

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

Docket No. DG 17-152

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.,
d/b/a LIBERTY UTILITIES**

Least Cost Integrated Resource Plan

CONSERVATION LAW FOUNDATION'S MOTION FOR

REHEARING OF ORDER NO. 26,684

NOW COMES the Conservation Law Foundation (“CLF”), an intervenor in this docket, and moves pursuant to RSA 541:3 and N.H. Code Admin. Rule Puc 203.33 for rehearing of Order No. 26,684, entered by the New Hampshire Public Utilities Commission (“Commission”) in the above-captioned docket on September 14, 2022. In support of its motion for rehearing (“Motion”), CLF avers as follows:

BACKGROUND

This matter raises important issues regarding the proper interpretation of the statutes governing utility least cost integrated resource plans (“LCIRP”) in New Hampshire, *see* RSA 378:37-40, and the application of these laws to the investment decisions made by Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty Utilities (“Liberty”). More specifically, it involves the Commission’s failure to follow the LCIRP statutory requirements with respect to the contents of Liberty’s next LCIRP, as well as the Commission’s evasion of its responsibility to issue a decision on Liberty’s 2017 LCIRP within five years of filing.

Liberty initiated this matter on October 2, 2017, when it filed its LCIRP for the period from November 1, 2017, to October 31, 2022 (“2017 LCIRP”). Thereafter, CLF and other parties petitioned to intervene in the docket, which the Commission granted.

On May 15, 2018, Terry Clark, an intervenor, moved to dismiss Liberty's LCIRP on the ground that the filing failed to comport with the New Hampshire statutes governing LCIRPs, RSA 378:37-378:40. The Commission denied the motion; however, in ruling on the motion, the Commission concluded that Liberty had "overlooked" the Commission's instruction in Order No. 25,762 that Liberty "address *all of the statutory elements of RSA 378:38 and RSA:39 in its plan development in a granular way*, so that reviewing parties may track the correspondence of the plan with the relevant statutory standards." Docket No. DG 17-152, Order No. 26,225, at 6 (March 13, 2019) (emphasis added) (quoting *Liberty LCIRP*, Order No. 25,762 (Feb. 9, 2015)).

Accordingly, the Commission directed Liberty to:

[S]ubmit a supplemental filing, including supporting testimony, to address each of the specific elements required under RSA 378:38 and RSA 378:39 that are not already addressed in its LCIRP, with adequate sufficiency to permit the Commission's assessment of potential environmental, economic, and health-related impacts of each option proposed in the LCIRP, as required by RSA 378:39.

Docket No. DG 17-152, Order No. 26,225, at 7 (March 13, 2019). The Commission explained that "those specific elements are set forth in RSA 378:38, V and VI, and in RSA 378:39" and that it would "review Liberty's LCIRP and the supplemental filing to determine whether it meets the public interest, consistent with all applicable statutory requirements." *Id.*

Liberty subsequently submitted two supplemental filings. CLF filed motions in opposition to these supplemental filings, arguing that Liberty's filings remained deficient pursuant to the LCIRP statutes and the Commission's March 13, 2019 order. The Commission denied CLF's motion but stated that the docket would proceed and that it would "determine whether Liberty has met its burden of proving the adequacy of its LCIRP based on the evidence presented at hearing." Docket No. DG 17-152, Order No. 26,286, at 6 (August 12, 2019).

Subsequently, CLF and several other parties filed testimony in this docket.

Thereafter, in late 2019, due to a development in the now-abandoned Granite Bridge Project that Liberty asserted affected its LCIRP, Liberty filed a motion to suspend the LCIRP docket, including the scheduled hearing dates, which the Commission granted. Subsequently, on March 16, 2022, the Commission issued a procedural order in this docket, requesting that the parties file summaries of their positions. On June 21, 2022, the Commission conducted a status conference for the matter, and on July 20, 2022, Liberty, the Office of Consumer Advocate (“OCA”), and Department of Energy filed a settlement agreement (“Settlement Agreement”).

