

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

**DOCKET NO. DG 19-126**

**Northern Utilities, Inc.**

**2019-2024 Integrated Resource Plan**

**Motion for Rehearing**

NOW COMES Northern Utilities, Inc. (“Northern” or the “Company”) and, pursuant to N.H. Admin. Rule Puc 203.07 and 203.33 and RSA 541:3, respectfully moves the New Hampshire Public Utilities Commission (the “Commission”) to grant rehearing of Order No. 26,662 (the “Order”) issued on August 8, 2022 in the above-captioned docket pertaining to Northern’s Least Cost Integrated Resource Plan (“LCIRP”).

In support of this Motion, Northern states as follows:

**I. BACKGROUND AND INTRODUCTION**

1. On July 22, 2019, Northern filed its 2019 LCIRP and following preliminary discussions with the Staff<sup>1</sup> and the Office of the Consumer Advocate (“OCA”), on February 24, 2020 Northern supplemented that filing. Following discovery and the exchange of testimony, on May 27, 2020 Northern, Staff, and the OCA filed a settlement agreement (the “Settlement Agreement”) with the Commission pertaining to Northern’s LCIRP. The Settlement Agreement requested that the Commission approve Northern’s LCIRP as adequate pursuant to RSA 378:39. May 27, 2020 Settlement Agreement at 2. Further, the Settlement Agreement noted the parties’ agreement “that additional guidance from the Commission regarding expectations under RSA

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<sup>1</sup> The Staff of the Commission later became the Staff of the New Hampshire Department of Energy (“DOE”) upon the passage of RSA Chapter 12-P on July 1, 2021. In the context of this Motion, the Staff of the DOE assumed the responsibilities of the Staff of the Commission relative to Northern’s LCIRP. Accordingly, references to the “Staff” are intended to include the Staff of the Commission as well as the Staff of the DOE.

378:37-40 will be constructive for Northern’s future LCIRPs”. *Id.* Accordingly, the parties agreed to convene a working group (“Working Group”) to discuss potential approaches and recommendations for future LCIRP filings. In particular, the parties agreed:

that the proposed development of recommendations by the Working Group would be specifically related to: (1) the statutory interpretation of RSA 378:37-40; (2) recommended criteria for the evaluation by Northern of least cost resources to meet the applicable statutory requirements regarding environmental, economic and health-related impacts in future LCIRPs, including, but not limited to, alternative resources and optimization of pipeline capacities; and (3) the content and presentation of future LCIRP filings; including recommendations on how to integrate the Working Group’s recommendations into the content and presentation of Northern’s next LCIRP filing.

*Id.* at 3.

2. The Commission approved the Settlement Agreement in Order No. 26,382 (July 23, 2020), and found that Northern’s “LCIRP adequately satisfies the statutory requirements for natural gas utility least cost integrated resource planning.” *Northern Utilities, Inc.*, Order No. 26,382 (July 23, 2020) at 6. Also, the Commission made no changes to the proposed scope of inquiry for the Working Group. Rather, the Commission directed the Working Group to file a report (the “Report”) of its discussions and any agreement reached on the content of future LCIRP filings on or before July 1, 2021. *Northern Utilities, Inc.*, Order No. 26,382 at 7 (July 23, 2020). The Commission further directed the Company to file its next LCIRP on or before July 1, 2022. *Id.* By a later order *nisi*, the Commission granted the Working Group’s request to extend the deadline for the Report, and it waived the requirement that a Northern’s next LCIRP be filed within two years of the Commission Order approving the prior LCIRP. *Northern Utilities, Inc.*, Order No. 26,510 (August 20, 2021) at 4. On December 29, 2021, Northern filed a motion requesting an extension of time to file the Report until March 31, 2022, and to extend the deadline for the Company’s next LCIRP submission to March 31, 2023.

3. On March 31, 2022, Northern filed the Report which included an overview of the items identified in the Settlement Agreement – including the Working Group’s interpretation of the LCIRP law – as well as the Working Group’s analysis of the identified issues and related concerns. As noted in the Report, “The interpretation and application of RSA 378:37-:40 is an issue of particular significance to gas distribution companies like Northern, given the statutes’ focus, both historically and in present form, on matters pertaining to electric utilities.” Report at 4.

Beyond including an interpretation of the LCIRP law as it pertained to Northern, the Report provided a series of eight recommendations intended to refine the content and presentation of Northern’s future LCIRP filings. Report at 18-19.

4. On August 8, 2022, the Commission issued the Order. In the Order, the Commission accepted the Report and acknowledged the efforts of the Working Group. The Order, however, largely rejected or significantly modified the Report’s recommendations.

According to the Order:

We find the Working Group recommendations helpful, and we use their eight recommendations as the structure to provide our analysis and guidance to Northern below.

