

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire d/b/a Eversource Energy
2019 Least Cost Integrated Resource Plan
Docket No. DE 19-139

OFFICE OF THE CONSUMER ADVOCATE BRIEF ON THE COMMISSION'S AUTHORITY
TO WAIVE AN RSA 378:38 STATUTORY DEADLINE UNDER RSA 378:38-a

I. Background

On March 11, 2020 a Settlement Agreement was reached between Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource or Company), the New Hampshire Public Utilities Commission Staff (Staff), and the Office of the Consumer Advocate (OCA) (collectively, the Settling Parties). The Settlement Agreement identified additional requirements for the Company's next least-cost integrated resource plan (LCIRP) filing and endorsed a fifteen week extension of that filing date from June 19, 2020 to October 1, 2020.

On March 16, 2020 at a hearing to approve the Settlement Agreement, the Commission requested each Party brief the issue of the Commission's authority to delay Eversource's next LCIRP filing beyond the statutory deadline. This brief is responsive to that request.

II. Legal Authority

RSA 378:38-a grants the Commission the authority to waive for RSA 378:38 requirements: "The commission, by order, may waive for good cause any requirement under RSA 378:38, upon written request by a utility."

There are three components to this authority: (1) the utility provides a written request for the waiver, (2) there must be an actual requirement under RSA 378:38 to be waived, and (3) the utility must demonstrate good cause. In this instance, the utility request comes in the form of the Settlement Agreement. In 2017, on this very issue, the OCA argued that 378:38-a only gave the Commission the authority to waive the enumerated requirements for specific plan elements.¹

The Commission disagreed:

We read the plain language of RSA 378:38-a as allowing the Commission to waive for good cause both the specific content elements of an LCIRP and the timelines for filing. We will not grant any waivers without good reason, however, and we will require a compelling demonstration of good cause before waiving the timeline for filing an LCIRP.

Order No. 26,262 (June 14, 2019) at 5. Therefore, the Commission's authority in this instance revolves around whether there is good cause for extending the statutory deadline by fifteen weeks from June 19, 2020 to October 1, 2020.

III. Analysis

Providing the Company with an additional fifteen weeks to file a full LCIRP will provide the Commission and the public a more complete and robust filing that includes a new system wide Company distribution plan, increased analysis of the non-wires solutions (NWS) agreed to by the Settling Parties, and a filing that should be responsive to a series of previous Commission orders. The Settlement Agreement attempts to increase the likelihood that this next LCIRP actually meet all the requirements laid out in previous settlement agreements and orders. The

¹ The settlement agreement currently under review on this docket expressly provides at page 8 that “[t]he Commission’s acceptance of this Agreement does not constitute continuing approval of or precedent regarding any particular issue under this docket.” Accordingly, the OCA reserves the right in future proceedings to renew its previous argument that the Commission’s waiver authority under RSA 378:38-a is limited to specific LCIRP elements.

increased incorporation of NWS and the inclusion of the new distribution planning guide will provide a good foundation for each of the next filings. For these three reasons, the Commission should find good cause to exercise its authority under RSA 378:38-a to grant the deadline waiver and approve the Settlement Agreement.

1. First, the Company is in the process of completing a system-wide, three-state distribution planning guide which is scheduled for completion in June of this year. The Settlement Agreement requires that the internal documentation reflect an increased emphasis on incorporating non-wires solutions (NWS). The Parties are interested in the next LCIRP reflecting this new distribution planning guide and the Company planning process employed to assess NWS. This three month extension will provide the Commission and the public with a more accurate and up-to-date representation of the planning process actually employed by this utility.
2. Second, prior to the filing of the LCIRP, the Company has agreed to provide a list to the Settling Parties of potential NWS candidates, and to meet with the Settling Parties to identify one NWS candidate that will be the focus of a more detailed analysis for the LCIRP filing. The additional three months provides the Company the opportunity to do the first analysis of candidates, meet with the Settling Parties to discuss and select a potential project, and engage in detailed analysis of that potential project for incorporation into the filing.
3. We do not think the Commission should take lightly the requirement for good cause to delay or to waive any requirement of the least-cost integrated resource planning process. This particular can has been kicked down the road several times and we are emphatic that the next filing be complete and responsive to the statutory requirements, the Commission

orders, and the settlement agreements of the Settling Parties. To that end we provide a summary of orders and settlement agreements that we expect to be incorporated in this 2020 LCIRP filing based on Commission orders.

