

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Electric and Gas Utilities

2024-2026 Triennial Energy Efficiency Plan

Docket No. DX 23-068

Motion for Remote Participation and for Additional Pre-Hearing Conference

NOW COMES the Office of the Consumer Advocate (“OCA”), a party to this docket, and moves for (1) leave to have one of its two expert witnesses participate in the upcoming merits hearings remotely, and (2) an additional pre-hearing conference prior to the commencement of hearings on October 18, 2023. In support of these requests, the OCA states as follows:

I. Request for Remote Participation

On September 12, 2023, consistent with the approved procedural schedule in this docket, the OCA submitted the written pre-filed direct testimony of two expert witnesses, Tim Woolf and Danielle Goldberg (tab 48). Both are employed by Synapse Energy Economics – Mr. Woolf as its senior vice president and Ms. Goldberg as a senior associate.

Because Ms. Goldberg is based in Oregon, the OCA requests leave to allow her to testify and participate remotely. Requiring her to travel to New Hampshire would incur significant expense that would ultimately be borne by the state’s

residential utility customers. The OCA appreciates the value of in-person hearings and notes that Mr. Woolf, who is based in Cambridge, Massachusetts, expects to take the stand in the Commission’s hearing room at the appropriate time.

Therefore, we believe that granting our request would have little material effect on the quality of the upcoming hearings.

Beyond granting Ms. Goldberg leave to testify remotely, the OCA respectfully requests further guidance from the Commission about how the hearings in this docket will proceed. In its Prehearing Order of August 2, 2023 (tab 37), the Commission scheduled hearings for four days – October 18, 24, 25, and 31. This reflects an emerging practice at the Commission, which historically had adopted procedural schedules in contested cases that called for either a one-day of hearing or contiguous hearing days as the final milestone (or, in cases requiring briefs, the penultimate milestone) prior to an order on the merits.¹

This is a contested case but, unlike many such proceedings, there are essentially no issues in dispute. That became obvious when, on September 12, the

¹ The Office of the Consumer Advocate has concerns about this emerging practice but does not necessarily object to it in its entirety (though we reserve the right to preserve appellate issues related to the procedures adopted in this docket). We believe that changes of this magnitude in the way the Commission handles contested administrative proceedings ought to be enumerated in the Commission’s procedural rules, Chapter Puc 200 of the New Hampshire Code of Administrative Rules. We note that the Commission has an ongoing docket (DRM 22-055, opened a year ago) whose purpose is to update the procedural rules to account, *inter alia*, for the creation in 2021 of the Department of Energy. We urge the Commission to issue an initial proposal as soon as possible because the rulemaking provides a suitable public opportunity for those with frequent business before the Commission, the OCA included, to collaborate with the agency on how best to adapt contested cases procedures to a regulatory paradigm that changed significantly in 2021. To date, the Commission has responded to these changes in an *ad hoc* manner which, we respectfully suggest, has bred an unhelpful degree of regulatory uncertainty for utility shareholders, utility customers, and other parties participating in Commission proceedings. That uncertainty looms large here because this is a significant case that has attracted much public attention.

OCA, the Department of Energy, and intervenor Clean Energy New Hampshire all submitted written testimony fully in support of the Commission approving the Triennial Energy Efficiency plan filed by the six NHSaves utilities pursuant to RSA 374-F:3, VI-a(d)(5). The case has other intervenors – Conservation Law Foundation, The Nature Conservancy, LISTEN Community Services, Southern New Hampshire Services, CPower, and Acadia Center – but to the best of the OCA’s knowledge none of these parties intend to oppose the Triennial Plan. The statutory task of the Commission is to serve as the arbiter between the interests of utility shareholders and those of utility ratepayers, RSA 363:17-a, and, in this docket, it appears that those interests as represented before the Commission are fully aligned.

Nevertheless, the OCA is aware of and respects the Commission’s intention, as stated in this and other proceedings, to scrutinize with vigilance all matters consigned to it for resolution via contested case procedures. A looming procedural and evidentiary issue concerns the extensive “record requests” issued by the Commission to the NHSaves utilities on August 4 (tab 40) and September 1 (tab 45). The Commission’s procedural rules contain no reference to “record requests,” nor is there a mechanism in the rules that provides a defined pathway for responses to such queries from the Commission to find their way into the evidentiary record. Additionally, the Commission’s Procedural Order of September 7, 2023 (tab 46) calls for two rounds of legal briefs that conclude on October 6, 2023; if nothing else, the Procedural Order and the “record requests” put the parties on notice that significant

legal issues have arisen in this docket, many but not all of which concern benefit-cost testing for ratepayer-funded energy efficiency programs and measures.

RSA 541-A:31, V(b) and Rule Puc 203.15 both explicitly provide for one or more prehearing conferences in contested cases. Although the Commission held an initial prehearing conference on July 27, 2023, the OCA believes a second prehearing conference, conducted by one or more Commissioners and/or a hearing officer, would be helpful to both the Commission and the parties. The OCA and potentially other parties would welcome an opportunity to suggest to the Commission that four full days of evidentiary hearings may not be necessary in light of the lack of issues in dispute among the parties. Conversely, it would likely also be helpful to all concerned to go into the hearings with a better understanding of what issues will be the focus of Commission's attention, and which witnesses can be most helpful in providing the Commission with the evidence it needs to approve the Triennial Plan. It would also be enormously helpful (and, from a ratepayer perspective, economical) to structure the hearings by topic or otherwise so that it is not necessary for every witness to be present and ready to testify at every one of the hearing dates.

Given that the General Court has via RSA 374-F:3, VI-a(d) been unusually prescriptive about the scope and nature of this specific proceeding, the OCA looks forward to a collegial and unremarkable path through the hearings toward approval of the Triennial Plan by the required date of November 30, 2023. An additional prehearing conference would be enormously helpful to that end.

WHEREFORE, the OCA respectfully request that this honorable Commission:

- A. Grant the OCA leave to have witness Danielle Goldberg testify and participate remotely at the hearing to be conducted in this proceeding, and
- B. Schedule an additional pre-hearing conference pursuant to RSA 541-A:31, V(b) at the Commission's earliest convenience.

Sincerely,



Donald M. Kreis
Consumer Advocate
Office of the Consumer Advocate
21 South Fruit Street, Suite 18
Concord, NH 03301
(603) 271-1174
donald.m.kreis@oca.nh.gov

September 14, 2023

Certificate of Service

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



Donald M. Kreis