

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 23-068

ELECTRIC AND GAS UTILITIES

2024–2026 Triennial Energy Efficiency Plan

Order on Electric and Gas Utilities’ 2024–2026 Triennial Energy Efficiency Plan

O R D E R N O. 26,908

November 30, 2023

In this order, the Commission approves the changes to New Hampshire’s ratepayer-funded energy efficiency program offerings for the 2024–2026 period requested by New Hampshire’s electric and gas utilities.

I. PROCEDURAL HISTORY

On June 30, 2023, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty; New Hampshire Electric Cooperative, Inc. (NHEC); Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource); Unitil Energy Systems, Inc. (UES); Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty; and Northern Utilities, Inc. (together, the “joint utilities”) petitioned the Commission pursuant to RSA 374-F:3, VI-a(d)(5).

Other parties participating in this proceeding include the New Hampshire Department of Energy (DOE), the Office of the Consumer Advocate (OCA), Clean Energy New Hampshire (CENH), the Conservation Law Foundation, CPower, the Acadia Center, The Nature Conservancy, LISTEN Community Services, and Southern New Hampshire Services.

The procedural schedule transpired between two statutory deadlines set by RSA 374-F:3, VI-a(d)(5): the joint utilities’ July 1 petition deadline and the Commission’s November 30 order deadline. Although the procedural schedule included opportunities

for discovery, pre-filed testimony, and settlement conferences, no responses to discovery were filed, and the parties did not present a settlement agreement. The Commission initially reserved five full-day hearing sessions. The Commission requested that records, data, and specific answers to its questions be provided, and that legal questions be briefed. The parties, excluding the DOE, filed a joint stipulation as to certain facts, and argued that the records, data, and specific answers could not be considered by the Commission. Hearing sessions were held on October 25 and October 31, 2023.

All docket filings, other than any information subject to confidential treatment, are posted at: <https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-068.html>.

II. BACKGROUND ON RATEPAYER FUNDED ENERGY EFFICIENCY

The Commission has historically regulated the development and implementation of ratepayer-funded energy efficiency programs pursuant to its broad general statutory authority.¹ In Order No. 24,932, the Commission stated that it “will oversee the development of the specific [energy efficiency] programs and their subsequent implementation to ensure that the energy efficiency programs funded by customers are indeed the least-cost resource available to the Joint Utilities’ customers.” *Id.* at 54.

Effective January 1, 2022, HB 549 (2022) amended RSA chapter 374-F, “Electric Utility Restructuring,” by, among other things, adding new subsection VI-a to RSA 374-F:3.² RSA 374-F:3, VI-a made two overarching changes to New Hampshire’s ratepayer-funded utility-administered energy efficiency programs: 1) it set funding

¹ See Order No. 25,932, at 46–48 (August 2, 2016), citing RSA 374:3 (general supervision of all public utilities), RSA chapter 378 (rates and charges), and RSA 374-F:3, VI (authorizing a System Benefits Charge (SBC), a non-bypassable volumetric charge).

² HB 549 (2022) also added new section RSA 374:63, expressly authorizing the States’ gas utilities to participate in statewide energy efficiency programs, subject to the requirements of RSA 374-F:3, VI-a.

levels for ratepayer-funded energy efficiency programming by setting the energy efficiency portion of the SBC and LDAC³ charges; and 2) it limited the Commission's authority with respect to the 2024–2026 triennial planning period to authorizing changes to program offerings. See RSA 374-F:3, VI-a(d).

III. COMMISSION ANALYSIS

A. Legal Standard

In contrast with the Commission's broad regulatory authority that served as the basis of the Commission's oversight of energy efficiency programs prior to HB 549 (2022), we now conclude that RSA 374-F: 3, VI-a(d)(5) effectively limits the Commission's role in this proceeding to authorizing changes proposed by the joint utilities to energy efficiency program offerings. If all proposed changes are approved, the result is the proposed 2024–2026 Plan taking effect as a matter of law. We rely on a number of factors in reaching this conclusion, including the specific language in subparagraph (d)(5) applicable to this proceeding, the statutory scheme's guarantee of the continuation energy efficiency programs, and ambiguities regarding the Commission's role and applicable standard of review under RSA 374-F:3, VI-a.

i. Specific Authorizing Language

The first two sentences of RSA 374-F:3, VI-a(d)(5) apply specifically to the 2024–2026 planning horizon and prescribe a specific form of relief that the Commission is authorized to provide: “approving or denying a joint utility request to alter program offerings.” That specific form of relief is distinct from the general references to “plan or interim program update” used elsewhere in subsection VI-a. The OCA succinctly described the limiting nature of this subparagraph:

³ The natural gas utilities implement the energy efficiency charge through the Local Distribution Adjustment Charge (LDAC).

[B]y its terms, subparagraph (5) limits the scope of the Commission’s review to “approving or denying a joint utility request to alter program offerings” from those currently made available via NHSaves [and] ... directs the Commission to review “changes to program offerings,” as between those currently available and those included in the proposed Triennial Plan, and nothing else.”