- a. On May 1, 2014, the Commission approved a Settlement Agreement in Docket No. DE 13-177 that contained a requirement that the next LCIRP in June 2015 include:

- (1) a description of [the Company's] methodology for distribution planning, (2) a narrative description and a business process model that illustrates how PSNH integrates least cost objectives into its planning process, and (3) an updated assessment of demand-side energy management programs, including conservation, efficiency improvement, and load management programs. In addition, Staff and PSNH acknowledged that there may be benefits to PSNH and its customers through the addition of Smart Grid, particularly distribution automation technologies, to PSNH's distribution system. PSNH agreed to incorporate consideration of such issues in its next LCIRP.

Order No. 25,659 at 7,

- b. On October 19, 2015, the Commission permitted a more limited LCIRP in Docket No. DE 15-248 given the impending possibility of generation asset divestiture. The Commission stated the limited LCIRP would “give more time for the Company to participate in the important investigations by the Commission related to energy efficiency and grid modernization. Through this participation *we expect a more robust discussion of these issues in the Company's next LCIRP.*” Order No. 25,828 at 7 (emphasis added).

- c. On August 25, 2017, the Commission approved a Settlement Agreement in Docket No. DE 15-248 concerning the 2015 LCIRP:

With respect to the next Eversource LCIRP, Eversource and Staff agreed that Eversource should prepare an LCIRP containing a complete evaluation of all elements of RSA 378:38, including a full analysis of how to maximize the use of cost-effective energy efficiency and other demand resources (RSA 378:37), and consideration of promoting fuel diversity, in addition to the information required for Eversource's 2015 LCIRP filing by Order No. 25,659.

Order No. 26,050 at 6.

- d. On June 14, 2019, the Commission granted Eversource a partial waiver in Docket No. DE 15-248 so the Company could file a more limited document by August 25, 2019, and then file a complete LCIRP by June 19, 2020. The Commission said there was good cause for the waiver of the two-year filing requirement:

Given our pending investigation on grid modernization, IR 15-296, and the anticipated timing of an IDP filing, we find that a waiver of the August 25, 2019, filing deadline for Eversource will allow a more efficient use of utility resources.

Order No. 26,262 at 5.

The Commission did not require in this limited filing for

Eversource to update its distribution automation plan or its customer engagement platform in the August 25, 2019, filing. Although those items were included in the order approving the 2015 LCIRP, they will be covered in more detail in the IDP.

Id. at 7 (referencing the integrated distribution plans (IDPs) then under discussion in the grid modernization docket, IR 15-296, as successors to LCIRPs).

The above reflects a seven-year history of continually and repeatedly deferred expectations and commitments intended to effectuate in meaningful fashion the requirements of least-cost

integrated resource planning that have remained in effect even as New Hampshire's electric industry has been restructured and subjected to the effects of rapidly evolving technology.

Assuming PSNH complies in good faith with the terms of the pending settlement agreement, its adoption would pave the way for at least partial restoration of the least-cost integrated resource planning as a meaningful exercise in regulatory oversight.

IV. Conclusion

This next LCIRP requires all of the items identified in Order 26,050 (*see c. above*) which includes a requirement for all of the items identified in Order 25,659 (*see a. above*) and should address the expectations identified in Order 25,828 (*see b. above*). In addition, the LCIRP will provide the company's new distribution planning guide and in depth analysis of at least one non-wires solution. These three reasons provide sufficient cause for the Commission to exercise its authority under RSA 378:38-a to waive the five year statutory deadline by granting an extension of fifteen weeks from June 19, 2020 until October 1, 2020.

Respectfully submitted,



Christa B. Shute
Staff Attorney
Office of the Consumer Advocate
21 South Fruit Street, Suite 18
Concord, NH 03301
(603) 271-1173
christa.shute@oca.nh.gov

March 25, 2020

Certificate of Service

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



Christa B. Shute