

THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Electric and Gas Utilities
2024-2026 Triennial Energy Efficiency Plan
Docket No. DE 23-068

NEW HAMPSHIRE DEPARTMENT OF ENERGY’S
BRIEF IN RESPONSE TO SEPTEMBER 7, 2023 PROCEDURAL ORDER

The New Hampshire Department of Energy (“DOE” or “Department”) files this brief as requested by the Public Utilities Commission (“PUC” or “Commission”) in its Procedural Order dated September 7, 2023.

I. INTRODUCTION

New Hampshire’s Joint Utilities, consisting of Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty; New Hampshire Electric Cooperative, Inc.; Public Service Company of New Hampshire d/b/a Eversource Energy; Until Energy Systems, Inc.; Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty; and Northern Utilities, Inc. (together, “Joint Utilities”) filed its petition on June 30, 2023 requesting the Commission to approve its 2024-2026 Statewide Triennial Energy Efficiency (“Plan”) pursuant to RSA 374-F:3, VI-a(d)(5). On September 7, 2023 the Commission issued a Procedural Order asking the DOE, Office of Consumer Advocate (“OCA”), and Joint Utilities to submit a brief in response to several questions articulated in the Order.

This brief responds to specific questions raised by the Commission concerning what elements of the pending 2024-2026 Triennial Energy Efficiency Plan are appropriate for review

and potential modification in this docket, given the provisions of HB 549, which amended RSA 374-F:3, VI in early 2022. The Department makes some general observations about HB 549, before turning to the specific questions asked by the Commission.

House Bill 549 provided legislative guidance on a number of key policy issues concerning Energy Efficiency (“EE”) after the Commission issued Order No. 26,553 on November 12, 2021 in DE 20-092, which significantly altered the EE Plan proposed by the Joint Utilities for 2021-2023. House Bill 549 established several key factors which are relevant to the Commission’s review of this 2024-2026 Triennial Plan in this docket:

- The System Benefit Charges (SBC) and the Local Distribution Adjustment Charges (“LDAC”) for funding EE programs are now set by formula and by extension, so are total EE budgets. RSA 374-F:3, VI-a(d)(2).
- Cost-effectiveness evaluation of EE programs will include four elements:
 - o use of the latest Avoided Energy Supply Cost (“AESc”) Study results,
 - o use of Evaluation, Measurement, and Valuation (EM&V) study results,
 - o consideration of free ridership, and
 - o use of the Granite State Test (“GST”) as the primary test and the Total Resource Cost Test (“TRCT”) as a secondary test. RSA 374-F:3, VI-a(d)(4).
- Up to 5% of program budgets will be spent on EM&V studies. RSA 374-F:3, VI-a(d)(5).
- Proposed EE programs and budgets will be deemed approved, in cases where the Commission does not issue a decision in a specified timeframe; and in the event the Commission denies approval of an EE Plan, the existing EE plan will remain in effect until changes are approved. RSA 374-F:3, VI-a(d)(5).

With these elements established by statute, stability and continuity in the EE area have been largely restored.

II. ANALYSIS

A. Codification of Frameworks

With the legislative directives summarized above as a backdrop, the Department provides the following responses to the specific inquiries raised by the Commission.

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 this docket, the Commission is generally precluded from changing a variable or assumption contained in the GST framework, but inputs may be updated. HB 549 directs that cost-effectiveness of EE program offerings will be evaluated using the GST as the primary test and the TRCT as the secondary test. RSA 374-F:3 VI-a(d)(4). The GST was developed by the Benefit/Cost (“B/C”) Working Group in close coordination with the EM&V Working Group.¹ The B/C Working Group conducted an in-depth review of cost effectiveness testing utilizing the consulting services of Synapse Energy Economic, Inc. (“Synapse”). Synapse provided a study report to the Commission on October 14, 2019 in DE 17-136 with a comprehensive recommendation concerning benefit/cost testing, which described the GST in great detail. (“Synapse Report”). The Commission approved the recommendation of the B/C Working Group that the GST (as detailed in the Synapse Report) be the primary test used in New Hampshire for evaluating the cost effectiveness of EE programs. Order No. 26,322 (December 30, 2019).