On August 18, 2022, the Commission conducted a hearing. On September 14, 2022, the Commission issued the order at issue in this Motion and rejected the Settlement Agreement. In its order, the Commission provided instructions regarding what Liberty must include in its next LCIRP—instructions that are contrary to the plain language of the LCIRP statutory requirements. Order Denying Settlement Agreement, Docket No. DG 17-152, Order No. 26,684, at 6-9 (Sept. 14, 2022) (“Final Order”). Moreover, despite the fact that nearly five years had passed since Liberty filed its last LCIRP, the Commission violated the LCIRP statutes in failing to issue a decision on Liberty’s 2017 LCIRP. The Commission’s failure to follow these provisions of the LCIRP statutes in its Final Order are the subject of CLF’s Motion and necessitate rehearing.

STANDARD OF REVIEW

The Commission may grant rehearing for “good reason” if the movant shows that an order is “unlawful or unreasonable” RSA 541:3, RSA 541:4. “Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding, or by identifying specific matters that were overlooked or mistakenly conceived.” *Northern Utilities, Inc.*, Docket No. DG 18-094, Order No. 26,229 (Mar. 25, 2019) (quotations and citations

omitted). Additionally, a “successful motion for rehearing does not merely reassert prior arguments and request a different outcome.” *Id.*

Here, not only did the Commission overlook the plain language of the LCIRP statutes, but it *ignored* the explicit requirements of the LCIRP statutes in its Final Order. In particular, the Commission misinterpreted the requirements of the LCIRP statutes with respect to (1) energy efficiency; (2) environmental impacts; and (3) public health impacts. The Commission also violated the LCIRP statutes by not issuing a decision on Liberty’s LCIRP within the five-year timeframe that is the subject of that LCIRP. Because the Commission’s order violates the LCIRP statutes and is unreasonable, the Commission should grant CLF’s Motion.¹

ARGUMENT

I. The Commission’s Order on the Requirements of Liberty’s Next LCIRP Contravenes the Plain Language of the LCIRP Statutes.

The Commission’s decision on what Liberty must include in its next LCIRP violates the plain language requirements of the LCIRP statutes. In interpreting the LCIRP statutes, the Commission failed to follow the New Hampshire Supreme Court’s well-established rules of statutory construction. Given the importance of the rules of construction to statutory interpretation, and the Commission’s disregard thereof, CLF provides the following overview of these rules prior to addressing the Commission’s clear failure to follow the LCIRP statutory language in the Final Order.

The New Hampshire Supreme Court has stated that it “first look[s] to the language of the statute itself, and, if possible construe[s] that language according to its plain and ordinary meaning.” *Petition of Carrier*, 165 N.H. 719, 721 (2013); *see also State v. Beattie*, 173 N.H. 716,

¹ It is axiomatic that because CLF could not predict the content of the Final Order, this is the first time CLF is making these arguments and it is not reasserting a prior argument and requesting a different outcome.

720 (2020) (same). The court “interpret[s] legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.” *Petition of Carrier*, 165 N.H. at 721. The court has explained that the legislature “is not presumed to waste words or enact redundant provisions and whenever possible, every word of a statute should be given effect.” *Beattie*, 173 N.H. at 720; *see also Garand v. Town of Exeter*, 159 N.H. 136, 141 (2009) (same). Similarly, the court “presume[s] that the legislature does not enact unnecessary and duplicative provisions.” *Garand*, 159 N.H. at 141. Courts must also not “construe a statute in a way that would render it a virtual nullity.” *Beattie*, 173 N.H. at 724.

The court also “construe[s] all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result.” *Petition of Carrier*, 165 N.H. at 721; *see also State Employees Association of New Hampshire v. State*, 161 N.H. 730, 738 (2011) (same). The court does not “consider words and phrases in isolation, but rather within the context of the statute as a whole,” which enables the court “to better discern the legislature’s intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme.” *Beattie*, 173 N.H. at 720; *see also The LLK Trust v. Town of Wolfeboro*, 159 N.H. 734, 736 (2010) (same). Further, when “interpreting two statutes which deal with a similar subject matter, [the court] will construe them so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statute.” *Pennelli v. Town of Pelham*, 148 N.H. 365, 366 (2002). Finally, “construction of a later statute as impliedly repealing an earlier one is disfavored,” unless “it is clear that the later act conflicts with the earlier act” or “the later act is clearly intended to occupy the entire field covered by the prior enactment.” *Professional Fire Fighters of Wolfeboro, IAFF Local 3708 v. Town of Wolfeboro*,

164 N.H. 18, 22 (2012). Based on the rules of statutory construction, it is clear that the Commission misinterpreted the LCIRP statutes with respect to the required analyses for energy efficiency and environmental and public health impacts.