Brief of the OCA (September 22, 2023) at 10–11. *See also* Tr. Oct. 31 at 137–39. The joint utilities’ petition also quoted the first two sentences of RSA 374-F:3, VI-a(d)(5), and only the first two sentences, in their petition seeking Commission approval of the Plan consistent with RSA 374-F:3, VI-a(d)(5). We conclude that this language is specific and limits both the relief requested and the Commission’s authority to request changes to program offerings in this proceeding.

ii. Programs Continue Under All Scenarios

Second, should the Commission deny a request to alter program offerings, then the most recent triennial plan, as updated, remains in effect until the Commission approves proposed changes to the plan or program update filing. RSA 374-F:3, VI-a(d)(5). The most recent triennial plan, as updated, is the 2022–2023 biennial plan approved by Order No. 26,621 (April 29, 2022). If the Commission takes no action on the plan by the November 30 deadline, the proposed changes to program offerings are approved by operation of law. Additionally, the Commission is precluded from approving changes to program offerings that are not proposed by the joint utilities for the 2024–2026 planning period in this proceeding. As the joint utilities surmised, “the Joint Utilities’ plan ... reasonably circumscribes the Commission’s authority to initiate a unilateral change to the energy efficiency framework...” Brief of the Joint Utilities (September 22, 2023) at 3. We also note that the Commission heard the following arguments from the OCA: that hearings were unnecessary because the Commission was bound by the outcome requested by the parties, Tr. Oct. 25 at 13–14; that if RSA

374-F:3, VI-a(d)(4) authorizes review of cost-effectiveness, it is beyond the scope of the proceeding pursuant to RSA 374-F:3, VI-a(d)(5), *id.* at 14; and that this proceeding can be reduced to a simple equation: (the current plan) + (changes) = (the next plan). Tr. Oct. 31 at 136. This supports the premise that Commission action is limited by the workings of HB 549 (2022) to a small segment of the triennial plan purview.

iii. Ambiguous Standard of Review

Third, we observe that RSA 374-F:3, VI-a(d)(5) does not contain an express standard of review to guide the Commission's determination under RSA 374-F:3, VI-a(d)(5). Nor does this provision contain directives to the Commission as to whether or how to assess proposed changes to program offerings under subparagraph (d)(5) with respect to: various existing standards and policy statements contained in RSA chapter 374-F and RSA 378:37; the directive to the joint utilities regarding optimization of programs to deliver ratepayer savings in RSA 374-F:3, VI-a; and language regarding the Commission's consideration of prioritization of program offerings among and within customer classes in RSA 374-F:3, VI-a(d)(4). Rather, the parties in this proceeding argued that the Commission lacked traditional regulatory authority, including the authority to refer to or rely on pre-filed records, data, and written responses to Commission inquiries in this proceeding. *See, e.g.*, Joint Utilities' Position Statement (October 16, 2023); OCA Response to Procedural Order (October 12, 2023). In legal briefs filed before the hearings, the parties generally argued that the Commission lacks authority in this proceeding to: initiate changes to benefit-cost testing framework inputs, assumptions, and variables; alter the role, composition, or function of working groups authorized by the Commission, such as the evaluation, measurement and verification (EM&V)

working group; or substantively assess the frameworks for performance incentives and lost base revenues. *See generally* Briefs of the Joint Utilities, OCA, DOE, and Joint Intervenors (September 22, 2023). In light of the ambiguities over the applicable standard of review, we review the proposed changes to program offerings individually and collectively, evaluating the proposed changes to program offerings for the 2024–2026 period to determine whether the result is just and reasonable and serves the public interest. *See, e.g.*, Puc 203.20(b).

iv. Emphasis on Continuation of the *Status Quo Ante*

In 2022, the Commission issued an order that interpreted statutory language similar to that contained in subparagraph (d)(5). In Order No. 26,621, the Commission identified that “energy efficiency programming should continue in a predictable manner” and “that the functional role of the Commission must be more than a passive reviewer with no regulatory role in the implementation and ongoing oversight of this multi-million-dollar program funded primarily through direct ratepayer charges.” Order No. 26,621 at 20–21. That Order balanced those competing directives by conditionally approving the 2022–2023 plan. The Commission sought to focus the attention of the joint utilities and other parties at directing savings on a both long- and short-term basis by requiring that both annual and lifetime electric energy savings meet a 65 percent statutory threshold for the 2024–2026 plan. *Id.* at 23. That condition and interpretation was legislatively overturned in the interest of maintaining the *status quo ante* of planning and development frameworks. SB 113 (2023) (clarifying the public utility commission's review of criteria for cost effectiveness). We therefore place greater emphasis on the continuation of the existing efficiency programs in a manner consistent with the frameworks in existence when HB 549 (2022) was enacted.

