

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

Docket No. DE 20-092

ELECTRIC AND GAS UTILITIES

2021-2023 Triennial Energy Efficiency Plan

**DEPARTMENT OF ENERGY’S MOTION FOR REHEARING
AND/OR CLARIFICATION OF ORDER NO. 26,553**

NOW COMES the Department of Energy (“DOE”), a party to this proceeding, and moves pursuant to RSA 541:3 and N.H. Code Admin. R. Puc 203.07 for rehearing and/or clarification of Order No. 26,533 (November 12, 2021)(“Order Denying Triennial Plan” or “Order”), which sets rates relating to the electric and natural gas utilities 2021-2023 Triennial Energy Efficiency Plan (“Triennial Plan”), while also ordering further processes relating to a to-be-filed Program Proposal and budgets. In support of this Motion, the DOE states as follows:

1. Pursuant to RSA 541:3, the Commission may grant rehearing when a party states good reason for such relief. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding or by identifying specific matters that were overlooked or mistakenly conceived by the deciding tribunal.¹ A successful motion for rehearing does not merely reassert prior arguments and request a different outcome.² RSA 541:4 requires a motion for rehearing “shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.”

2. Several aspects of Order No. 26,553 require clarification and may provide good reason for rehearing, including those related to: (1) the appropriate benefit-cost test; (2) treatment of the 2021

¹ *Public Service Company of New Hampshire*, Order No. 25,239 at 4-5 (June 23, 2011).

² *Id.* at 5.

Avoided Energy Supply Costs Study; (3) the existence of, and budget for, Evaluation, Measurement, and Verification (“EM&V”) activities moving forward; (4) the use of gross and net savings figures; (5) the allocation of budgets between customer sectors and programs; (6) the impact of forecasted versus actual revenues; (7) the impact of budgetary underspends; and (8) the level of process due to the parties for review of the Program Proposal.

I. Benefit-Cost Test

3. Benefit-cost analysis is a systematic approach for assessing the cost-effectiveness of investments by comparing the net present value of the benefits and costs of potential investments.³ New Hampshire’s least cost integrated resource planning statutes require prioritization of energy efficiency and other demand side resources during utility planning processes when available options have equivalent financial costs, equivalent reliability, and equivalent environmental, economic, and health-related impacts.⁴ Benefit-cost analysis is the vehicle that allows consistent quantification of financial costs, reliability, environmental economic, and health related impacts — regardless of whether an investment is a demand side investment, or a distribution/transmission/supply side investment — so the Commission can evaluate resources on equal footing. In the context of energy efficiency program planning, benefit-cost screening is also a mechanism that can inform which measures and programs will provide net benefits to ratepayers, and how funds are allocated to prioritize certain measures and programs. From 2000-2020, the Commission screened the cost-

³ National Standard Practice Manual: Benefit Cost Analysis for Distributed Energy Resources. (August 2020) Page 30. (Observing that that benefit-cost analysis “is widely used by businesses for deciding whether to proceed with projects, investments, programs, initiatives, or other courses of action... [and] is frequently used by utilities, both for making internal resource investment decisions and to justify investment decisions to regulators and other stakeholders.” Available at: https://www.nationalenergyscreeningproject.org/wp-content/uploads/2020/08/NSPM-DErs_08-24-2020.pdf

⁴ See, RSA 378:39. Although the terminology of RSA 378:37-39 focuses on investment that are “least-cost,” RSA 378:37 clarifies that it “shall be the energy policy of this state to meet the energy needs of the citizens and businesses of the state at the lowest *reasonable* cost.” While the least cost planning statute directs consideration of health-related impacts, the Granite State Test does not directly quantify those impacts, and instead they are considered within a secondary test.

effectiveness of energy efficiency programs under the Total Resource Cost (TRC) test.⁵ The TRC generally measures the costs and benefits that accrue to both the utility system and to program participants, including participant costs (such as the customer copay for a given measure) and participant benefits (such as improved occupant comfort, productivity, and health) whose quantifications are sometimes contentious.⁶

4. In 2018, the Commission authorized a Benefit-Cost Working Group to solicit and hire a consultant to conduct a review of issues relating to the cost-effectiveness test for energy efficiency programs in accordance with the framework established in the National Standard Practice Manual.⁷ Using that framework, the Working Group led the development of a Report,⁸ and ultimately recommended adoption of a new primary cost-effectiveness screening test known as the Granite State Test (GST).⁹ The Commission adopted the Granite State Test as the primary cost-effectiveness screening test on December 30, 2019, with an effective date of January 1, 2021.¹⁰ In justifying adoption of the GST, the Commission cited the GST's focus on utility system impacts, as compared to the TRC, and provided the following illustrative example:

Use of the GST as the primary test will improve energy efficiency program screening by placing a greater emphasis on the utility system impacts than our current test. For example, in evaluating the cost-effectiveness of a lighting retrofit at a small business under the TRC, program evaluators consider the costs and benefits that accrue to the utility system and the program participant who installed the lighting measure. Evaluating that same lighting retrofit under the GST, program evaluators would consider the costs and benefits that accrue to the utility system but would not generally

⁵ See, Order No. 23,574 at 14 (November 1, 2000) (Establishing the total resource cost test as the standard for cost-effectiveness screening in New Hampshire.)

