

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 20-002

UNITIL ENERGY SYSTEMS, INC.

2020 Integrated Resource Plan

Order on Unitil Motion for Rehearing

O R D E R N O. 26,703

October 13, 2022

In this order the Commission denies Unitil's motion for rehearing and clarifies Order No. 26,666.

I. PROCEDURAL HISTORY

On August 15, 2022, the Commission issued Order No. 26,666 (Order), in which the Commission approved, with modifications, the terms of a Settlement concerning Unitil Energy Systems, Inc.'s (Unitil's) 2020 LCIRP, required additional annual reporting and clarified requirements for Unitil's future LCIRP's. On September 14, 2022, Unitil moved pursuant to RSA 541:3 for rehearing of the Order.

II. BACKGROUND

A. Guidance on LCIRPs in Docket IR 15-296

While this LCIRP docket was proceeding, the Commission issued Order No. 26,358 (May 22, 2020) in Docket No. IR 15-296. Order 26,358 provided guidance for future distribution system planning and included a discussion of integration of the existing utility LCIRPs into the updated planning process. In response to motions for rehearing by Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) and Unitil, the Commission issued Order No. 26,575 (February 3, 2022) clarifying Order No. 26,358 and indicating that the earlier order was issued as

guidance. The guidance was intended to “instruct the utilities and stakeholders in all pending and future LCIRP dockets of the goals and expectations for those dockets.” *Id.* at 6.

Order No. 26,358 stated Commission goals for future LCIRPs:

We find that for future LCIRPs the following would create consistency and efficacy: (1) filing on a staggered basis by each electric distribution utility every three years; (2) inclusion of a granular load forecast, DER forecast, and detailed description of foreseeable distribution system needs over the next five years, including five-year capital and operating expenditure plans; (3) a comparison of solutions to meet those needs and potential alternatives, including non-wire solutions where appropriate; (4) a description of foreseeable system investments planned for the next 10 years; and (5) a summary of stakeholder input, how stakeholder recommendations are incorporated into the final plan, or why a stakeholder recommendation was not incorporated into the final plan. Order No. 26,358 at 21.

Order No. 26,358 also highlighted the need for LCIRPs and rate case capital investments to align:

We value a transparent utility planning process that identifies likely investments in advance of a given need. We expect the analysis developed to prioritize investments proposed in the LCIRP and related annual filings will be of value to the Commission, the Utilities, and other stakeholders when a utility requests recovery of those investments. The LCIRP and related annual filings may align well with rate case filings and any requested step increases, and we expect each utility to weigh the potential synergies of the related rate case and LCIRP filings when planning for rate changes. Our expectation is that investments for which recovery is requested in rate cases are consistent with investments described in the LCIRP and related filings. *Id.* at 25.

Order No. 26,358, and Order No. 26,575 clarifying it, were issued at the culmination of an extensive investigation spanning more than five years and including extensive stakeholder input.

B. Order No. 26,666 on Unitil’s 2020 LCIRP

In Order No. 26,666, the Commission emphasized the need to ensure through the LCIRP that utility distribution system planning resulted in the lowest possible capital costs. The Order noted a ten-year history of increasing distribution rate base

and operating revenue for Unitil and announced the Commission's intent to focus on Unitil's distribution capital expenditures in its next LCIRP. The Commission stated that an LCIRP is an opportunity for the utilities it regulates to work with interested parties to evaluate capital plans that secure reliable and least-cost service for ratepayers.

Going forward, the Commission announced that it expects Unitil to follow the capital plans developed through the LCIRPs. The Commission provided that future LCIRP capital plans should resemble those reviewed by executive management at the Company, including justifications for each major capital addition (costing over \$250,000) and retirement as well as for aggregated smaller investments by category.

The Commission also directed Unitil to file annual updates of its 10-year capital plan, annual estimates of small, distributed energy resources (DER) added behind customer meters, and information on the interconnection process encountered by the larger DER projects added in its service territory during the prior 12 months.

III. POSITIONS OF THE PARTIES

A. Unitil's Motion for Rehearing

1. Emphasis on Least Cost Excludes Other Statutory Factors

Unitil argues that the Commission's emphasis on least cost distribution system investments negates other important statutory considerations under RSA 378:37-40 (LCIRP Statute).

2. Distribution System Capital Planning

Unitil argues that the Commission, without sufficient notice or record to support such changes, convert's Unitil's future LCIRP filings into a capital planning process. Unitil claims that the Commission has not demonstrated that such a focus is supported by the LCIRP statute or other legal authority. Further, Unitil asserts that

the Commission's focus on increased capital investments is based on a flawed premise that capital investment should be related to customer growth.

Second, by requiring Unitil to subject its long-term capital planning to a project-by-project review in an LCIRP, Unitil argues that the Commission has improperly interjected itself into Unitil's planning process in a manner contrary to its role as regulator and beyond the Commission's statutory authority. Unitil then requests more detail concerning the iterative process of distribution capital investment planning and reporting outlined in the Order.