Nonetheless, we find that many of these recommendations lack appropriate focus on the need to reduce gas supply costs and distribution system costs. Further, some of the recommendations will lead to an LCIRP filing that is more complex and expensive to produce without adhering to the main thrust of the LCIRP Statute, which is to choose the “lowest reasonable cost” options. *See* RSA 378:37. Specifically, we believe that any assessments and evaluations conducted as part of an LCIRP should be for the purpose of producing data that will be useful to the utility as a distribution utility in achieving the energy policy established by RSA 378:37.

Order at 13. Further, the Order specified that “the Commission’s objective [is] to transform the LCIRPs into a useful component of the capital planning process for Northern.” Order at 17. To that end, and in addition to eliminating or modifying the Report’s recommendations, the Commission ordered, for the first time, that Northern provide significant capital project

documentation in its LCIRP filings. *Id.* at 17-18.

5. On August 17, 2022, the OCA filed a Motion for Rehearing or Clarification pertaining to the Order. In that motion, the OCA requested that the Commission clarify the Order to indicate that its legal and policy determinations regarding the LCIRP requirements are “purely advisory in nature” and to otherwise grant rehearing of various legal conclusions contained in the Order. OCA Motion for Rehearing or Clarification at 17. For the reasons set out below, Northern also requests rehearing of the Order.

## **II. LEGAL STANDARD**

6. Pursuant to RSA 541:3, the Commission may grant reconsideration or rehearing when a party states good reason for such relief. *Public Service Company of New Hampshire*, Order No. 25,361 (May 11, 2012) at 4. “The Commission may grant rehearing or reconsideration for ‘good reason’ if the moving party shows that an order is unlawful or unreasonable.” *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 26,087 at 3-4 (Dec. 18, 2017) (citations omitted). “A successful motion must establish ‘good reason’ by showing that there are matters that the Commission ‘overlooked or mistakenly conceived in the original decision,’ or by presenting new evidence that was ‘unavailable prior to the issuance of the underlying decision.’” *Id.* “A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome.” *Id.*

## **III. ARGUMENT**

### **a. Capital Planning**

7. Through the Order, the Commission makes two fundamental modifications in LCIRP filings, and it does so without sufficient notice or record to support such changes. Further, in making the modifications, the Commission has improperly interjected itself into the

utility's internal planning processes in a manner contrary to its role as regulator and beyond its statutory authority. Northern addresses both modifications in turn.

8. The first modification the Commission created through the Order is to transform the review of a Northern's LCIRP from one relating to planning intended to meet the gas supply needs of its customers, to a "component of the capital planning process for Northern." Order at 17. The Commission states that "LCIRPs are the chance for the Commission to exercise its regulatory role to ensure that each utility it regulates is making investments in capital assets to enable customers to benefit from the least cost resources available." *Id.* However, the Commission does not identify any legal basis, statutory or otherwise, pursuant to which the Commission can use the LCIRP process to examine and regulate Northern's capital planning and investments on a forward-looking basis. This modification represents a substantial change in the requirements for, and evaluation of, gas utility LCIRP filings, was made without basis or support in the record or in the law, and should be reconsidered.

9. The requirements of the LCIRP law<sup>2</sup> have applied to gas utilities for only a relatively short time. *See Northern Utilities, Inc. d/b/a Unitil*, Order No. 26,027 (June 19, 2017) at 6 (noting that "the current Northern LCIRP represents its first plan filed since the Legislature added natural gas utilities to the filing requirements of RSA 378:37-:40 as of August 15, 2014."). Prior to that time, gas distribution company LCIRPs were limited to supply planning. *See, e.g., Northern Utilities, Inc.*, Order No. 25,641 (March 26, 2014) at 5 (approving a settlement agreement stating that "the purpose of Northern's next IRP is two-fold: 1) for Northern to describe and explain the resource planning it will have used to develop an adequate, reliable, and economic portfolio of resources to serve firm customer demand, and 2) to allow the Commission

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<sup>2</sup> RSA 378:37 *et seq.*

to evaluate the reasonableness of those planning processes and procedures.”); *see also Northern Utilities, Inc.*, Order No. 25,089 (April 5, 2010) at 7 (“The filing of IRPs helps promote communication between the utility and the Commission regarding the utility’s supply needs and gas resource decisions.”) (internal citations omitted).

10. Subsequent to the 2014 legislative amendment applying the LCIRP law to gas distribution companies, for Northern the Commission has either waived the requirement of the LCIRP law pertaining to the inclusion of transportation and distribution requirements, *see* Order No. 26,027 at 5, or accepted LCIRP filings that do not include such material, finding that such filings satisfied the statutory requirements. *See* Order No. 26,382, *supra*. Going further, the Commission has concluded that the statutory provision of the LCIRP law pertaining to assessments of transmission and distribution requirements does not apply to gas companies. *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 26,225 at 7 n. 2 (March 13, 2019) (“RSA 378, IV . . . applies only to electric distribution utilities.”). Accordingly, gas utility LCIRP filings in New Hampshire have not been a forum or platform for review of “transmission and distribution requirements,” in line with the Commission’s interpretation of the law. Given this precedent, the Working Group did not focus on that provision. Report at 7 (stating that based on the ruling in Order No. 26,225 regarding transmission and distribution requirements “this element of RSA 378:38 was not a focus of the efforts or analysis of the Working Group.”).

