STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

Electric and Gas Utilities

2024-2026 Triennial Energy Efficiency Plan

Docket No. DE 23-068

BRIEF IN RESPONSE TO SEPTEMBER 7, 2023 PROCEDURAL ORDER

Pursuant to the N.H. Code of Administrative Rules Puc 203.32 and the procedural order issued by the New Hampshire Public Utilities Commission ("Commission") in this docket on September 7, 2023 requesting that the parties to the docket submit briefs on specified legal issues ("Procedural Order"), this joint responsive brief is hereby submitted on behalf of 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. (collectively, the "Joint Utilities").

A. Introduction

Before addressing the specific queries set forth by the Commission, the Joint Utilities wish to note some overarching points applicable to all the Commission's questions posited in the Order. The Energy Efficiency Plan submitted by the Joint Utilities to the Commission on June 30, 2023 (the "Plan") did not propose to make any changes to the inputs or assumptions underlying the framework of the Plan, as may be contemplated by the Commission's questions, nor is any other party to this docket proposing or supporting such changes to be made. The changes to the planning

components or framework discussed in the Procedural Order cannot be made unilaterally and without notice, record evidence supplied and supported by a party to the docket or otherwise permitted by RSA 541-A:31, VI and Puc 203.23,[1] and unless all parties have been provided with full due process, including a full and fair opportunity for cross-examination and rebuttal. Such unilateral changes would run afoul of the New Hampshire Administrative Procedures Act (RSA 541-A), the Commission's Puc 200 rules, and the due process rights of the parties to the docket.

The specific mandate of RSA 374-F:3, VI-a(d)(5) regarding the July 1, 2023 filing for the Plan states that the Joint Utilities will "petition the commission to approve changes to program offerings for the next 3-year period" and that the Commission "shall issue its order approving or denying a joint utility request to alter program offerings." Thus, it is clear from the plain language of the statute that the legislature intended for the Joint Utilities to put forward a three-year plan that is consistent with the structural elements and funding that RSA 374-F:3, VI-a codified. Moreover, the intent of the statute is clear: to maintain consistent uninterrupted, and reliable energy efficiency programming in New Hampshire. Furthermore, it is clear that the legislature intended for the Joint Utilities, with input from stakeholders, to make adjustments to the program offerings only as necessary to ensure "programming and incentive payments at levels optimized to deliver ratepayer savings as made possible by the funding" established by the same statute.

The Order also asks whether the Commission is precluded from modifying various aspects of this Plan's framework and components in this docket. As a matter of New Hampshire administrative law and process, and because the Plan incorporated no such proposals (consistent with the mandate of RSA 374-F:3, VI-a(d)(5)), the general answer to this question,

[1] Puc 203.23 makes clear that only parties to the docket may enter evidence into the record and also enumerates those parties that may do so. Included in that list is "staff of the commission", which reflects the fact that the rule has not been updated since the formation of New Hampshire Department of Energy, which has taken the place of Commission staff as a mandatory party to all dockets representing the State of New Hampshire.

notwithstanding the Commission's broad regulatory authority, is that the statutory language does not prescribe a role for the Commission that would authorize the Commission to create program proposals from "whole cloth" or to institute broad-based exceptions to the proposal submitted for review and approval. The statutory language contemplates a consensus-based approach to program development by parties other than the Commission, with the final product subject to the Commission's general oversight and approval, as opposed to placing the Commission in the role of "originator" of energy efficiency proposals.

B. Statutory Construction

When interpreting a statute, the language of the statute must be examined first, considered as a whole, and given its plain and ordinary meaning. *Appeal of Mullen,* 169 N.H. 392, 402 (2016). Legislative history need not be considered unless the language of the statute is ambiguous. *Id.* In this instance, RSA 374-F:3, VI-a is not ambiguous. Even assuming it was, and reliance on legislative history was necessary, the Supreme Court has held "[w]here that history plainly supports a particular construction of the statute, we will adopt that construction, since our task in interpreting statutes is to determine legislative intent." *Union Leader Corp. v. New Hampshire Ret. Sys.,* 162 N.H. 673, 678 (2011) (internal quotations and citations omitted). The discussion below follows these primary canons of statutory construction, as well as others, thereby supporting the interpretation that the Joint Utilities' plan, as proposed and supported by party positions in this docket, reasonably circumscribes the Commission's authority to initiate a unilateral change to the energy efficiency framework, as codified by RSA 374-F:3, VI-a.