We also note that through briefs and at hearing the parties argued that the Commission's regulatory oversight is narrow. Nonetheless, the joint utilities seek affirmative approval of the Plan. To quote Black's Law Dictionary page 94 (5th ed. 1979), which in turn cites to *McCarten v. Sanderson* 111 Mont. 407, 109 P.2d 1108, 1112, "Approval' implies knowledge and exercise of discretion after knowledge." We limit our findings and approval to what we understand the Commission's authority to be for the 2024–2026 planning horizon: approving or denying requested changes to program offerings as requested by the joint utilities pursuant to RSA 374-F:3, VI-a(d)(5), and further conclude that it necessarily follows that approval of all changes to offerings means that the proposed 2024–2026 Energy Efficiency Plan shall take effect as a matter of law. In so doing, we see no uncertainty in the effect of our order, but rather believe that we are fulfilling the limited duties assigned to us under law without impermissibly exceeding our role following the enactment of HB 549 (2022) and SB 113 (2023).

v. Oversight and Review Under Subparagraph (d)(4)

Despite the limited scope of the Commission's review in this proceeding, statutory provisions within and outside of RSA 374-F:3, VI-a(d)(5) impose requirements on ratepayer-funded energy efficiency programs. These requirements include that: an electric utility's planned electric system savings not fall below 65 percent of overall planned annual energy savings (RSA 374-F:3, VI-a(d)(4)); no less than 20 percent of the funds collected for energy efficiency are expended on income-eligible energy efficiency programs (RSA 374-F:3, VI-a(c)); and no more than five percent of funding are expended on EM&V studies (RSA 374-F:3, VI-a(d)(5)). It is unclear whether RSA 374-F:3, VI-a fully restricts the Commission's authority under RSA 374:3 and :4 if clear violations of those statutory standards in this proceeding are

implicated. However, as discussed below, our analysis does not trigger this question, insofar as the requirements of subsection VI-a result in a *de facto* approval of the 2024–2026 Plan, without the ability of the Commission to challenge the Plan’s specifics beyond the discrete changes specified in subparagraph (d)(5). To the extent that program updates are contemplated in RSA 374-F:3, VI-a(d)(5)’s parts of general applicability, it follows that statutory parties to this proceeding (particularly the joint utilities and DOE as mandatory parties) thereby assume the responsibility to propose interim updates as necessary to ensure that program offerings are lawful and further New Hampshire’s policies.

Despite the limitations under subparagraph (d)(5), subparagraph (d)(4) contains a reference to “the commission’s review of ... cost effectiveness” that appears to provide the Commission a basis to review energy efficiency program cost-effectiveness generally. However, in this proceeding, our analysis under RSA 374-F:3, VI-a(d)(4) is distinct from that relied upon to make our determination under RSA 374-F:3, VI-a(d)(5) because the Commission lacks authority to consider changes to energy efficiency program development and implementation not proposed as changes to program offerings by the joint utilities. Therefore, this analysis is provided for the benefit of the joint utilities, interested parties, and policymakers only.

B. Changes to Program Offerings

The joint utilities testified that “changes to program offerings” are reflective of changes at the program level to the existing suite of programs they offer, as opposed to program management adjustments such as changing energy efficiency measures, incentive levels, or sub-program offerings within the programs. *See* Tr. of Oct. 25 at 177–78, 199–200. The joint utilities went on to testify that the existing framework affords them inherent authority over program management and program execution,

including the discretion to remove, add, or change measures and sub-programming offerings, update the Technical Reference Manual (TRM), or otherwise respond to changes in the marketplace, and shift funds between programs up to 20 percent of program budgets. *Id.* at 132–34, 181–82, 194–95, 206.

The term “changes to program offerings” is not defined by statute and therefore leads to ambiguity. While we have significant concerns about the utilities’ control over many meaningful aspects of “changes to program offerings,” we nevertheless view our authority as a limited review of organizational changes to program offerings and evaluate the joint utilities’ requested changes accordingly.

i. Changes to Programs Requested by the Joint Utilities

The joint utilities identified two changes to program offerings that require Commission approval. *Id.* at 177–78.

- 1) Transitioning the active demand reduction (ADR) pilot into a full program to be offered by all the joint utilities except NHEC.
- 2) A new program name and structure for municipal gas customers that would maintain energy efficiency program offerings currently available to municipalities through commercial and industrial (C&I) program offerings.

With respect to transitioning the ADR pilot into a full program, we note that the objective of the ADR program is to reduce the Independent System Operator-New England (ISO-NE) Installed Capacity Requirement by dispatching resources during time periods likely to be associated with the ISO-NE system peak to reduce system load and provide savings to all users of the grid. Plan at Bates pages 77–78. According to the joint utilities, the ADR pilot provided quantifiable cost-effective benefits to all users of the electric grid during the pilot phase implemented by Eversource and UES. *Id.* The joint utilities’ proposed budget for the ADR program is \$5,887,156 over the

2024–2026 term, *id.* at Bates page 81, or approximately 2.3 percent of the overall Plan budget.

The proposed program structure change for municipal natural gas customers maintains consistent energy efficiency offerings that are already available through C&I programs. Tr. of Oct. 25 at 185. However, this new program structure will provide dedicated marketing and attention to municipal and public-school staff. Plan at Bates page 39. This structure will resemble that offered for municipal electric customers. Tr. Oct. 25 at 184–86. The proposed triennial budget for the gas portion of the municipal program is \$1,510,856, Plan at Bates page 47, or approximately 0.6 percent of the overall triennial budget.