A. The Provisions in the Final Order Relating to Energy Efficiency Violate the LCIRP Statutes.

The Commission's Final Order fails to follow the plain and ordinary language of the LCIRP statutes regarding energy efficiency. Pursuant to RSA 378:37, the New Hampshire General Court has declared that:

[I]t shall be the energy policy of this state to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; *to maximize the use of cost effective energy efficiency and other demand-side resources*; and to protect the safety and health of the citizens, the physical environment of the state, and the future supplies of resources, with consideration of the financial stability of the state's utilities.

Id. (emphasis added). Additionally, as part of the required LCIRP filings, utilities must include an "assessment of demand-side energy management programs, including conservation, efficiency, and load management programs." RSA 378:38 (II). Finally, under RSA 378:39, where alternatives have equivalent financial costs, equivalent reliability, and equivalent environmental, economic, and health impacts, the Commission is required to prioritize "[e]nergy efficiency and other demand-side management resources" over other energy policy priorities. *Id.*

The Settlement Agreement included the following "recommendation" relating to energy efficiency for Liberty's next LCIRP: "Recommendation 1: Evaluate energy efficiency as a potential resource alternative, incremental to any customer-funded programs offered via NHSaves" Ex. 12, Settlement Agreement, at 3. However, the Commission rejected this recommendation and instead declared in the Final Order that energy efficiency "is currently

subsumed within the Energy Efficiency Resource plans for both electric and natural gas utilities operating in New Hampshire, with maximum ratepayer funding levels set legislatively. As a result[,] we do not expect the LCIRP process to conflict with that policy decision by exploring additional ratepayer funding sources.” This directive, however, both fails to give every word of the LCIRP statutes effect, *Beattie*, 173 N.H. at 720, and effectively “add[s] language [to the statute] that the legislature did not see fit to include.” *Petition of Carrier*, 165 N.H. at 721.

It is noteworthy that in 2014, New Hampshire’s legislature amended a prior version of RSA 378:37 to specifically establish, for the first time, that it is the state’s energy policy to “maximize the use of cost effective energy efficiency and other demand-side resources.” PUBLIC UTILITIES—ELECTRICITY—ENERGY CONSERVATION, 2014 New Hampshire Laws Ch. 129 (H.B. 1540). At the time of the 2014 amendment to RSA 378:37, New Hampshire’s Core energy efficiency programs, which were established by the Commission, had been in place for over 12 years. *See Gas and Electric Utilities, Energy Efficiency Resource Standard*, Docket No. DE 15-137, Order No. 25,932, at 2-3 (Aug. 2, 2016) (explaining that the Core program was established in 2001). The legislature, which, it can be presumed, was aware of the Core program, passed new legislation that did not seek to modify the Core energy efficiency programs, but rather, created a new and additional requirement that energy efficiency be maximized in least cost integrated resource planning. *See Anderson v. Estate of Wood*, 171 N.H. 524, 529 (2018) (explaining that the legislature “is presumed to be familiar with judicial interpretation of statutes”). Thus, by amending the statute, the legislature signaled its intention for energy efficiency and other demand-side resources to play as essential a role in accomplishing the state’s energy needs—and in utilities’ least cost integrated resource planning—as the other policies outlined in RSA 378:37, including the requirement that energy

needs be provided at the lowest reasonable cost. The legislature also indicated that energy efficiency alternatives contemplated as part of LCIRP planning should be additive to other, already existing energy efficiency programs.

RSA 378:37 unambiguously establishes a policy to both meet energy needs at the lowest reasonable cost *and* to maximize cost-effective energy efficiency and other demand-side resources. By precluding Liberty from exploring ratepayer-funded energy efficiency beyond the NH Saves program, the Commission’s order has failed to give effect to the language in RSA 378:37 requiring the maximization of energy efficiency for least cost integrated resource planning and rendered that language a “virtual nullity.” *Beattie*, 173 N.H. at 724. Moreover, the Commission’s interpretation of the energy efficiency provision in RSA 378:37-39 fails to effectuate their overall purpose—embodied by the legislature’s 2014 amendments—of placing energy efficiency on an equal footing with the other criteria that the Commission is required to consider when reviewing LCIRPs.