C. Responses to Commission's Inquiries

1. Is the Commission legally precluded from changing in this proceeding any input, assumption, or variable of the Granite State Test or other benefit-cost testing frameworks approved by Commission order? In responding, please separately address each of the following:

a. Inputs, assumptions, or variables explicitly addressed in RSA 374-F:3, IV-a (d)(1)–(5), e.g., savings impacts associated with free-ridership for those programs and measures where such free-ridership may have a material impact on savings figures, planned electric system savings, etc.

As noted in the introduction, the Commission's authority to make unilateral changes in this proceeding is reasonably circumscribed by the nature and scope of the Plan proposed by the Joint Utilities, as the plain language of the statute contemplates a process whereby the Joint Utilities work with the Department of Energy and other constituencies to develop the program offerings, and the Commission either approves or rejects *those offerings*. The Joint Utilities submitted the Plan for the Commission's consideration that kept the existing frameworks intact, proposing "changes to program offerings for the next 3-year period" consistent with RSA 374-F:3, VI-a(d)(5). Thus, the Plan does not change the plan structure or programming framework or otherwise fundamentally alter the inherent planning components.

RSA 374-F:3, VI-a preserved the primary components of the energy efficiency plan framework, inclusive of its inputs and assumptions, because the overall purpose of this unanimous legislative effort[2] was to stabilize New Hampshire energy efficiency programming and provide continuity in program offerings and availability. This in turn ensures that benefits to customers

[2] House Bill 549 was adopted unanimously by the House of Representatives. *See House Record No. 2* (Jan. 6, 2022), p.74: https://www.gencourt.state.nh.us/house/calendars_journals/viewer.aspx?fileName=Journals\2022\HJ%2002%20January%206,%202022.PDF. HB 549 was also unanimously voted out of the Senate Energy and Natural Resources Committee. *See Senate Calendar No. 5* (January 27, 2022), p. 5: https://www.gencourt.state.nh.us/senate/calendars_journals/viewer.aspx?fileName=Calendars\2022\No%2005%20January%2027%202022.PDF.

and the jobs created by the programs are not disrupted.[3] The Joint Utilities have submitted a Plan that reflects this mandate and intent by maintaining continuity in the Plan's components and framework.

The New Hampshire Administrative Procedures Act likewise circumscribes the Commission's unilateral action to change the program elements outside of the proposals put forth by the Joint Utilities. RSA 541-A:31, IV states "[o]pportunity shall be afforded all *parties to respond and present evidence and argument* on all issues involved" (emphasis added). This proposition is further supported by Puc 203.23, which lists parties that are permitted to enter evidence into the record, as discussed in footnote 1.[4] Lastly, RSA 541-A:31, VIII states "[f]indings of fact shall be based exclusively on the evidence and on matters officially noticed." The Commission serves in a quasi-judicial role in adjudicative proceedings, and therefore must render a decision based on the record that is presented to it by the parties. If a party were to propose changes to the fundamental framework or planning components of the Plan, then the Commission would certainly have the authority to consider those proposals in light of the record evidence offered in support of them. But that is not the case here, and, the specific provisions of the governing statute, RSA 374-F:3, VI-a (d), does not authorize the Commission to drive, create or rebuild program proposals beyond those put forth by the Joint Utilities.

Additionally, RSA 374-F:3, VI-a(d)(4), the provision where certain "[i]nputs, assumptions, or variables" are enumerated, plainly limits use of these factors only for the purpose of reviewing

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[3] The legislative history makes clear that the intent of HB 549 was to preserve not only ratepayer funded energy efficiency programming, but also the framework and component parts of the planning framework, so that those components could remain stable and not be unilaterally modified in a way that disrupts the continuous provision of program offerings. *Senate Energy and Natural Resources Committee Report* at 2. (January 18, 2022) (emphasis added). https://gencourt.state.nh.us/bill_status/legacy/bs2016/HearingReport.aspx?id=6956&sy=2022.