We agree that transitioning the ADR program from a pilot to a full program is reasonable because the record indicates that the pilot has met its goals, provides cost effective and innovative measure offerings, and is an area of targeted demand reduction that should be offered to additional customer groups across the state. See Plan at Bates pages 77–78. We also agree that targeting municipal gas customers through a separate program, consistent with the way that municipal electric customers are served, although not a substantial change or change to offerings, is reasonable to provide uniformity to those customers. Tr. Oct. 25 at 185.

ii. Forecasted Budgets

The joint utilities requested approval of proposed budgets. The statutory funding formula resulted in a forecasted 2024–2026 Plan budget of \$253,769,323, *see* Plan at Bates pages 23–25, an increase of approximately \$30,024,000 over the previous triennial period budget. *See* Order No. 26,621 at 5. We find that the proposed Plan budgets were calculated based on reasonable assumptions about forecasted energy consumption and anticipated statutory SBC and LDAC rate increases. Plan at

Bates pages 347–76. We find that other revenue inputs required under RSA 374-F:3, VI-a(d)(1), including the energy efficiency fund established pursuant to RSA 125-O:23, revenues available from wholesale energy and ancillary services markets operated by ISO-NE, and energy efficiency carry-forward or carry-under balances, were appropriately incorporated into the budget. Plan at Bates pages 23–25. We note that the joint utilities commit to seeking and utilizing external sources of funding. *Id.* at 25–26; Tr. Oct. 25 at 176 (regarding federal funding).

As noted above, up to 20 percent of program budgets are transferrable between programs in the same customer class; therefore, budget allocations are a moving target subject to utility management discretion. See Tr. Oct. 25 at 132–33. Therefore, apart from finding the assumptions used to calculate the overall budgets to be reasonable, we are not called on to make a specific determination under RSA 374-F:3, VI-a(d)(5) that program budget allocations are appropriate.

iii. Changes to Performance Incentive Framework

Finally, the joint utilities request Commission approval of proposed changes to the performance incentive structure. These changes include incorporating costs and benefits from the ADR program, the calculation of the performance of each utility's programs against their respective three-year term instead of annual goals, and the elimination of Eversource's separate SmartStart program performance incentives.

We find that approving these changes to the performance incentive structure as changes to program offerings is consistent with RSA 374-F:3, VI-a(d)(5), and necessarily accompanies the addition of a new program offering under existing frameworks. Therefore, these are reasonable changes to the existing performance incentive framework. Adjusting the performance incentive framework to accommodate a new ADR program is reasonable and consistent with the existing framework's

treatment of programs. Calculating the performance of the utilities over the three-year term is consistent with the three-year term of the program offerings and may help insure proper verification and reconciliation of those amounts. Eliminating Eversource's SmartStart incentive is consistent with the Commission's prior Order No. 26,621, and therefore is both reasonable and required.

C. Cost Effectiveness Review Under Subparagraph (d)(4)

As noted above, the 2024–2026 budget amounts to \$253,769,323. The two programmatic changes approved in this order amount to less than 3 percent of the overall 2024–2026 forecasted energy efficiency programming budget. *See also* Tr. Oct 31 at 134–35. If these changes were not acted on, they would be deemed approved. If disapproved, the law directs that the *status quo ante* of energy efficiency programs would continue by operation of law. This results in 97 percent of the program offerings not subject to review under subparagraph (d)(5) in this proceeding.

Although not used to make our determination under RSA 374-F:3, VI-a(d)(5), the Commission did engage in an independent review of the Plan's cost effectiveness based on the language of RSA 374-F:3, VI-a(d)(4). This review was aided by a series of inquiries issued by the Commission related to the administration, operation, measures, sub-programs, programs, benefits, costs and related assumptions, and follow-up questions at hearing. Based on this review, we question both whether the 2024–2026 Plan's programming and incentive payments are optimized to deliver ratepayer savings and whether the utilities have prioritized program offerings appropriately among and within customer classes. If making such findings were necessary to approve the 2024–2026 Plan, and given the limited evidentiary record, we may not have been able to support the approval of the Plan as filed. Consistent with the analysis above, we instead offer our observations, suggestions, and

recommendations for future consideration by the joint utilities, policymakers, and other interested persons.

Through questioning at the October 25 and October 31, 2023 hearings, the Commission confirmed the flow of inputs and the calculation of benefits and costs that were applied by the joint utilities in determining benefit-to-cost ratios. Through these inquiries, the Commission confirmed that the inputs used for calculating the discount rates in the benefit-to-cost models are:

- (i) The prime rate, which is used as a nominal discount rate ⁴; and,
- (ii) The inflation rate, which is used to adjust the nominal rate in order to arrive at a real discount rate.

