

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire d/b/a Eversource Energy
2020 Least Cost Integrated Resource Plan

Docket No. DE 20-161

Post-Hearing Brief of the Office of the Consumer Advocate

NOW COMES the Office of the Consumer Advocate (“OCA”), a party to this docket, and offers the following initial brief according to the schedule established by the Commission in the wake of the merits hearing conducted on March 7, 2023; March 8, 2023; and April 25, 2023. The purpose of this brief is to demonstrate that the Commission must reject the Least Cost Integrated Resource Plan (“LCIRP”) that is the subject of the above-captioned adjudicative proceeding.

I. Legal Standard

The Least Cost Integrated Resource Planning statute – sprawled across sections 37 through 40 of RSA 378 – is anything but a model of clarity. But it is a statutory regime with a coherent and visible architecture, which neither Eversource nor the Commission are free to ignore.

A. Statutory Requirements of RSA 378:37 *et seq.*

Simply stated, each electric and natural gas utility in New Hampshire is required periodically to file and obtain Commission approval of a Least Cost

Integrated Resource Plan. The inexorable consequence of failing to meet this requirement is significant – the utility may not increase its rates.¹

What, then, is an LCIRP worthy of Commission approval? What must it contain? The answer is that an approvable LCIRP is an inventory of the options available to a utility’s management and an analysis of how that management intends to deploy those options while implementing and advancing the state energy policy set forth in section 37.

RSA 378:38 is the source of the requirement that electric and gas utilities file LCIRP; this section includes a non-exclusive list of specific plan requirements in seven enumerated paragraphs. RSA 378:39 is the provision requiring the Commission’s review of LCIRPs, via an adjudicative proceeding. The reason the LCIRP statute is not as clear as it might be is that section 378 states no clear standard for the Commission to use in its review; rather, the General Court merely directed the agency to “evaluate the consistency of each utility’s plan with this subdivision,” i.e., RSA 378:37 through :40.

The next clause of section 39 is, however, central to applying the statute: The Commission must “consider potential environmental, economic, and health-related impacts of *each proposed option*” (emphasis added). Just days ago, the New Hampshire Supreme Court reiterated the prime directive of statutory construction:

¹ Section 40 of the LCIRP statute (RSA 378:40), which imposes this requirement, actually refers to any “change” in rates rather than any *increase* in rates. But it would be absurd to conclude that the General Court intended to punish ratepayers for a utility’s non-compliance with the LCIRP requirements by precluding rate decreases.

“first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning.” *Loneragan v. Town of Sanbornton*, N.H. Supreme Ct., May 31, 2023, slip op. at 3 (citation omitted). Here, the plain and ordinary meaning of a statute directing the Commission to “consider” certain impacts of “each proposed option” is that an approvable LCIRP must list and describe a series of proposed options the utility intends to deploy and/or execute in quest of advancing the state energy policy in a manner that is least-cost.

Historically, the Commission has treated LCIRP dockets as an occasion to review the planning processes (as opposed to outcomes) of utilities. More recently, the utility has focused on capital investments, a more narrow (but generally more shareholder-favorable) menu than “options.”² In the respectful opinion of the Office of the Consumer Advocate, both of these interpretations of the LCIRP statute are incorrect.

The Legislature could have, but did not, refer in section 39 to “each proposed *capital* option.” When interpreting a statute, it is never appropriate to “add words which the lawmakers did not see fit to include.” *Loik v. Loik*, N.H. Supreme Ct., May 3, 2023, slip op. at 3 (citation omitted). A utility is not limited to making capital investments in order to advance the state energy policy, and it is reasonable to assume the General Court was aware of such an obvious fact. The explicit

² The reason shareholders would favor a menu of capital options, as opposed to a variety of options that is not limited to capital investments, is obvious. Under cost-of-service ratemaking, a utility earns a profit on shareholder investments and a return of such investments via depreciation charges, whereas expenses associated with operating costs involve no profit margin. *See, e.g., Lazar, J., Electricity Regulation in the US: A Guide*, 2d edition (Regulatory Assistance Project, 2016) at 49-53 (laying out the basis of determining a utility’s annual revenue requirement as the sum of operating expenses and rate base multiplied by an allowed rate of return).

directive for the Commission to consider the impacts of certain proposed options is likewise fatal to the idea that a review of planning *processes*, as opposed to planning outcomes, is what the Legislature had in mind. It is simply impossible to square mere process review with the plain language of section 39.