[4] The Joint Utilities note that the "record requests" served on the Joint Utilities by the Commission on August 4 and September 1, 2023, are not a part of the administrative record in New Hampshire as defined by RSA 541-A and the Puc 200 rules.

the program offerings for "considering whether the utilities have prioritized program offerings appropriately among and within customer classes." Nothing in the statute suggests that these items can be unilaterally generated or altered by the Commission. RSA 374-F:3, VI-a(d)(4) must be read in conjunction with RSA 374-F:3, VI-a(d)(5). In so doing, it is clear that (d)(4) provides the Commission with elements to judge whether to "approve or deny the changes to program offerings" as stated in (d)(5). Neither paragraph (d)(4) or (d)(5) authorizes the Commission to unilaterally change those elements.

b. Inputs, assumptions, or variables not explicitly addressed in RSA 374-F:3, IV-a (d)(1)-(5) but addressed in the New Hampshire Cost Effectiveness Review.

The legal analysis set out in the introduction and in response to part (a) of this question is equally applicable here. However, additional substantive or factual considerations must be noted. In designating the Granite State Test as the primary test, RSA 374-F:3, VI-a(d)(4) does not provide the inputs, assumptions or otherwise define the Granite State Test. To ascertain what comprises the Granite State Test, one must examine what the Commission approved in Order No. 26,322. However, that order alone does not articulate the components of the test; it speaks more to the attributes that make it the most preferable and beneficial cost-effectiveness screening test for New Hampshire energy efficiency programs. Although Order No. 26,322 does not explicitly enumerate the inputs to the Granite State Test, it does state that the Commission was adopting the test without modification. The Commission observed and agreed with the Benefit Cost Working group's note regarding possible changes during "future iterations of program plan filings", but the Commission deferred "consideration of certain recommendations in the Cost-Effectiveness Test Review" because "certain issues are more appropriately addressed in the context of a specific program proposal." Order No. 26, 322 at FN4. This indicates that the Granite State Test that was approved

by the Commission and adopted by RSA 374-F:3, VI-a(d)(4) did not incorporate modifications to the framework or fundamental inputs.

However, Order No. 26,322 does not articulate precisely what comprises the Granite State Test, just that the Commission approved "the proposed framework", so it must be determined what the proposed framework was. Since the Commission adopted the recommendation of the Benefit Cost Working Group, it makes sense to begin with that recommendation, but the recommendation refers to the Cost Effectiveness Test Review at pages 50-52; that is where the Granite State Test framework lies. Specifically, page 50 provides a checklist of the recommended inputs, and pages 51 and 52 highlight some of the core inputs.[5] Page 51 also mentions impacts not included in the test, or that are included but could be modified over time,[6] which as mentioned above, the Commission when it approved the test said that the appropriate place for changes to the inputs of the test were in "future iterations of program plan filings" and "in the context of a specific program proposal". Moreover, RSA 374-F:3, VI-a(d)(4) adopts the Granite State Test without reference to modification. And since no modifications have been proposed in either the Joint Utility Plan or any testimony of the parties to the docket, the Commission is limited in terms of making changes to the inputs of the Granite State Test on its own motion, given that those inputs were listed in the Cost Effectiveness Review through this proceeding.

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[5] The utilities should maintain the following *current practices*: Exclude lost revenues (sunk costs) from cost-effectiveness tests. Calculate long-term, marginal impacts for all cost-effectiveness analyses. Use a low-risk discount rate, determined by current practices. Screen for cost-effectiveness at the program level. The utilities should implement projects with a benefit-cost ratio less than 1.0, provided the program maintains a benefit-cost ratio greater than 1.0. Monitor free-ridership and spillover rates and modify program design as needed to ensure programs are optimized to serve participants. *New Hampshire Cost Effectiveness Review* at 52.

[6] *Id.* at 51.

i. Please specifically address the statements referencing impacts in the New Hampshire Cost Effectiveness Review such as "the Commission should recognize that evolution of policy guidance and consider including those impacts in the primary Granite State Test." New Hampshire Cost Effectiveness Review at 31; "… the Commission should periodically reassess whether the utilities' methods of accounting for impacts are appropriate." Id. at 36.