The nominal cost stream is derived using inflation-adjusted SBC and LDAC rates⁵ per RSA 374-F:3 VI-a (d)(2), and the nominal benefits stream is derived using the inflation-adjusted Avoided Energy Supply Costs (AESC) from 2021.⁶ These streams are then treated differently when calculating the net-present value of costs and benefits. Eversource witness Brandy A. Chambers confirmed on behalf of joint utilities that while the real discount rate⁷ is used to derive program benefits, program costs were discounted using the nominal discount rate. *See* Tr. Oct. 25 at 158–59.

Ms. Chambers and Eric M. Stanley confirmed that the inputs informing the benefits calculations were sourced from different timeframes, with the nominal discount rate set using the June 2023 prime rate, and the inflation rate set⁸ from

⁴ The prime rate used to calculate the present value of costs is 8.25 percent. *See* Tr. Oct 31 at 122.

⁵ The inflation rate applied to calculate the SBC rates is 4.91 percent for 2024, 4.51 percent for 2025 and 2.65 for 2026. *See* Tr. Oct 31 at 121.

⁶ Per the benefit-to-cost models, the AESC 2021 avoided costs are adjusted using annual inflation rate of 5.33 percent to create an avoided cost stream beginning in 2024. *See* Tr. Oct. 25 at 269.

⁷ The real discount rate (i.e., the prime rate adjusted by inflation) used to calculate the present value of benefits is 2.78 percent. *See* Tr. Oct 25 at 269.

⁸ The source provided in the benefit-to-cost models for inflation rate calculations is FRED, based on the change in the GDP deflator over time.

quarter 1 of 2022 through quarter 1 of 2023. *See* Tr. Oct. 25 at 147–48. As a follow-up to a record request from the first day of hearings⁹, Ms. Chambers noted that the real discount rate (or social discount rate in cost-effectiveness analysis) would become lower if the data point used for the prime rate was aligned to quarter 1 of 2023 instead of using the June 2023 prime rate input. *See* Tr. Oct. 31 at 12.

The Commission reviewed the data provided and confirmed that the real discount rate was indeed lower and would have been negative if calculated using quarter 1 data. A negative discount rate would be counter to the fundamental discounting principles as the present value of money would be worth less than that in the future. A negative discount rate values the future period more than the present period, which is inconsistent with the premise of how and why the discounting is performed to develop net present values. With a negative discount rate being applied only on benefits, the result would be even more perverse for the benefits-to-costs analytics, as costs continue to be treated as described above with a positive discount rate. In contrast, as noted by Ms. Chambers, aligning the timelines to quarter 2 of 2023 would lead to several programs no longer being cost-effective (i.e., yielding a benefit-to-cost ratio greater than 1). *Id.*

The Commission recommends consideration of either a new method of determining the discount rate or using a symmetrical and longer-term dataset to determine inputs. We believe that such a change would improve the applicability of discount rates in future benefit-to-cost assessments. To ensure cost-effective proposals, joint utilities are encouraged to consider conduct sensitivity analyses¹⁰ using longer-term discount rates to identify robust programs and prioritize them in

⁹ *See* Tr. Oct. 25 at 151.

¹⁰ The analyses could include consideration of 10-year, 20-year and 30-year prime rates and inflation rates in order to provide consistency through a more predictable real discount rate.

order to ensure that customers reap benefits throughout the life of each measure. Tim Woolf, expert witness for the OCA agreed with the merits of using a longer-term approach to discounting. *See* Tr. Oct 25 at 270–71. The Commission appreciates the openness, expressed by Ms. Chambers on behalf of the joint utilities, to work with the parties in considering discount rates and inflation rates over a longer time-period, such as five or ten years. *See* Tr. Oct. 31 at 13. The Commission believes the results of such sensitivity analyses could further guide program design by informing adjustments to incentives, program budgets etc.

With respect to how benefits and costs flow through the models provided, the Commission heard at the October 31 hearing that the avoided energy benefits captured by Column ‘BH’ in the ‘Calculations Tab’ of the benefit-to-cost models benefit participants only, and that of the total non-electric resource benefits, all but Demand Reduction Induced Price (DRIPE)¹¹ benefits accrue only to participants¹². *See* Tr. Oct. 31 at 123–25. The Commission observes that approximately 20 percent¹³ of ratepayers participate in energy efficiency programs and receive at least 70 percent of the benefits modeled in the Granite State Test. It follows that non-participants primarily fund energy efficiency programs but receive a small percentage of the benefits.

The Commission also notes from the testimony of Mr. Stanley that benefits and costs for participants are currently not tracked by ratepayer type (e.g., income-eligible or non-income eligible participants), or by rate class. Tr. Oct. 25 at 169–70. The Commission encourages the joint utilities to track information on program spending

¹¹ The Commission understands DRIPE to be a valuation of demand reductions measured through a decrease in wholesale energy prices that could arise from the shedding of the most expensive marginal resources.

¹² In the transcript, reference was made to Oil DRIPE as an example of non-resource benefits. *See* Tr. Oct. 31 at 125.

