

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Appeal of the Office of the Consumer Advocate

Case No. 2022-0051

NOTICE OF WITHDRAWAL OF APPEAL

NOW COMES the Office of the Consumer Advocate (“OCA”), appellant in the above-captioned proceeding, and respectfully withdraws its Notice of Appeal and requests that the Court dismiss the matter as moot. In support of this request, the OCA states as follows:

1. This is an appeal of [Order No. 26,553](#) as issued by the Public Utilities Commission (“Commission”) on November 12, 2021 (rehearing denied, [Order No. 26,560](#), January 7, 2022). In Order No. 26,553, the Commission rejected the 2021-2023 Triennial Energy Efficiency Plan (“2021-2023 Plan”) as jointly proposed by the state’s investor-owned electric and natural gas utilities. Order No. 26,553 also repudiated the Commission’s previous endorsement of the Energy Efficiency Resource Standard (“EERS”), a regulatory approach whereby specific energy efficiency savings targets were set and then energy efficiency charges on electric and natural gas bills were determined accordingly.

2. On February 10, 2022, the Commission entered [Order No. 26,579](#), reversing certain reductions in energy efficiency charges imposed by Order No. 26,553 that took effect on January 1, 2022. Accordingly, the OCA withdrew the motion it had filed with this Court for a stay of Order No. 26,553.

3. On February 24, 2022, Governor Sununu signed into law House Bill 549, “An ACT relative to the system benefits charge and the energy efficiency and sustainable energy board.” A copy of the final version of House Bill 549 that was signed by the Governor is appended hereto.¹ House Bill 549 was effective upon passage and, *inter alia*, makes the rate adjustments approved in Order No. 26,579 mandatory and provides for future upward adjustment of those rates. *See* RSA 374-F:3, VI-a(d)(2), as adopted by House Bill 549 (page 2, lines 29-37 and page 3, lines 1-6).

4. Generally, a matter pending before the Court is moot “when it no longer presents a justiciable controversy because issues involved have become academic.” *In re Juvenile*, 2005-212, 154 N.H. 763, 765 (2007); *see also In re Guardianship of R.A.*, 155 N.H. 98, 100-01 (2007) (applying this principle to superseding legislation).

5. In the opinion of the Office of the Consumer Advocate, although the adoption of House Bill 549 does not resolve every legal infirmity reflected in Order No. 26,553 or the procedures used to issue the Order, the enacted legislation renders any such controversies academic in nature and thus dismissal on the ground of mootness is appropriate.

6. The OCA, however, reserves the right to raise such issues in the course of current and future Commission proceedings and, indeed, may well have the opportunity to do so in connection with the energy efficiency plans to be filed with the Commission on March 1, 2022, pursuant to RSA 74-F:3, VI-a(d)(3) as adopted by House Bill 549 (page 3, lines 7-30). In particular, the Commission’s express repudiation of the EERS in Order No. 26,553, the Commission’s intention as stated therein to phase out ratepayer-funded energy efficiency programs over time, and certain other determinations in the order that are subsidiary thereto, are prospective in nature. Other problems raised via the OCA’s notice of appeal, concerning the use of administrative proceedings to decide issues without notice to the parties and without a firm grounding in record evidence, also

¹ A citation to the New Hampshire Laws of 2022 is not yet available.

remain of concern. All of these issues involve questions the OCA looks forward to litigating vigorously before the Commission and, if necessary, this Court, in due course.

WHEREFORE, for the foregoing reasons, the OCA respectfully requests that the Court dismiss the pending appeal as moot.

March 3, 2022

Respectfully submitted,

OFFICE OF THE CONSUMER ADVOCATE

By its attorneys:



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Certificate of Service

I hereby certify that consistent with Supreme Court Rule 26 and Supplemental Supreme Court Rule 18, on March 3, 2022, I served the foregoing Notice of Dismissal electronically and by conventional service to those parties listed in the Court's E-Filing System as participating in this appeal.



Dated: March 3, 2022

Donald M. Kreis

Final Version of House Bill 549

CHAPTER 5
HB 549 - FINAL VERSION

6Jan2022... 2205h
02/03/2022 0165s

2022 SESSION

21-0717
10/06

HOUSE BILL

549

AN ACT relative to the system benefits charge and the energy efficiency and sustainable energy board.

