

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

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE
ENERGY'S BRIEF ON THE COMMISSION'S AUTHORITY UNDER RSA 378:38-a**

On March 16, 2020, the Commission held a hearing on a proposed settlement agreement pertaining to the limited Least Cost Integrated Resource Plan (“LCIRP”) filing of Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) in the instant docket.

Section II. D. of that settlement provides:

In Order No. 26,262, the Commission took note that while it could waive the five-year filing requirement of RSA 378:38, it declined to do so at that time and retained the requirement that Eversource’s next LCIRP submission would be required to be filed by June 19, 2020. In recognition of the details requested for the next filing as specified above, and the ongoing work that Eversource is undertaking on its Distribution Planning Guide, the Settling Parties agree that there is good cause pursuant to RSA 378:38-a to waive the 5-year requirement. Specifically, Eversource requests, and the Staff and OCA agree that the Commission should grant, a waiver such that the deadline would be shifted by approximately 3 months from the current deadline and that Eversource’s next LCIRP should be filed on or before October 1, 2020.

March 11, 2020 Settlement in Docket No. DE 19-139 at 7. During the hearing, the Commission requested that the parties brief the issue of the Commission’s authority to grant the waiver requested in that provision. Accordingly, included below is the brief of Eversource.

1. Pursuant to RSA 378:38, “each electric and natural gas utility, under RSA 362:2, shall file a least cost integrated resource plan with the commission within 2 years of the commission’s final order regarding the utility’s prior plan, and in all cases within 5 years of the filing date of the prior plan.” Eversource’s prior LCIRP as required by RSA 378:38 and Order No. 24,659

(May 1, 2014), as clarified by the Commission in Order No. 25,676 (June 12, 2015) was filed on June 19, 2015. Ultimately, a settlement agreement on that plan was reached between Eversource and the Commission Staff and approved by the Commission in Order No. 26,050 (August 25, 2017). Order No. 26,050 provided that Eversource's next LCIRP would be due within 2 years of that date, or August 25, 2019.

2. On February 12, 2019, the Commission Staff submitted its recommendation on grid modernization in Docket No. IR 15-296. Among other things, the Staff's recommendation proposed that the LCIRP be replaced by a new submission, an Integrated Distribution Plan or IDP, and that utilities request waivers of the LCIRP filing requirements in light of the new IDP. *See* February 12, 2019 Staff Recommendation in Docket No. IR 15-296 at 67.

3. In view of the above recommendation, on April 9, 2019, Eversource filed a motion seeking a waiver of the requirement to make an LCIRP filing by August 25, 2019. On June 14, 2019, the Commission issued Order No. 26,262 in Docket No. DE 15-248 and partially granted the waiver requested by Eversource. In granting the waiver, the Commission ordered that Eversource make what the Commission described as "a more limited filing" by August 25, 2019, and that the "purpose of that filing will be to ensure that Eversource is adhering to the commitments made in its prior approved LCIRP." Order No. 26,262 at 6. Regarding the filing deadlines in RSA 378:38, the Commission found:

We issued our decision on the Company's prior LCIRP on August 25, 2017. *See* Order No. 26,050. Thus, without a waiver, Eversource would be required to file its next LCIRP on or before August 25, 2019. 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. Thus, good cause exists for a waiver of the two-year filing requirement found in RSA 378:38.

RSA 378:38 also contains a five-year filing requirement that runs from the date that a utility's prior LCIRP was filed. Eversource filed its prior LCIRP on

June 19, 2015. Thus, the five-year filing requirement would compel an Eversource LCIRP filing on or before June 19, 2020. This five-year requirement ensures that LCIRP filings occur at regular intervals regardless of the timing of the review and approval process at the Commission. We do not find that good cause exists to waive the five-year requirement at this time.

Order No. 26,262 at 5-6. In that the pending settlement agreement contemplates a waiver from the five-year requirement referred to in Order No. 26,262, the Commission has requested briefing to clarify its authority to waive that requirement.

4. RSA 378:38-a states, in its entirety, “The commission, by order, may waive for good cause any requirement under RSA 378:38, upon written request by a utility.” (emphasis added). As Eversource has described previously, the plain language of the statute does not limit or restrict which requirements within RSA 378:38 may be waived by the Commission and makes clear that any requirement is within the Commission’s authority to waive. In that the need to file an LCIRP by a date certain is a requirement of RSA 378:38, the Commission has express statutory authority to waive that requirement by order when requested by a utility and good cause is demonstrated. The pending settlement agreement makes the required written request, and describes the good cause justifying the waiver. For purposes of this filing, Eversource addresses only the Commission’s legal authority to waive the five-year requirement, and not the adequacy of good cause as that is described in the settlement, and which was testified to at the hearing.¹ Accordingly, if a written request is made and if good cause is shown, the plain language of the law permits the Commission to waive any requirement of RSA 378:38, including the five-year requirement.

¹ Of note, the good cause described in the settlement did not include any reference to the State of Emergency that has been declared by Governor Sununu relating to the on-going coronavirus pandemic. Though it was not referenced, Eversource submits that the existence of that State of Emergency, which presently has no clear end date, constitutes additional good cause for extending the filing deadline.

5. Moreover, in granting Eversource's prior waiver request the Commission agreed with the proposition that pursuant to its clear statutory authority any requirement of RSA 378:38 could be waived. The Commission specifically concluded "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.*" Order No. 26,262 at 5 (emphasis added). Furthermore, the Commission's conclusion in Order No. 26,262 that it did not find good cause to waive the five-year requirement "at that time" indicates that the Commission understood it had authority to waive the five-year requirement, if good cause had been shown at the time. There is nothing in the plain language of the statute that limits the Commission's waiver authority or that restricts the Commission from waiving the five-year requirement of RSA 378:38 if good cause is shown. Further, the pending waiver request is for an extension of approximately 3 months, rather than some indefinite period. To the extent there could be any argument that a long-term waiver would undermine the purpose of RSA 378:38 (and Eversource submits that even then the clear language of RSA 378:38-a would control), such concern is tempered in this case. The underlying purpose and intent of RSA 378:38 will not be weakened or ignored by granting the waiver requested in this case.

6. As a final note, Eversource acknowledges the requirements of RSA 378:40. That statute provides that rate changes are not permitted for a utility unless an LCIRP been filed and approved by the Commission in accordance with the provisions of RSA 378:38 and RSA 378:39. It further provides, however, that the Commission may approve a change otherwise permitted by statute or agreement where the utility has made the required plan filing in compliance with RSA 378:38 and the process of review is proceeding in the ordinary course but has not been completed. Should the Commission grant the requested waiver, which it may do consistent with

express statutory authority, Eversource's last LCIRP would be one filed and approved by the Commission and thus, Eversource would be compliant with the law. Moreover, should the waiver be granted, Eversource will have made "the required plan filing" through its last LCIRP, as that would be the last filing that was required to be made in compliance with RSA 378:38. Accordingly, granting the waiver requested by Eversource will not impede other regulatory actions by the Commission.

7. Based upon the express, statutorily-granted authority contained in RSA 378:38-a, and in light of the above, the Commission has adequate authority to waive the requirement for Eversource to file an LCIRP within the five-year window referenced in RSA 378:38. Accordingly, Eversource requests that the Commission approve the pending settlement agreement including the waiver request contained within it.