As mentioned in the previous section, RSA 374-F:3, VI-a(d)(4) codified the Granite State Test as it was approved in Order No. 26,322 on December 19, 2019. This statutory provision does not include references to future changes. And as discussed above, the Commission is statutorily precluded from instituting broad-based changes to any input, assumption, or variable of the Granite State Test or other benefit-cost testing frameworks because the Plan that is the subject of this proceeding did not incorporate changes of this kind, nor is any other party suggesting such changes. As a result, these types of changes are not properly within the scope of the proceeding. Instead, such issues would be, as the Commission stated in Order No. 26,322, "more appropriately addressed in the context of a specific program proposal" when such a proposal is made.

It should also be noted that the Cost Effectiveness Review was drafted prior to the restructuring of the Commission to form the New Hampshire Department of Energy ("DOE"). As the energy policy arm of the state, the DOE can certainly "periodically reassess whether the utilities' methods of accounting for impacts are appropriate", as the Joint Utilities work closely with the DOE throughout each planning period and receive ongoing feedback from the DOE and other stakeholders, including an extensive stakeholder session leading up to the filing of a Plan. These stakeholder sessions are a conducive venue for this type of reassessment, as all stakeholders, most of whom become parties to the energy efficiency adjudicative dockets, can collaboratively examine along with the Joint Utilities and the energy efficiency working groups—both experts in the energy efficiency programs—whether evolution of the markets necessitate adjustments, and can propose the same to the Commission for consideration.

c. Inputs, assumptions, or variables that the New Hampshire Cost Effectiveness Review states could be updated or monetized over time. E.g., Avoided Ancillary Services, Avoided Credit and Collection Costs, Reduced Risk, Increased Reliability, Market Transformation, or Income Eligible Participant Impacts. Id. at 51.

These changes are likewise not the subject of any proposal by the Joint Utilities or any party, and therefore are outside the scope of this proceeding. Should a proposal come before the Commission in a future proceeding suggesting consideration of such changes, that proceeding would be the proper time to contemplate them, to the extent they are consistent with RSA 374-F:3, VI-a(d)(4).

2. Is the Commission legally precluded from changing in this proceeding the role, composition, or function of any working group convened under the authority of a prior Commission order?

Nothing precludes the Commission from altering, creating or eliminating a working group per se; however, changing working group roles or functions in this proceeding is outside of the scope of this docket. The scope of this proceeding is limited by the Plan that the Joint Utilities proposed, consistent with RSA 374-F:3, VI-a(d)(5), which entail program offering changes. Since no party is suggesting changes to the Plan or any other energy efficiency framework or process-related modifications, nothing in the scope contemplates alteration of working groups in this proceeding. Relatedly, although RSA 365:28 allows the Commission to alter its own orders after proper notice, alteration of working groups was not noticed in this matter, and is therefore beyond the scope of this proceeding.

3. Is the Commission legally precluded from changing in this proceeding any input, assumption, or variable in the performance incentive framework previously established by Commission order; and

4. Is the Commission legally precluded from changing in this proceeding any input, assumption, or variable in the lost base revenue framework previously established by Commission order?

Both the performance incentive and lost base revenue frameworks, while established by Commission order, were later codified in RSA 374-F:3, VI-a(d), which cannot be unilaterally modified by Commission order, particularly without record support. Adjustments to those frameworks are not included in the Plan nor contemplated in any of the testimony of the parties to the docket, which will become part of the record once adopted at hearing. Therefore, these frameworks are precluded from being changed in this proceeding as well.

5. Are the policy priorities and statements in RSA 374-F:3 and 378:37 complementary or conflicting?

Rules of statutory construction require that two statutes dealing with a similar subject matter must be construed "so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statutes." *Merrimack Premium Outlets v. Town of Merrimack*, 174 N.H. 481, 487 (2021). Because RSA 374-F:3 and RSA 378:37 both deal with the subjects of energy and energy efficiency, they should be construed in a complementary rather than contradictory fashion. However, if a conflict exists between two statutes, "the later statute will control, particularly when the later statute deals with a subject in a specific way and the earlier enactment treats that subject in a general fashion." *Professional Firefighters of Wolfeboro v. Town of Wolfeboro*, 164 N.H. 18, 22 (2012).

