

STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire d/b/a Eversource Energy
2015 Least Cost Integrated Resource Plan

Docket No. DE 15-248

**OBJECTION OF THE OFFICE OF THE CONSUMER ADVOCATE TO
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
MOTION FOR WAIVER PURSUANT TO RSA 378:38-A**

NOW COMES the Office of the Consumer Advocate (“OCA”), a party to this docket, and pursuant to N.H. Code Admin. Rules Puc 203.07(e), and hereby objects to the motion of Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”) for waiver of the filing requirements relating to the Company’s Least Cost Integrated Resource Plan (“LCIRP”). In support of this objection, the OCA states the following:

1. On April 9, 2019, PSNH filed a motion for waiver of the provision of RSA 378:38 which requires the Company to file an LCIRP “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.” In support of its motion the Company claims RSA 378:38-a authorizes the Commission, upon request from a Company and a subsequent finding of good cause, to allow a waiver of not just the enumerated requirements set forth in RSA 378:38, but rather any element of the statute. PSNH Motion at 2.

2. PSNH’s selective interpretation of RSA 378:38-a suggests the Commission can effectively nullify the requirements of the entire suite of least cost integrated resource planning statutes (RSA 378:37-40) by approving a waiver pursuant to RSA 378:38-a to delay for an

indeterminate amount of time the filing and review requirements in RSA 378:37-40. This interpretation is at odds with well-known canons of statutory interpretation requiring the Commission to read statutes not in isolation, but in the context of the overall statutory scheme. *State Employees Ass'n of New Hampshire v. New Hampshire Div. of Personnel.*, 158 N.H. 338, 343 (2009). If the Legislature had intended for RSA 378:38-a to provide the Commission authority to nullify the entire least cost integrated resource planning statutory suite by waiving plans for an indeterminate amount of time, it would not have limited the waiver provision to requirements set forth in RSA 378:38 only. Thus, the phrase “any requirement under RSA 378:38” as used in section 38-a clearly refers only to the enumerated requirements for LCIRP contents in section 38. The Commission’s interpretation of RSA 378:38-a to date agrees with this interpretation: in the numerous instances where the Commission has granted waivers under RSA 378:38, each of those waivers have applied to only the enumerated list of requirements under RSA 378:38, rather than the filing requirement itself.

3. Even if the Commission agrees with PSNH’s interpretation of RSA 378:38-a, the Commission should deny PSNH’s waiver request because the Company has failed to satisfy the good cause requirement of RSA 378:38-a. PSNH sets forth several claims for why it might have good cause to request waiver of the timeline set forth in RSA 378:38, including:¹ (1) “that an LCIRP filing in line with prior filings would, nearly instantly, become obsolete and unnecessary” in light of the LCIRP evolution outlined in Staff’s Grid Modernization Recommendation, (2) any Commission action relative to an LCIRP would be fruitless given the limited lifespan of such

¹ Aside from the various good cause arguments, PSNH also claims on page 6 of its [motion](#) that “Commission Staff has recommended that waiver of the LCIRP filing requirement is appropriate.” However, in that very same paragraph, PSNH then states that “Staff has indicated that, at present, it takes no position on whether a waiver is appropriate.” While not entirely material to the discussion of good cause, it is worth noting that these two statements, found in the same paragraph of PSNH’s motion, cannot both be true.

plans and the fact that review “may not be complete by the time an [Integrated Distribution Plan] IDP or equivalent is filed,” (3) two statements of the Consumer Advocate at hearings, urging the Commission to reinvent least cost integrated resource planning, (4) the overlap of the timelines applicable to PSNH’s rate “review” and its scheduled August 2019 LCIRP filing, and (5) that no settling party in the previous LCIRP proceeding would be harmed by waiver of its provisions. PSNH Motion at 3-6. As described in greater detail in the paragraphs below, none of these arguments satisfy the good cause under RSA 378:38-a and therefore the Commission should reject Eversource’s request to waive the filing of its August 2019 LCIRP.