⁶ DE 17-136. Benefit-Cost Working Group Recommendation. Page 4. (October 31, 2019). Available at: https://www.puc.nh.gov/regulatory/Docketbk/2017/17-136/LETTERS-MEMOS-TARIFFS/17-136_2019-10-31_STAFF_FILING_WORKING_GROUP_REC.PDF

⁷ Order No. 26,207 at 8 (December 31, 2018).

⁸ DE 17-136. New Hampshire Cost-Effectiveness Review. Application of the National Standard Practice Manual to New Hampshire. Available at: https://www.puc.nh.gov/regulatory/Docketbk/2017/17-136/LETTERS-MEMOS-TARIFFS/17-136_2019-10-31_STAFF_NH_COST_EFFECTIVENESS_REVIEW.PDF

⁹ *Supra*, at note 6.

¹⁰ Order No. 26,322 (December 30, 2019) (Approving Benefit Cost Working Group Recommendation and establishing the Granite State Test as the primary test for cost-effectiveness screening effective January 1, 2021.).

consider those impacts accruing to program participants (e.g., the participant's improved productivity, comfort, property value, and share of installation costs). We find that this emphasis on utility system impacts, which accrue to program participants and non-participants equally, will more appropriately target those measures and programs that lower utility system costs, minimizing disparate treatment of program participants and non-participants.¹¹

5. In the Order Denying the Triennial Plan, the Commission found that the GST "is overly dependent on subjective factors," "cannot be expected to be reasonably understood by the public," and "cannot be solely relied upon for benefit-cost testing."¹² In light of these findings, the Commission directed that program benefits and costs be screened and reported using both the GST and the TRC, including for the purposes of the Program Proposal.¹³

6. Based on the Order, it is unclear whether the GST or TRC should be the primary test for cost-effectiveness screening moving forward. The DOE requests the Commission clarify that the TRC should be provided for illustrative purposes and considered a secondary test, and that the GST shall continue as the primary cost effectiveness test moving forward, including for development of the Program Proposal.¹⁴ A Program Proposal that uses the TRC as its primary test would look vastly different than a Program Proposal that uses the GST as its primary test because the choice of which benefits and cost are considered would have a significant impact on the program prioritization the Commission directed occur during development of the Program Proposal.¹⁵ For example, the TRC considers a program participant's copay a cost of the program, even though it is not within the program budget or recovered from ratepayers, while the GST does not consider participant copays a

¹¹ *Id.* at 9.

¹² Order No. 26,553 at 39.

¹³ *Id.* at 39, 47.

¹⁴ Order No. 26,322 established the GST as the primary test, along with two secondary tests that would be used for informational purposes only.

¹⁵ Order No. 26,553 at 1. (Directing the Joint Utilities to "identify energy efficiency programs that provide the greatest benefit per unit cost with the lowest overhead and administrative costs within the approved budget and file a program proposal for review and approval by the Commission.")

cost of the programs.¹⁶ If the Commission had instead intended for the TRC to be used as the primary test moving forward, the DOE requests reconsideration and/or rehearing of that decision, given the that the Commission appears to have overlooked facts related to its previous embrace of the GST, as well as the lack of evidence in the record regarding the subjectiveness/understandability of the GST compared to the TRC.

II. Avoided Energy Supply Cost Study

7. In order to transparently, reliably, and consistently determine the utility system benefits that will occur as a result of energy efficiency investments, every two to three years public utility commissions, state energy offices, technical experts, utility program administrators, and other stakeholders from the New England States oversee the development of a region-wide avoided cost study.¹⁷ That study forecasts future costs relating to the supply, transmission, and distribution of energy that may be avoided for each kWh, kW, and MMBtu of energy efficiency program savings. At the time the Triennial Plan was filed, the most recent edition of this study was the **2018 Avoided Energy Supply Cost Study (AESC)**, so that edition was used for development of the Triennial plan.¹⁸ In the time that passed between the initial Triennial Plan filing and the Order No. 26,533, the 2021 AESC was issued in March 2021, and then updated and re-released in May 2021.¹⁹ The 15-year leveled avoided energy supply costs projected in AESC 2021 are overall significantly less than those projected in AESC 2018. For example, summer peak avoided retail capacity costs have decreased by

¹⁶ A participant copay is the amount paid towards an efficiency measure that is funded by the person choosing to install the measure, not by ratepayers. For example, a \$5 lightbulb purchased at the store that qualified for a \$2 rebate would have a cost of \$5 under the TRC and a cost of \$2 under the GST.

¹⁷ See Generally, Synapse Energy Economics, Inc. Avoided Energy Supply Costs in New England Landing Page. Available at: <https://www.synapse-energy.com/project/avoided-energy-supply-costs-new-england-aesc>

¹⁸ Avoided Energy Supply Components in New England: 2018 Report. (October 24, 2018). Available at: <https://www.synapse-energy.com/sites/default/files/AESC-2018-17-080-Oct-ReRelease.pdf>

¹⁹ Avoided Energy Supply Components in New England: 2021 Report. (May 14, 2021). Available at: https://www.synapse-energy.com/sites/default/files/AESC%202021_20-068.pdf

approximately 44%, avoided retail energy costs have decreased by approximately 28%, and benefits associated with demand reduction induced pricing effect have decreased by approximately 50%.²⁰

8. In the Order Denying the Triennial Plan, the Commission directed the Joint Utilities to “file a copy of any AESC update released in 2021 into the instant docket.”²¹ However, the Order remains silent on which set of avoided costs the Joint Utilities should use to develop their Program Proposal. Since the avoided costs in the 2021 AESC are significantly less than the avoided costs in the 2018 AESC, a Program Proposal developed using the now outdated 2018 AESC would provide an inaccurate assessment of avoided costs, lead to an inaccurate prioritization of programs based on inaccurate benefits, and risk characterizing programs as cost-effective when they may not be cost-effective under the AESC 2021 figures. Furthermore, a Program Proposal that uses AESC 2018 as its source of avoided costs would look vastly different than a Program Proposal that uses AESC 2021 as its source of avoided costs because the decrease in certain avoided costs in AESC 2021 would have a significant impact on the program prioritization the Commission directed occur during development of the Program Proposal.