Further, although RSA 378:37-39 do not proclaim that energy efficiency in New Hampshire is only accomplished via triennial energy efficiency plans, the Commission improperly reads this language into the statutes by finding that the LCIRP process is not expected to explore additional ratepayer funding sources for energy efficiency beyond the approved NHSaves program. The Commission concludes that the LCIRP process cannot conflict with the legislature’s policy decision to set maximum ratepayer funding for triennial energy efficiency plans. However, HB 549 (2022), in which the legislature established funding levels for NHSaves, did not modify RSA 378:37-39 and neither addresses nor prevents the use of ratepayer-funded energy efficiency as part of least cost integrated resource planning. Because HB 549 does not conflict with the language of RSA 378:37 and does not contain any language

indicating that HB 549 was intended to occupy the entire field of energy efficiency, the Commission erred in concluding that HB 549 impliedly repealed the requirement in RSA 378:37 to maximize energy efficiency. *See Professional Fire Fighters of Wolfeboro, IAFF Local 3708 v. Town of Wolfeboro*, 164 N.H. at 22. Accordingly, because the Commission’s order on the requirements for Liberty’s next LCIRP vis-à-vis energy efficiency is contrary to the language in RSA 378:37-39 on energy efficiency, the Commission must reconsider its decision.

B. The Provisions in the Final Order Relating to Environmental and Public Health Impacts Violate the LCIRP Statutes.

As noted, in addition to RSA 378:37 declaring it the state’s energy policy to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost, it is also the state’s energy policy to “*protect the health and safety of the citizens*” and “*the physical environment of the state.*” RSA 378:37 (emphases added). Further, RSA 378:38 (VI) requires that each LCIRP include an “*assessment of the plan’s long- and short-term environmental, economic, and energy price and supply impact on the state.*” *Id.* (emphases added). Moreover, in “deciding whether or not to approve a utility’s plan, the [C]ommission *shall* consider potential *environmental, economic, and health-related impacts of each proposed option.*” RSA 378:39 (emphases added).

The Settlement Agreement recommended that for Liberty’s next LCIRP, it assess (1) “environmental impacts by documenting the greenhouse gas impacts of evaluated resources in terms of emissions (MMT CO₂e) created or avoided” and (2) “public health impacts in terms of the health effects of local air quality (AQ) impacts of evaluated resources by documenting sulfur oxides (SO_x), nitrous oxides (NO_x), and particulate matter (PM_{2.5}) emissions, projecting health impacts.” Ex. 12, Settlement Agreement, at 4. However, the Commission’s order largely rejected these settlement terms.

Regarding environmental impacts, the Commission stated that it does not oppose analyses of the environmental impact of greenhouse gas emissions, that such analyses would be within the LCIRP statutes, and that it “understand[s] this to include the leakage of natural gas and other pollutants from the Liberty distribution system in New Hampshire.” Final Order, at 7. However, the Commission concluded that “an analysis of the emissions caused by Liberty’s customers’ combustion of the natural gas they receive is a broad inquiry beyond the purpose of the LCIRP.” *Id.* According to the Commission, while consideration of environmental impacts is germane to the LCIRP review process, this consideration “must be grounded in the direct operation of the Liberty system in our State and not second or third-order impacts which are beyond the scope of the LCIRP” and it “*sees little benefit in Liberty spending ratepayer money to conduct analyses that do not have the potential to improve its services and operations.*” *Id.* (emphasis added).

As for public health impacts, the Commission’s order only requires Liberty to assess the “health-related impacts of the emissions resulting from leakage (also known as ‘lost gas’ or ‘unmetered gas’) occurring in its distribution system in New Hampshire.” *Id.* The Commission also concluded that the public health assessment “should be based on state and federal government reports and peer-reviewed and publicly available reports concerning the public health impacts of emissions at levels similar to those resulting from leakage from Liberty’s distribution system” and that it “will not require Liberty to *undertake its own study of those potential health impacts, the funding of which would be beyond the scope of the LCIRP.*” *Id.* at 7-8 (emphasis added).