3. Annual Reporting Requirements

Unitil argues that the annual reporting requirements are beyond the scope of the LCIRP Statute, were not properly noticed, and will be burdensome to comply with. The Order requires annual updates to a 10-year capital plan, and Unitil only plans five years out for its capital investments.

4. Rulemaking Requirements Should Apply

Finally, noting that similar distribution system planning guidelines were issued in Order No. 26,664 (August 8, 2022) pertaining to Northern's New Hampshire natural gas distribution company, Unitil claims that such directives concerning Unitil's next LCIRP must be issued as rules of general applicability under the New Hampshire Administrative Procedure Act, RSA Chapter 541-A.

IV. COMMISSION ANALYSIS

The Commission may grant rehearing for "good reason" if the moving party shows that an order is unlawful or unreasonable. RSA 541:3; RSA 541:4; *Rural Tel. Cos.*, Order No. 25,291 (November 21, 2011); *see also Pub. Serv. Co. of N.H. d/b/a Eversource Energy*, Order No. 25,970 at 4–5 (December 7, 2016). A successful motion must establish good reason by showing that there are matters that the Commission

“overlooked or mistakenly conceived in the original decision,” *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citations omitted), or by presenting new evidence that was “unavailable prior to the issuance of the underlying decision,” *Hollis Tel. Inc.*, Order No. 25,088 at 14 (April 2, 2010). A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Pub. Serv. Co. of N.H.*, Order No. 25,970, at 4–5 (citing *Pub. Serv. Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *Freedom Energy Logistics*, Order No. 25,810 at 4 (September 8, 2015)).

A. Clarification of the Order

In the Order the Commission interprets the LCIRP Statute to give Unitil guidance as to the Commission’s focus and expectations for Unitil’s next LCIRP. The Commission makes clear here that this guidance is not binding—nor could it be. Rather, in the interest of efficient process, the Commission provides these expectations but remains open to receiving and reviewing any LCIRP that is consistent with the applicable statutes. In Unitil’s next LCIRP proceeding, Unitil and the parties will have an opportunity to litigate the adequacy of its LCIRP, the appropriate forecasting and planning time frames, and the Commission’s interpretation of the requirements of the LCIRP Statute.

We also note that the Order is not the first time the Commission has given guidance on future electric distribution utility LCIRPs. As noted above, Order Nos. 26,358 (May 22, 2020) and 26,575 (February 3, 2022), previewed a project-by-project approach to distribution planning and a tie-in between capital investments planned in LCIRPs and capital investments recovered in rate cases. Both concepts are carried forward and developed further in the Order. The Commission’s guidance in this docket is consistent with the guidance already given in Docket IR 15-296.

None of Unitil's legal arguments require us to reconsider the conclusions reached in the Order. For clarity, however, we will address Unitil's specific arguments below.

B. Review of Unitil's Capital Investments in the LCIRP Proceedings

Unitil argues that the Commission has failed to provide statutory authority for its intended review of distribution capital investments in Unitil's future LCIRP. RSA 378:38, IV provides, that an LCIRP should include:

An assessment of distribution and transmission requirements, including an assessment of the benefits and costs of 'smart grid' technologies, and the institution or extension of electric utility programs designed to ensure a more reliable and resilient grid to prevent or minimize power outages, including but not limited to, infrastructure automation and technologies.

The Commission's statutory authority includes the express language as well as all powers reasonably implied. *Public Service Company of N.H.*, 122 N.H. 1062, 1066 (1982). We interpret the language "distribution and transmission requirements" in RSA 378:38, IV to include a review of a utility's distribution capital investment planning. Further, our general supervisory authority over the public utilities we regulate clearly includes such inquiries. *See* RSA 374:1, :2, :3, :4 and :5.

Because we find that the language of RSA 378:38–39, as well as RSA Chapter 374, provides the Commission with statutory authority to review distribution planning and capital investment, Unitil has not provided the Commission with a basis to reconsider the Order on this point.

C. Unitil's Management of its Distribution System

The Order outlines reporting requirements and a Commission review process for Unitil's distribution system planning and capital investment. Unitil claims on the one hand that these requirements improperly interfere with its management of its distribution assets, and on the other that the process outlined lacks sufficient clarity.

The Order makes clear that the Commission does not intend to interfere with Unitil's management decisions. Nonetheless, those management decisions must be subject to some Commission oversight. The balance of regulation and utility management prerogative is best achieved in an adjudicative proceeding where specific planning decisions can be reviewed.

D. Adequacy of Notice

Unitil argues that the Commission did not provide notice to the parties that it would review capital investments in Unitil's LCIRP. "The requirements of due process are flexible and call for such procedural protections as the particular situation demands." *Appeal of Mullen*, 169 N.H. 392, 397 (2016) (quoting *Gantert v. City of Rochester*, 168 N.H. 640, 648 (2016)). To determine what process is due, courts "balance three factors: (1) the private interest that is affected; (2) the risk of erroneous deprivation of that interest through the procedure used and the probable value of any additional or substitute procedural safeguards; and (3) the government's interest, including the fiscal and administrative burdens brought about by additional procedural requirements." *Id.* The Commission adopts the same test here.