9. In light of the ambiguity regarding which AESC Study shall be used for the purpose of developing the Program Proposal, the DOE requests the Commission clarify that the more recent version of the AESC Study be used for development of the Program Proposal. If the Commission had instead intended for the Program Proposal to be based on AESC 2018 avoided cost projections, the DOE requests reconsideration and/or rehearing of that decision because the material impact of AESC

²⁰ *Id.* at 5. The illustrative percentage reductions in avoided costs cited are for the West Central Massachusetts reporting zone, rather than New Hampshire, but the New Hampshire-specific values that were developed by the study are likely similar.

²¹ Order No. 26,553 at 44. The Commission also found “the least cost showing requirement in from [sic] Order 25,932’s framework has not been adequately demonstrated,” because the record did not contain “direct comparisons of cost of energy savings to supply alternatives.” AESC 2018 is the direct comparison of the cost of energy savings to supply alternatives, was used for compiling the Triennial Plan and related benefit cost models, and can be found on the Commission’s website within its EM&V repository, available at: https://www.puc.nh.gov/Electric/Monitoring_Evaluation_Report_List.htm.

2021 on avoided costs is a fact that could not have been known to the Commission, since AESC 2021 was finalized several months after the Commission closed the evidentiary record in this proceeding, and no administrative notice was taken of the updated study.²²

III. Evaluation, Measurement, and Verification

10. Evaluation, Measurement, and Verification (EM&V) is a term for studies or actions “that have the objective of verifying energy savings, estimating future savings, and identifying ways to improve program delivery and results.”²³ Since 2000, New Hampshire has completed or taken part in approximately 150 of these studies, which are generally used to: (1) evaluate when intervention in a particular market may be warranted (market assessments); (2) verify past savings and ensure future savings estimates are as accurate as possible in light of past results (impact evaluations); and (3) ensure that processes used to deliver programs provide the most savings at the lowest cost per program (process evaluations).²⁴ As observed by the United States Department of Energy, “common practice suggests that a reasonable spending range for evaluation (impact, process, and market) is 3% to 6% of a portfolio budget.”²⁵ In line with this common practice, New Hampshire typically allots 5% of energy efficiency program budgets towards EM&V, but generally spends less than the allotment, having spent between 70% and 74% of the EM&V budget in 2018, 2019, and 2020.²⁶

11. One particularly important justification for conducting EM&V is that ISO-New England requires consistently updated EM&V studies for any utility seeking to bid the demand reductions

²² The Commission received testimony during the evidentiary phase of the proceeding that the 2021 AESC would be released in March 2021 and that avoided costs would likely decline significantly. December 21, 2021, Transcript (Tab #64) Page 136, Lines 2-18.

²³ Order No. 26,323 at 9. (December 21, 2019)

²⁴ New Hampshire Public Utilities Commission. Completed Monitoring and Evaluation Study Repository. Available at: https://www.puc.nh.gov/Electric/Monitoring_Evaluation_Report_List.htm

²⁵ See Generally, US Department of Energy. SEE Action Guide for States: Evaluation, Measurement, and Verification Frameworks – Guidance for Energy Efficiency Portfolios Funded by Utility Customers. Page 34. (January 2018). Available at: https://www.energy.gov/sites/default/files/2021-07/EMV-Framework_Jan2018.pdf

²⁶ Docket No. DE 17-136. These figures are derived from Page 23 of the Fourth Quarter Reports for 2018 (Tab 116), 2019 (Tab 198), and 2020 (Tab 244).

associated with an energy efficiency program into the Forward Capacity Market.²⁷ During the previous triennial plan, the Joint Utilities received approximately \$23 million in revenues associated with verified energy efficiency program demand reduction from the Forward Capacity Market; these revenues directly offset the need for ratepayer funding sources.²⁸

12. The Commission has long recognized that “The importance of a thoughtful and thorough monitoring and evaluation program cannot be overstated,”²⁹ and more recently approved the re-engagement of an EM&V consultant for the 2021-2023 Triennium, while also observing that three evaluation studies were planned to begin in 2020.³⁰ Consistent with the Commission’s previous directives, the DOE solicited and contracted with an independent EM&V consultant, as approved by the Governor and Council on August 4, 2021. Similarly, the EM&V working group has continued work in 2021 on two of the three studies previously identified by the Commission, namely, the Large Business Impact and Process Evaluation, as well as the development of the Technical Reference Manual.³¹

13. In the Order Denying the Triennial Plan, the Commission observed that the proposed EM&V budget of \$16 million was unreasonable, required that 2022 EM&V budgets be “significantly reduced,” directed that all EM&V work be completed by December 31, 2022, and directed the EM&V Working Group to submit a plan “in advance of any costs being incurred related to EM&V during the triennium.”³²

²⁷ ISO New England Manual for Measurement and Verification of Demand Reduction Value from Demand Resources: Manual M-MVDR. Section 15-2. (June 1, 2014). Available at: https://www.iso-ne.com/static-assets/documents/2017/02/mmvdr_measurement-and-verification-demand-reduction_rev6_20140601.pdf

²⁸ Docket No. DE 17-136. Joint Utilities’ 2018 (Tab #116), 2019 (Tab # 198), and 2020 (Tab # 244) Fourth Quarter Annual Reports. Page 18.