In its order granting petitions to intervene in this docket, the Commission astutely recognized that “by their own terms,” the LCIRP statutes “require a focus on how Liberty’s plans

would affect the State of New Hampshire and its citizens.” Order Granting Petitions to Intervene, Docket No. DG 17-152, Order No. 26,134, at 4 (May 11, 2018). The Commission’s directive on environmental and public health impacts for Liberty’s next LCIRP, however, will prevent a complete assessment of how Liberty’s plan would “affect the State of New Hampshire and its citizens.” *Id.* The Commission’s interpretation of the environmental and health requirements in the LCIRP statutes fails to give effect to the statutory language, fails to effectuate the overall statutory purpose, and leads to an absurd result. *See Petition of Carrier*, 165 N.H. at 721.

1. The Commission’s Decision on Environmental and Health Impacts Fails to Give Effect to All the Words of the LCIRP Statutes and Impermissibly Adds Language the Legislature Did Not Include in the Statutes.

First, the Commission’s instruction that Liberty’s environmental and public health analysis need only focus on the greenhouse gas (“GHG”) emissions and lost-gas impacts caused by Liberty’s distribution system, *to the exclusion of the end user impacts resulting from the combustion of the gas sold by Liberty*, unreasonably circumscribes the statutory requirements. The LCIRP statutes require an LCIRP to include an assessment of long- and short-term environmental impacts and for the Commission to consider potential environmental and economic and health-related impacts of each option. RSA 378:38-39. There is no language in these statutes that limits the assessments in the manner prescribed by the Commission. While the Commission disparagingly concludes that Liberty’s “second or third-order impacts are beyond the scope of the LCIRP,” this conclusion rests on both an erroneous interpretation of the LCIRP statutes and an incorrect assumption about the impacts caused by Liberty. Liberty’s distribution system exists for the sole and ultimate purpose of delivering gas to its users so that it can be combusted; accordingly the combustion of gas by end users, and the environmental and public health impacts it causes, *is directly attributable to Liberty’s system*. Given that the combustion

of gas by Liberty's customers is the direct consequence and intended purpose of Liberty's system, the Commission improperly and unreasonably adds language to LCIRP requirements by mandating that Liberty not analyze the environmental and public health impacts caused by the combustion of gas by Liberty's customers. *See Petition of Carrier*, 165 N.H. at 721.

Similarly, the Commission's determinations that there is "little benefit in Liberty spending ratepayer money to conduct [environmental] analyses that do not have the potential to improve its services and operations" and that it "will not require Liberty to undertake its own study of [] potential health impacts, the funding of which would be beyond the scope of the LCIRPs" have no basis in the LCIRP statutory language. Final Order, at 7-8. The LCIRP statutes make the consideration of environmental and public health impacts just as important to the Commission's decision-making on LCIRPs as whether a plan is least cost, RSA 378:39, and require utilities to include an assessment of environmental impacts in their LCIRP filings, RSA 378:38 (VI). Given the language in the LCIRP statutes establishing the significance of these assessments to the Commission's review of LCIRPs, it is contrary to the statutory language for the Commission to conclude that (1) Liberty does not need to conduct a public health assessment; (2) instead of conducting its own public health assessment, Liberty may "rely on state and federal government reports and peer-reviewed and publicly available reports concerning the public health impacts of emissions at levels similar to those resulting from leakage from Liberty's distribution system"; and (3) the funding for a public health assessment is beyond the scope of the LCIRP. Final Order, at 7-8.

Likewise, the Commission's directive that Liberty should not spend ratepayer money on environmental analyses that do not have the potential to improve its services and operations is unsupported by the statutory language. Whether an environmental impacts analysis has the

potential to improve a utility's service and operations is irrelevant to the statutory requirements for such analysis. Accordingly, the Commission's order both fails to give effect to the statutory language on environmental and public health assessments and adds new limitations on such analyses that the legislature did not see fit to include. *See Beattie*, 173 N.H. at 720.