¹³ According to record request response 2-001-1, roughly 20 percent of New Hampshire ratepayers are participants.

by ratepayer type, including spending by rate class and customer type (i.e., participants and non-participants who are income-eligible and non-income eligible). Such enhanced tracking would better track penetration by ratepayer type and capture how the benefit-to-cost ratios can be traced back to participants and non-participants, providing a better understanding of how program dollars are generated by ratepayers relative to how they are spent in generating benefits for each customer type in each rate class. The Commission suggests that this type of granular data could help inform program design to better achieve the goal of delivering ratepayer savings through energy efficiency programming.

Given the societal focus of energy efficiency program benefits, on the topic of participants versus non-participants in measuring cost effectiveness, we suggest that cost-effectiveness metrics capture both participant and non-participant benefits and costs as comprehensively as possible. Societal focus could also include consideration of participants' role in program delivery. Overall, we encourage energy efficiency planning be geared to serving more ratepayers.

The Commission considers the importance of the income-eligible program, as captured through legislation per RSA 374-F:3 VI-a (a)(6) and RSA 374-F:3 VI-a (c), the latter of which requires that “[n]o less than 20 percent of the portion of the funds collected for energy efficiency shall be expended on low-income energy efficiency programs.” In performing this work, the Commission suggests that it is important to be able to distinguish various funding recipient types, such as landlords, renters, and income-eligible homeowners. As identified earlier, the joint utilities currently do not have in place the means to track program incentives by recipient types. *See* Tr. Oct. 25 at 169–70. To better achieve policy goals, we recommend that future energy efficiency programming records and tracks each category of funding recipients to allow feedback

loops and analysis to ensure that benefits of the program can be focused on income-eligible recipients.

The Commission also considers the need for focused analysis on how many income-eligible customers are helped through program funding (i.e., whether greater emphasis will need to be put on the number of income-eligible customers helped versus how much funding each income-eligible customer receives). To that end, we recommend that project caps be revisited to analyze the impact of different income-eligible project spending caps and determine optimized thresholds. Overall, this analysis would help balance the need to serve more income-eligible customers with the convenience to utilities of providing additional proactive services exceeding project caps for single recipients. *See* Tr. Oct 31 at 29–31. The Commission suggests that the goal of income-eligible programming will best be served, and the benefit-to-cost ratio will likely improve, if utilities aim to maximize benefits by reaching out to more customers while remaining within the identified project caps.

The Commission notes that the joint utilities currently use their own discretion, as well as relying on the discretion of customer of choice of vendors/contractors, when deciding upon and providing incentives to customers. These often include 100 percent incentives going to customers other than those within the income-eligible program. *See* Tr. Oct. 31 at 33–34. The Commission recommends that supporting analysis be performed, and the approval process be clarified and made more uniform, to justify incentive levels higher than 50 percent offered to customers outside of the income-eligible program. The Commission believes that this will help improve future program design and effectively reach more customers.

Finally, the Commission observes from Table 1-1 of Plan that the cost per kilowatt hour (kWh) saved has been increasing over time. Likewise, overall benefit-to-

cost ratios demonstrate a declining trend. *See* Tr. Oct. 31 at 23–24. The joint utilities are encouraged to focus planning on program changes that yield lower cost per kWh savings in order to address this trend of diminishing returns, as well as focusing on energy efficiency measures that benefit all customers through ratepayer savings and system benefits, as opposed to predominantly the participants.

In sum, we believe that there are opportunities for improvements to New Hampshire's ratepayer-funded energy efficiency programming so that the State's policy priorities related to energy efficiency will be better targeted, including but not limited to the optimization to deliver ratepayer savings through the funding provided and appropriate prioritization of programming among and within customer classes. This guidance is of particular importance when considered in the context of the diminishing returns on investments in energy efficiency that have been observed over the last decade. With those goals in mind, we respectfully recommend that the following topics be prioritized for further study and consideration of ways to shape, redesign, and better implement ratepayer-funded energy efficiency programs:

1. Weighting benefits and costs as symmetrically as possible, and in doing so:
 - Assess whether the current methodology of deriving a discount rate results in a sound and predictable discount rate.
 - Consider whether cost effectiveness and program design appropriately reflect both societal costs and social benefits.
2. Study how the joint utilities determine customer incentive levels, focusing on ways to achieve greater penetration of energy efficiency for more ratepayers.

3. Consider more granular tracking of recipient classes for all customer classes to focus better on cost-effectiveness for both participants and non-participants.
4. Consider more granular tracking of recipient categories of income-eligible program offerings to differentiate between owner-occupants, tenants, and landlords so that benefits target income-eligible recipients.
5. Study the declining trend in the ratio of benefits to costs, with emphasis on measures and programming that benefit all customers and not only participants, enabling more cost-effective use of funding, ratepayer savings, and system benefits.

D. CONCLUSION

We conclude that the Commission's role in evaluating the joint utilities' petition related to the 2024–2026 planning period under RSA 374-F:3, VI-a(d)(5) is a narrow one of approving the joint utilities' requested changes to program offerings, which in this proceeding constitute approximately 3 percent of the proposed overall spending for the 2024–2026 triennium. We approve the requested changes to program offerings. Because these changes are approved, it follows that the proposed Plan¹⁴ shall take effect as a matter of law.