²⁹ Order No. 23,574 at 21 (November 1, 2000); *See also*, Order No. 25,932 at 61 (August 2, 2016) (stating “[r]igorous and transparent EM&V is essential... to ensure that the efficiency programs actually achieve planned savings in a cost-effective manner”)

³⁰ Order No. 26,323 at 5, 9 (December 31, 2019).

³¹ The EM&V Working Group also began a study relating to the appropriate baselines for use in savings estimation.

³² Order No. 26,553 at 46 (November 12, 2021).

14. In light of the Commission's past guidance regarding EM&V, and ongoing EM&V studies, the DOE requests clarification of several aspects of the Order's EM&V-related directives. Given that the Commission had previously approved the use of an independent EM&V consultant during the 2021-2023 Triennium, and three studies remain ongoing at this time, the DOE requests the Commission clarify that the ongoing EM&V studies and the requisite consulting expertise shall continue at least until the conclusion of the existing contracts. If the Commission had instead intended for those costs to cease by the end of 2022, regardless of whether their studies and contracts are complete, the DOE requests reconsideration and/or rehearing of that decision, given that the Commission appears to have overlooked facts related to its previous embrace of those costs, and in light of the lack of evidence in the record demonstrating that such costs are unreasonable.

15. Similarly, the Commission's directive relating to cessation of all EM&V work by December 31, 2022 appears to overlook the fact that EM&V is an ongoing necessity for ISO-NE FCM revenue eligibility, for savings accuracy, and program administration more broadly. At its most basic, EM&V is a necessary ratepayer protection measure for any jurisdiction which offers ratepayer funded energy efficiency programs. Without EM&V, there is no continued assurance that efficiency programs are being delivered at the lowest reasonable cost. In light of this, the DOE requests reconsideration and/or rehearing of the Commission's directive requiring cessation of all EM&V work by December 31, 2022.

IV. Net v. Gross Savings Figures

16. When determining the level of kW, kWh, and MMBtu savings that result from an investment in energy efficiency, two different methods are generally used: gross savings and net savings. Gross savings is "The difference between energy consumption of the affected equipment or facility with versus without the EE project or EE measure in place, without consideration of program influence or

attribution.”³³ Net savings indicates the percentage of observed savings which are *actually attributable to a program intervention*, removing savings attributable to “free riders” who would have taken the action without the program intervention,³⁴ and adding “spillover” savings that are attributable to the program intervention but occur outside of the measure or program being examined.³⁵ Spillover generally increases claimable savings, while free ridership generally decreases claimable savings.

17. A primary benefit of measuring and reporting net savings rather than gross savings is that it can help program administrators and regulators understand when a market has reached the end stages of the market transformation cycle, so they may plan an exit strategy for program incentives for that market. Free ridership is a direct indicator of whether a market barrier exists that would otherwise prevent a ratepayer’s investment in efficiency measures for a particular market. A measure or program with a low net savings percentage due to high free ridership faces no market barriers and should be discontinued, while a high net savings percentage and low or no free-ridership is evidence that action would not have been taken without the program intervention, likely due to market failures or barriers such as information asymmetries, existing energy market price distortions, capital market imperfections, split-incentives, principle-agency problems within firms, and the “bounded” rationality

³³ US Department of Energy. State and Local Energy Efficiency Action Network. SEE Action Guide for States: Evaluation, Measurement, and Verification Frameworks—Guidance for Energy Efficiency Portfolios Funded by Utility Customers. (January 2018) Page 72. Available at: https://www4.eere.energy.gov/seeaction/system/files/documents/EMV-Framework_Jan2018.pdf

³⁴ An example of **free ridership** is when a customer becomes aware of, and receives, a weatherization program rebate *after* they had already decided on a specific budget for their project, where the rebate does not motivate the customer to alter the budget/scope of the project or further invest the program rebate in efficiency upgrades.

³⁵ An example of **spillover** is when a customer notices the high efficiency outdoor lighting their neighbor was motivated to purchase because of a program rebate and is inspired by their neighbor to purchase similar high efficiency lighting, but does not receive a program incentive for their purchase.

of consumer decision-making.³⁶ In short, a net savings percentage near or approaching 100% is strong evidence that a program intervention overcame a market barrier.

18. In the Order Denying the Triennial Plan, the Commission observes that the Settling Parties have agreed to a qualified transition to net savings figures, but directs that the Joint Utilities file Program Oversight filings on March 31 of each year containing financial information regarding the prior program year expressed as *gross* savings, rather than net savings.³⁷ However, the Order remains silent on whether the Joint Utilities should use net savings projections or gross savings projections to develop the Program Proposal. Since net savings benefits would be significantly less than gross savings benefits for markets such as residential and commercial lighting which face a waning need for program intervention,³⁸ a Program Proposal developed using gross savings figures would provide an inaccurate assessment of program benefits, lead to an inaccurate prioritization of programs based on inaccurate benefits, and risk characterizing programs as cost-effective when they would not in actuality be cost-effective. Furthermore, the Order repeatedly emphasizes the importance of programs narrowly tailored towards reducing market barriers to investment in energy efficiency,³⁹ but a potential continued focus on gross savings is directly antithetical to these directives.