Then the legislature adopted the GST in HB 549 in early 2022. Thus, when considering questions as to what has been established by HB 549 versus what the Commission can review, change, approve, etc. in this docket, one should carefully review and rely on the Synapse Report

¹ These working groups were formed, and their scope of review was delineated, by Commission Orders in DE 17-136. See Order No. 26,095 (January 2, 2018) and Order No. 26,207 (December 31, 2018).

and Commission Order No. 26,322 in DE 17-136. This order adopted the GST as the primary test, as detailed in Synapse Report which was thoroughly reviewed in that docket.

Appendix 1 to the Commission Order No. 26,322 is a chart establishing the various impacts to be used in the GST. These impacts cannot be altered in this docket by the PUC because the GST was adopted by the legislature. That said, the inputs used in the GST need to be updated for current circumstances (like in the calculation using discount rates - see more below) and also because the GST (as described in the Synapse Report) contemplated future study in many areas. For example, the Synapse Report at p. 9 provides:

- Avoided Ancillary Services - “In the short term, value at \$0. Overtime, determine whether this impact is enough of a priority to monetize.”; and
- Increased Reliability – “Use the avoided values in AESC to monetize reliability once those values are developed using recent, local data.”

In addition, all evidence the Commission uses in reaching a decision in this docket must be in the record and the parties must have been given an opportunity to respond to it. RSA 541-A:31, IV (“Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.”); *see also* RSA 365:28 (for instances where the Commission changes a prior Commission order). When reviewing issues in this docket, consistent with the limitations placed by HB 549 as discussed herein, the Commission can use its expertise as long as official notice is taken and the parties have the opportunity to respond.² In *Appeal of Granite State Electric*, the New Hampshire Supreme Court reversed and remanded a PUC decision

² “[T]he PUC may rely not only upon the evidence presented, but also upon its own expertise and that of its staff. It is not compelled to accept the opinion evidence of any one witness or group of witnesses. ‘Whether it should rely upon the expert testimony presented by staff witnesses in preference to that offered by the company is a matter for its judgment based upon the evidence presented.’” *Appeal of Pennichuck Water Works*, 160 N.H. 18, 26 (2010) (quoting *New England Tel. & Tel. Co. v. State*, 113 N.H. 92, 101-02 (1973)) (internal citations omitted).

because the PUC relied on certain data without taking official notice of it and allowing the parties to respond. 121 N.H. 787, 790-92 (1981).³

Discount Rates

Discount rates are used to calculate EE costs and benefits in present value terms. A higher discount rate gives more weight to short-term impacts, while a lower discount rate gives more weight to long-term impacts. Synapse Report at 43. The Synapse Report concludes by recommending that “New Hampshire stakeholders continue the current practice of using a low-risk discount rate”. *Id.* Further, the Report notes that “for the 2019 [EE Plan] Update, the New Hampshire utilities used a nominal discount rate of 4.75 percent and a general inflation rate of 1.86 percent, resulting in a real discount rate of 2.84 percent.” *Id. at 44* (referencing the Joint Utilities 2019 Plan Update, DE 17-136, Docket Tab 50, Statewide EE Plan 2019 Update at p. 36).⁴ Given this degree of specificity concerning the formula for calculating the recommended discount rate in the Synapse Report, the Department’s view is that this specific formula was embodied in the legislature’s adoption of the GST, and thus this formula is not subject to review by the Commission in this docket. What is appropriate for review is a determination whether the utilities used the correct, corresponding up-to-date values for populating the prescribed formula, and that the utilities applied the results of the calculation correctly in the benefit/costs analyses contained in the EE Plan.

³ “It is not this [C]ourt’s function to comb lengthy and detailed administrative records in search of evidence which would support an administrative finding.” *Id. at 792*. In finding that none of the evidence was in the record, the Court reasoned that “the PUC may have been able to support its action by taking administrative notice of certain specified documents had it chosen to do so.” *Id.*

⁴ The formula underlying these figures, as stated in the 2019 Plan Update is: Real Discount Rate = [(1 + the nominal discount rate)/(1 + the inflation rate)] - 1, where the nominal discount rate equals the prime interest rate.