At issue here is the Commission's non-binding guidance with respect to Unitil's future LCIRP filings. The Commission can identify no source of law identifying a private interest in what amounts to a suggestion, and Unitil has provided none. Even if such an interest were to exist, Unitil is free to disagree with it, file its next LCIRP accordingly, and litigate at that time whether the Commission's guidance is appropriate. There is no risk that Unitil will be deprived of anything should the Commission's guidance remain in place. Finally, the burden the Commission would face is modest, but not nonexistent. If the Commission were required to offer notice and a hearing in advance of providing any non-binding guidance, these burdens would

add up. In short, Unitil does not have any interest in the content of prospective, non-binding guidance, such that any process is due here.

Even if Unitil were entitled to due process on this point, the notice was more than adequate. The Order of Notice announced that the Commission would consider whether the Unitil LCIRP complied with the LCIRP Statute. As discussed above, RSA 378:38, IV includes consideration of Unitil's Capital investments. Thus, the order of notice reasonably included consideration of any improvements or changes suggested for Unitil's future LCIRP filings in order to comply with RSA 378:37–40. Because we find that the notice provided in this docket reasonably informed the parties of possible inquiry concerning Unitil's capital investment planning, Unitil has not provided the Commission with a basis to reconsider its order on this point.

E. Interpretation of Lowest Reasonable Cost

Unitil argues that the Commission improperly emphasizes lowest reasonable cost when interpreting the LCIRP Statute and does not give due weight to other statutory requirements.

The Order analyzes Unitil's planning process under each of the criteria in RSA 378:38 and :39. That analysis addresses factors other than least cost. Nonetheless, the language in the LCIRP Statute and the 10-Year State Energy Strategy clearly requires the Commission to prioritize lowest cost in choosing resources:

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

Addressing energy costs is a critical goal for New Hampshire. Expensive energy--or pursuing policies that raise the cost of energy--directly and negatively impacts New Hampshire families and businesses and the quality of life in our state. As such, the primary goal of this Strategy is to pursue cost-effective energy policies which is even more important in this time of record energy prices and high inflation.

New Hampshire 10-Year State Energy Strategy, NH Department of Energy July 2022 at 18–19.

Both the LCIRP Statute and the Statewide 10-Year Energy strategy emphasize the need to obtain energy at the lowest reasonable cost. Unitil's arguments that the Commission has improperly prioritized least cost are not supported by the language of the LCIRP statute, or the 10-Year Energy Strategy, and we therefore find no basis for granting Unitil's motion for rehearing on this point.

F. Requirement for Rulemaking

Northern argues, based on a recent Commission order in an LCIRP docket involving Unitil's natural gas distribution affiliate, that guidance on distribution system capital investment in LCIRPs should be given through a rulemaking docket. LCIRPs are reviewed through adjudicative proceedings as required by RSA 378:39. "The commission shall review integrated least-cost resource plans in order to evaluate the consistency of each utility's plan with this subdivision, **in an adjudicative proceeding....**" *Id.* (emphasis added). The LCIRP process lends itself to adjudication because, each utility has its own unique service territory, distribution infrastructure and supply procurement requirements.

Nonetheless, the Commission agrees that any *binding* and generally applicable requirements to future LCIRPs would need to be promulgated through the rulemaking process. See RSA 541-A:1, XV. The Commission, however, has issued no such

requirements here. As explained above, this guidance is simply that—guidance. The Commission makes this guidance available to the parties through this order, consistent with RSA 541-A:16, II(a).

G. Annual Reporting Requirements

Unitil argues that the annual reporting requirements are inconsistent with the LCIRP Statute and are burdensome for the Company. Unitil plans its capital investments using a five-year forecast and cannot comply with the Order's requirement for reporting on a ten-year capital investment period. We will grant rehearing to the extent required to modify the reporting requirement to incorporate a five-year capital investment plan. We do not find any basis for rehearing any of Unitil's other arguments concerning the reporting requirements.

H. Consideration of LCIRP in Future Unitil Rate Cases

Unitil argues that the Order improperly ties rate case recovery for rate base investments to the LCIRP. According to Unitil, this requirement is beyond the scope of RSA 378:40 which only requires that a utility have an approved LCIRP in order to gain approval for a rate change. We do not read RSA 378:40 so narrowly. We find in the LCIRP Statute, and our general supervisory statutes, ample authority to review rate increase requests for consistency between planned capital investments described in an LCIRP and subsequent utility rate base investments. Therefore, Unitil has not provided us with a basis for granting rehearing on this point.

Based upon the foregoing, it is hereby

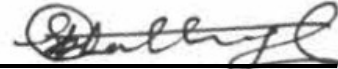
ORDERED, the motion for rehearing is DENIED, except that Unitil may report its capital expenditure plans on a five-year planning basis until its next LCIRP; and it is

FURTHER ORDERED, that the request for clarification is GRANTED as discussed herein.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of October, 2022.



Daniel C. Goldner
Chairman



Pradip K.
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Commissioner



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Special Commissioner

Service List - Docket Related

Docket#: 20-002

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