The policy of maximizing the use of cost effective energy efficiency and other demand side resources expressed in RSA 378:37 can easily be read harmoniously with the restructuring policy principles set forth in RSA 374-F:3. In enacting the Restructuring Act, the legislature's

stated goal was "to develop a more efficient industry structure and regulatory framework that results in a more productive economy by reducing costs to consumers while maintaining safe and reliable electric service with minimum adverse impacts on the environment." RSA 374-F:1, I. The policy of maximizing the use of cost-effective energy efficiency furthers that goal because it yields more than one dollar in benefits for every dollar spent, as well as generally lowering costs for all customers – not just those who participate in energy efficiency programs – through system benefits associated with decreased energy usage. Succinctly stated, "energy efficiency is the cheapest form of energy."[7] Thus, the restructuring policies and statements in RSA 374-F:3 aimed at lowering energy costs for customers are consistent with the state energy policy set forth in RSA 378:37 which favors maximizing the use of cost-effective energy efficiency.

RSA 378:37 may also be read harmoniously with recently enacted provisions of RSA 374-F:3, VI-a, which address the subject of energy efficiency in great detail. For example, that statute establishes the methodology for calculating the System Benefits Charge ("SBC") and Local Distribution Adjustment Charge ("LDAC") that the electric and natural gas utilities, respectively, may collect from customers to fund the Joint Utilities' Plan, and specifies additional sources of energy efficiency funding. *See* RSA 374-F:3, VI-a (d)(1) and (2). Thus, when RSA 378:37 is read in a complementary fashion with RSA 374-F:3, VI-a, it is reasonable to conclude that the state energy policy to "*maximize* the use of cost effective energy efficiency" means using *all* of the SBC and LDAC funds prescribed by RSA 374-F:3, VI-a (d)(2), as well as all of the other funding sources identified in RSA 374-F:3, VI-a (d)(1) for cost effective energy efficiency programs.

The foregoing interpretation is supported by rules of statutory construction requiring that statutory terms be accorded their plain and ordinary meaning. *In Re Omega Trust*, 175 N.H. 179

[7] Representative McWilliams, Debate on HB 549, House Record (Jan. 6, 2022) p. 76.

(2022); *see also* RSA 21:2 (non-technical words are construed according to their common and approved usage). Because the word "maximize" is not defined in RSA 378:37, it is appropriate to look to the dictionary for guidance as to the ordinary meaning of that term. *Natal v. GMPM Company,* 175 N.H. 74, 78 (2022). Dictionary definitions of the term "maximize" include: "to increase to the greatest possible amount or degree"[8] and "to increase to the highest possible degree or value (frequently in economic contexts)."[9] These definitions support using the funding sources identified in RSA 374-F:3, VI-a (d) (1) and (2) to the greatest possible amount or degree for cost effective energy efficiency, consistent with the policy expressed in RSA 378:37.

Although the foregoing discussion demonstrates that the state energy policy and the restructuring principles contained in RSA 374-F are complementary, in the event that the specific energy efficiency provisions of RSA 374-F:3, VI-a (adopted in 2022)[10] are viewed as conflicting with the energy efficiency policy statement contained in RSA 378:37 (adopted in 2014)[11], the more recently enacted statute will control because it deals with the subject of energy efficiency in a much more comprehensive fashion than the older policy statement. *See Professional Firefighters of Wolfeboro v. Town of Wolfeboro, supra.* Similarly, to the extent that any of the generally worded restructuring principles in RSA 374-F:3, adopted prior to 2022, are construed as conflicting with RSA 374-F:3, VI-a, the more specific provisions of RSA 374-F:3, VI-a will prevail. *Id.*

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8 www.dictionary.com/browse/maximize

9 www.oed.com/search/dictionary/?scope=Entries&q=maximize

10 House Bill 549 was adopted unanimously by the House of Representatives. *See House Record* (Jan. 6, 2022), p.74. The Senate adopted an amendment reflecting the current language of RSA 374-F:3-a, VI which became effective on January 1, 2022. *See Senate Journal* (Feb. 3, 2022), pp. 62-64; N.H. Laws of 2022, Ch. 5:1.