19. In light of the ambiguity regarding whether net or gross savings shall be used for the purpose of developing the Program Proposal, the DOE requests the Commission clarify that, for those measures where the Technical Reference Manual and Settlement prescribe it, net savings shall be used

³⁶ Levine, M., et al. Lawrence Berkeley National Laboratory. *Energy Efficiency, Market Failures, and Government Policy*. (March 1994) Page 14-19. Available at: <https://eta-publications.lbl.gov/sites/default/files/energy-efficiency-market-failures-and-government-policy.pdf>

³⁷ Order No. 26,553 at 45.

³⁸ As noted in Elizabeth Nixon's testimony in this proceeding (Tab # 8, Bates 22), commercial and industrial lighting represents approximately half of the triennial plan's planned savings, represents a market that was rapidly moving towards transformation in November of last year, and may no longer warrant the level of incentives contemplated in the Triennial Plan. *See also*, Massachusetts Energy Efficiency Advisory Consultants. *The Future of C&I Lighting in Massachusetts: A Continued Major Source of Savings, or in Decline?* September 25, 2019. Page 13-15. Available at: <http://ma-eeac.org/wordpress/wp-content/uploads/TheFuture-of-CI-Lighting-October-2019.pdf>

³⁹ Order No. 26,553 at 29, 31, 32, 45 and 47.

for development of the Program Proposal.⁴⁰ If the Commission had instead intended for the Program Proposal to be based on gross savings, the DOE requests reconsideration and/or rehearing of that decision because the material impact of using net savings for program prioritization appears to have been a fact overlooked or mistakenly conceived in Order No. 26,553.

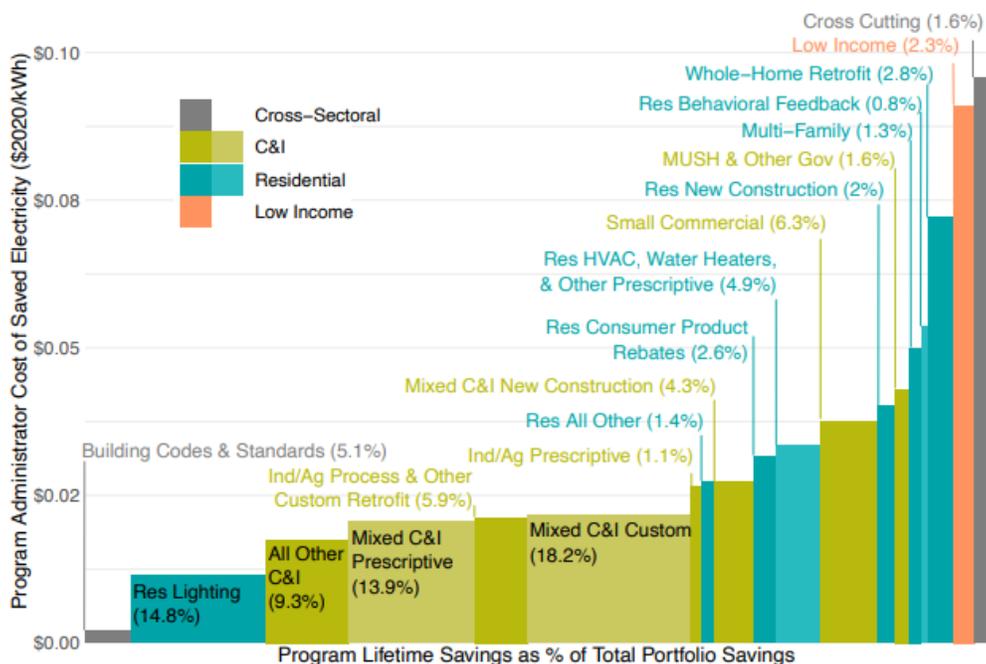
V. Allocation of Budgets Between Customer Sectors and Programs

20. The Commission Staff, now the DOE, participated extensively in the collaborative processes that led to the development of the Triennial plan. Based on this experience, the DOE understands that the measure/program mix in any plan is based on a series of interdependent factors, including benefit-cost analysis, intergenerational/inter-sector equity considerations, and the need for program diversity, amongst other things. In the same way that supply-side resource homogeneity can be problematic for reliability,⁴¹ demand side resource homogeneity can be problematic for energy efficiency program offerings. As a general rule, commercial and industrial programs provide the greatest benefit to ratepayers at the lowest per-unit cost. However, in order to maintain a diversity of offerings and ensure that all ratepayers have the opportunity to become program participants, it is extremely common for ratepayer-funded energy efficiency programs to target savings beyond the commercial sector which generally have a far higher per-unit cost than commercial sector programs. The chart

⁴⁰ Note that the utilities also take into account other adjustments, such as the realization rate, that is, the rate at which the expected savings occur, and consider those adjustments to the gross savings (“adjusted gross savings”). Any adjustments to gross savings should be considered in the development of the Program Proposal.