4. PSNH’s argument that an LCIRP filing in line with prior filings would become obsolete nearly instantaneously obscures the purpose of the LCIRP statute and fails to recognize the benefits that accrue to the Commission, Staff, and ratepayers from a review and approval process that occurs at regular intervals. LCIRPs provide an easily accessible snapshot of utility distribution planning practices and investment plans at one point in time, so much of their value arises out of the fact that these snapshots appear at regular intervals and thus allow stakeholders and the Commission to understand how those practices and planned investments change over time. This is the type of information that otherwise might require Staff, the OCA, and any other parties to undergo several rounds of discovery and technical sessions to reveal in other proceedings, if revealed at all.

For example, as a result of several rounds of discovery related to distribution system planning in Docket Nos. DE 17-136 and DE 16-576, the OCA understands that Eversource has made important changes to its distribution system planning practices since the filing of its 2015 LCIRP, including the method and granularity with which it forecasts distribution system load. A related example can be seen in Granite State Electric d/b/a Liberty Utilities’ most recent LCIRP,

which significantly revised that Company's previously approved threshold for equipment rating criteria violations. These types of changes can have a significant impact on distribution system investments and associated ratepayer costs and deserve stakeholder scrutiny outside of each Company's internal planning processes.

Keeping the Commission, Staff, OCA, and other stakeholders abreast of these types of changes — at regular and foreseeable timing intervals — is exactly type of distribution system planning visibility that RSA 378:38-40 is meant to preserve, and that Staff's Grid Modernization Recommendation is attempting to augment rather than supplant. As such, PSNH's argument that the pending LCIRP will instantaneously become obsolete is immaterial to the actual value provided by LCIRPs, and does not satisfy the good cause requirement in RSA 378:38-a.

5. PSNH's argument that any Commission action on the August 2019 LCIRP would be fruitless and may not be complete by the time the IDP is filed fails to satisfy the good cause requirement because such a contention (1) does not account for the likely scenario that stakeholders will be unable to meet the ambitious timeline set forth in the Staff Grid Modernization Recommendation, and (2) fails to acknowledge the walk-jog-run approach to distribution system planning also set forth by Staff in its Grid Modernization Recommendation.

The Staff Grid Modernization Recommendation suggests that the LCIRP, which in recent years has focused on distribution and sub-transmission system planning,² should evolve into the much broader and all-encompassing IDP.³ Staff suggests that the Commission convene several

² [Order No. 25,828](#) at 2 (granting PSNH's motion to waive several of the LCIRP filing requirements because a limited LCIRP would allow the Commission to expedite its review and "give more time for the Company to participate in the important investigation by the Commission relate to energy efficiency and grid modernization," expecting that this participation would "lead to a more robust discussion of these issues in the Company's next LCIRP"). The Commission required, consistent with guidance previously issued in [Order No. 25,459](#), a limited LCIRP which was intended to focus on transmission and distribution system planning. *Id.*

³ Staff Grid Modernization [Report](#) at 15 (suggesting that IDPs cover *inter alia* distribution planning, including load and DER forecasting, hosting capacity analysis, locational value analysis, DER interconnection processes, strategic

working groups to attempt to reach consensus on non-consensus issues and in recent technical sessions the Staff has suggested that some of the more likely non-consensus issues may be subject to an adjudicative process that takes place *after* the working group process. The report and associated March 25, 2019 technical session presentation by Staff contemplates that the working groups will begin in May 2019 and last nine months into at least January 2020, and then suggests the deadline for IDP filing should be May 2020. As noted by Unitil in its comments on the Staff Grid Modernization Report, this timeline allows an insufficient period of only three to four months for the Company IDPs to incorporate working group recommendations, a period that may be extended even further if there is a lack of working group consensus on outcome-determinative issues, such as the appropriate benefit-cost test and related common avoided cost assumptions, that must then be adjudicated before the Commission.⁴ In such a scenario, it is entirely possible that PSNH's LCIRP, which is due to the Commission on August 25, 2019, will have been reviewed and approved by the Commission long before the process for IDP stakeholder input and plan development reaches its conclusion.