SPONSORS: Rep. Vose, Rock. 9; Rep. Harrington, Straf. 3; Rep. Ammon, Hills. 40; Rep. Nunez, Hills. 37; Sen. Ward, Dist 8; Sen. Gannon, Dist 23

COMMITTEE: Science, Technology and Energy

AMENDED ANALYSIS

This bill changes the programs and expenses that system benefits charges may fund, and adjusts the procedure for setting and increasing the rate of the system benefits charge. The bill also modifies the duties of the energy efficiency and sustainable energy board.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 5
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6Jan2022... 2205h
02/03/2022 0165s

21-0717
10/06

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to the system benefits charge and the energy efficiency and sustainable energy board.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 5:1 Restructuring Policy Principles; System Benefits Charge. Amend RSA 374-F:3, VI to read as
2 follows:

3 VI. Benefits for All Consumers. Restructuring of the electric utility industry should be
4 implemented in a manner that benefits all consumers equitably and does not benefit one customer class
5 to the detriment of another. Costs should not be shifted unfairly among customers.

6 ***VI-a. System Benefits Charge.***

7 (a) A nonbypassable and competitively neutral system benefits charge applied to the use of
8 the distribution system may be used to fund public benefits related to the provision of electricity. [Such
9 benefits] ***This charge***, as approved by regulators, may [include, but not necessarily be limited to, programs
10 for low-income customers, energy efficiency programs, funding for the electric utility industry's share of
11 commission and department expenses pursuant to RSA 363-A, support for research and development,
12 and investments in commercialization strategies for new and beneficial technologies. Legislative approval
13 of the New Hampshire general court shall be required to increase the system benefits charge. This
14 requirement of prior approval of the New Hampshire general court shall not apply to the energy efficiency
15 portion of the system benefits charge if the increase is authorized by an order of the commission to
16 implement the 3-year planning periods of the Energy Efficiency Resource Standard framework
17 established by commission Order No. 25,932 dated August 2, 2016, ending in 2020 and 2023, or, if for
18 purposes other than implementing the Energy Efficiency Resource Standard, is authorized by the fiscal
19 committee of the general court; provided, however, that no less than 20 percent of the portion of the funds
20 collected for energy efficiency shall be expended on low-income energy efficiency programs. Energy
21 efficiency programs should include the development of relationships with third-party lending institutions to
22 provide opportunities for low-cost financing of energy efficiency measures to leverage available funds to
23 the maximum extent, and shall also include funding for workforce development to minimize waiting
24 periods for low-income energy audits and weatherization.] ***fund:***

25 (1) ***Energy efficiency programs.***

26 (2) ***Programs that promote and describe the consumer advantages of energy efficiency***
27 ***across all ratepayer classes.***

28 (3) ***The electric utility industry's share of commission and department expenses pursuant***
29 ***to RSA 363-A.***

30 (4) ***Support for research and development.***

31 (5) ***Investments in commercialization strategies for new and beneficial technologies.***

1 (6) *Programs for low-income customers.*

2 (b) *Up to \$400,000 of system benefits charge funds collected annually shall be used to*
3 *promulgate the benefits of energy efficiency according to guidelines developed as specified in RSA 125-*
4 *O:5-a, I(c) as determined by the department of energy.*

5 (c) *No less than 20 percent of the portion of the funds collected for energy efficiency shall be*
6 *expended on low-income energy efficiency programs.*

7 (d) *Notwithstanding any subsequent commission order to the contrary, the joint utility energy*
8 *efficiency plan and programming framework and components, including utility performance incentive*
9 *payments, lost base revenue calculations, and Evaluation, Measurement, and Verification process that*
10 *were in effect on January 1, 2021, shall remain in effect until changed by an order or operation of law as*
11 *authorized in subparagraphs (3) and (5). The joint utilities shall continue to prepare triennial energy*
12 *efficiency plans with programming and incentive payments at levels optimized to deliver ratepayer savings*
13 *as made possible by the funding described as follows:*