⁴¹ Docket No. DE 06-097. Investigation into Public Service Company of New Hampshire’s Coal Procurement. *Final Report Analysis of PSNH Coal Procurement and Transportation Operations*. (August 8, 2007) (Stating that “Utility fuel procurement involves a number of risks and uncertainties,” and that “Utility fuel procurement organizations have typically developed what is termed a “portfolio strategy” to help manage these and other fuel procurement risks and uncertainties. These strategies generally address the following goals: supplier diversity; supply region diversity, transportation diversity, diversity of contract term, commodity diversity, and approaches to handling price volatility. Available at: https://www.puc.nh.gov/Regulatory/Docketbk/2017/17-075/TRANSCRIPTS-OFFICIAL%20EXHIBITS-CLERKS%20REPORT/17-075_2019-01-09_EXH_4.PDF

below was developed by Lawrence Berkley National Laboratory and provides a review of the per unit cost of saved energy within various commonly offered energy efficiency programs from 2010-2018.⁴²



It shows that commercial programs overwhelmingly provide the lowest cost per unit of energy saved, with the notable exception of residential lighting programs. During the first half of the 2010’s, residential lighting programs were heavily supported prior to the transformation of that market, a transformation which resulted in net savings figures that led regulators and program administrators to eliminate those programs. The chart also demonstrates that low-income weatherization programs have some of the highest per unit costs of all the program offerings.

21. In the Order Denying the Triennial Plan, the Commission directs that the Joint Utilities “identify programs that provide the greatest benefit per unit cost with the lowest overhead and administrative costs within the approved budget and file a program proposal for review.”⁴³ However, the Order is unclear regarding the role of program diversity in the 2022 Program Proposal, the priority

⁴² Nims Frick, N., et alia. *Still the One: Energy Efficiency Remains a Cost-Effective Electricity Resource*. (August 10, 2021). Slide 14. Available at: https://eta-publications.lbl.gov/sites/default/files/cose_cspd_analysis_2021_final_v2.pdf

⁴³ Order No. 26,553 at 1, 47.

of low-income programs, and the degree to which the Program Proposal should focus overall funding on a single customer sector, potentially diverting funds derived from residential customers to the commercial and industrial sectors where the most cost-effective savings potential lies.

22. In light of the ambiguity regarding the impact of these considerations on the Program Proposal, the DOE requests the Commission clarify that benefit per unit cost shall be only one of the many interdependent factors considered by the Joint Utilities as they develop the Program Proposal. If the Commission had instead intended for the Joint Utilities to prioritize programs within the Program Proposal according to greatest benefit per unit cost exclusively, the DOE requests reconsideration and/or rehearing of that decision because the material impact of such a directive on program and sector prioritization (in particular, the negative impact on the residential programs) appears to have been a fact overlooked or mistakenly conceived in Order No. 26,553. Furthermore, such a directive would be inconsistent with RSA 374-F:3, VI, which requires that the programs “provide benefits to all consumers and do not benefit one customer class to the detriment of another.”

23. Similarly, if the Commission had intended for the Joint Utilities to prioritize programs within the Program Proposal according to greatest benefit per unit cost exclusively, the DOE also requests reconsideration and/or rehearing of that decision so that evidence relating to the impact on the Weatherization Assistance Programs (WAP) managed by the DOE may be received and considered by the Commission. The WAP program and the ratepayer funded Home Energy Assistance (HEA) program are generally delivered in tandem, with funding for a given installation often derived from both programs. Low-income weatherization programs such as the WAP and the HEA program have among the highest per-unit costs of all program offerings, and WAP may require significant alteration if HEA program funding is significantly reduced beginning in 2022. The Triennial Plan would have funded HEA program budgets at approximately \$73 million from 2021-2023, but budgets closer to

those during the previous triennium, as the Commission has directed, would fund those same programs at approximately \$30 million.⁴⁴ Inasmuch as the Commission has overlooked potential impacts on the WAP programs in directing HEA program funding reductions in 2022 and 2023, the DOE requests reconsideration and/or rehearing of this issue.

VI. Impact of Forecasted v. Actual Revenues

24. Energy efficiency budgets are set prospectively and are generally based on the Commission-approved \$/kWh or \$/therm rates but are also impacted by several forecasted variables that affect the revenues collected by the Joint Utilities to form the budget. As noted in the Triennial Plan, “Actual sales may differ [from projected sales], resulting in potentially more or less SBC or LDAC revenue available for energy efficiency programs.” In addition, Regional Greenhouse Gas Initiative (RGGI) and FCM proceeds are estimated and are also likely to differ from actual revenues.”⁴⁵

25. In the Order Denying the Triennial Plan, the Commission sets an energy efficiency funding rates that it deems acceptable for 2021-2023, and directs the Joint Utilities to file budgets based on those rates.⁴⁶ The Commission also directs that “If the Utility has spent more than the budget, or actual amount collected, in any program year, whichever is less, the cost shall be borne by the Utility’s shareholders.”⁴⁷

26. Although the DOE appreciates the Commission’s focus on programs that are budget conscious, the directive that any budget overspends be recovered from shareholders — when paired with several revenue inputs which are beyond the control of the Joint Utilities, such as FCM revenues, RGGI revenues, lost base revenues, and actual sales volumes which vary significantly based on

⁴⁴ See Docket No. DE 20-092, Exhibit 2 at Bates 335, and Docket No. DE 17-136, Exhibit 2 at Bates 182-188. Assuming a budget of \$8,000 for each weatherization project, that funding disparity translates to approximately 5,000 fewer HEA program participants than proposed in the Triennial Plan.