Additionally, the Staff Grid Modernization Report suggests that grid modernization should occur in a phased manner, citing the walk-jog-run approach developed by Paul De Martini of Newport Consulting Group. As Staff suggests, this approach “recognizes that all of the complex features of the grid do not need to be addressed initially, while utilities and stakeholders must take a global view of the grid and keep in mind future features that will be

electrification, a deployment plan for cost-effective advanced metering functionality, cyber security and privacy issues, “grid mod and business-as-usual performance metrics,” and a methodology for cost recovery).

⁴ Unitil [Comments](#) on Staff Report at 1. (Stating “the Report contemplates a schedule that will begin a number of working groups in May 2019, lasting nine months (most optimistically, through January 2020) with a final IDP required to be filed in May 2020. This allows an insufficient period of only three to four months for the companies to complete their plans. The working groups' conclusions should be reached prior to starting the clock on developing the IDP.”)

required, but are not needed at this time.”⁵ A citation at page 24 of Staff’s report references the U.S. Department of Energy’s Modern Distribution Grid Decision Guide, which provides even further elaboration on this approach. It suggests that “[t]oo often, grid modernization and distributed resource integration stakeholder discussions are stalled due to ambiguity on desired customer and policy outcomes, and in which the perfect solution is clouding the good enough solution that achieves the majority of net value potential for all customers.”⁶ If the Commission were to embrace this walk-jog-run approach to integrated distribution planning, it could use the imminent round of LCIRPs to affirm that the least cost planning objectives as applied to distribution system planning necessitate consideration on non-wire alternatives to traditional capital investments on the distribution system. The Staff Grid Modernization Report supports this approach and even suggests that the Commission should require the utilities to “use demonstration projects to explore subsequent commercial terms” for non-wire alternatives.⁷

Since PSNH’s argument that any Commission action on the August 2019 LCIRP would be fruitless and may not be complete by the time the IDP is filed doesn’t account for the likely scenario that stakeholders will be unable to meet the ambitious timeline set forth in the Staff Grid Modernization Recommendation and doesn’t acknowledge the walk-jog-run approach to distribution system planning set forth by the Staff Grid Modernization Recommendation, it fails to satisfy the good cause requirement set forth in RSA 378:38.

6. PSNH excerpted two statements made by the Consumer Advocate in previous LCIRP hearings that the Company claims supports the instant waiver request. In so doing,

⁵ Staff Grid Modernization [Report](#) at 23.

⁶ U.S. Department of Energy, [Modern Distribution Grid Decision Guide: Volume III](#) (June 2017) at 32-33.

⁷ Staff Grid Modernization [Report](#) at 61.

PSNH has misconstrued his statements and quoted them out of context. Nowhere did the Consumer Advocate urge the Commission to use its waiver power to delay the filing of future LCIRPs. In fact, the Consumer Advocate asked the Commission to do exactly the opposite and take steps to reinvent the LCIRP process “as soon as possible,” by “requiring the utilities to yield some of their hegemony in favor of allowing and even facilitating the process of having key grid components developed, owned and operated by third parties and even customers themselves.”⁸ These statements were delivered in a very particular context, at the end of the most recent Commission adjudications over recently filed LCIRPs, which were only the latest in a series of LCIRPs in which the electric distribution utilities have consistently rebuffed Commission guidance to integrate non-wire alternatives into their distribution system planning process meaningfully.⁹ As such, the intent of the Consumer Advocate was not to encourage the utilities to avoid filing of their next LCIRP, but rather to encourage the Commission to consider waiving some of requirements enumerated in RSA 378:38 which are merely vestiges of a time when New Hampshire’s distribution utilities were vertically integrated, and consider directing the utilities to meaningfully embrace cost-effective non-wire alternatives via their distribution planning process in a way that might provide a net benefit to ratepayers. Based on the plain language, intent, and context of the Consumer Advocate’s LCIRP comments as explained above, PSNH’s citation of those comments does not support the good cause requirement of RSA 378:38 as implied in the Company’s motion. If anything, the comments have the opposite effect.

⁸ PSNH [Motion](#) at 4-5.