For whatever reason, Eversource chose nevertheless to focus its LCIRP drafting on its planning *processes*. The only discussion of planning outcomes, in any of the litany of documents the utility apparently believes to comprise, collectively, its least-cost-integrated resource plan, involves the selection of investments to address particular identified needs on individual distribution circuits or at individual substations. The problem with that approach is that it ignores a key word in both sections 38 and 39: “integrated.” When construing a statute, the Commission is obliged to “give effect to all words in a statute and presume that the legislature did not enact superfluous or redundant words.” *Appeal of Vasquez*, N.H. Supreme Ct., Sept. 30, 2022, slip op. at 4 (citation omitted). There is nothing “integrated” about addressing particular needs at discrete locations in Eversource’s distribution network on a piecemeal basis, however reasoned or thorough any such analysis proves to be.

B. The Commission cannot cure the deficiencies in the Eversource LCIRP.

During the three days of evidentiary hearings conducted in this docket, Commissioner Simpson, in particular, undertook valiant efforts to fill in the obvious gaps in the Company’s LCIRP. His purpose, as he explained at page 180 of the March 7, 2023 transcript, was to do what he could to assure the Commission

faithfully discharges the obligations assigned to it under section 39 of the statute.

But members of the Public Utilities Commission are not tasked with actually doing least-cost planning – that is unassailably the utility’s job – and so, ultimately, the Commission must render its decision here based on what the Company produced by way of an LCIRP.

During the second day of hearings in this docket, the OCA took exception to efforts from the bench to “backfill” the Eversource LCIRP. Tr. 2 at 42, line 15.³ Commissioner Simpson asked: “Can you point to the statutory authority that is the basis of your position? . . . Where does [the LCIRP statute] say that the Commission cannot respond . . .?” *Id.* at 42, line 20 to 44, line 12. This raises important principles of statutory interpretation that warrant further analysis here.

³ For the sake of clarity and simplicity, this brief refers to the transcript of the testimony given on March 7, 2023 as “Tr. 1,” the transcript of the testimony given on March 8, 2023 as “Tr. 2,” and the transcript of the testimony given on April 25, 2023 as “Tr. 3.”

The “backfill” concern arose in the context of a Commissioner question about the number of Eversource customers on interruptible rates. Tr. 2 at 39, lines 18-24. Eversource witness Russell Johnson said he could offer only a “general response” but “would have to take a [record] request” if the Commission needed “detailed information.” *Id.* at lines 22-24. In response, the OCA pointed out that the relevant issue is not how many Eversource customers are on interruptible rates but, rather, how interruptible rates as a resource option figure in the utility’s least-cost planning as reflected in its LCIRP. *Id.* at 42, lines 1-14.

When this issue arose, the OCA did not object to posing a “record request” to Eversource in order to assure that the number of customers on interruptible rates was part of the record. Such an objection was not necessary inasmuch as, for reasons already explained, the datum is tangential to the outcome of the docket. However, this should not be understood as the OCA acquiescing generally to the propriety of “record requests,” a term that appears nowhere in the Commission’s procedural rules. Rule Puc 203.30 allows for “reopening the record” post-hearing for the “late submission of additional evidence,” but only upon the Commission considering whether the parties’ right of cross examination pursuant to RSA 541-A:33, IV is adequately protected. The OCA remains concerned about over-reliance on “record requests” in Commission adjudicative proceedings.

As we noted at the time, there is no explicit statement in the LCIRP statute to the effect that the Commission cannot cure deficiencies in an LCIRP via queries interposed at hearing. *Id.* at 44, lines 13-15. Such a notion is, nevertheless, an impermissible construction of the LCIRP statute.

The New Hampshire Supreme Court has repeatedly stressed that while construing a statute according to its “plain and ordinary meaning” is always the first touchstone, it is important to “construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result.” *Town of Lincoln v. Chenard*, 174 N.H. 1181, 1184 (2002) (citations omitted). “Context is a primary determinant of meaning. . . . The entirety of the document thus provides the context for each of its parts.” A. Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* (Thompson/West, 2012) (“Scalia & Garner”) at 167. “[T]he principle that what a [statutory] text does not provide is unprovided . . . must sometimes be reconciled with the principle that a text does include not only what is expressed but also what is implicit.” *Id.* at 96.

