

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

IR 15-296

INVESTIGATION INTO GRID MODERNIZATION

Order Denying Joint Motion for Rehearing

ORDER NO. 26,275

July 26, 2019

This order denies a motion by the Office of the Consumer Advocate and other non-utility parties for rehearing of Order No. 26,254 (May 29, 2019).

I. PROCEDURAL HISTORY

The Commission opened this docket on July 30, 2015, to investigate the modernization of New Hampshire's electric grid. The procedural history in this matter can be found in Order No. 26,254, which set forth the Commission's plan for how it intended to proceed.¹ On June 27, 2019, the Office of the Consumer Advocate (OCA) and five other entities or individuals (collectively the Movants), filed a Motion for Rehearing (Joint Motion).² No participant filed an objection to the Joint Motion.

II. POSITIONS

The Joint Motion asserts that the Commission's waivers of Least Cost Integrated Resource Plan (LCIRP) filing deadlines for Liberty and Eversource imply that the Commission has determined, without adjudication, that integrated distributions system plans (IDPs) will replace the LCIRP filings required under RSA 378:37-:41. *See Liberty Utilities (Granite State*

¹ Order No. 26,254 is available at: <http://www.puc.nh.gov/Regulatory/Orders/2019Orders/26254i.pdf>.

² The Acadia Center, Clean Energy New Hampshire, Conservation Law Foundation, the City of Lebanon, and Patricia Martin, joined the OCA on the Joint Motion.

Electric) Corp. d/b/a Liberty Utilities, Order No. 26,261 (June 14, 2019); *Public Service Co. of New Hampshire*, Order No. 26,262 (June 14, 2019).

The Joint Motion argues that such a determination must be made through an adjudicative process for three reasons. First, the Joint Motion asserts that a decision about grid modernization will affect the private interests of consumers represented by the OCA and others, and that due process requires adjudication. Joint Motion at 8. According to the Movants, an informal working group process does not constitute adjudicative due process. *Id.* at 13. Second, the Joint Motion claims that RSA 378:39 requires that the Commission review utility LCIRPs in an adjudicative proceeding; therefore, Commission determinations concerning what is to be included in LCIRPs must also be determined through an adjudicative proceeding. *Id.* at 9. The Movants argue that if they wait until the utility specific LCIRP proceedings, it will be too late to challenge the basic components of utility IDPs. *Id.* at 7. Third, the Joint Motion asserts that there are only two types of proceedings available to the Commission: adjudications or rulemakings. *Id.* at 11-12. The Movants claim that the relevant statutes, RSA 378:37-:41, do not delegate rulemaking authority to the Commission and that, therefore, the Commission is not authorized to adopt rules for LCIRPs. *Id.* at 12.

The Movants also argue that the Commission cannot force them to participate in alternative dispute resolution. They claim that efforts to obtain consensus on issues concerning utility IDPs harm their right to due process. Finally, the Movants request clarification of the Order to confirm that the further process required by the Order does not preclude a decision that contested issues will be adjudicated.

III. COMMISSION ANALYSIS

Under RSA 541:3, the Commission may grant rehearing when a party states good reason for such relief. Good reason may be shown by identifying new evidence that could not have

been presented in the underlying proceeding, *see O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977); or by identifying specific matters that were "overlooked or mistakenly conceived" by the Commission, *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful Motion for Rehearing does not merely reassert prior arguments and request a different outcome. *Public Service Company of New Hampshire*, Order No. 25,239 at 8 (June 23, 2011).

In their Joint Motion, the Movants repeat their prior argument that the process going forward in this docket is a "contested case," and thus requires an adjudicative proceeding. *See* RSA 541-A:1, I and IV; RSA 541-A:31. We considered those arguments in Order No. 26,254 and rejected them. *See* Order No. 26,254 at 5.

We reaffirm our earlier finding that the parties are not engaged in a "contested case" in which any party's "rights, duties or privileges ... are required by law to be determined ... after notice and an opportunity for hearing" in an "adjudicative proceeding," under the Administrative Procedure Act. *See* RSA 541-A:1, I and III; Order No. 26,254 at 5.

We acknowledge that RSA 378:39 requires the Commission to review individual utility LCIRPs in an adjudicative proceeding. The Commission has not begun the process of reviewing individual LCIRPs. When we commence consideration of utility specific plans, we will do so in an adjudicative proceeding.

At present, we are seeking to determine whether the stakeholders agree on any of the eleven issues relating to IDPs identified in Order No. 26,254. We will continue to invite substantive comment on those issues on or before September 6, 2019. Once we have identified any issues on which stakeholders agree, we will determine what process to utilize to resolve the non-consensus issues.

No party, other than the utilities, is required to file written comments. Further, no party is required to participate in any alternative dispute resolution. "We look forward to receiving

additional substantive detail from stakeholders regarding all of the topics identified. Those who believe that any of the enumerated issues should be reserved for utility-specific IDP proceedings should say so in their comments.” Order No. 26,254 at 6.


If we determine that a formal rulemaking proceeding will assist in administering the LCIRP-related statutes, RSA 378:37-:41, or in fulfilling its purposes, we will commence a rulemaking docket under our general statutory authority. *See* RSA 365:8. At this stage in the development of an approach to grid modernization, we do not believe a rulemaking proceeding is necessary or appropriate.

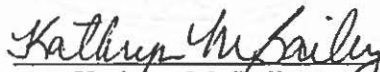
Accordingly, we deny the Joint Motion for Rehearing of Order No. 26,254. We will not clarify the Order because it speaks for itself, and we affirm the procedural directives contained therein.

Based upon the foregoing, it is hereby

ORDERED, that the motion for rehearing and for clarification is DENIED.

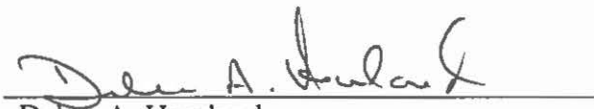
By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of July, 2019.


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