These determinations are based on our analysis of the language, structure, and ambiguous provisions within the applicable statute, with emphasis given to the specific statutory language applicable to this particular filing, the limited authority of the Commission under RSA 374-F:3, VI-a(d)(5), and the potential outcome of the proceeding if the Commission denied or did not act on the requests to change program

¹⁴ The Plan is inclusive of budgets, marketing activities, workforce development, as well as existing working groups and frameworks (including the EM&V working group and TRM update process) unless changed by order of the Commission in a subsequent proceeding.

offerings. If no order is issued, the two programming changes would be approved by operation of law. If the Commission denied the requests, the existing programs, unchanged, would continue automatically. The resulting legal outcome (the Plan taking effect as a matter of law) carries no precedential effect. Given the limited evidentiary record, our analysis under subparagraph (d)(4) does not definitively support the conclusion that opportunities do not exist to optimize ratepayer savings and better prioritize offerings among and within customer classes. If the applicable legal standard were interpreted differently to require the Commission's approval of the Plan based on New Hampshire's general statutory standards and policy priorities, we may have reached a different result.

Nonetheless, we limit our order to what we interpret the Commission's authority and role to be under the law for the 2024–2026 planning horizon, consistent with the directive that ratepayer-funded utility-administered energy efficiency programs continue consistent with existing programming framework and components.

We approve the requested changes to program offerings as discussed above under a just and reasonable and serving the public interest standard. This standard is met because each change is individually reasonable and will provide more uniformity in programming access and availability across the state to residential, C&I, and municipal ratepayers. These changes transition the ADR pilot into a full program offered by all the joint utilities except NHEC and add a new program structure for municipal gas customers. Both changes are expected to be cost-effective program offerings individually and collectively. The proposed changes to the performance incentive structure accompany these program offering changes in a manner that is consistent with the performance incentive framework and the three-year planning

horizon. Therefore, the requested changes to the performance incentive structure are also approved.


In response to the DOE's request, we decline to provide any specific approval to hire a consultant to facilitate the next triennial plan development because such an approval is outside the scope of this proceeding.

Finally, we thank the joint utilities for their responsiveness to our written inquiries and questioning during the hearing sessions. The responses aided the Commission in its understanding of the plan for the three years ahead and our role under the applicable statute. We reiterate that we approve the requested changes to the joint utilities' program offerings for the 2024–2026 period, and that by approving the requested changes to program offerings, this Order results in the joint utilities' proposed 2024–2026 Triennial Energy Efficiency Plan taking effect as a matter of law.

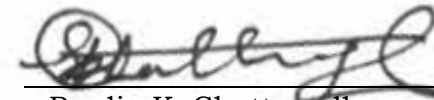
Based upon the foregoing, it is hereby

ORDERED, that, consistent with RSA 374-F:3, VI-a(d)(5), the joint utilities' requested changes to program offerings for the 2024–2026 period are **APPROVED**.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of November, 2023.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner

CONCURRING AND DISSENTING OPINION OF COMMISSIONER SIMPSON

I concur in the majority's decision approving the program changes contained in the 2024-2026 Triennial Plan (the Plan); however, I respectfully dissent from the remainder of the decision. The decision states that the program changes are approved and that the Plan takes effect as a matter of law. I interpret RSA 374-F:3, VI-a (d) to require a Commission decision on triennial plans in addition to a decision on program changes. Because this decision fails to rule on the Plan at large, I cannot join it. Based on the record I would approve the Plan as proposed, including the program changes.

As decisional officials, Commissioners are obliged to rule on all issues raised in a proceeding. *See* RSA 363:17-b (requiring a decision on all issues presented), *see also* RSA 541-A:35 (agency decisions shall include findings of fact and rulings of law). The petition in this docket specifically requested approval of the Plan.¹⁵ RSA 374-F:3, VI-a (d) directs the joint utilities to continue to prepare triennial energy efficiency plans for the Commission's review and states in part:

(d) 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, and Evaluation, Measurement, and Verification process that were in effect on January 1, 2021, shall remain in effect until changed by an order or operation of law as authorized in subparagraphs (3) and (5). The joint utilities shall continue to prepare triennial energy efficiency plans with programming and incentive payments at levels optimized to deliver ratepayer savings as made possible by the funding described as follows...