11. Despite the above, and without any record in this proceeding or notice that it would do so, the Commission has now altered its long-standing precedent and declared that Northern’s LCIRP filings will be used for the evaluation and analysis of the Company’s capital planning processes and projects. In doing so, the Commission has also imposed new substantive

requirements upon Northern that will require expending additional Company resources. As described above, the Commission has not reviewed gas utility distribution planning through LCIRP filings, and, in line with its interpretation of the law, has limited its review to supply planning obligations. In the Order, however, the Commission rejects these rulings and conclusions without notice or justification.

12. The second substantial modification the Commission made through the Order, that it would now review the long-term capital planning and project information of a gas utility, improperly interjected the Commission into the utility's planning processes. It has long been the law of this State that, "[t]he PUC is a creation of the legislature and as such is endowed with only the powers and authority which are expressly granted or fairly implied by statute." *Appeal of Public Service Company of New Hampshire*, 122 N.H. 1062, 1066 (1982)(citing *Petition of Boston & Maine Railroad*, 82 N.H. 116, 116, 129 A. 880, 880 (1925)). Further, New Hampshire "has long recognized as public policy that the owners of a utility do not surrender to the PUC their rights to manage their own affairs merely by devoting their private business to a public use." *Appeal of PSNH*, 122 N.H. at 1066-67. Thus, while public utilities are subject to regulation, that regulation has limits, and utility companies retain the right and obligation to plan, build, and operate their systems in the regular conduct of their business.

13. Further, though the Commission is not forever bound by its prior conclusions, parties have a right to rely on a set interpretation of the relevant law and proper notice of potential revisions to such interpretations that may affect its rights. "A fundamental requirement of the constitutional right to be heard is notice of the impending action that affords the party an opportunity to protect the interest through the presentation of objections and evidence." *Appeal of Concord Steam Corp.*, 130 N.H. 422, 427-28 (1988). "While due process in administrative

proceedings is a flexible standard, [the New Hampshire Supreme Court] long has recognized that the PUC has important quasi-judicial duties, and we therefore require the PUC's 'meticulous compliance' with the constitutional mandate where the agency acts in its adjudicative capacity, implicating private rights". *Id.* at 428. In that the Commission provided no notice that it would be revising its interpretation and application of the LCIRP law to disrupt the utility's rights and obligations to plan and construct its system and impose new substantive requirements upon Northern (and, presumably, other utility companies operating in the State), the Commission has fallen short of the meticulous compliance to due process requirements required by the Court.

14. As Northern understands the requirements of the Order, pursuant to the Commission's new interpretation of the law the Company would now be required to:

- Submit an LCIRP containing two different "views" of its capital plans for the coming ten years<sup>3</sup> along with load forecasts for the same ten years;
- Annually file capital investment "summaries" comparing the status of "major investments" with the materials in the LCIRP filing;
- Provide "sufficient notice and justification" for any "material deviations" from the capital plans developed through the LCIRP (presumably beyond any information in the annual filings); and
- Even following all of the above reviews, defend the capital projects identified in the LCIRP as prudent and reasonable as part of each rate case.

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<sup>3</sup> Northern does not prepare a capital plan extending for ten years. *See* August 2, 2021 Testimony of Kevin Sprague and Christopher LeBlanc in Docket No. DG 21-104 at Bates 320-331 (explaining the Company's annual and five year capital planning processes). Further, it is not clear to Northern how to construct a reasonable capital plan extending for a ten year period that would accurately account for changes in labor costs, material costs, inflation, technological advancements, or other factors. Had the Commission properly noticed this issue in Docket No. DG 19-126, the Company would have had the opportunity to present evidence demonstrating its practices and abilities, industry best practices, the relative prudence and usefulness (or lack thereof) of attempting to project out a ten year capital plan, the strain on resources that such a task would create, and other material information that the Commission should have considered prior to imposing major new substantive obligations upon the Company.



Order at 16-18. Although the Commission declares in the Order that it does “not seek to upend how companies make capital decisions but rather integrate the statutorily required LCIRP into each company’s internal process,” Order at 17, that is precisely what these new requirements do.

15. In the Order, the Commission does not establish any nexus between the new substantive capital planning requirements that it imposes upon Northern and the LCIRP law, or any other law for that matter. The Commission appears to want to review all aspects of the Company’s capital planning due to concerns related to “trends of increasing investment in distribution system facilities.” Order at 11. The policy underlying the LCIRP law, however, relates specifically to resource planning – i.e., assessing the energy supply needs of a utility’s customers and planning to meet those energy needs “at lowest reasonable cost while providing for the reliability and diversity of energy sources.” RSA 378:37. Even assuming, *arguendo*, that RSA 378:38, IV applies to gas distribution utilities (notwithstanding clear Commission precedent stating it does not), there is nothing in the plain language of the statute indicating that it is intended to require inclusion of “[a]n assessment of transmission and distribution requirements” beyond what is necessary to meet customers’ projected energy needs.