14 (1) *Energy efficiency program funding. The budget for joint energy efficiency planning*
15 *shall be funded through the system benefits charge, local distribution adjustment charges, the energy*
16 *efficiency fund established pursuant to RSA 125-O:23, revenues available from wholesale energy and*
17 *ancillary services markets operated by ISO-New England, and energy efficiency carry-forward or carry-*
18 *under balances detailed in the most recent Performance Incentive and Fund Balance reports; however,*
19 *the joint utilities shall continue to seek alternative sources of funding to supplement the aforementioned*
20 *funding sources. Total plan overspending shall be treated as a carry-under balance, and not as a charge*
21 *to utility shareholders.*

22 (2) *System benefits charge and local distribution adjustment charge funding levels. For*
23 *the year 2022, the energy efficiency portion of the system benefits charge shall be set at the level for 2020*
24 *authorized in Order No. 26,323 dated December 31, 2019. The energy efficiency portion of the local*
25 *distribution adjustment charge shall be set at the level for 2020 authorized in Order No. 26,306 dated*
26 *October 31, 2019, for Liberty Utilities (Energy North Natural Gas) Corp. and in Order No. 26,303 dated*
27 *October 29, 2019, for Northern Utilities, Inc. The energy efficiency portion of the system benefits charge*
28 *and local distribution adjustment charges shall adjust annually beginning January 1, 2023, and shall be*
29 *calculated using the most recently available 3-year average of the consumer price index (CPI-W) as*
30 *published by the Bureau of Labor Statistics of the United States Department of Labor plus 0.25 percent all*
31 *as calculated by the department of energy. Utilities subject to commission rate regulation shall submit*
32 *tariff amendments altering solely the system benefits charge and local distribution adjustment charge as*
33 *described, reconciled for over and under collections already occurred, as soon after the effective date of*
34 *this subparagraph as possible, and every December 1 for the upcoming year thereafter.*

35 (3) *2022-23 plan filing. On March 1, 2022, the joint utilities shall petition the commission*
36 *to approve any changes to current program offerings that will be available for the period between May 1,*
37 *2022, and January 1, 2024, consistent with the system benefits charge and local distribution adjustment*
38 *charges described in subparagraph (2). The commission shall issue its order approving or denying the*
39 *joint utility request to alter program offerings no later than May 1, 2022. If the commission fails to issue an*

1 *order by May 1, 2022, the proposed alterations to programs and budgets shall be deemed approved,*
2 *except for any changes in performance incentives and recovery of lost base revenues, which the*
3 *commission shall promptly review and approve by order. If the commission denies a 3-year plan or*
4 *interim program update, the most recent 3-year plan, as updated, shall remain in effect until the*
5 *commission approves proposed changes to that plan or program update filing.*

6 (4) *Cost effectiveness. For the purpose of the March 1, 2022 filing, and future plan*
7 *offerings, the commission's review of the cost effectiveness shall be based upon the latest completed and*
8 *available Avoided Energy Supply Cost Study for New England, the results of any Evaluation,*
9 *Measurement, and Valuation studies contracted for by the department of energy or joint utilities,*
10 *incorporate savings impacts associated with free-ridership for those programs and measures where such*
11 *free-ridership may have a material impact on savings figures, and use the Granite State Test as the*
12 *primary test, with the addition of the Total Resource Cost test as a secondary test. The commission shall*
13 *use benefit per unit cost as only one factor in considering whether the utilities have prioritized program*
14 *offerings appropriately among and within customer classes. In no instance shall an electric utility's*
15 *planned electric system savings fall below 65 percent of its overall planned energy savings.*

