tests shall be applied in order to choose programs that have the best return on investment.

- 11) The Joint Movants state that the reference to "Dollar savings per unit of energy estimated to have been produced" is unclear with respect to whether this refers to the inverse of a utility's cost to save each unit of

energy or if it is something new. Energy also seeks clarification relating to the treatment of the 2021 Avoided Energy Supply Costs Study.

The Commission clarifies that “avoided” costs should be evaluated, as opposed to “produced.” The Joint Utilities should use the updated 2021 AESC figures in the calculation of avoided costs in future proposals for programming.

12) The Joint Movants request clarification regarding the second portion of the requirement that savings be “broken out by participating and non-participating ratepayers, by ratepayer class.”

The Joint Utilities shall continue to provide modeling similar to that provided in Exhibit 4 Attachment M to demonstrate savings broken out by participating and non-participating ratepayers, and by ratepayer class.

13) The Joint Movants seek clarification on what constitutes appropriate administrative and overhead costs in light of the Commission’s concerns expressed in the order that more than 15 percent of program costs were allocated to administration and overhead.

The Order points out that \$58.3 million in administration costs were included in the Proposal. The Commission would expect that the administration costs, implementation services, and marketing costs would be reduced proportionally from the initial Proposal to the updated programming proposal, with EM&V reduced much more significantly due to the phasing down of EM&V.

14) The Joint Movants seek clarification on the calculation of “gross savings” required by the order. Energy also requests clarification of the use of gross and net savings figures.

Although the Commission requires gross savings to be reported, we allow the Joint Utilities to choose between net or gross savings⁵ when developing the Program Proposal, so long as assumptions are fully disclosed. The utilities are free to use EM&V and other tools for internal evaluation and to provide the Commission with

⁵ In the context of the calculations requested, gross savings are the lifetime total savings in dollars, using a stated discounted cash flow. Net savings uses the gross savings in dollars and subtracts the discounted cash flow cost

useful information derived from these tools. The Commission will use GST and TRC tests for the program evaluation.

- 15) The Joint Movants seek clarification whether the carryforward requirement applies to HEA funds.

Unless statutorily authorized, the programs shall not carry forward fund balances year-to-year, as discussed herein.

- 16) The Joint Movants seek clarification whether 2021 carryforward balances should be calculated in the aggregate or that balances be shown for each sector.

The Commission clarifies that 2021 carryforward balances should be calculated in the aggregate for each utility by taking actual 2021 revenues and subtracting the actual 2021 spending.

- 17) The Joint Movants state that the Order's reference to RSA 125-O:23 is misplaced, and that further clarification is needed regarding whether the Commission intends for the NH Utilities to utilize RGGI funds in a manner that is different from the Proposed Plan.

The Commission clarifies that it does not intend for the Joint Utilities to utilize Regional Greenhouse Gas Initiative (RGGI) funds, as allocated by the Department of Energy, in a manner that is different from that contained in the Proposed Plan.

- 18) The Joint Movants seek clarification on how NHEC should treat overspent amounts, and Energy seeks clarification on the impacts of budgetary overspends and forecasted versus actual revenues.

Consistent with the determination on rehearing above, any overspending of budgets by the NHEC will trigger a filing requirement. Because the NHEC does not have shareholders and is not otherwise rate regulated, it is free to use an alternative rate mechanism to recoup overspent budgets without relying on system benefits charge (SBC) revenues.

With respect to Energy's request, overspending occurs when actual costs are greater than actual revenues, and underspending occurs when actual costs are less

than actual revenues. The Commission expects the utilities to closely monitor actual revenues across all sources, including FCM and RGGI, and adjust program budgets and costs throughout the year. The level of uncertainty in both revenues and costs decreases month by month, from January to December, as more revenues and costs are booked, allowing the utilities to tailor their spending profile to the actual revenues.

19) The Joint Movants state that the NH Utilities that have lost base revenue (“LBR”) will require a hearing to set that rate, and the last approved LBR will remain in place until a hearing can be held, or an order nisi issued.

The Commission clarifies that the utilities that have LBR shall file any proposed rate change by March 31, 2022.

20) Finally, the Department of Energy requests clarification on the process for the parties’ review of the new Program Proposal.

Although expeditious implementation of new programming is important, we agree that a revised schedule for the submission of the new Program Proposal is appropriate following the suspension of filing deadlines pursuant to Order No. 26,556 and the clarifications issued herein. We also acknowledge Energy’s request to incorporate further process related to the development and filing of a new program proposal. We therefore direct the Joint Utilities to confer with the parties in this matter and file a proposed procedural schedule by January 21, 2022. The proposed procedural schedule should result in submission to the Commission of a Program Proposal for the remainder of the 2021–2023 triennium no later than March 31, 2022, for effect May 1, 2022 upon Commission approval. The Program Proposal filing shall include a detailed budget containing all program and cost items greater than \$500,000 in live spreadsheets, and proposed spending by program and each program’s corresponding benefit/cost calculations in live spreadsheets as outlined in the Order. If the proposed procedural schedule is not assented to by all parties, objections to the proposed procedural schedule shall be filed no later than January 28, 2022.

VI. Conclusion

Based upon the foregoing, it is hereby

ORDERED, that the Joint Utilities' motion for a full commission and appointment of special commissioner(s) is GRANTED IN PART to the extent that a special commissioner has been requested to replace Commissioner Simpson, and otherwise DENIED; and it is

FURTHER ORDERED, that the Joint Movants' motion for rehearing, clarification, and stay of Order No. 26,553 is GRANTED IN PART to the extent the Commission has reheard issues relating to carryforwards and issued numerous clarifications, as discussed in the body of this order, and is otherwise DENIED; and it is

FURTHER ORDERED, that the Department of Energy's motion for rehearing and/or clarification of Order No. 26,553 is GRANTED IN PART to the extent the Commission has reheard issues relating to carryforwards and issued numerous clarifications, as discussed in the body of this order, and is otherwise DENIED; and it is

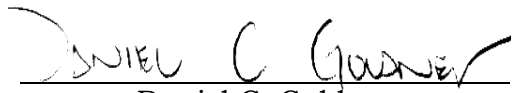
FURTHER ORDERED, LISTEN Community Service's motion for rehearing, clarification, and stay of Order No. 26,553 is GRANTED IN PART to the extent the Commission has reheard issues relating to carryforwards and issued numerous clarifications, as discussed in the body of this order, and is otherwise DENIED; and it is

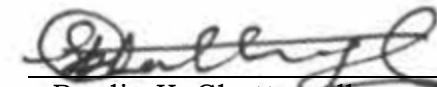
FURTHER ORDERED, that the Joint Utilities shall file an EM&V proposal related to ongoing participation in the ISO-NE forward capacity market as discussed herein no later than March 1, 2022; and it is

FURTHER ORDERED, that the utilities collecting lost base revenue shall file for any necessary rate changes no later than March 31, 2022; and it is

FURTHER ORDERED, that the Joint Utilities shall file a procedural schedule relating to the submission and evaluation a new Programming Proposal by the deadlines established herein above, but in any case, a new Program Proposal shall be filed no later than March 31, 2022.

By order of the Public Utilities Commission of New Hampshire this seventh day of January, 2022.


Daniel C. Goldner
Chairman


Pradip K. Chattopadhyay
Commissioner

Service List - Docket Related

Docket# : 20-092

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