- a. **Is the Commission legally precluded from changing in this proceeding ... inputs, assumptions, or variables explicitly addressed in RSA 374-F:3, VI-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.**

House Bill 549 specifically states that “the Commission’s review of the cost-effectiveness [of EE plans] shall “incorporate savings impacts associated with free-ridership for those programs and measures where such free-ridership may have a material impact on savings figures.” RSA 374-F:3, VI-a(d)(4). Further, while suggesting methodologies for Market Transformation, the Synapse Report states that “Overtime, the utilities should re-evaluate their approach to free-ridership, spillover, and market transformation and decide whether and how to better account for these impacts in their cost-effectiveness analysis.” Synapse Report at p. 9, 11. Thus, in this docket, Commission review of the methods and assumptions the Joint Utilities undertook concerning free-ridership is appropriate to see if these assumptions are consistent with EM&V study results. *See* RSA 374-F:3, VI-a(d)(4) (requiring that the review of cost effectiveness shall be based upon ... results of any Evaluation, Measurement, and Valuation studies contracted for by the department of energy or joint utilities. . . .”).

- b. **Is the Commission legally precluded from changing in this proceeding inputs, assumptions, or variables not explicitly addressed in RSA 374-F:3, VI-a(d)(1)-(5) but addressed in the New Hampshire Cost Effectiveness Review.**

Generally, yes. Again, the answer to this question lies in the details of HB 549, Order No. 26,322, and the Synapse Report. As indicated above, the basic framework of the GST is laid out clearly in Order No. 26,322, Appendix 1, and in the Synapse Report at p. 50. Impacts not listed on those charts (for example participants’ portion of EE measure costs – which are included in the TRCT) cannot be incorporated into the GST. Likewise, for example, EM&V

costs, which are listed and included in the GST, cannot be eliminated from the GST in this docket. Such alterations to the basic GST framework would be contrary to HB 549. Impacts specifically addressed in the Synapse Report should be handled according to the recommendations in the Synapse Report, similar to the discussion above for discount rates and free ridership.

- 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.**

The Commission should look at these statements within the context of the Synapse Report (which provided the underpinnings of the GST) and with understanding that the legislature adopted the GST as law in NH in early 2022. The first statement deals with environmental externalities (other than a NH fossil fuel proxy), which is an impact that is listed on the chart of impacts but specifically not included in the GST. *See* Order No. 26,322 Appendix 1, and Synapse Report at p. 50. To add this impact now to the GST, would contradict HB 549 for two reasons. First, the quoted language refers to steps Synapse recommended for a change to a secondary test (not the GST which was recommended (and adopted) as the primary test). Second, the statement was pertinent only in the event that the stakeholders received explicit direction relative to the value of avoided emissions, which they have not received.

The second sentence deals with Synapse’s recommendation for monetizing impacts in the GST. Synapse recommended a three-step process for monetizing impacts, and the first step is

deciding whether to include an impact in the GST, based on changes to state policy. However, as indicated above, the legislature, in HB 549 since adopted the GST so no new impacts can be considered for inclusion in the GST in this docket. The recommended three-step process can be followed for impacts that are included in the GST framework (per Order No. 26,322, Appendix 1), similar to the discussion above concerning free ridership. Further, step three of this process calls for using state-specific evaluation of impacts, which is consistent with the provision in HB 549 requiring that B/C analyses be based on EM&V study results conducted by the Department or the Joint Utilities.

- c. Is the Commission legally precluded from changing in this proceeding inputs, assumption, 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.**

No, in fact updating and modifying these impacts in the GST is contemplated, as made clear in the Synapse Report on pp. 9 and 51. Modification should be made in line with the Synapse recommendations. For example, concerning ancillary services, the Synapse Report recommends using a value of \$0 in the short term. However, “[o]ver time, stakeholders could determine whether this impact is enough of a priority to monetize, and whether the cost to monetize this impact, perhaps through the AESC process, is worth paying given the expected improvement in the cost-effectiveness analysis.” Synapse Report p. 38. As noted above, use of the latest AESC results in benefit/cost analyses is called for (and thus consistent with) HB 549.