16. In addition, the implication of the Commission’s statement that it seeks to “integrate the statutorily required LCIRP into each company’s internal process”<sup>4</sup> is that the Commission believes Northern has not previously integrated those requirements into its internal process and those processes therefore must be amended to comport with the law. There is no record or information that justifies or supports any such conclusion in this docket and, in fact, the Commission recently found in this very docket that Northern’s supply plans in its LCIRP filings

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<sup>4</sup> The further implication of this statement is that the Commission intends the requirements established in the Order to apply to all New Hampshire gas and electric utilities, without having put any these utilities on notice or having heard evidence or testimony regarding the propriety of these new requirements or the legal authority supporting them.

satisfy the statutory requirements. *See* Order No. 26,382 at 6.

17. Further to the issue of the “notice and justification” requirement imposed by the Commission, and beyond the concerns about the Commission’s role in the Company’s planning processes, the Order invites a series of procedural and process questions that are unanswered in the Order or elsewhere:

- What criteria or timeframe will determine when a deviation is material such that it must be filed with the Commission, and what level of detail is required?<sup>5</sup>
- Assuming a notice and justification is filed, if the Commission is to rule upon the notice and justification, by what standards will it evaluate the deviations identified and determine whether, in its judgment, the deviations are material or justified?
- What is the timeframe for the Commission to act on the notice since the utility will not proceed with an investment in the face of an unknown risk of the Commission rejecting the justification?
- What is the effect of the Commission accepting or rejecting a justification? If a justification is accepted, does that function as a “pre-approval” for some or all of an investment?<sup>6</sup>
- Will any Commission action on a deviation for a pending project occur in a contested proceeding with all of the rights and obligations that attach to such a proceeding, and subject to the timing requirements of such a proceeding?
- If the Commission does not intend to act upon the information in the notice and justification until the time of a rate case, is there some other interim purpose to be

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<sup>5</sup> The Order only requires “sufficient” notice, but does not define sufficiency.

<sup>6</sup> Northern notes that the LCIRP law explicitly provides that approving a utility’s LCIRP filing does not act as pre-approval for any proposal within that plan. RSA 378:39. Accordingly, it is not clear what purpose a Commission ruling on any particular project or deviation would serve.

served by the notice?

The Order also indicates that the Commission “will hold Northern to the capital plans developed through the LCIRPs” and “consider how [the Company’s] capital investments align with its approved LCIRP” in future rate cases. Order at 16. To the extent that the Commission is suggesting that capital investments that depart from information provided in the LCIRP process will be subject to disallowance, such a process would invert the traditional and well-established regulatory paradigm in which the Company is entrusted to make prudent investments and thereafter demonstrate the prudence of such investments in a rate case. Arbitrarily “holding” the Company (or any other utility) to forward-looking capital plans will, as noted above, put at risk the Company’s ability to nimbly act in the interests of its customers,<sup>7</sup> and likely also raise the prospect of an unconstitutional deprivation of the Company’s right to earn a reasonable return on its investments.

18. Moreover, the requirement to continually identify projects and justify adjustments to them is beset by the same risks to utility management identified by Eversource in its June 22, 2020 Motion for Reconsideration in Docket No. IR 15-296, where the Commission similarly sought to remake utility planning processes. In ruling upon the substantive challenges to the Commission’s decision in that proceeding, the Commission ultimately stated that its determinations were “guidance” and that it would “instruct the utilities and stakeholders in all pending and future LCIRP dockets of the goals and expectations for those dockets.” *Electric Distribution Utilities*, Order No. 26,575 (February 3, 2022) at 5-6. The Commission stated that in those future LCIRP dockets “utilities and stakeholders will have the due process afforded in

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<sup>7</sup> The Company also notes that in the last two and a half years New Hampshire and the world has been substantially affected by volatile energy prices coupled with significant and widely-reported disruptions to labor markets and supply chains. It is unclear whether, or how, the Commission would account for such issues if it intends to “hold” companies to their prior plans.

all Commission adjudications.” *Id.* at 6. According to the Commission, the “data presented and process for stakeholder involvement in those utility-specific LCIRP adjudications will be subject to evidence and argument by utilities and all other parties.” *Id.* Rather than abide by these intentions to assure due process in LCIRP proceedings to “test and refine” its guidance, however, the Commission has simply imposed new oversight and obligations on the Company without notice in this proceeding.

19. Further, Northern is aware of the recent order of the Commission pertaining to its affiliate, Unitil Energy Systems, Inc., relating to that company’s LCIRP. *See* Order No. 26,666 (August 15, 2022). Because, in that order, the Commission largely repeats the same capital planning and reporting requirements that were created in the Order, it is clear that the Commission is attempting to broadly remake the requirements of utility LCIRP filings and capital planning processes throughout the State. Beyond the above, Northern has two primary concerns with this development.