⁹ See generally Docket No. DE 17-136, Office of the Consumer Advocate [Statement of Legal Position](#) Regarding Geo-Targeted Energy Efficiency Pilots and the 2019 Energy Efficiency Program Plan Update (November 2018) at 1-11.

7. PSNH's claim that having to file an LCIRP would be an unnecessary diversion of resources to a document that would provide no incremental value while its "rate review" is taking place does not satisfy the good cause requirement because it incorrectly assumes there is no incremental value to the filing of LCIRPs. The LCIRPs provide the Commission, Staff, OCA, and other docket participants with the opportunity to understand and weigh in on the prospective plans of New Hampshire's distribution utilities *before* they have made investment decisions in a manner that is essentially foreclosed by the retrospective and somewhat piecemeal prudence reviews that take place in a rate case. This prospective review and input process provides significant incremental value to ratepayers. Furthermore, as discussed above, LCIRPs delivered at the statutorily mandated intervals, and the planning assumptions which underpin them, can be valuable sources of information for those who review the prudence of a certain distribution system investment for which recovery is requested in a rate case.

Even if the Commission agrees with the Company's concerns about resource constraints, rather than excusing the Company's obligation to comply with RSA 378:38 for an indeterminate amount of time, the Commission should direct PSNH to file a limited LCIRP that still provides data relevant to its evolving distribution system planning framework and planned investments, in a manner similar to the filing prescribed by the Commission in Order No. 25,828 for PSNH's most recent LCIRP. In that order, the Commission required PSNH's to focus its LCIRP on: (1) a forecast of demand pursuant to RSA 378:38, I, (2) an assessment of demand-side energy management, including conservation, efficiency improvement, and load management programs pursuant to RSA 378:38, II, and (3) an assessment of distribution and transmission requirements, including the benefits and costs associated with smart grid technologies pursuant to RSA 378:38, IV. The Commission justified the limited scope of the 2015 LCIRP in order to "allow

Eversource more time to participate in the Commission's energy efficiency and grid modernization dockets."¹⁰ Order No. 26,050 at 2. As both of these dockets remain ongoing today, the same logic should apply to this LCIRP.

If the Commission were to embrace this limited LCIRP approach for the forthcoming LCIRPs, it should revise the third requirement listed above so that it better comports with Staff's Grid Modernization Recommendations and focuses on distribution and sub-transmission planning processes and a prospective analysis covering at least the next five years of business-as-usual system investments planned by the Companies.¹¹ Relatedly, the Commission should waive the portion of RSA 378:38, IV requiring an assessment of smart grid costs and benefits, as that as those costs and benefits, *inter alia*, will be a primary focus of working group discussions over the next several months and years as the IDPs are developed. In addition, as suggested above, the Commission should clarify that any discussion of planned distribution and sub-transmission investments should include an assessment of which planned investments might be deferred or eliminated through the use of non-wire alternatives, with each electric distribution company LCIRP proposing at least one candidate for a non-wire alternative demonstration project.

The Commission need look no further than Until Energy Systems' recent non-wire alternative RFI for a load constraint in the capital area service territory,¹² or Granite State Electric's original testimony in DE 17-189,¹³ to understand non-wire alternatives are no longer

¹⁰ [Order No. 25,828](#) at 7-9. (October 19, 2015)

¹¹ Staff Grid Modernization [Report](#) at 8-9. (Stating "The IDP would include a 5- and 10-year roadmap for each utility and determine the least cost options for operating distribution and sub-transmission systems by analyzing both traditional utility investments and non-utility owned resources.")

¹² Until Energy Systems, [Request for Information](#), 37 Line/4X1 Non-Wires Alternative Project for Distribution Load Relief (March 29, 2019) (attached).

