

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

Liberty Utilities (Energy North Natural Gas) Corp. d/b/a Liberty

2017 Least Cost Integrated Resource Plan

Docket No. DG 17-152

Objection to “Motion for Waiver of Certain LCIRP Requirements”

NOW COMES the Office of the Consumer Advocate (“OCA”), a party to this docket, and objects to the motion filed by Liberty Utilities (Energy North Natural Gas) Corp. d/b/a Liberty (“Liberty”) on September 22, 2022, captioned “Motion for Waiver of Certain LCIRP Requirements. In support of this objection, the OCA states as follows:

**I. Introduction**

The OCA recited the relevant history of this proceeding in the motion for rehearing we filed yesterday in connection with Order No. 26,284. In essence, we contended there – and continue to assert here – that the Commission has grievously misinterpreted the Least Cost Integrated Resource Planning (LCIRP) statute, RSA 378:37 *et seq.*, as well as the Administrative Procedure Act, RSA 541-A, by rejecting the settlement agreement we negotiated with Liberty and, *inter alia*, directing Liberty to file its next Least Cost Integrated Resource plan on October 3, 2022.

On September 22, 2022, Liberty filed a motion for the Commission to waive certain LCIRP requirements. Although the Commission's procedural rules specify that parties have ten days to object to motions, *see* N.H. Code Admin. Rules Puc 203.07, and although only seven days have elapsed since Liberty filed its motion, earlier today the Commission inexplicably issued a procedural order granting the Liberty motion. We object to both the motion and the Commission's premature decision to grant the motion.

## **II. Misinterpretation of the LCIRP Statute**

Properly construed, Liberty did not ask the Commission to waive LCIRP requirements – something that is explicitly within the Commission's authority pursuant to RSA 378:38-a. Rather, Liberty sought leave to comply with the requirements of the LCIRP statute in piecemeal fashion by filing part of its LCIRP on October 3 and the rest of the LCIRP on May 1, 2023.

Such an approach to the Least Cost Integrated Resource Planning required by the statute cannot be squared with the obvious intent and clear meaning of the enactment. Allowing a utility to file a least cost integrated resource plan over the course of seven months would make sense if the LCIRP requirement were a homework assignment required for academic credit, but it flies in the face of the obvious purpose of the statute – to allow the Commission to review a single report, reflective of the utility's best judgment with respect to how the company plans to meet its service obligations, advance the state's energy policy as enumerated in RSA 378:37, and accomplish these things in a manner that is least-cost for customers.

What has occurred here is that the utility and its regulator have now, in effect, collaborated on a plan to do an end-run around RSA 378:40. As noted in the rehearing motion we filed yesterday, because there is not presently an approved LCIRP on file with the Commission, RSA 378:40 precludes the company from increasing its rates. The end-run occurs because the Commission has now given Liberty permission to file an incomplete LCIRP on October 3, thus presumably giving the Company the right to take advantage of the RSA 378:40 loophole, applying to the situation “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.”

Filing an incomplete LCIRP on October 3 and completing the homework assignment next May does not equal “review . . . proceeding in the ordinary course.” For the reasons already stated in our pending rehearing motion, the Commission is misapplying and misinterpreting the LCIRP statute in a manner that transgresses the guidance from the New Hampshire Supreme Court about statutory construction as cited in our rehearing motion.

The settlement agreement previously rejected by the Commission created a reasonable roadmap to LCIRP compliance that does not trigger the problems the Commission now confronts and had the added advantage of enjoying the support of the utility subject to the statute’s requirements. The Commission has now compounded its previous errors by issuing a procedural order that violates both the statute and Rule 203.07.

### III. Conclusion

For the reasons stated above, the Commission should withdraw its procedural order of September 29, 2022 and grant the pending rehearing motion of the Office of the Consumer Advocate.

Sincerely,



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September 29, 2022

### Certificate of Service

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



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Donald M. Kreis