20. First, the Commission’s desire to broadly remake the requirements of LCIRP filings appears to be based on a flawed premise. As the Order notes, the Commission has concern with the “large growth in utilities’ rate bases” at a time when customer numbers are not increasing in a substantial way. Order at 11. The Order, and other orders raising similar concerns, *see e.g., Northern Utilities, Inc.*, Order No. 26,650 (July 20, 2022) and *Unitil Energy Systems, Inc.*, Order No. 26,666 (Aug. 15, 2022), appear to presume that there is, or should be, a direct, perhaps one-to-one, relationship, between the change in utility rate base and the change in customer numbers and that because the Commission has not seen such a relationship, reviews of capital planning must change.<sup>8</sup> Contrary to the concern expressed by the Commission, there is

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<sup>8</sup> Northern notes that the Order selectively references information from the evidentiary record in a different docket. The Commission’s conclusions and mandates in the Order are not based on a fully developed record in Docket No.

no such correlation. Even presuming Northern never added a new customer from this day forward, Northern's equipment and facilities would continue to age and require replacement to assure safe and reliable service. Moreover, existing customers would expect and require adjustments and enhancements in customer-side service systems and equipment. These investments in the utility system would result in increases to rate base without any relation to the number of customers served. Though the Commission may reasonably be concerned with avoiding imprudent and unnecessary investment that improperly raises costs to customers, it is incorrect to conclude that growth in customer numbers, or lack thereof, bears a direct, causal relation to growth in rate base.

21. Second, and as the Commission is aware, when an administrative agency is implementing requirements of general applicability, those requirements are "rules" as the term is defined in the Administrative Procedures Act ("APA"). See RSA 541-A:1, XV (defining "rule" as "each regulation, standard, form as defined in paragraph VII-a, or other *statement of general applicability adopted by an agency to (a) implement, interpret, or make specific a statute enforced or administered by such agency or (b) prescribe or interpret an agency policy, procedure or practice requirement binding on persons outside the agency*, whether members of the general public or personnel in other agencies.") (emphasis added). In that the Commission has established the same new filing and reporting requirements on at least two of the utilities it regulates, and that it has indicated its general intent to impose those requirements more broadly, see Order at 16, the Commission is not merely issuing orders affecting individual persons or entities, it is implementing rules. The APA requires that specific processes and procedures be followed for implementing rules, including notice to all potentially affected parties. See, e.g.,

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DG 19-126.

RSA 541-A:3, :3-a, :6, :9. The Commission has not provided such notice here. As pointed out by the OCA in its Motion for Rehearing or Clarification in this proceeding:

The Commission failed to give notice that it would use Docket No. [DG] 19-126 to make sweeping and binding determinations of how it will interpret the LCIRP statute henceforth, both as to natural gas utilities in particular and all utilities subject to the statute in general. Had the Commission provided such notice, it is a near certainty that every utility subject to the LCIRP statute would have appeared and participated vigorously.

OCA Motion at 5. Northern agrees with the OCA. The Commission's lack of notice and failure to follow the required protocols imperils its directives in the Order. Accordingly, rehearing is proper.

**b. Report and Recommendations**

22. Beyond the above issues pertaining to capital planning, through the Order the Commission made various adjustments to the recommendations in the Report. The Settlement Agreement leading to the Working Group specified that its purpose was to provide a Report containing guidance on future LCIRP filings that would take into consideration whether revisions to Northern's future LCIRP planning process were feasible and practical. May 27, 2020 Settlement Agreement in Docket No. DG 19-126 at 2-3. Northern does not contend that the Commission was required to accept and implement all provisions of the Report without scrutiny or adjustment. Northern does, however, have concern with the adjustments made because, contrary to the intent of the approved settlement agreement, some Commission adjustments appear to conflict with the LCIRP law or other statutory law, others are difficult to understand, and some are infeasible to implement, as explained below.

**i. Recommendation 1**

23. Addressing the concerns in the Order as presented in the Report and the Order, the first Working Group recommendation proposes that Northern evaluate incremental Energy

Efficiency (“EE”), as a potential resource alternative, and look for opportunities for C&I customer fuel switching. In evaluating this recommendation, the Commission concluded that because the current customer funded EE programs are subject to a legislatively-defined maximum rate, it did “not expect the LCIRP process to conflict with that policy by exploring additional ratepayer funding sources for EE.” Order at 13-14. Northern observes no conflict.