2. The Commission's Decision on Environmental and Health Impacts Fails to Effectuate the Purpose of the LCIRP Statutes and Leads to an Absurd Outcome.

The Commission's conclusion that Liberty is not required to analyze the environmental and public health impacts resulting from the combustion of the gas it sells—a direct consequence of its distribution system, and indeed the sole purpose of such system—also fails to effectuate the overall purpose of the statutory requirements for these analyses and leads to an absurd result. *See Petition of Carrier*, 165 N.H. at 721. In particular, the Commission's determinations will lead to an analysis that fails to analyze the full extent to which Liberty's plan contributes to the greatest environmental threat facing New Hampshire, *i.e.*, climate change.

The burning of natural gas at the burner tip results in GHG emissions. Ex. 9, Direct Testimony of Paul Chernick for CLF, DG 17-152, at Bates 12. GHG emissions are responsible for climate change and climate change poses the greatest environmental threat to New Hampshire today. *See id.*; Ex. 8, Direct Testimony of Elizabeth A. Stanton for CLF, DG 17-152, at Bates 4-9. In fact, Liberty, itself, acknowledges that the use of natural gas results in GHG emissions that contribute to the risk of climate change, that the “emissions of greenhouse gases contribute to the social, economic, and environmental risks associated with climate change,” and that climate change poses a threat to New Hampshire. Paul Hibbard Testimony, Hearing Transcript, DG 17-152, at 159-61 (Aug. 18, 2022); Ex. 4, Direct Testimony of Paul Hibbard for Liberty, DG 17-152, at Bates 26-27, 29.

As part of the environmental and public health analyses it conducted pursuant to the LCIRP statutes, Liberty analyzed the GHG emissions resulting from its preferred resource alternatives and provided a more limited analysis of the resulting pollutants, including NOx, SO2, particulate matter, mercury, and CO2. Paul Hibbard Testimony, Hearing Transcript, DG 17-152, at 161-62 (Aug. 18, 2022); Ex. 4, Direct Testimony of Paul Hibbard for Liberty, DG 17-152, at Bates 27. Importantly, when analyzing the environmental and public health impacts of its plan, Liberty included analysis of the impacts resulting from the *combustion* of gas sold by Liberty to its customers. Paul Hibbard Testimony, Hearing Transcript, DG 17-152, at 162-63 (Aug. 18, 2022); Ex. 4, Direct Testimony of Paul Hibbard for Liberty, DG 17-152, at Bates 27, 62. Liberty stated that it considered analysis of the environmental and public health impacts resulting from the *combustion* of the gas it sells germane to the LCIRP statutory requirements. Paul Hibbard Testimony, Hearing Transcript, DG 17-152, at 163 (Aug. 18, 2022).

The Commission's order that Liberty need not analyze the GHG emission and public health impacts resulting from the combustion of the gas it sells fails to effectuate the purpose of the LCIRP statutes. Without a full analysis of the environmental and public health impacts of Liberty's LCIRP, including the impacts from the combustion of the gas it sells, the Commission will be unable to ensure that the plan will "protect the safety and health of the citizens [and] the physical environment of the state," RSA 378:37, and the Commission will be unable to fully consider the "potential environmental, economic, and health-related impacts of each proposed option." RSA 378:39. The Commission's order will also preclude Liberty from conducting a full assessment of the environmental impacts of its plan, as required under RSA 378:38 (VI).

As CLF's and Liberty's witnesses testified, GHG emissions resulting from the combustion of natural gas, and their contribution to climate change, are a recognized

environmental and public health impact from the gas that Liberty sells. Indeed, in Liberty's 2017 LCIRP, Liberty concluded that an environmental analysis pursuant to the LCIRP statutory requirements would be incomplete without an analysis of the GHG emissions resulting from gas combustion, and included some analysis on such GHG emissions in its filings. Remarkably, however, despite the fact that climate change presents the greatest environmental threat to New Hampshire, the Commission's Final Order will absurdly and unreasonably preclude Liberty from fully accounting for the climate change impacts resulting from the gas it sells. *See Petition of Carrier*, 165 N.H. at 721 (holding that when statutes are construed, absurd results must be avoided). This is clearly contrary to the legislature's intent for the Commission to consider the environmental and health related impacts of a utility's preferred alternative and for state energy policy to protect the environment of the state. Accordingly, the Commission should reconsider its decision regarding the required environmental and public health impacts analysis for Liberty's next LCIRP.