This is an example of such a situation. Although the rules of evidence do not apply to Commission proceedings, and thus there are few constraints on what Commissioners may inquire about at hearing, the Commission may not use the process of taking evidence to allow a utility to elide its obligation to advance the state’s energy policy as enumerated in RSA 378:37 in a manner that is least-cost from a customer perspective – and a utility’s concomitant obligation to demonstrate to the Commission that it has done so. Any other reading of the LCIRP statute

would reduce it, impermissibly, to a nullity. *See Wolfgram v. New Hampshire Department of Safety*, 140 N.H. 32, 36 (2016) (“We will not construe a statute in a way that would render it a virtual nullity”) (citation and internal quotation marks omitted).

C. Eversource was not blindsided by opposition to its LCIRP and must meet its burden of proof.

At hearing, the Eversource witnesses focused on how individual supply-side capital projects are evaluated and, to a significant degree, the process appeared to be a robust one. But at no point did Eversource produce any evidence of a truly integrated planning process, in which all of the various options available to the utility are considered together so that the Commission and ultimately the public can be assured that Eversource is advancing the state’s energy policy in a manner that is least-cost overall.

When the OCA’s witnesses were on the stand during the second day of hearings, Chairman Goldner asked them whether they, or the OCA generally, had made Eversource aware over the course of the proceeding that its LCIRP was deficient because it lacked any overall assessment of available resource deployment options. *See* tr. 2 at 215, lines 8-13. “Would it be fair to say,” the Chairman asked, that this would be the first time that they have heard that you’re concerned about their lack of assessment, or would they have heard about it before?” *Id.* at lines 19-24. Tim Woolf, the OCA’s lead witness, conceded that the OCA had not pressed these concerns via the formal discovery process, but added that “they certainly got an earful with our testimony” as filed more than nine months ago in August of last

year. *Id.* at 215, lines 14-17 and 216, lines 1-3; *see also id.* at 188, lines 14-21 (similar colloquy between Mr. Woolf and counsel for the Department of Energy). As noted, *infra*, the record does not support an inference that Eversource was somehow blindsided with respect to the key deficiencies in its LCIRP, but even if such a claim could be proven it would be irrelevant. The LCIRP statute imposes no burdens on the OCA, the Department of Energy, or any party other than the subject utility. *See* N.H. Code Admin. Rules Puc 203.25 (“Unless otherwise specified by law, the party seeking relief through a petition, application, motion or complaint shall bear the burden of proving the truth of any factual proposition by a preponderance of the evidence.”). Rather, section 38 of the statute states that each electric and gas utility “shall” file an LCIRP at an appropriate interval, and section 39 of the statute states that the Commission “shall” conduct an adjudicative proceeding to “evaluate the consistency of each utility’s plan with this subdivision,” i.e., the LCIRP statute as it appears in sections 37 through 40 of RSA 378.

II. The Proposed Settlement Agreement Between Eversource and the Department of Energy

The Commission devoted an entire day of hearings to a “Settlement Agreement” entered into by Eversource and the Department of Energy on March 2, 2023 and of record as exhibit 22. The Commission should withhold its approval of this agreement as not germane to the issues actually requiring resolution in this proceeding.

The Settlement addresses two issues: Eversource’s use of the so-called “N-1” (typically referred to orally as “N minus one”) standard for DER interconnection,

and the framework Eversource uses to evaluate non-wires alternatives (“NWAs”) – i.e., resource deployment options that would allow the Company to defer if not avoid outright investments in new distribution or transmission infrastructure. Neither issue is ripe for resolution at this time.

As to the N-1 question, it became apparent at hearing that the settlement is nothing more than an agreement between the Department and Eversource that this issue should be deferred. It was, at first, puzzling to ponder why these two parties would “settle” an issue by agreeing not to resolve it. The testimony of Mr. Freeman, on behalf of Eversource, made clear that the intent of the signatories was to persuade the Commission to reject the position of intervenor Clean Energy New Hampshire that the Company’s use of this standard is inappropriate and imposes unfair burdens on the developers of solar facilities and other distributed energy projects. But, because the Eversource LCIRP fails to meet the approval standard set forth in the statute, the fate of the LCIRP does not turn on whether Eversource should be allowed to require distributed energy facilities to bear the cost of assuring there are always two routes for moving the output of those facilities into the utility’s wider transmission and distribution network.