16 (5) *Subsequent plan and update filings. On July 1, 2023, the joint utilities shall petition*
17 *the commission to approve changes to program offerings for the next 3-year period, consistent with the*
18 *system benefits charge and local distribution adjustment charges described in subparagraph (2). The*
19 *commission shall issue its order approving or denying a joint utility request to alter program offerings no*
20 *later than November 30, 2023. Any utility or party may petition the commission to approve interim*
21 *program updates prior to the next 3-year planning period on July 1 of any year during which a 3-year plan*
22 *is not filed. The commission shall issue its order approving or denying the interim program updates by the*
23 *following November 30. If the commission fails to issue an order on either a 3-year plan or an interim*
24 *program update during the year in which a petition is filed, the proposed alterations to programs and*
25 *budgets shall be deemed approved except for changes in performance incentives and recovery of lost*
26 *base revenues, which the commission shall promptly review and approve by order. If the commission*
27 *denies a 3-year plan or interim program update, the most recent 3-year plan, as updated, shall remain in*
28 *effect until the commission approves proposed changes to that plan or program update filing. The joint*
29 *utilities shall present a joint energy efficiency plan to the commission for review and approval no less*
30 *frequently than every 3 years. Up to 5 percent of the overall program budget shall be expended on*
31 *Evaluation, Measurement, and Verification studies, which the department or joint utilities shall contract for*
32 *as the department deems necessary to assure program funds are optimized to deliver ratepayer savings*
33 *and to secure funds available from wholesale energy and ancillary services markets.*

34 5:2 New Section; Ratepayer-Funded Energy Efficiency Programs for Gas Utilities. Amend RSA 374
35 by inserting after section 62 the following new section:

36 374:63 Ratepayer-Funded Energy Efficiency Programs for Gas Utilities. The commission may
37 authorize a public utility providing natural gas service to participate in and recover costs associated with
38 statewide energy efficiency programs, including any utility-specific aspects of such programs, provided
39 that when the costs of such programs are recovered via the public utility's local distribution adjustment

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1 charge or a similar rate mechanism, any such charges be made subject to the requirements of RSA 374-
2 F:3, VI-a for the energy efficiency portion of electric utility system benefits charges.

3 5:3 Energy Efficiency and Sustainable Energy Board; Duties. Amend RSA 125-O:5-a, I to read as
4 follows:

5 I. An energy efficiency and sustainable energy board is hereby created to promote [and
6 ~~coordinate~~] energy efficiency, demand response, and sustainable energy programs in the state. The
7 board's duties shall include but not be limited to:

8 (a) Review available energy efficiency, conservation, demand response, and sustainable
9 energy programs and incentives and compile a report of such resources in New Hampshire.

10 (b) ~~[Develop a plan to achieve the state's energy efficiency potential for all fuels, including~~
11 ~~setting goals and targets for energy efficiency that are meaningful and achievable.~~

12 (c) ~~Develop a plan for economic and environmental sustainability of the state's energy~~
13 ~~system including the development of high efficiency clean energy resources that are either renewable or~~
14 ~~have low net greenhouse gas emissions.~~

15 (d) ~~Repealed.]~~

16 (e) Explore opportunities to coordinate programs targeted at saving more than one fuel
17 resource, including conversion to renewable resources and coordination between natural gas and other
18 programs which seek to reduce the overall use of nonrenewable fuels.

19 [(f)] (c) Develop **strategies, concepts, and** tools to enhance outreach and education programs
20 to increase knowledge **and awareness** about energy efficiency and sustainable energy among New
21 Hampshire residents and businesses.

22 [(g)] (d) Expand upon the state government's efficiency programs to ensure that the state is
23 providing leadership on energy efficiency and sustainable energy including reduction of its energy use
24 and fuel costs.

25 [(h)] (e) Encourage municipalities and counties to increase investments in energy efficiency
26 and sustainable energy through financing tools, and to create local energy committees.

27 [(i)] (f) Work with community action agencies and the office of strategic initiatives to explore
28 ways to ensure that all customers participating in programs for low-income customers and the Low
29 Income Home Energy Assistance Program (LIHEAP) have access to energy efficiency improvements, and
30 where appropriate, renewable energy resources, in order to reduce their energy bills.

31 [(j)] (g) Investigate potential sources of funding for energy efficiency and sustainable energy
32 development and delivery mechanisms for such programs, coordinate efforts between funding sources to
33 reduce duplication and enhance collaboration, and review investment strategies to increase access to
34 energy efficiency and renewable energy resources.

5:4 Effective Date. This act shall take effect January 1, 2022.

Approved: February 24, 2022
Effective Date: January 01, 2022