II. Although the Commission Characterizes its Determinations on the LCIRP Requirements as Guidance and Not Binding, the Order Will Have a Binding Effect on the Contents of Liberty's Next LCIRP.

The Commission lays out "guideposts for the content to be provided by Liberty as part of its next LCIRP" and states that "this guidance is not binding—nor could it be." Final Order, at 6. The Commission claims that "in the interest of efficient process," it provides "these expectations but remains open to receiving and reviewing any LCIRP that is consistent with the applicable statutes." *Id.* Despite the Commission's pronouncement, however, such "guidance" will have a binding effect on the content of Liberty's next LCIRP.

With respect to environmental impacts, the Commission finds that the impacts from the combustion of the gas Liberty sells are beyond the scope of the LCIRP and that "it sees little

benefit in Liberty spending ratepayer money to conduct analyses that do not have the potential to improve its services and operations.” Final Order at 7. Because the Commission has mandated that Liberty will not recover the costs of any analyses into the impacts from gas combustion, it has issued a binding determination on the content of Liberty’s next LCIRP vis-à-vis environmental impacts.

Likewise, for public health impacts, the Commission states that “it will not require Liberty to undertake its own study of [the] potential health impacts, the funding of which would be beyond the scope of the LCIRP.” *Id.* at 8. By informing Liberty that it cannot expect to recover the costs for conducting an analysis into the public health impacts of its plan, the Commission has issued a binding decision effectively precluding Liberty from conducting such an analysis.

Similarly, for energy efficiency, the Commission states that energy efficiency is subsumed within the triennial plans, the maximum funding for which is set legislatively, and that it does “not expect the LCIRP process to conflict with that policy decision by exploring additional ratepayer funding sources for energy efficiency.” *Id.* at 6. In other words, the Commission has proclaimed that Liberty should not waste its time, or ratepayer funds, on exploring ways energy efficiency measures beyond the triennial plan could be the least cost resource option.

In sum, although the Commission characterizes its order as mere guidance, its effect is binding on the content of Liberty’s next LCIRP and has the effect of eviscerating the LCIRP requirements for Liberty’s next LCIRP.² Thus, in deciding this motion, the Commission should

² CLF also agrees with the argument raised in the OCA’s motion for rehearing in this docket, filed on September 28, that the Commission lacks authority to issue advisory opinions. *See* OCA Motion for Rehearing, DG 17-152, at 3-6.

not hide behind its use of the word “guidance” to avoid addressing the merits of CLF’s arguments.

III. The Commission Violated the LCIRP Statutes by Failing to Issue a Decision on Liberty’s LCIRP Within Five Years.

The Commission erred as a matter of law, and acted unreasonably, by failing to issue a decision on Liberty’s 2017 LCIRP within five years of its filing. The Commission last approved a Liberty LCIRP on February 9, 2015. *See Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Docket No. DG 13-313, Order No. 25,762 (February 9, 2015). Liberty filed the 2017 LCIRP on October 2, 2017. Thus, over seven years have passed since the Commission approved *any* Liberty LCIRP, and it has now been more than five years since Liberty filed the 2017 LCIRP that is the subject of this docket. By not issuing a decision on Liberty’s 2017 LCIRP, the Commission has evaded its responsibility to approve or deny an LCIRP within five years.

RSA 378:38 requires a natural gas utility to “file a least cost integrated resource plan with the [C]ommission within 2 years of the [C]ommission’s final order regarding the utility’s prior plan, and in all cases within 5 years of the filing date of the prior plan.” *Id.* The Commission is required to review LCIRP plans to determine whether the utility has complied with the LCIRP statutory requirements and must “*decid[e] whether or not to approve the utility’s plan.*” RSA 378:38 (emphasis added). RSA 378:40 contains further requirements for the Commission’s approval of LCIRPs, stating that where an LCIRP has been filed but the Commission’s review is pending, the Commission’s process of review must be “proceeding in the ordinary course.” *Id.*

As already noted, words and phrases of a statute must not be considered in isolation “but rather within the context of the statute as a whole” in order to “better discern the legislature’s intent and to interpret statutory language in light of the policy or purpose sought to be

advanced.” *Beattie*, 173 N.H. at 720. Further, all parts of a statute must be construed together to “effectuate its overall purpose and avoid an absurd or unjust result.” *Id.* Taken as a whole, the language of RSA 378:38-40 indicates that the legislature intended for the Commission to approve or deny an LCIRP during the five-year planning period covered by the LCIRP.

