

STATE OF NEW HAMPSHIRE

CONSUMER ADVOCATE
Donald M. Kreis



TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-1172

OFFICE OF THE CONSUMER ADVOCATE

21 South Fruit Street, Suite 18
Concord, New Hampshire 03301-2429

Website:
www.oca.nh.gov

October 12, 2023

New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

via e-mail to clerksoffice@puc.nh.gov

Re: Docket No. DE 23-068
Triennial Energy Efficiency Plan

To the Commission:

Please treat this letter as the response of the Office of the Consumer Advocate (“OCA”) to the Procedural Order Re: Fourth Set Record Requests and Requests for Specific Answers to the Joint Utilities and Requests to the Office of the Consumer Advocate (tab 72) (“Procedural Order”), entered in the above-referenced docket on October 6, 2023. Page 4 of the Procedural Order contains two requests for information from the OCA concerning the written testimony of Tim Woolf and Danielle Goldberg, which we filed on September 12, 2023 (tab 48).

Via this letter, we are providing a substantive response to these two requests but, regrettably, we must do so while preserving a standing objection to the propriety of the requests as made by an administrative tribunal in connection with an ongoing contested case that is being litigated pursuant to the Commission’s procedural rules (N.H. Code Admin. Rules Chapter Puc 200) and the Administrative Procedure Act (RSA 541-A) (“APA”). In effect, the Commission is conducting discovery, something for which there is no provision in the APA. The Chapter Puc 200 rules, which are in need of revision in light of the creation in 2021 of the Department of Energy as the successor to what was previously the Staff of the Commission, provide for discovery but only as conducted by the petitioner, the “staff of the commission” (i.e., now, the Regulatory Support Division of the Department of Energy), the OCA, and intervenors. Rule Puc 203.09(a).

Given that the OCA intends to have Mr. Woolf and Ms. Goldberg adopt their written testimony at hearing and thereafter to make them available for cross-examination, there exists the possibility of their being asked at that time, while under oath, questions similar to (or following up on) those the Commission has posed in the Procedural Order. Regrettably, we must reserve the right to interpose objections to such questions at that time as well. If asserted, such objections would likely raise issues of relevance and probative value, given the limited scope of the Commission’s task in this docket as defined by RSA 374-F:3, VI-a(d) and the reality that the stipulation submitted on October 6, 2023 (tab 74), which is binding on the Commission pursuant to Rule Puc 203.20(d), contains all of the facts necessary for the Commission to approve the proposed 2024-2026 Triennial Energy Efficiency Plan on a non-contested basis.

Subject to the foregoing, attached to this letter is a live Excel workbook we believe is responsive to the Commission’s two requests. In reviewing the workbook and the testimony to which it refers, we request that the Commission and the parties take note that:

1. All values are now based on constant 2024 dollars. Mr. Woolf and Ms. Goldberg made an error in the testimony that used costs in nominal dollars but benefits in constant 2024 dollars. The correction had a very small impact on the numbers and no impact on the findings. The workbook contains the correct calculations.
2. Figure 4 in the Woolf/Goldberg testimony was mislabeled as “Costs, benefits, and net benefits of *electric and* gas efficiency programs, 2024–2026” (emphasis added) but the text of the testimony and the actual data in Figure 4 refer to gas-only efficiency programs. The attached live workbook provides data for the gas efficiency programs.

We will offer appropriate corrections to the written testimony as part of the live, direct testimony of Mr. Woolf and Ms. Goldberg at hearing.

Because it is germane to the live testimony of Mr. Woolf and Ms. Goldberg, along with that of others, we are taking this opportunity to respond to certain language in the Commission’s Prehearing Order of October 12, 2023 (tab 80). At page 3 of the Prehearing Order, the Commission stated that it

intends to take official notice of the written responses to the Commission’s written inquiries issued over the course of this proceeding, including having written responses adopted by witnesses during hearing sessions. The parties were afforded the opportunity to provide responses to the Commission’s statement of intent, and the parties made position statements that were preliminary in nature.

As to the question of the Commission taking official notice of other responses to the numerous written inquiries directed to the utilities participating in this docket, the OCA’s position is that these documents do not meet any of the criteria for official notice as set forth in the applicable provision of the Administrative Procedure Act, RSA 541-A:33, V. This is not a preliminary view although we reserve the right to make other objections to the admission of this or other evidence into the record. The OCA simply does not believe that these documents are appropriate for being entered into evidence, particularly in the circumstances of this case.

We hope for a smooth and uneventful hearing, culminating in Commission approval of the 2024-26 Triennial Energy Efficiency Plan. This letter is filed in that spirit, so as to minimize surprise and assist with the orderly conduct of the remainder of the docket. Please feel free to contact me if there are any questions or concerns about the foregoing.

Sincerely,



Donald M. Kreis
Consumer Advocate

cc: Service List
Attachment