Similarly, concerning Income Eligible Participant Impacts, the Synapse Report recommends using “the values expected to be provided in the forthcoming Home Energy Assistance Program Evaluation or a proxy value such as a benefit adder informed by that study,

or reliable values readily adapted from literature.” Synapse Report at 9. Again, using EM&V study results is mandated by (and therefore completely consistent with) HB 549.

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 changing in this proceeding the role, composition, or function of any working group convened under the authority of a prior Commission order as long as the parties have proper notice in accordance with RSA 365:28 and RSA 541-A:31, IV.

As discussed, the EM&V Working Group was established as part of Docket DE 17-136 and is comprised of Commission Staff members (now the DOE), representatives of the Joint Utilities, an independent expert, and a stakeholder representative appointed by the Energy Efficiency and Sustainable Energy (“EESSE”) Board.⁵ Order No. 26,207 (December 31, 2018) (approving the Settlement Agreement). Commission orders in DE 17-136 also established the Benefit/Cost Working Group, the Performance Incentive Working Group, the Lost Base Revenue Working Group, and the Finance and Funding Working Group. Of all these working groups, only the EM&V Working Group remains active. The role of the EM&V Working Group continues to be very important for two reasons: First HB 549 provides: “For the purposes of the March 1, 2022 filing, and future plan offerings, the commission’s review of the cost-effectiveness shall be based upon . . . the results of any Evaluation, Measurement, and Valuation

⁵ The composition of the EM&V Working Group changed this year. House Bill 281 repealed the establishment of the Energy Efficiency and Sustainable Energy (“EESSE”) Board, who appointed a stakeholder representative to the EM&V Working Group. RSA 125-:5-a (repealed 2023). The EESSE Board voted and recommended that the OCA or its designee serve as this representative going forward. See August 10, 2023 EESSE Board letter. <https://www.energy.nh.gov/sites/g/files/ehbemt551/files/inline-documents/sonh/eese-board-em-v-working-group-ltr.pdf>

studies contracted for by the department of energy or joint utilities” RSA 374-F:3, VI-a(d)(4). Second, HB 549 requires “[u]p to 5 percent of the overall [Plan’s] program budget shall be expended on Evaluation, Measurement, and Verification studies, which the department or joint utilities shall contract for as the department deems necessary to assure program funds are optimized to deliver ratepayer savings and to secure funds available from wholesale energy and ancillary services markets.” RSA 374-F:3, VI-a(d)(5). The EM&V Working Group advises the Department and Joint Utilities as to how those funds should be expended.

Nothing precludes the Commission from changing the EM&V Working Group, as long as notice and an opportunity to respond are provided. RSA 541-A:31, IV; RSA 365:28.⁶ However the DOE urges the Commission to allow the EM&V Working Group to continue to operate as it currently does, given the group’s important role, especially the role of the EM&V independent expert consultant who advises which studies to conduct, ensures the studies are done accurately with the results implemented appropriately as well as serving as an expert advisor on various EM&V issues.

- 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?**
- 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?**

⁶ State statute RSA 365:28 provides, “At any time after the making and entry thereof, the commission may, after notice and hearing, alter, amend, suspend, annul, set aside, or otherwise modify an order made by it. . . .”

No. Performance incentives (“PI”) and lose base revenue (“LBR”) were restored by HB 549,⁷ but are subject to change in future filings. RSA 374-F:3, VI-a(d)(3) and (5) specifically contemplate that a subsequent order could change PI and LBR. Subsection (5) reiterates the importance of the Commission issuing a decision by “the following November 30” after the submission of the Plan. RSA 374-F:3, VI-a(d)(5). If the PUC fails to do so, then the plan “shall be deemed approved except for changes in performance incentives and recovery of lost base revenues.” Thus, even if there is a delay in issuing an order on an EE Plan, the PUC still retains authority to subsequently review and approve proposed changes to PI and LBR.