11 *See* N.H. Laws of 2014, Ch. 129:1 (eff. Aug. 15, 2014).

6. What is the difference between "optimized" and "maximize" as those words are used in relation to energy efficiency in the policy priorities and statements in RSA 374-F:3 and 378:37?

As discussed in the previous section, "maximize" in RSA 378:37 means to use to the greatest extent possible. RSA 374-F:3, VI-a(d)(2) established a ceiling for maximizing energy efficiency by setting the SBC and LDAC rates. The definition of "optimize" as used in RSA 374-F:3, if taking the ordinary meaning of the word, is to "make the best or most effective use of."[12] However, in RSA 374-F:3, VI-a(d), where "optimized" appears, the reference has its own metric, which is that the programming and incentive levels are able to "deliver ratepayer savings as made possible by the funding [set forth in the statute]", which is determined by whether a program is cost effective or not according to the Granite State Test, which as mentioned above, means that every ratepayer dollar spent yields more than one dollar in benefits. Delivering customer savings is precisely what the programs in the Plan do, as is demonstrated by the fact that all programs have been evaluated using the Granite State Test and each utility's program portfolio has a cost-effectiveness value greater than 1.

The words "maximize" and "optimize" are complimentary in this context and result in a unified policy priority to use as much of, or maximize, the funding permitted by RSA 374-F:3, VI-a(d)(2), in a cost-effective manner as directed by RSA 374-F:3, VI-a(d) and (d)(4), which means that the funding is delivering ratepayer savings, which is to say the funding is being optimized. This does not mean, however, that "optimizing" the programs means simply ranking them by cost effectiveness, because RSA 374-F:3, VI-a(d)(4) also states that "the commission shall use benefit per unit cost as only one factor in considering whether the utilities have prioritized program offerings appropriately among and within customer classes." This reading is supported by the New

[12] https://www.oed.com/search/dictionary/?scope=Entries&q=optimize

Hampshire Supreme Court's holding that statutes must be read as a whole, and consistent with the "entire statutory scheme and not in isolation." *N. New England Tel. Operations, LLC v. Town of Acworth*, 173 N.H. 660, 667 (2020).

7. Does the section title "Least Cost Energy Planning" have any interpretive value with respect to the policy statement in RSA 378:37?

The section title "Least Cost Energy Planning" is not conclusive with respect to interpreting RSA 378:37, however, "'it provides significant indication of the legislature's intent in enacting the statute.'" *Petition of the State of New Hampshire*, 174 N.H. 785, 792 (2022) *quoting Garand v. Town of Exeter*, 159 N.H. 136, 142 (2009). RSA 378:37 is entitled "New Hampshire Energy Policy" and states as follows:

> The general court declares that it shall be energy policy of this state to meet the needs of the citizens and business of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; *to maximize the use of cost effective energy efficiency* and other demand side resources; and to protect the safety and health of the citizens, the physical environment of the state, the future supplies of resources, with consideration of the financial stability of the state's utilities. (Emphasis added.)

The above-cited case law supports the conclusion that in enacting RSA 378:37, the legislature intended that maximization of cost-effective energy efficiency is not only part of the state's "Energy Policy," it is also consistent with least cost energy planning. It is important to note that while RSA 374-F:3, VI-a created certain parameters around utility-sponsored energy efficiency programs, the legislature has not altered the state's energy policy articulated in RSA 378:37. The legislature recently repealed all of the other statutory provisions falling under the heading "Least Cost Energy Planning" (i.e., those requiring electric and natural gas utilities to file least cost integrated resource plans) see N.H. Laws 2023, Ch. 233:1, but left RSA 378:37 intact. In view of the foregoing, it is reasonable to infer that the legislature intended that the state's energy policy continue to include maximizing the use of cost-effective energy efficiency and other

demand side resources, and that cost-effective energy efficiency remains consistent with least cost energy planning as that title to RSA 378:37 suggests. Accordingly, energy efficiency programs such as those proposed in the Plan (which have been determined to be cost-effective under the Granite State Test), combined with the system benefit charge reductions and other specifications codified by RSA 374-F:3, VI-a, is consistent with Least Cost Energy Planning.