The legislature intended for filed LCIRP plans to play an essential role in utility planning and in furthering the state’s energy policy. *See* RSA 378:37. Therefore, it mandated that a utility file an LCIRP at least every five years and required the Commission to issue a decision on filed LCIRP plans. RSA 378:38-39. However, the Commission’s determination that Liberty may file its next LCIRP *before* a decision is issued on its pending 2017 LCIRP fails to effectuate the overall purpose of the LCIRPs statutes and leads to an absurd and unreasonable result. In particular, despite the clear requirement in the LCIRP statutes that the Commission issue a decision on LCIRPs, the Commission’s order allows utility LCIRPs to evade review and, as here, absurdly results in the filing of a new LCIRP where the Commission has failed to issue a decision on the prior LCIRP.

In addition to violating the LCIRP statutes, the Commission’s failure to render a decision approving or denying Liberty’s LCIRP is unreasonable. The Commission stated in the order of notice opening this docket that the 2017 LCIRP filing raised issues “relating to whether Liberty’s planning process is adequate as defined by the requirements set forth in RSA 378:38 and RSA 378:39, as recently amended by the Legislature.” Order of Notice, Docket No. DG 17-152, at 1 (Feb. 8, 2018). Further, in ruling on a motion to dismiss in its March 13, 2019 order in this docket, the Commission required Liberty to submit a supplemental filing to address each of the elements required under RSA 378:38 and RSA 378:39 and specifically established that it would “review Liberty’s LCIRP and the supplemental filing to determine whether it meets the public

interest, consistent with all applicable statutory requirements.” Docket No. DG 17-152, Order No. 26,225, at 7 (March 13, 2019). The Commission has since unreasonably failed to comply with these clearly stated requirements by failing to issue a decision on whether Liberty has complied with all of the LCIRP statutory provisions, during the five-year timeframe that is the subject of the 2017 LCIRP.

Seven years have passed since the Commission last approved a Liberty LCIRP, meaning that for seven years, the Commission has failed to approve any updates to Liberty’s plan or issue a determination on whether Liberty’s planning furthers New Hampshire’s energy policy. Based on the overall LCIRP statutory structure and purpose, the legislature clearly did not intend for the filing of a subsequent LCIRP to occur before the Commission had issued a decision on the earlier LCIRP. Although the Commission’s review of LCIRPs is supposed to proceed in the “ordinary course,” there is nothing ordinary about a utility filing a subsequent LCIRP where the Commission failed to act on a prior LCIRP. RSA 378:40. Accordingly, the Commission has violated the LCIRP statutes by failing to issue a decision on Liberty’s 2017 LCIRP within five years of its filing and before Liberty’s next LCIRP is due.

CONCLUSION

The Commission’s Order in this docket violates the LCIRP statutes. Specifically, the Order misinterprets the requirements of the LCIRP statutes with respect to (1) energy efficiency; (2) environmental impacts; and (3) public health impacts. Moreover, these determinations will have a binding effect on the content of Liberty’s next LCIRP. Because these determinations have no basis in law, the Commission should reconsider its decision and issue guidance approving the Settlement Agreement’s “recommendations” relating to these subjects, as these recommendations align with the LCIRP statutory requirements. Additionally, the Commission

violated the LCIRP statutes, and acted unreasonably, by failing to issue a decision approving or denying the 2017 LCIRP, based on a review thereof under the statutory requirements pertaining to LCIRPs, within the applicable five-year statutory timeframe.

WHEREFORE, CLF respectfully requests that the Commission grant rehearing for the reasons set forth in this Motion.

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October 7, 2022

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Summary of Position has, on this 7th day of October 2022, been sent by email to the service list in Docket No. DG 17-152.

Respectfully submitted,

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