

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 07-064

ELECTRIC UTILITIES

Energy Efficiency Rate Mechanisms

Order Denying Motion for Rehearing

Q R D E R N O. 24,951

March 23, 2009

I. PROCEDURAL HISTORY

On January 16, 2009, the Commission issued Order No. 24,934 (Order) resolving the investigation into various energy efficiency rate mechanisms that could have the effect of removing obstacles to, and encouraging investment in, energy efficiency. On February 18, 2009, The Way Home (TWH), through its counsel New Hampshire Legal Assistance (NHLA), filed a Motion for Rehearing.

In the Motion for Rehearing, NHLA argued that important questions remained unresolved, among those were: (1) should revenue decoupling normalize for weather, number of customers, economic conditions or other variables to reduce customer risk; (2) should revenue decoupling or other energy efficiency rate mechanisms apply to all customer classes; (3) what circumstances should result in true-ups; (4) what alternatives such as real time or critical peak pricing achieve similar goals to revenue decoupling; (5) are retroactive features of rate adjustment mechanisms allowable; and, (6) will proper consumption price signals be sent in utilizing rate adjustment mechanisms.

NHLA argued that resolving these questions in a generic docket at this time is in the public interest. As support for this conclusion NHLA stated that parties and utilities need

standards, guidelines and uniform principles to develop and evaluate rate mechanisms and to balance the risks and benefits among utilities and customers. NHLA asserted that resolving these issues on a case by case basis may lead to inconsistent and unfair results. Further, it argued that not all parties to this generic proceeding would be able to participate in numerous utility rate cases. Specifically, NHLA claimed that low income customers and non-profit groups would not be able to afford the time and expense of intervention and involvement in numerous utility specific proceedings.

NHLA also claimed that the record in this proceeding is not complete because intervenors were not given an opportunity to conduct formal discovery, file testimony, reply to comments, or conduct cross-examination of witnesses. According to NHLA, the Commission reached conclusions in the Order that are not supported by the record. Specifically, it argued that there is no evidence in the record that existing rate design can pose obstacles to investment in energy efficiency, or that different rate mechanisms could further promote such investment. NHLA further alleges that the record does not show that a rate reconciling adjustment mechanism can successfully identify the specific sales volume reductions associated only with the implementation of energy efficiency programs.

II. COMMISSION ANALYSIS

In order to prevail in a motion for rehearing, the moving party must demonstrate that the order is unlawful or unreasonable. *See, RSA 541:3 and RSA 541:4.* Good cause for rehearing may be shown by new evidence that was unavailable at the time, or by a showing that evidence was overlooked or misconstrued. *Dumais v. State*, 118 N.H. 309, 312 (1978). Further, in order to preserve a question for review a litigant must not raise an issue for the first time in a motion for rehearing. *Appeal of Campaign for Ratepayers Rights*, 133 N.H. 480, 484 (1990). Instead,

the matter raised in a motion for rehearing must have been “determined in the action, or proceeding, or covered or included in the order...” RSA 541:3.

NHLA contends that important questions remain unanswered, that the record is incomplete and that the conclusions reached are not supported by the record. Notwithstanding NHLA’s objections, the Commission as a general matter has broad discretion in determining the appropriate procedural approach for implementing particular rate mechanisms. The record developed in this proceeding, moreover, provides sufficient basis for the process determinations made in the Order. Rather than expend significant additional resources resolving issues generically, we determined to reserve more specific findings concerning various rate mechanisms for future dockets. We were persuaded by the baseline presentations and the expert presentations that fact based inquiries are necessary and that they are more effectively made in rate cases using our existing ratemaking authority to implement energy efficiency rate mechanisms appropriate to company specific circumstances. Furthermore, NHLA has not raised facts not already considered, nor has it demonstrated that the Order is unlawful or unreasonable. Accordingly, we deny the motion for rehearing.

RSA 541:3 requires that Motions for Rehearing be filed within 30 days of the decision. In this case the Order was issued on January 16, 2009, and the 30-day filing deadline fell on February 15, 2009, a Sunday. The following day February 16, 2009, was President’s Day, a state holiday. *HIK Corporation v. Manchester*, 103 N.H. 378, 381 (1961) provides for filing on the following Monday when the statutory deadline falls on a Sunday. We read this case to provide for filing on the next business day, if the following Monday is also a holiday. As a result, NHLA’s motion for rehearing was due on February 17, 2009. NHLA filed its motion for

rehearing on February 18, 2009, a day late. As discussed above, even if NHLA's motion had been timely we would deny it.

Based upon the foregoing, it is hereby

ORDERED, that the motion for rehearing is DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of March, 2009.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary