

STATE OF NEW HAMPSHIRE
Before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire d/b/a Eversource Energy
2019 Least Cost Integrated Resource Plan

Docket No. DE 19-139

COMMISSION STAFF BRIEF ON RSA 378:38-a WAIVER AUTHORITY

Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) filed a settlement in the instant docket on March 11, 2020. The Commission Staff (Staff) and Office of the Consumer Advocate (OCA) were signatories to that settlement. Through section II.D of the settlement, Eversource requests that the Commission invoke its authority under RSA 378:38-a to grant a waiver of the five year filing requirement contained in RSA 378:38. That provision states, in pertinent part:

In Order No. 26,262, the Commission took note that while it could waive the five-year filing requirement of RSA 378:38, it declined to do so at that time and retained the requirement that Eversource's next LCIRP submission would be required to be filed by June 19, 2020. In recognition of the details requested for the next filing as specified above, and the ongoing work that Eversource is undertaking on its Distribution Planning Guide, the Settling Parties agree that there is good cause pursuant to RSA 378:38-a to waive the 5-year requirement. Specifically, Eversource requests, and the Staff and OCA agree that the Commission should grant, a waiver such that the deadline would be shifted by approximately 3 months from the current deadline and that Eversource's next LCIRP should be filed on or before October 1, 2020.

DE 19-139 Settlement at 7. (March 11, 2020)

At hearing on March 16, 2020 the Commission requested the settling parties file briefs regarding the Commission's authority to waive the five year filing deadline contained in RSA 378:38.

1. RSA 378:37-40 defines parameters by which the Commission oversees the least cost integrated resource planning practices of New Hampshire’s regulated electric and gas utilities. It requires each utility to file a least cost integrated resource plan (LCIRP) that is reviewed by the Commission for consistency with RSA 378:37-39. If a utility does not “have on file with the commission a plan that has been filed and approved,” then the Commission cannot approve any rate change for that utility. RSA 378:40.

2. Pursuant to RSA 378:38-a “[t]he commission, by order, may waive for good cause any requirement under RSA 378:38, upon written request by a utility.” RSA 378:38 provides that “each electric and natural gas utility, under RSA 362:2, shall file a least cost integrated resource plan with the commission within 2 years of the commission's final order regarding the utility's prior plan, and in all cases within 5 years of the filing date of the prior plan.”

3. The Commission has previously interpreted RSA 378:38-a as authorizing its waiver of the timelines prescribed in RSA 378:38. In June 2019, the Commission granted Eversource a partial waiver of RSA 378:38’s requirement to file an LCIRP within two years of the Commission's final order regarding the utility's prior plan. Order No. 26,262 at 5. (June 14, 2019) (“We read the plain language of RSA 378:38-a as allowing the Commission to waive for good cause both the specific content elements of an LCIRP *and the timelines for filing.*”) (emphasis added)

4. Providing Eversource a waiver of the five year filing requirement in exchange for a commitment to file an LCIRP on October 1, 2020 would be consistent with purpose of the least cost integrated resource planning statutes. The purpose of the least cost planning statutes is to provide the Commission with a means to ensure utilities are planning their system at the lowest

reasonable cost to ratepayers. This is accomplished by requiring the regular filing and approval of LCIRPs. The Commission is not asked, in this instance, to determine whether it has the authority under RSA 378:38-a to waive the requirement that a Company file an LCIRP in its entirety. Instead, Eversource has requested a more limited waiver, where the Commission's waiver of the five year requirement is conditioned upon the Company's commitment to file an LCIRP on or before October 1, 2020. The Company's commitment to file an LCIRP at a date certain is precisely what allows the Commission to waive the five year requirement without concern for whether such a waiver would nullify the entirety of the LCIRP statutory suite.

5. Good cause exists to support the requested waiver of the five year filing requirement. First, the Company is developing a distribution planning guide meant to replace the planning documents regularly reviewed in LCIRP filings and that document will not be available in time for a June 2020 LCIRP filing. DE 19-139 Settlement at 7. The extension of the filing deadline to October 1, 2020 would avoid the filing and review of documents that will be replaced by a new distribution planning guide shortly after they are filed. Second, the settlement commits Eversource to provide a significantly greater degree of detail regarding its load forecasts, planned capital investments, and potential alternatives to planned capital investments than it has provided in past LCIRPs. DE 19-139 Settlement at 4-6. The amount of labor and time required to compile this information in an accessible manner should not be underestimated. Third, the settlement commits Eversource to engage in a process, with the settling parties, to identify a planned capital investment that might be cost-effectively avoided or deferred through deployment of non-wire solutions. DE 19-139 Settlement at 5-6. It is highly unlikely that this process will be complete by the time the June filing is due. Based on the pending distribution planning guide and above detailed commitments, good cause exists to support Eversource's

waiver request, contingent upon the Company's commitment to file an LCIRP on October 1, 2020.

6. Based on the analysis above, the Commission has the authority under RSA 378:38-a to grant the Company's request to waive the five year filing requirement under RSA 378:38, its previous interpretations of that statute have confirmed that authority, and good cause exists for the Commission to provide the waiver.