8. Does Appeal of Algonquin Gas Transmission, 170 N.H. 763, 774 (2018) establish any principles or rules applicable to the Commission's review under RSA ch. 374-F in this proceeding?

Algonquin addressed the narrow question of whether the Commission erred when it determined Public Service Company of New Hampshire d/b/a Eversource Energy's proposal to purchase gas capacity for use by electric generation facilities was inconsistent with the purposes of restructuring. *Algonquin*, 170 N.H. 763, 771 (2018). In reaching the conclusion that the Commission's determination was in error, the Supreme Court of New Hampshire held that the legislature's overriding purpose in enacting RSA 374-F (the "Restructuring Act") was not to introduce competition to the generation of electricity, but rather to "*harness[] the power of competitive markets* . . . as a means to reduce costs to consumers, not as an end in itself." *Algonquin*, 170 N.H. 763, 774-775 (2018) (emphasis added). This particular proposition does not bear on the Commission's review of the Plan because the Restructuring Act does not treat energy efficiency as an aspect of electric service to be transferred to the competitive market. Rather, the Restructuring Act treats energy efficiency as one of the "public benefits" the Commission is authorized to approve for recovery via the System Benefits Charge ("SBC"). *See* RSA 374-F:1, III (identifying inter-dependent policy principles that guide the Commission's implementation and regulation of a restructured electric industry); RSA 374-F:3, VI-a (establishing a non-bypassable SBC to fund, among other things, energy efficiency programs); RSA 374-F:3, X (stating that

restructuring should be designed to reduce market barriers to investments in energy efficiency); *Algonquin* at 772 (explaining that the Restructuring Act identifies fifteen inter-dependent policy principles for regulating a restructured industry, including energy efficiency).

In short, *Algonquin* does not extend to the Commission's review of the Plan under the Restructuring Act. But even assuming for the sake of argument that *Algonquin* stands for the proposition that the foremost consideration in reviewing energy efficiency should be the minimization of costs, which it does not, the Plan is consistent with that interpretation as well. As demonstrated in the Joint Utilities' filing, the Plan will reduce costs for consumers and is expected to result in nearly $300 million in aggregate **net benefits**. The Commission's focus regarding the cost of the Plan *must* consider net benefits. In Order 26,553, the Commission focused on increases to program budgets and concluded that those increases were inconsistent with the Restructuring Act's primary focus on minimizing electricity costs as established by *Algonquin*. *Electric and Gas Utilities, 2021-2023 Triennial Energy Efficiency*, Order No. 26,553 (Nov. 12, 2021) at 34-36. However, the Commission's analysis was incomplete because it considered only one side of the equation – costs to customers – without accounting for the benefits energy efficiency yields to all customers, program participants and non-participants alike. Unlike other activities that result in rate increases while providing benefits that are more indirect or less readily quantified, investments in energy efficiency result in direct and quantifiable customer benefits, both in terms of reduced consumption and reduced costs, which persist for the lives of the energy efficiency measures installed. Accordingly, the Commission must account for the avoided costs and other system benefits generated by the programs, which are enjoyed by all customers regardless of whether they participate in energy efficiency programs. By the measure of net benefits reflected in the cost benefit analysis of the Granite State Test, the Plan plainly reduces consumer costs.

For the reasons discussed above, *Algonquin* does not provide guidance specifically applicable to the Commission's review of the Plan under RSA 374-F – although energy efficiency does in fact lower costs to customers – because the benefits yielded by energy efficiency distinguish energy efficiency from the generation and procurement of energy supply. Moreover, there is no need for the Commission to seek out any external guidance from *Algonquin*, or elsewhere, because the Plan can and should be reviewed according to the plain and ordinary meaning of the terms in the Restructuring Act as they pertain to energy efficiency.