In fact, two changes are proposed for PI in this case. First, Eversource has agreed to remove the PI associated with its SmartSTART program, pursuant to Commission Order No. 26,621 (April 29, 2022, p. 27). *See* DOE Testimony in DE 23-068, Attachment DOE 11 (Data Request Response 1-021) (Sept. 12, 2023). Second, the proposed Plan now includes the net benefits from the Active Demand Response programs in the PI. *See* DOE Testimony, Attachment DOE 11 (Data Request Response 1-019) (Sept. 12, 2023); Plan at Bates p. 78 (June 30, 2023) (“As full programs, the design level PI will incorporate both the costs *and* the benefits achieved by the ADR programs.”). That said, the basic PI structure was approved by the Commission based on the recommendation of the PI Working Group, after significant stakeholder involvement. No party in this docket has proposed a substantial change to the basic, existing PI structure.

⁷ “Notwithstanding any subsequent commission order to the contrary, the joint utility energy efficiency plan and programming framework and components, including utility performance incentive payments, lost base revenue calculations . . . shall remain in effect until changed by an order or operation of law as authorized in subparagraphs (3) and (5).” RSA 374-F:3, VI-a(d).

Concerning LBR, the Department expects that Eversource will seek to eliminate LBR when it requests approval for revenue decoupling in its next rate case. *See* Order No. 25,932 (August 2, 2016) in DE 15 -137. The Commission is not precluded from reviewing such a change to Eversource’s LBR mechanism when presented.

B. Statutory Policy Priorities and Statements

The Commission posed the following four specific questions concerning statutory construction which the Department addresses below:

- 5. Are the policy priorities and statements in RSA 374-F:3 and 378:37 complementary or conflicting?**
- 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?**
- 7. Does the section title “Least Cost Energy Planning” have any interpretive value with respect to the policy statement in RSA 378:37?**
- 8. Does *Appeal of Algonquin Gas Transmission*, 179 N.H. 763, 774 (2018) establish any principles or rules applicable to the Commission’s review under RSA Ch. 374-F in this proceeding?**

In considering the Plan, the PUC should ascribe plain meaning to RSA 374-F and RSA 378:37 and “not consider words and phrases in isolation, but rather within the context of the statute as a whole.” *See Appeal of Algonquin Gas Transmission*, 170 N.H. 763, 770 (2018). Additionally, “in the case of conflicting statutory provisions, the specific statute controls over the general statute.” *Appeal of Pennichuck Water Works*, 160 N.H. 18, 34 (2010) (quoting *Appeal of Plantier*, 126 N.H. 500, 510 (1985)). The PUC should consider both statutes and interpret them consistently since they both address EE and can be read consistently. *See Merrimack Premium Outlets v. Town of Merrimack*, 174 N.H. 481, 487 (2021). If the PUC believes that these

provisions conflict, then the PUC should give more weight to RSA 374-F:3, VI-a as this provision is directly on point in evaluating the EE Plans. *See Pennichuck*, 126 N.H. at 510.

As already discussed, one of the fundamental canons of statutory interpretation is to interpret statutes according “to its plain language.” *Algonquin*, 170 N.H. at 774. In the *Algonquin* case, the New Hampshire Supreme Court reviewed the PUC’s decision to reject Eversource’s proposal to acquire gas-capacity finding that it violated the Restructuring statute. *Id.* at 774-775. The Restructuring statute in RSA 374-F:3 lists approximately fifteen (15) “interdependent policy principles” that “are intended to guide the . . . public utilities commission . . . in implementing a statewide electric utility industry restructuring plan” RSA 374-F:1, III. The Supreme Court determined that the PUC erred because it elevated one policy principal of the Restructuring statute, ‘functional separation,’ RSA 374-F:3, III over the others. It was the Court’s position that the policies were interdependent, and all must be addressed. The ultimate goal was not to increase competition by separating transmission and distribution services from power generation, but the ultimate goal was to reduce costs for customers by evaluating all fifteen policies.⁸ In fact the PUC in its order did not even address any of the other fourteen (14) policy principles. *Algonquin*, 170 N.H. at 773.

⁸ The Court “discern[ed] that the primary intent of the legislature in enacting RSA chapter 374-F was to reduce electricity costs for consumers. *See* RSA 374-F:1, I. [The Court] disagree[d] with the PUC’s ruling that the legislature’s ‘overriding purpose’ was ‘to introduce competition to the generation of electricity.’ Rather, as the statute provides, the legislature intended to ‘harness[] the power of competitive markets,’ RSA 374-F:1, I as a means to reduce costs to consumers, not as an end in itself.” *Appeal of Algonquin Gas Transmission*, 170 N.H. 763, 774 - 75 (2018).