24. RSA 378:38 requires that an LCIRP include analyses of demand-side management “including conservation, efficiency, and load management programs,” RSA 378:38, II, and of the plan’s “long- and short-term environmental, economic, and energy price and supply impact on the state.” RSA 378:38, VI. While existing customer-funded EE programs are relevant to each of these analyses, they do not end them. As noted in the Report “While there is currently no approved mechanism to recover EE expense outside of the energy efficiency docket, the Working Group interprets the LCIRP statute to direct utilities to maximize cost-effective EE, and encourages the Commission to consider proposals that would allow for such investment if the appropriate findings can be made.” Report at 11-12. Thus, the Working Group was aware of the present restrictions around customer-funded EE programs, yet understood that the LCIRP law nonetheless required that analyses be done on how to maximize cost-effective EE regardless of the funding source. This maximization aligns with the State energy policy in RSA 378:37 (“The general court declares that it shall be the energy policy of this state to ... to maximize the use of cost effective energy efficiency”). By cutting short the analysis pertaining to cost-effective EE, the Commission’s ruling appears to improperly limit the scope of the inquiry under the LCIRP law.

25. Further, the Commission’s conclusions relative to Recommendation 1 that Northern not explore incremental EE, and that it not review the potential for promoting fuel

switching, are inconsistent with other conclusions. Recommendation 7 of the Report provides, in relevant part, that Northern “identify opportunities to incorporate Non-Pipeline Alternatives [(“NPAs”)] that could avoid or defer reinforcements costs associated with distribution system infrastructure and seek to incorporate such opportunities as resource options are developed.” Report at 17. The Report further noted that “NPAs may also exist in the form of additional EE.” *Id.* In ruling on Recommendation 7, the Commission agreed that Northern should evaluate opportunities to incorporate NPAs in its planning, and it outlines a number of potential NPAs to consider, but excludes EE. In that, as the Report notes, additional or incremental EE could serve as an NPA under appropriate circumstances, the Order simultaneously encourages review of NPAs, while also restricting that review. In light of the internal inconsistency and conflict with relevant law, the Commission should reconsider or clarify its ruling.

## **ii. Recommendation 2**

26. The Commission agrees that Northern should include RNG as a potential supply option, but “caution[s] that such resources should only be added to the Northern supply if they are the least cost options.” Order at 14. This conclusion is potentially in conflict with RSA 362-I:2, which states, in relevant part: “The commission may approve . . . recovery of costs related to prudent utility procurement of renewable natural gas and any qualified investment . . . if the commission determines that it is in the public interest to do so.” RSA 362-I:2,I. In determining the public interest, the Commission shall consider: “(a) [t]he monetary benefits of the proposal to the utility customers and the state, such as the value of any environmental attributes or carbon offsets, relative to the incremental cost to gas utility customers necessary to achieve those benefits” and “(b) the extent to which the proposal advances the objectives of the energy policy of the state under RSA 378:37, the state’s 10-year energy strategy, or other state strategy,



including enhancing consumer choice and improving gas system resiliency through diversification of supply options.” RSA 362-I:2,II. Notably, the statute does not state that RNG should only be added to a utility’s supply portfolio if it is the “least cost option” relative to other supply options.

27. The Legislature clearly intended that the Commission consider more than just relative cost when assessing whether the procurement of RNG by a utility is in the public interest. Rather, the Commission must consider additional benefits and policy objectives when making such a determination. The Commission should therefore clarify or reconsider its statement that RNG resources “should only be added to the Northern supply if they are the least cost options,” and make clear that any such resource additions will be considered subject to the public interest standard established in RSA 362-I:2.

**iii. Recommendation 3**

28. Regarding Recommendation 3, the Report provides that “Northern assess resources in terms of environmental impacts by documenting the GHG [greenhouse gas] impacts of evaluated resources in terms of emissions (MMT CO<sub>2</sub>e) created or avoided and an estimate of associated monetary impact.” Report at 15. Northern would conduct this assessment, in part, by estimating “both fugitive emissions, which occur due to unintentional pipe leakage, and combustion emissions for all resource options.” *Id.* at 14. In ruling upon this recommendation, the Commission severely curtailed the proposed recommendation, and it did so in a manner counter to the requirements of the LCIRP law.

29. While the Commission agreed that Northern should assess the environmental impact of GHG emissions, it rejected the conclusion that the assessment should include an analysis of the emissions from customers’ combustion of natural gas. Order at 14. According to

the Commission “We find that an analysis of the emissions caused by Northern’s customers’ combustion of the natural gas they receive is a broad inquiry beyond the purpose of the LCIRP.”

*Id.* According to the Commission, the consideration of environmental factors in the LCIRP “must be grounded in the direct operation of the Northern system in our State and not second or third-order impacts which are beyond the scope of the LCIRP.”<sup>9</sup> *Id.* It is not clear upon which portion of the LCIRP law this conclusion is based, nor what record in this docket requires this outcome.

30. RSA 378:38 requires Northern to file an assessment of demand-side and supply-side resources, and that it assess the plan’s impact on the state’s compliance with the Clean Air Act (“CAA”). RSA 378:38, II, III, and V. Northern is not aware of any provision of the LCIRP law that limits the analysis to only leaks of gas from Northern’s distribution system. Limiting the required assessments does not meet the requirements of the law. As one example of the conflict created by the Commission’s ruling, implementing cost-effective demand-side resources could avoid combustion of natural gas, which would have an impact on the state’s compliance with the CAA, an issue Northern is specifically required to address. Thus, there is a direct connection to be drawn to the LCIRP assessments.