(5) Subsequent plan and update filings. On July 1, 2023, the joint utilities shall petition the commission to approve changes to program offerings for the next 3-year period, consistent with the system benefits charge and local distribution adjustment charges described in subparagraph (2). The commission shall issue

¹⁵ In this case, the Commission received a timely and complete petition from the joint utilities on June 30, 2023. In addition, the joint utilities' filing complied with the Commission's administrative rules. The petition requested that the Commission: "[a]pprove the Plan as proposed."

its order approving or denying a joint utility request to alter program offerings no later than November 30, 2023. Any utility or party may petition the commission to approve interim program updates prior to the next 3-year planning period on July 1 of any year during which a 3-year plan is not filed. The commission shall issue its order approving or denying the interim program updates by the following November 30. If the commission fails to issue an order on either a 3-year plan or an interim program update during the year in which a petition is filed, the proposed alterations to programs and budgets shall be deemed approved except for changes in performance incentives and recovery of lost base revenues, which the commission shall promptly review and approve by order. If the commission denies a 3-year plan or interim program update, the most recent 3-year plan, as updated, shall remain in effect until the commission approves proposed changes to that plan or program update filing. The joint utilities shall present a joint energy efficiency plan to the commission for review and approval no less frequently than every 3 years. (Emphasis added)

RSA 374-F:3, VI-a (d)(5) addresses our review process for this Plan, as well as subsequent plans and update filings, and then goes on to address changes to plan offerings without distinguishing whether those changes are part of new 3-year plans or part of an interim filing. The plain language of sub-section 5 requires the Commission to issue a decision that either approves or denies a 3-year plan. The sub-section also addresses the effect of the Commission failing to issue an order on a 3-year plan and the effect of denying a 3-year plan. Further, RSA 374-F:3, VI-a (d) refers to an energy efficiency “plan” on numerous occasions. I read RSA 374-F:3, VI-a (d), as a whole, to require a Commission decision on an overall 3-year plan, not just a decision on program changes.

The majority explains why they decline to rule on the Plan based in part on an excerpt from the Office of the Consumer Advocate’s (OCA) September 22, 2023 Brief. The majority does not explain that the OCA repeatedly asked the Commission to approve the Plan as filed throughout this proceeding and that the discussion as referenced in the September 22 brief was narrowly focused on the Commission’s

review of cost effectiveness and free ridership.¹⁶ I raised the question of distinguishing “program change” and “Plan” at hearing to clarify this issue. The majority opinion does not mention legal arguments offered at hearing from the New Hampshire Department of Energy, joint utilities, and the Conservation Law Foundation articulating their respective position that the Commission must rule on the Plan. See October 31, 2023 Hearing Tr. at 131-150.

It is unclear to me why the majority’s interpretation of RSA 374-F:3, VI-a (d) has changed. RSA 374-F:3, VI-a (d)(3) pertained to the joint utilities’ 2022-2023 Plan filing:

(3) 2022-23 plan filing. On March 1, 2022, the joint utilities shall petition the commission to approve any changes to current program offerings that will be available for the period between May 1, 2022, and January 1, 2024, consistent with the system benefits charge and local distribution adjustment charges described in subparagraph (2). The commission shall issue its order approving or denying the joint utility request to alter program offerings no later than May 1, 2022. If the commission fails to issue an order by May 1, 2022, the proposed alterations to programs and budgets shall be deemed approved, except for any changes in performance incentives and recovery of lost base revenues, which the commission shall promptly review and approve by order. If the commission denies a 3-year plan or interim program update, the most recent 3-year plan, as updated, shall remain in effect until the commission approves proposed changes to that plan or program update filing. (Emphasis added)

In Order No. 26,621 (April 29, 2022), the Commission ruled on 2022-2023 updates to the 2021-2023 triennial plan. The first sentence of Order No. 26,621 states, “In this order the Commission approves the 2022-2023 New Hampshire Energy Efficiency Plan...” The majority decision is inconsistent with Order No. 26,621 despite almost identical language requiring statutory interpretation. The majority defends their new interpretation by consistently stating that the Commission’s role in reviewing energy efficiency programs and plans has been limited by the General Court, yet they opine at

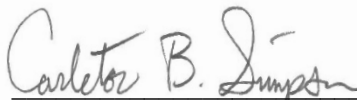
¹⁶ See Direct Testimony of Tim Woolf and Danielle Goldberg at 8, September 22, 2023 OCA Brief at 16, October 12, 2023 OCA Response to Procedural Order, and Transcripts of October 25 and 31, 2023 Hearings.

length on the specific statutory provisions pertaining to cost effectiveness and the methodologies codified.

The majority's decision may cause confusion as to which aspects of the Plan are approved and which, if any, take effect as a matter of law. The Plan contains numerous other elements, in addition to program changes. Those elements include budgets, evaluation, measurement and verification working group directives, and planning elements (marketing NHSaves, workforce development and education, benefit-to-cost testing, and development of the Technical Reference Manual). I fear that the majority decision creates uncertainty and sends the wrong message to the parties and the public.

All parties recommended approval of the Plan. Dozens of public comments were received from individual citizens, municipalities, non-profit organizations, and industry groups supporting approval of the Plan. While I support the Plan as filed, our work is not complete. In future triennial plans or program updates, I hope to see more analysis and development around the integration of renewable and distributed energy resources, energy storage, managed electric vehicle charging, and smart controls to optimize efficiencies and coordination between the electric and natural gas networks.

In summary, I would approve the Plan as filed, based on the record presented. For the foregoing reasons, I respectfully concur in part and dissent in part.


Carleton B. Simpson
Commissioner

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Docket# : 23-068

Printed: 11/30/2023

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