¹³ Docket No. DE 17-189, Direct [Testimony](#) of Heather M. Tebbetts (November 30, 2017) at 15-17.

the future of distribution system planning but instead are quickly becoming the norm. Although a chart Staff Report describes development of a full-scale market for DER NWA sourcing as not occurring until the fourth year of the IDP,¹⁴ as noted above, it also identifies deployment of demonstration projects during earlier years of market development as an emerging best practice. The Commission would be wise to follow Staff's sage advice because failing to provide regulatory oversight of these ongoing solicitations and projects in the near term will result in a continued bias towards capital assets like battery storage and against traditionally more cost-effective operating expenses like energy efficiency and load curtailment.¹⁵

In two of the states that are farthest along in the grid modernization debate, New York and California, regulators required electric distribution companies to pilot non-wire alternatives prior to the full development of their grid-side investment plans or even the full development of their new distribution system planning architecture. In New York, this directive was issued by the Public Service Commission ("NY PSC")'s February 25, 2015 Order Adopting a Policy Framework an Implementation Plan:¹⁶

Staff recommended as a near-term implementation item that utilities should publish information regarding portions of their system that need upgrades but are amenable to non-wires alternatives. *As an interim filing prior to the initial DSIP [the DSIP is analogous to Staff's IDP], each utility should identify at least one such potential project, including the nature, scale, and timing of the need and the geographic area affected, with enough specificity for potential market participants to develop*

¹⁴ Staff Grid Modernization [Report](#) at 14.

¹⁵ For example, although Unital's non-wire alternatives RFI suggests respondents describe additional benefits the suggested approach provides above and beyond load reduction, it does not clarify for respondents that benefits and costs to the utility system (and therefore ratepayers) outside of load reduction will be included in the Company's quantitative assessment of benefits and costs associated with RFI responses. This would tend to bias respondents to favor of investments energy storage, which has utility system costs related increased energy consumption stemming from battery round trip efficiency, and against energy efficiency, which has utility system benefits such as energy savings which directly correlate with any solicited demand reduction. The bias is further encouraged by the [Averch-Johnson](#) effect, since regulated utilities can earn a return on capital assets such as energy storage, but not on operating expenses like energy efficiency and load curtailment.

¹⁶ NY PSC. [Order Adopting a Policy Framework and Implementation Plan](#). (February 25, 2015) at 130. (emphasis added)

proposals. These filings will be made not later than May 1, 2015, and may be *used to inform future demonstration projects* and/or to allow market participants to begin planning for projects that may follow initial DSIPs.”

Notably, although the NY PSC directed the utilities to file NWA candidates on May 1, 2015 and the broader DSIP (i.e. the IDP) plans on December 15, 2015, the DSIPs were not actually filed until June 30, 2016, and were not approved by the Commission until March 2017. In California, the directive to pilot non-wire alternative projects was issued by the California Public Utilities Commission (CPUC) in December 2016.¹⁷ In comparison, the CPUC didn’t issue its final guidance on the state’s full grid modernization framework (i.e.- the IDP) until its March 2018 Decision on Track 3 Policy Issues, Sub-Track 2 (Grid Modernization).¹⁸

8. PSNH’s argument that no party to the 2015 LCIRP settlement (DE 15-248) would be harmed by the Commission’s granting of a waiver since only the Company and Staff were signatories fails to recognize that the Company, Staff, and other parties have signed settlements outside of DE 15-248 that speak directly to the contents and submission of the August 2019 LCIRP. For example, in Docket No. DE 17-136 the parties agreed in connection with the 2019 Energy Efficiency Plan Update that the regulated electric distribution companies would file Grid Needs Assessments within each utility’s pending LCIRP.¹⁹ This commitment to the filing of a Grid Needs Assessment was made less than four months ago, when the parties would have

¹⁷ California Public Utilities Commission. [Decision Addressing Competitive Solicitation Framework and Utility Regulatory Incentive Pilot](#). Rulemaking 14-10-003 et al. (December 15, 2016)

¹⁸ California Public Utilities Commission. [Decision on Track 3 Policy Issues, Sub-Track 2 \(Grid Modernization\)](#). Rulemaking 14-08-013 et al. (March 22, 2018)

¹⁹ Docket No. DE 17-136, 2019 Energy Efficiency Plan Update [Settlement Agreement](#) (December 13, 2018) at 19 (stating that “[t]he Regulated Electric Utilities agree that as part of each company’s next LCIRP filing they will provide a ‘grid needs assessment’ consistent with the one described on page 17 of the November 19, 2018 Settlement Agreement in Docket No. DE 17-189”).