⁴⁵ Exhibit 1, at Bates 33.

⁴⁶ Order No. 26,553 at 36, 38, and 49.

⁴⁷ *Id.* at 42-43.

weather and cannot be known until the end of the year — could create a situation where the Joint Utilities will likely either plan ‘buffer’ budgets at a level below those directed by the Commission or eliminate programs entirely each December if annual sales volumes appear less than projections. This ‘start/stop’ effect could result in significant program disruptions, a situation that has previously been identified as problematic in the contractor community.⁴⁸ It is unclear to the DOE whether the Commission intended to except from its directive those instances where actual FCM revenues, RGGI revenues, lost base revenues, or sales volumes vary from initial projections. In light of this ambiguity regarding the impact of budget inputs that must be forecasted, the DOE requests the Commission clarify that budget overspends relating solely to the difference between forecasted and actual sales volumes, FCM revenues, RGGI revenues, and lost based revenues may be reconciled in the following program year. The Commission has historically allowed reconciliation of energy efficiency funding across program years.⁴⁹ Such reconciling mechanisms are not unique to this Commission, and are mirrored in many other Commission-approved rates which are similarly based on forecasted volumes or other projected factors.⁵⁰ If the Commission had instead intended to penalize the Joint Utilities for budgets overspending directly tied to forecasted variables largely outside of the control of the Joint Utilities, the DOE requests reconsideration and/or rehearing of that decision because it overlooks the likely impacts relating to program “start/stop” effects and the likelihood that the Joint Utilities would plan “buffer” budgets to shield them from the potential detrimental impacts of forecasted variables.

⁴⁸ Docket No. DR 96-150. Report to the New Hampshire Public Utilities Commission on Ratepayer Funded Energy Efficiency Issues in New Hampshire. Page A29. (July 6, 1999) (Stating “A major complaint heard about these incentive programs was their disruptive “start/stop” nature related to availability of funding.”) Available at: [https://www.puc.nh.gov/Electric/96-150%20%20NH%20Energy%20Efficiency%20Working%20Group%20Final%20Report%20\(1999\).pdf](https://www.puc.nh.gov/Electric/96-150%20%20NH%20Energy%20Efficiency%20Working%20Group%20Final%20Report%20(1999).pdf)

⁴⁹ Order No. 25,062 at 12. (January 5, 2010) (Approving a settlement agreement directing that the “Utilities will file performance incentive reports by June 1 of each year for the prior year, and will include a year-end reconciliation to document and identify any carry forward balances.”)

⁵⁰ See generally, Docket Nos. DE 21-109 (Eversource 2021 Transmission Cost Adjustment Mechanism), DE 21-121 (Unitil Stranded Cost Recovery and External Delivery Charge Reconciliation and Rate filing), and DE 21-063 (Liberty Utilities Annual Retail Rate Filing).

VII. Impact of Budgetary Underspends

27. Ratepayer funded energy efficiency programs have existed in New Hampshire for approximately 30 years.⁵¹ Since 2018, those programs existed within the Commission-established Energy Efficiency Resource Standard (EERS) framework, in which the Commission provided the Joint Utilities with savings targets, a cost recovery mechanism, performance incentives, and lost base revenues.⁵² Prior to the EERS framework, electric utility industry restructuring in the early 2000's led the Commission to approve 'CORE' program offerings, which provided the Joint Utilities with a rate that would dictate savings targets, and a performance incentive, but no lost base revenues.⁵³ For approximately a decade prior to the CORE programs, the New Hampshire utilities offered utility-specific Conservation and Load Management (C&LM) programs. Certain utility C&LM programs faced spending well below Commission-approved budgets.⁵⁴

28. In the Order Denying the Triennial Plan, the Commission found that "Performance Incentives are no longer just and reasonable and in the public interest in the context of ratepayer funded EE," and directed that the "Performance Incentives be eliminated effective December 31, 2021."⁵⁵

29. In light of the historical evidence regarding the potential for budgetary underspends, the DOE requests the Commission clarify that the elimination of the performance incentive was intended as a precursor to the establishment of an alternative incentive or penalty mechanism to encourage the

⁵¹ During the majority of this time, performance incentives have been included in the program cost-benefit analysis used to determine if a program portfolio results in just and reasonable rates.

⁵² Order No. 25,932 (August 2, 2016).

⁵³ Order No. 23,574 (November 1, 2000)

⁵⁴ Order No. 21,366 at 4 (September 20, 1994) (Stating "Staff introduced an exhibit during the final hearing which indicates that PSNH in fact dramatically underspent its C&LM funds during the period in question. For instance, during the period of May 16, 1991 through the end of 1991 PSNH spent only 32 percent of the funds available for C&LM programs. In 1992 only 18 percent of available funds were utilized. Overall, for the time period in question PSNH only spent 28 percent of its available C&LM funds."); *See also*, Order No. 20,186 at 7 (July 23, 1991)(Stating "While the commission is concerned with GSEC's underspending on residential programs and believes the company needs to be encouraged to increase its spending to at least projected levels, at this point we believe it is premature to adopt the Consumer Advocate's recommendation that the C&LM factor for the residential class remain at the original authorized level (\$.00423/kilowatthour)."