31. Furthermore, in evaluating the consistency of an LCIRP filing with the requirements of the law, the Commission is required by RSA 378:39 to “consider [the] potential environmental, economic, and health-related impacts of each proposed option.” To the extent demand-side resources such as incremental EE, or other potential actions, may impact the amount of gas combusted, and consequently the environmental impact of that combustion, it

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<sup>9</sup> Relatedly, and in an apparent desire to limit the scope and cost of LCIRP filings, the Commission stated that it “does not wish to see substantial time and resources diverted to issues not directly involved with Northern’s core business or to issues beyond the scope of the company’s LCIRP.” Order at 16.

appears necessary for the Commission to evaluate those options. Thus, Northern does not agree that emissions from combustion of natural gas are second or third-order effects, or that the analysis of such effects is beyond the scope of an LCIRP.

**iv. RSA 378:37 Requires the Commission to Evaluate the “Lowest Reasonable Cost” in Conjunction With Other Critical Factors**

32. As evidenced by its review of the above recommendations, throughout the Order the Commission appears to have elevated concerns about first or direct cost above all other factors in the LCIRP analysis and to have devalued or eliminated consideration of other factors.<sup>10</sup> In so doing, the Commission has read out of the law certain requirements that are specifically, and explicitly, required to be reviewed. As the New Hampshire Supreme Court has often stated:

The legislature is not presumed to waste words or enact redundant provisions and whenever possible, every word of a statute should be given effect. We construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result. Moreover, we do not consider words and phrases in isolation, but rather within the context of the statute as a whole. This enables us 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.

*State v. Beattie*, 173 N.H. 716, 720 (2020) (internal citations and quotations omitted).

33. The LCIRP law requires that environmental, health, safety, and economic impacts (not only direct costs) be assessed and considered by both the utility and the Commission. The Commission’s near exclusive focus on direct cost does not effectuate the overall purpose of the law, and hampers the pursuit of the purpose sought by the statutory scheme. This is particularly evident with regard to the above recommendations because the Legislature has specifically

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<sup>10</sup> As noted above, the Commission concluded that the Working Group’s recommendations “lack appropriate focus on the need to reduce gas supply costs and distribution system costs.” Order at 13. There is no finding in this docket that the Company’s most recent LCIRP did not meet the requirements of RSA 378:37 *et seq*, or that the record in this case demonstrates an existing “need to reduce” gas supply or distribution system costs. Moreover, the LCIRP statute does not mandate utilities to “reduce” costs but, rather, to meet the energy needs of customers at the lowest reasonable cost when considered in balance with other critical factors.

defined that policy in RSA 378:37 where it states:

The general court declares that it 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.

RSA 378:37 (emphasis added). The legislature recognized that cost cannot be the exclusive focus of energy resource planning but, rather, one of several factors that must be considered in balance with each other. Notably, reliability and diversity of energy sources cannot, under the plain language of the statute, be compromised by an out-of-balance focus on cost. In that the recommendations in issue concern assessments specifically furthering the policy and purpose of the statute, and which are not subordinate to cost considerations, rehearing is proper.

34. Moreover, as noted above, the Commission's perspective appears to be directed to addressing direct capital costs, though it does reference a need to address Northern's supply costs. *See* Order at 13. Northern is not, however, aware of any justification in this proceeding for addressing its supply costs, and a singular focus on reducing supply costs may impede other goals of the State.

35. For example, in the most recent 10-Year State Energy Strategy, released by the DOE on July 14, 2022, the DOE states:

Natural gas has delivered benefits beyond cost-competitive electricity. The growth of natural gas production has contributed greatly to emissions reductions in the United States. U.S. carbon dioxide emissions have fallen to the levels of the early 1990's due to the market driven replacement of coal and oil by natural gas. For 2019, natural gas supplanting coal and oil were responsible for 60% of the reductions in CO2 emissions in the electricity generation sector, while renewables were responsible for the balance. This has contributed to much of the progress that the U.S. has made towards emissions reduction goals.

July 2022 New Hampshire 10-Year State Energy Strategy at 43. While this statement is focused

on electric generation rather than emission reductions from other uses of natural gas, it is reasonable to conclude that expanding the use of natural gas for all manner of uses has contributed reductions in CO<sub>2</sub> emissions in the country broadly and, by extension, in New Hampshire.

36. Limiting the focus to direct supply and distribution costs may lead to an underinvestment in natural gas infrastructure even though such infrastructure may provide a more economical path for reducing carbon emissions than other potential investments. A strict focus on reductions to natural gas supply and distribution costs may impede the ability of the natural gas utility (and the state) to convert customers from dirtier and less efficient fuels in the pursuit of this policy goal.