It is a well-established principle of statutory construction that, if possible, the words of a statute should be construed according to their plain and ordinary meaning. *Conduent State & Local Solutions, Inc. v. N.H. DOT*, 171 N.H. 414, 420 (2018). Section 374-F:1 of the Restructuring Act provides that restructuring should develop a more efficient industry structure and regulatory framework that results in (a) a more productive economy; (b) by reducing costs to consumers; (c) while maintaining safe and reliable service; (d) with minimum adverse impacts to the environment. These terms and concepts are not ambiguous, and the Commission can easily assess whether the Plan supports these goals based on the record in this case.

The Plan supports a more efficient industry structure and regulatory framework by making cost-effective, energy efficiency solutions available to all retail customers in New Hampshire, regardless of whether they receive supply on the electric utilities' default rate or from an external supplier. The Granite State Test provides an objective, quantitative demonstration of that efficiency, yielding a benefit cost ratio for the aggregated utility portfolios of 2.27. This result is exemplary of a more efficient industry: for every dollar spent, there is a greater value of benefits yielded. Direct Testimony of Heidi Lemay *et al*. on behalf of the Department of Energy ("DOE Testimony") at Bates Page 37.

The Plan contributes to a more productive economy by increasing local and state tax revenues, supporting job creation and retention by employing numerous local contractors and vendors, and reducing customers' costs, which can be reinvested in the economy. Plan at Bates Pages 12-13, Attachment M (Bates Pages 490-552); Testimony of Christopher J. Skoglund on Behalf Clean Energy New Hampshire ("CENH Testimony") at 7-8; Direct Testimony of Tim Wolf and Danielle Goldberg on behalf of the Office of the Consumer Advocate ("OCA Testimony") at Bates Page 29; DOE Testimony at Bates Page 37. The Plan will result in cost reductions of more than $675 million over the lifetime of the measures installed under the 2024-2026 NHSaves Programs. Plan at Bates Page 10, 21; *see* OCA Testimony at Bates Page 28 ("Cost-effective energy efficiency programs will lower system-wide electricity and natural gas costs, leading to reductions in customers' energy bills).

Also, as noted above, in the aggregate, the Plan is expected to produce close to $300 million in net benefits. The Plan contributes to maintaining reliable service by reducing energy consumption and demand, which in turn reduces stress on the Transmission and Distribution ("T&D") system. Plan at Bates Pages 10, 21, Attachment R (Bates Pages 976-987); OCA Testimony at Bates Page 28 ("[D]emand savings reduce stress on local T&D system, potentially deferring expensive upgrades or mitigating local transmission congestion problems."). The Plan helps reduce energy consumption, which in turn reduces the amount of carbon-intensive fossil fuels burned by power plants. This reduces greenhouse gas emissions that contribute to climate change and air quality concerns, which helps minimize the cost of mitigation and remediation at the state and federal levels. Plan at Bates Page 11.

Section 374-F:1 of the Restructuring Act provides, among other things, that restructuring should be designed to reduce market barriers to investments in energy efficiency and energy

efficiency programs should target cost-effective opportunities that might otherwise be lost to market barriers. Again, this language—and the terms used elsewhere in this section—are clear and unambiguous and can be readily construed and easily applied in the Commission's evaluation of the Plan. The Plan reduces market barriers because it enables customers to pursue investments that would otherwise not be pursued due to barriers such as incomplete information and upfront costs. Plan at Bates Page 12, Attachment N, Attachment O. Specific examples of market barriers addressed by the Plan include but are not limited to: reducing first-cost obstacles by providing customer incentives; increasing stocks of energy efficient equipment at retailers, distributors, and suppliers; training and recruiting installers and other market actors in highly efficient design and installation; and educating customers about the benefits of energy efficiency. Plan at Bates Page 22, Attachment O. For all these reasons, the Plan clearly supports the policy goals set forth in RSA 374-F:1.

But most directly to the point, RSA 374-F:3, VI-a, preserved the energy efficiency programs, as well as the components and framework that comprise the triennial plans, sending a clear signal that the policy of New Hampshire is to sustain the NHSaves programs by preserving the framework of the plans the methods through which they are delivered to customers.

D. Conclusion

The Joint Utilities thank the Commission for the opportunity to address these critical legal issues as the parties move forward in seeking approval of the Plan, and hope that in doing so the Commission and parties can work most constructively to see the next plan enacted as expeditiously as possible.