⁵⁵ Order No. 26,553 at 41.

program administrators to achieve levels of energy efficiency savings consistent with the rates set by the Commission. Under traditional cost of service ratemaking, utility shareholder profit is enhanced by continued investment in capital assets upon which the Company may earn a rate of return. In practice, this leads companies to seek out capital-intensive technologies and/or take advantage of other opportunities to build rate base. For distribution utilities, one of the largest historical opportunities for rate base growth has been focused on capacity related investments. Energy efficiency programs have the potential to diminish the need for these investments through their ability to reduce demand growth.⁵⁶ If there is no incentive to meet the targets that result from the Commission approved rate, and no consequence for failing to meet those targets, a likelihood exists that the Joint Utilities will not meet the targets associated with the Commission-approved rate.

30. If the Commission did not intend to replace the performance incentive with an alternative penalty or incentive mechanism, the DOE requests reconsideration and/or rehearing of that decision because the Commission received no evidence in the record supporting this action, and because that decision overlooks existing incentives inherent in the cost-of-service ratemaking that will discourage the Joint Utilities from procuring energy efficiency at the levels directed by the Commission in its Order, and similarly overlooks the value of penalties/incentives as a tool for ensuring programs are optimized for ratepayer benefit.

VIII. Due Process and the Program Proposal Timeline

31. When the Commission approved the EERS, it emphasized the importance of stakeholder involvement in plan development:

Involving energy service stakeholders in the development and implementation of the EERS is important, because they are directly connected to the provision of energy and efficiency services... We approve the Settling Parties' recommendations for an EERS process, including the pre-filing collaborative preparation of a plan for the first triennium with the assistance of a planning expert. We agree that such a process will

⁵⁶ Docket No. 21-030. Direct Testimony of Larry Blank at 13. (November 23, 2021). Tab 67.

likely result in a more efficient and less adversarial adjudicative proceeding following the plan's filing for Commission review and approval.⁵⁷

For both the 2018-2020 and 2021-2023 Triennial Plan, the parties to this proceeding, outside stakeholders, and the Joint Utilities have successfully engaged in this pre-filing collaborative process, to narrow the number of issues in contention before the Commission when it receives Triennial Plan filings. After the pre-filing collaborative process, adjudicative proceedings are held over a period of approximately four months to ensure that affected persons may avail themselves to a sufficient level of process relating to the Commission's implementation of a rate based on the Triennial Plan.

32. In the Order Denying the Triennial Plan, the Commission directed that the Joint Utilities file 2021, 2022, and 2023 Energy Efficiency budgets and a Program Proposal on December 15, 2021.⁵⁸ The Commission also direct that the "Joint Utilities and Stakeholders shall calculate annual budgets... identify[ing] the programs which provide the greatest energy efficiency savings at the lowest per unit cost with the lowest overhead and administrative costs for further implementation."

33. In light of the previous timelines associated with Triennial Plan development, the Commission's directive that the Joint Utilities work with Stakeholders to develop the new budgets and 2022 Program Proposal, and the possibility that the Commission will make material clarifications to Order No. 26,553 responsive to rehearing/clarification motions, the DOE requests the Commission clarify that it intends to begin an adjudicative process relating to the Program Plans and involving a timeline of approximately 4 months *after* the Commission has resolved any motions for clarification, reconsideration, or rehearing it has received. As noted in the body of this pleading, there are a number of elements within Order No. 26,553 requiring clarification, the clarification of which will likely have a material impact on the Program Proposal, program prioritization, and related budgets.⁵⁹

⁵⁷ Order No. 25,932 at 60-62.

⁵⁸ *Id* at 49.

⁵⁹ This is true even when the budgets are set based on the rate prescribed in Order No. 26,553.

34. These elements include: (1) the appropriate benefit-cost test; (2) treatment of the 2021 Avoided Energy Supply Costs Study; (3) the existence of, and budget for, Evaluation, Measurement, and Verification (“EM&V”) activities moving forward; (4) the use of gross and net savings figures; (5) the allocation of budgets between customer sectors and programs; (6) the impact of forecasted versus actual revenues; (7) the impact of budgetary underspends.

35. If the Commission had not intended for the Program Proposal filings to be followed by an adjudicative process involving a reasonable timeline (approximately 4 months) *after* the Commission has resolved any motions for clarification, reconsideration, or rehearing it has received, the DOE hereby requests reconsideration/rehearing of that decision, so the rights of all parties with respect to Program Proposal development may be preserved. The Commission’s directives related to the above-described issues, depending upon how they are clarified, will likely result in a Program Proposal which is drastically different from the Triennial Plan, and which has not undergone a review process before the Commission.

36. While the DOE defers to the Commission’s rate setting authority regarding the rate to be used for development of the Program Proposal and associated 2022 and 2023 budgets, we request that until such time as all parties have been afforded the level of process to which they are entitled, and a Program Proposal is approved by the Commission, no change occur in the program offerings or associated rates. Inasmuch as this request may be inconsistent with Order No. 26,553, the DOE hereby requests the Commission reconsider and/or rehear the decision to direct a change in rates without having first reviewed the Program Proposal, or having afforded the parties an adequate process for review of the Program Proposal.

WHEREFORE, for the reasons set forth herein, DOE respectfully requests that the Commission:

1. Grant rehearing and/or clarification as provided above; and

2. Grant such further relief as is just, equitable, and appropriate.

Respectfully submitted,
Department of Energy
By its Attorney,

/s/ Brian D. Buckley

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I hereby certify that, on December 10, 2021, a copy of this Response has been sent electronically to the Service List in this matter.

Brian D. Buckley

Brian D. Buckley