#### **v. Remaining Recommendations**

37. Regarding Recommendation 5,<sup>11</sup> the recommendation provided that “Northern assess economic development impacts by estimating direct, indirect and induced jobs created from a resource and the associated economic development impact.” Report at 16. The Working Group determined that Northern should endeavor to fulfill this assessment by “estimat[ing] the direct, indirect and induced jobs that are created by a new or existing resource, including consideration of any lost jobs as applicable.” *Id.* at 15. Northern would look to create that estimate “by applying payroll data for direct jobs to established economic multipliers for the relevant industries to convert the direct effects into indirect and induced effects,” and that it would “look for ways to quantify in monetary terms the economic impact of jobs added or lost to the State.” *Id.* Accordingly, Northern understood that it would seek to estimate current job impacts from reviewing data pertaining to new or existing gas supply resources. Though the

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<sup>11</sup> The Commission did not respond directly to Recommendation 6, noting that its concerns with Recommendation 6 were addressed through its directives relating to Recommendations 3, 4, and 5. Order at 15.

Commission agreed that Northern should conduct such an assessment, the Order places requirements on that assessment that are unclear and make it potentially impossible to achieve.

38. In the Order, the Commission concluded that Northern should assess the economic impacts of its “distribution system operation and its system upgrades” by including information “on direct jobs attributable to Northern’s operations over the last 20 years.” Order at 15. Moreover, the Commission found that if “any of the supply options being considered would create jobs in New Hampshire, Northern should estimate the direct jobs that would be created by utilizing recent trends and past experience.” *Id.* For this task, the Commission stated that it would accept an “analysis as is available from the US Department of Labor or other governmental resources that Northern can identify.” *Id.* It is not clear to Northern how to conduct the analysis the Commission has described.

39. As noted, the Commission is seeking an analysis of the direct impact from Northern’s operations over the last 20 years based on government data relating to those operations. Presumably, the review envisioned by the Commission includes analyses of Northern’s capital investments, as well as its supply procurements during the last 20 years. Assuming such data exists from available government sources, and it is not clear to Northern that it does, it is not evident how information specific to Northern’s operations could be meaningfully separated out from other information to determine the net impact of Northern’s operations in the prior decades. Moreover, in that the LCIRP is inherently forward-looking, it is not clear to Northern what value a study encompassing the past 20 years, during which time energy markets and the Company’s operations have continually evolved,<sup>12</sup> would have on the crafting or

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<sup>12</sup> Northern also notes that the 20-year period defined by the Commission would include years of Company operation prior to its ownership and management by Unitil Corporation. *See Unitil Corporation and Northern Utilities, Inc.*, Order No. 24,906 (October 10, 2008).

evaluation of Northern's plan. In that Northern cannot reasonably fulfill the requirements set by the Commission, rehearing is appropriate.

40. Lastly, relative to Recommendation 8, that recommendation pertained to the organization of future LCIRP submissions. In responding to that recommendation, the Commission agreed with the general intent of the recommendation, subject to Northern's evaluation of the modifications in the Order. Order at 16. The Commission also noted its expectation that Northern use internal resources to the degree possible for its LCIRP processes, and that it "does not wish to see substantial time and resources diverted to issues not directly involved with Northern's core business or to issues beyond the scope of the company's LCIRP." *Id.* The degree to which Northern can adapt and apply this recommendation will depend upon the ultimate determinations the Commission renders in response to the concerns in this motion.

#### **IV. CONCLUSION**

41. In view of the above, Northern contends that it has shown good cause for rehearing of the Order. Given this good cause for rehearing, Northern proposes two potential paths for resolution of the immediate concerns as well as a potential longer-term solution. In light of the immediate need to understand what can, and should, be included in an LCIRP so that Northern can produce and file one by March 31, 2023, Northern proposes that the Commission refine the Order such that it accepts the Report and its recommendations as filed. Alternatively, and similarly to the proposal of the OCA, Northern requests that the Commission declare that its pronouncements in the Order are advisory or informational and not binding on Northern for purposes of preparing its next LCIRP due in 2023.

42. In the longer-term it is apparent that there may be a need for further discussion and evaluation of the requirements of an LCIRP filing, not only to guide Northern in its planning

process but to guide all utilities subject to the law. Northern would, of course, fully and meaningfully participate in such discussions and would seek to find a common understanding for the requirements of the LCIRP, including through statutory amendments as may be appropriate. For now, however, Northern proposes that the Commission grant rehearing as specified above.

**WHEREFORE**, Northern respectfully requests that the Commission:

- A. Grant rehearing as described above; and
- B. Grant such additional relief as is just and appropriate.

Dated this 7<sup>th</sup> day of September, 2022.

Respectfully submitted,

NORTHERN UTILITIES, INC.

By Its Attorney,



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### **CERTIFICATE OF SERVICE**

I certify that I have caused copies of the above to be served on the service list in Docket No. DG 19-126.



Dated: September 7, 2022.

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Matthew J. Fossum