reasonably relied on the deadlines set in previous LCIRP orders for filing of the next LCIRP and related Grid Needs Assessments.²⁰ For PSNH, that deadline is August 25, 2019. The contents of these Grid Needs Assessments were further detailed in the settlement of the parties in DE 17-189, which required Liberty utilities to include a Grid Needs Assessment within its next LCIRP, which is due to the Commission in three months.²¹ Since PSNH has agreed via settlement in DE 17-136 roughly four months ago that it will include a Grid Needs Assessment in its next LCIRP, and the parties to that settlement would have reasonably relied on the deadline set forth in DE 15-248 for the filing of PSNH's next LCIRP, the Commission should weigh the harm to the parties against PSNH's claim that it has satisfied the good cause requirements of RSA 378:38-a, particularly in light of PSNH's recurring contention (with which the OCA does not necessarily agree) that signatories to settlement agreements in Commission proceedings are contractual undertakings.

9. As explained above, PSNH's motion fails to satisfy the good cause requirement of RSA 378:38-a, and the Commission should therefore deny its request to waive the filing deadline for an indeterminate amount of time. As the Commission considers the merits of whether some

²⁰ As suggested by the California Public Utility Commission, a primary purpose of a Grid Needs Assessment is to "provide transparency into the assumptions and results of the distribution planning process that yield the [NWA] candidate deferral shortlist." California Public Utilities Commission, [Decision on Track 3 Policy Issues, Sub-Track 1 \(Growth Scenarios\) and Sub-Track 3 \(Distribution Investment and Deferral Process\)](#), Docket Nos. R.14-08-013 and A.15-07-005 (February 15, 2018) at 33.

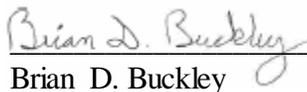
²¹ Docket No. DE 17-189, [Battery Storage Petition Settlement Agreement](#) (November 19, 2018) at 17. Liberty agreed to "provide a detailed grid needs assessment within its next LCIRP. That grid needs assessment shall describe all forecasted grid needs related to distribution system capital investments of \$250,000 or more over a five-year planning horizon at the circuit level. The grid needs assessment shall be available in spreadsheet format and shall include the following attribute-based columns and content: (1) Substation, Circuit, and/or Facility ID: identify the location and system granularity of grid need; (2) Distribution service required: capacity, reliability, and resiliency; (3) Anticipated season or date by which distribution upgrade must be installed; (4) Existing facility/equipment rating: MW, kVA, or other; and (5) Forecasted percentage deficiency above the existing facility/equipment rating over five years. Upon filing of the LCIRP and associated grid needs assessment, Commission Staff, the OCA, and Liberty will review planned capital investments to identify candidates that may be appropriate for NWA opportunities."

of the requirements of RSA 378:38 should be waived, it should follow the logic it applied previously in Order No. 25,828 and instead direct PSNH to file a *limited* LCIRP that includes: (1) a forecast of demand pursuant to RSA 378:38, I, (2) an assessment of demand-side energy management, including conservation, efficiency improvement, and load management programs pursuant to RSA 378:38, II, and (3) a summary of distribution and sub-transmission planning processes that includes an analysis covering at least the next five years of forward looking business-as-usual system investments planned by the Companies, and at least one candidate each for a non-wire alternative demonstration project.

WHEREFORE, the OCA respectfully request that this honorable Commission:

- A. Deny PSNH's waiver request for failure to satisfy the good cause requirement under RSA 378:38-a;
- B. Direct PSNH to file a limited LCIRP consistent with the guidance affirmed in Order No. 25,828, as revised by the recommendations within this objection;
- C. Grant any other such relief as it deems appropriate.

Sincerely,

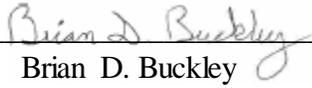


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Certificate of Service

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



Brian D. Buckley