In his dissent, Justice Hicks argued that the PUC should not be reversed because pursuant to 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*. The overall public policy goal *of restructuring* is 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. Increased customer choice and *the development of competitive markets* for wholesale and retail electricity services are key elements in a *restructured industry* that will require

Applying another canon of statutory interpretation, the Court only considered the words of the “statute as written and [did] not consider what the legislature might have said or add language that the legislature did not see fit to include. *Id.* at 770. Using this canon, the Court determined that if the separation of generation from distribution and transmission services was the most important policy principle of the fifteen than the legislature would have stated so. *Id.* at 774.

Like the *Algonquin* case, the PUC in this docket is called upon to interpret the Restructuring statute, because the Plan is governed by, RSA 374-F:3, VI and VI-a, which amended the statute through HB 549. The PUC should apply the rules of statutory construction addressed in *Algonquin* and should not review section VI-a in isolation but should consider the statute as a whole. Like *Algonquin*, the PUC needs to continue to consider all Restructuring policy objectives and not elevate one principal above all others. *See Algonquin*, 170 N.H. at 774-75. While considering the Plan pursuant to RSA 374-F:3, VI-a, the PUC should also consider Section VIII, which encourages “[c]ontinued environmental protection and long-term environmental sustainability” and Section X, which urges “incentives for appropriate demand-side management.” *Algonquin* also stands for the proposition that the PUC should “construe all parts of a statute together to effectuate its overall purpose” *Algonquin*, 170 N.H. at 770; *see also Langevin v. Travco Ins. Co.*, 170 N.H. 660, 664 (2018) (quoting *Petition of Carrier*, 165 N.H. 719, 721 (2013)).

unbundling of prices and services and at least functional separation of centralized generation services from transmission and distribution services.” *Algonquin*, 170 N.H. at 776-77 (quoting RSA 374-F:1, I) (emphasis added)). By reviewing the statute as a whole and focusing on the word ‘restructuring,’ the Dissent contended that the PUC did not err and that the primary purpose of the Restructuring statute was to separate distribution from their regulated and transmission and distribution functions.

In determining whether the Triennial Plan comports with RSA 374-F, the PUC must also follow the policies addressing energy efficiency in the least cost energy planning statute, RSA 378:37.⁹ Statute RSA 378:37 is the only remaining part of the Least Cost Energy Planning section of RSA 378 because House Bill 281 repealed RSA 378:38 through RSA 378:40. Prior to HB 281, the Joint Utilities were required to submit least cost integrated resource plans (“LCRIP”) created “[p]ursuant to the policy established under RSA 378:37.” “at least biennially”¹⁰ RSA 378:38 (repealed 2023). The rules of statutory construction require that two statutes dealing with similar subject matter must be interpreted “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*, 174 N.H. at 487. However, “[w]hen a conflict exists between two statutes, especially when the later statute deals with a subject in a specific way and the earlier enactment treats that subject in a general fashion.” *In re Public Serv. Co.*, 130 N.H. 265, 283 (1988) (quoting *Board of Selectmen v. Planning Bd.*, 118 N.H. 150, 152 (1978)).

Because both RSA 374-F:3 and RSA 378:37 deal with energy efficiency, the PUC should interpret both statutes consistently. However, if the PUC believes the two statutes are inconsistent, then the PUC should give the LCRIP statute less weight since this statute is older than RSA 374-F:3, VI-a and does not address the EE Plan directly as does RSA 374-F:3, VI-a.

⁹ The statute provides that it is the energy policy of this state to meet [its] energy needs 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; to protect the safety and health of the citizens, the physical environment of the state, and the future supplies of resources, with consideration of financial stability of the state’s utilities.” RSA 378:37.

¹⁰ The least cost integrated resource plans (“LCRIP”) required in part “[a]n assessment of demand-side energy management programs, including conservation, efficiency improvement, and load management programs; “[a]n assessment of plan integration and impact on state compliance with the national Energy Policy Act of 1992;” and [a]n assessment of the plan’s long- and short-term environmental . . . impact on the state.” RSA 378:38 (repealed 2022).

