

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
DE 20-092
ELECTRIC AND GAS UTILITIES
2021-2023 Triennial Energy Efficiency Plan
MOTION FOR A FULL COMMISSION AND
APPOINTMENT OF SPECIAL COMMISSIONER(S)

NOW COME Public Service Company of New Hampshire d/b/a Eversource Energy; Unitil Energy Systems, Inc.; Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty; New Hampshire Electric Cooperative, Inc.; Liberty Utilities (Energy North Natural Gas) Corp. d/b/a Liberty; and Northern Utilities, Inc. (Northern) (collectively, the “NH Utilities”) and, pursuant to NH RSA 363:17, respectfully move the New Hampshire Public Utilities Commission (“the Commission”) to conduct all future proceedings in the above-captioned matter with a full, three-member Commission, and to exercise the Commission’s authority under RSA 363:20 to apply to the Governor and Executive Council for the appointment of a special commissioner or two commissioners (if necessary). In support of this Motion, the NH Utilities state as follows:

1. On November 12, 2021, the Commission issued Order No. 26,553 in the above-captioned docket (“the Order”) which, *inter alia*, denied approval of a multi-party settlement agreement regarding the 2021-2023 New Hampshire Statewide Energy Efficiency Plan.
2. Contemporaneously with the filing of the instant motion, the NH Utilities have filed a Motion for Rehearing, Clarification and Stay of the Order (“Motion for Rehearing”).

3. The instant docket has been pending since June, 2020. It involves significant issues affecting all of New Hampshire’s electric and natural gas utilities, as well as stakeholders in the statewide energy efficiency programs, including utility customers, contractors, vendors, two state agencies (*i.e.*, New Hampshire Department of Environmental Services and New Hampshire Department of Energy) and advocacy groups. As Chairwoman Martin observed, “[t]his proceeding is, without question, particularly controversial and significant in consequence...”. *Gas and Electric Utilities, 2021-2023 New Hampshire Statewide Energy Efficiency Plan*, DE 20-092, Order No. 26, 458 at 7 (Feb. 19, 2021) (concurring opinion of Dianne Martin, Chairwoman).
4. Although two Commissioners constitute a quorum to issue orders, *see* RSA 363:16, due to the significance of the issues presented in this docket, the NH Utilities respectfully submit that a full three-member Commission is warranted for the consideration of the Motion for Rehearing and all other matters in this docket. “The risks of proceeding with two commissioners include a possible deadlock of an unforeseen event that disqualifies one commissioner, leaving a single commissioner on the docket.” *Public Service Company of New Hampshire, Investigation of Merrimack Scrubber Costs and Cost Recovery*, DE 11-250, Order No. 25,622 (Jan. 23, 2014) at 3. Those risks are “heightened by the significance of the issues” presented in a docket such as this one. *Id.*
5. Currently, the Commission is comprised of Chairman Goldner and Commissioner Chattopadhyay. While Commissioner Simpson has been confirmed to the position of Commissioner, he has not yet assumed his duties. Moreover, he has indicated during his confirmation hearing before the Executive Council that he will recuse himself from matters such as this one that involve his former employer, Unifil Energy Systems, Inc. In

addition to Commissioner Simpson's unavailability, it is unclear whether Commissioner Chattopadhyay will be able to participate in this proceeding, as he publicly stated during his confirmation hearing that he is currently evaluating the issue of whether he would recuse himself from participating in this docket. But even should Commissioner Chattopadhyay participate in this proceeding, the risk of a deadlock should be avoided due to the issues of heightened importance not only to the NH Utilities, but to New Hampshire residents and businesses statewide who are affected by the energy efficiency programs that are the subject of this docket. In these circumstances, a third Commissioner should be appointed via the special Commissioner appointment process.

6. A single Commissioner cannot issue an order. *See RSA 363:16; see also Public Service Company of New Hampshire Investigation of Merrimack Station Scrubber Costs and Cost Recovery, supra* ("RSA 363:13 requires a quorum of two commissioners to issue an order."). Also, a single commissioner cannot hold a hearing if any party whose interests may be affected files a written request (such as the instant Motion) for a full commission at least five (5) days before the hearing. RSA 363:17. As the NH Utilities have filed a motion for rehearing, new hearings are a possible result; therefore the NH Utilities request a full Commission.
- 7 Pursuant to statute, the Commission is to be composed of three Commissioners. RSA 363:1. At least one Commissioner must be an attorney licensed to practice law in New Hampshire, and at least one Commissioner shall have background, experience or both in one or more of the following: engineering, economics, accounting or finance. *Id.* Neither Chairman Goldner nor Commissioner Chattopadhyay is an attorney licensed to practice law in New Hampshire.

8. In view of the foregoing, the NH Utilities respectfully request that the Commission apply to the Governor and Executive Council under RSA 363:20 for the appointment of either one or two Special Commissioners, whichever is needed to result in a full Commission for consideration of the matters at issue in this docket, and that at least one of the Special Commissioners be an attorney licensed to practice law in New Hampshire.

WHEREFORE, the NH utilities respectfully request that the Commission:

- A. Conduct all future proceedings in the instant docket with a full, three-member Commission;
- B. Apply to the Governor and Executive Council under RSA 363:20 for the appointment of a Special Commissioner who is an attorney licensed to practice law in New Hampshire to substitute for Commissioner Simpson in this docket;
- C. Apply to the Governor and Executive Council under RSA 363:20 for the appointment of a Special Commissioner in the event that Commissioner Chattopadhyay recuses himself from this docket; and
- D. Grant such further relief as it deems appropriate.

Respectfully submitted,

The NH Utilities: New Hampshire Electric Cooperative, Inc.;
Public Service Company of New Hampshire d/b/a Eversource
Energy; Unitil Energy Systems, Inc.; Liberty Utilities
(EnergyNorth Natural Gas) Corp. d/b/a Liberty; Liberty Utilities
(Granite State Electric) Corp. d/b/a Liberty; and Northern Utilities,
Inc.

Date: December 10, 2021

By:  o/b/o the NH Utilities

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