See Pennichuck, 126 N.H. at 510 (applying the canon of statutory construction that the more specific statute controls in case of a conflict). However, the fact that the legislature could have repealed RSA 378:37 as part of HB 281 but chose not to shows that it continues to have relevance on New Hampshire's energy policy.

The section title of RSA 378:37-40 "Least Cost Energy Planning" should not be given significant weight in the Commission's analysis because "[t]he title of a statute is not conclusive of its interpretation, but it is a significant indication of the intent of the legislature in enacting a statute." *Appeal of Algonquin Gas Transmission, LLC*, 170 N.H. 763, 777 (2017) (citing *Greenland Conservation Comm'n v. N.H. Wetlands Council*, 154 N.H. 529, 534 (2006)). The title of this section of statute clearly relates to the fact that this section dealt with LCRIPs, *least cost* integrated resource plans, suggesting that cost is an important factor in New Hampshire utilities' resource plans.

Since the PUC can read both statutes harmoniously, it should do so. *Merrimack Premium Outlets*, 174 N.H. at 487 (holding that similar statutes should be interpreted to avoid conflict). Both statutes, RSA 374-F:3 and RSA 378:37, share many similarities. One advocates "the lowest reasonable cost," RSA 378:37 and the other encourages "reduce[d] rates for all customers." RSA 374-F:3, XI. Both recognize that cost is an important component in addition to encouraging "diversity of energy sources," RSA 378:37 and full and fair competition with "a range of viable suppliers" and "equitable treatment of old and new generation sources." RSA 374-F:3, VII. The Restructuring statute emphasized the need for renewable energy resources with consideration to cost, RSA 374-F:3, IX and RSA 378:37 also prioritizes "the physical environment of the state, and the future supplies of resources, with consideration of the financial stability of the state's utilities."

RSA 378:37 states that the energy policy of the state is “to maximize the use of cost-effective energy efficiency” whereas RSA 374-F:3, VI-a requires that funds, programming, and incentive payments are “optimized to delivery ratepayer savings.” RSA 374-F:3, VI-a(d)-(5). Ascribing plain meaning, *maximize* and *optimize* appear to have similar meanings, although maximize means “to increase to the greatest possible amount of degree” while optimize is defined to mean “to make as perfect, effective, or functional *as possible*.” *Maximize Definition*, DICTIONARY.COM, www.dictionary.com/browse/maximize (last visited Sept. 21, 2023); *Optimize Definition*, MERRIAM-WEBSTER.COM, [Optimize Definition & Meaning - Merriam-Webster](http://www.merriam-webster.com/dictionary/optimize) (last visited Sept. 21, 2023) (emphasis added). But, HB 549 now dictates the level of EE funding, so the maximum amount utilities will spend on ratepayer funded EE is established by statute. Operating within that maximum funding level, the Joint Utilities, per RSA 374-F:3, VI-a should implement the EE program to deliver optimal ratepayer savings. That could be accomplished by targeting EE programs with the highest B/C ratios, but also recognizing that all customers fund these EE programs (primarily by paying the SBC and the LDAC), and thus all customers should have the opportunity to participate in the EE programs. Thus, utilities often offer programs with lower B/C ratios to residential customers, than those offered to commercial and industrial customers.

III. CONCLUSION

The Department respectfully request that the Commission review the EE Triennial Plan before it in this docket subject to the various restrictions and parameters placed in it by HB 549, consistent with the discussion hereinabove.

Respectfully submitted,

New Hampshire Department of Energy
By its Attorneys,

/s/ Paul B. Dexter

/s/ Molly M. Lynch

Paul B. Dexter, Esq. #4866
Molly M. Lynch, Esq. #20795
21 South Fruit Street, Suite 10
Concord, NH 03301
603-271-3670
Paul.B.Dexter@energy.nh.gov
Molly.M.Lynch@energy.nh.gov

September 23, 2023

Certificate of Service

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included in the Commission's service list for this docket on this date, September 23, 2023.

/s/ Molly M. Lynch

Molly M. Lynch