Likewise, it is irrelevant to the question of whether the current LCIRP merits approval that Eversource has agreed to study the question of whether a standard more friendly to the use of NWAs for purposes of its next LCIRPs. *See* tr. 3 at 36, lines 10-24 (Eversource witness Walker confirming that the current NWA standard would remain in place with the Company using a different screening standard at

some point in the future so that Eversource can “make a qualified decision” about how to incorporate NWAs into its system). The record is devoid of evidence of why either standard – i.e., the current one or the one Eversource has agreed to study -- is anything but arbitrary. In any event, commitments Eversource has agreed to make so as to improve future planning efforts have no bearing on the question of whether the current LCIRP meets the statutory approval standard.

III. Proposed Findings of Fact

Developed in accordance with the Commission’s rules governing adjudicative proceedings, N.H. Code Admin. Rules Chapter Puc 200, the record adduced at hearing in this proceeding supports the following findings of fact:

1. Eversource filed the LCIRP at issue in this proceeding in two stages – an initial plan and appendices on October 1, 21020 and additional documents, submitted as appendices to the original plan, on March 31, 2021.⁴ Testimony of Tim Woolf and Ben Havumaki (exh. 18) at 14, lines 15-17.⁵
2. The LCIRP provides a high-level overview of Eversource’s system, summarizes its distribution and transmission planning processes, describes anticipated changes to those processes, includes a load forecast,

⁴ On October 18, 2022, Eversource filed a document entitled “2020 LCIRP Supplement” along with prefiled written direct testimony (tab 54), of record as exhibits 3, 4 (unredacted confidential version of exhibit 3) and 8. Also, Eversource filed written rebuttal testimony on September 30, 2022 (tab 49), of record as exhibit 7. These documents, although certainly comprising record evidence, are not validly part of the Eversource LCIRP.

⁵ For purposes of consistency and clarity, specific pages of exhibits are referred to by their “Bates” numbers even when, as with exhibit 18, other document-specific page numbers appear in the exhibits.

and offers a general view of Eversource's vision for maintaining its distribution system in the future. *Id.* at lines 18-22.

3. The LCIRP also briefly addresses several specific issues in a generally qualitative way, including consideration of non-wires alternatives (“NWAs”) (i.e., alternatives to investing in new supply-side infrastructure), the integration of distributed energy resources (“DERs”), demand-side management programs, and “smart grid” investments. *Id.* at lines 22-25.
4. The LCIRP does not evaluate or attempt to optimize available generation resources, claiming that that the least-cost plan will not have any meaningful impact on the cost of supply, and also claiming that the Company does not have any meaningful influence over the energy that its customers consume given that Eversource at present merely solicits supply for its default energy service customers through requests for proposals (“RFPs”) issued to wholesale suppliers. *Id.* at 16, lines 4-10.
5. However, even Eversource acknowledges that there are circumstances in which an assessment of supply options should be part of the LCIRP process. *See* tr. 2 at 79, lines 6-14 (Eversource witness Lavelle Freeman acknowledging as much, but appearing to claim that such inclusion is entirely an optional matter for the Company).
6. Eversource's claims about the limited or nonexistent role of generation in least-cost integrated resource planning notwithstanding, the Company is

- in a position to help reduce the cost of energy generation by improving the way it acquires default energy service, and procuring contracts for renewable resources, influence the implementation of DERs. *Id.* at lines 17-24.
7. Default energy service currently represents approximately two-thirds of total retail rates for Eversource's residential customers in New Hampshire. *Id.* at 17, lines 22-23.
 8. Therefore, reducing the cost of default energy service is one of the greatest opportunities for making electric service least-cost for Eversource customers. *Id.* at 18, lines 1-2.
 9. The fact that Eversource no longer owns generation resources does not mean the Company is unable to the reduce environmental impacts of its service. *Id.* at 17, lines 4-10.
 10. Generally, as least-cost planning has been conducted in various jurisdictions around the country, utilities and regulators evaluate a broad range of resource options so as to optimize those resources. *Id.* at 17, lines 22-25 and 18, lines 1-3.
 11. The Eversource LCIRP evaluates only a limited range of resource options and omits consideration of alternative energy efficiency or demand response resources beyond those already included in the ratepayer-funded "NHSaves" programs, does not consider any supply-side resource options,

and analyzes grid modernization opportunities only in cursory fashion.

Id. at 20, lines 9-15.

12. Both capital and operating costs have important implications for revenue requirements, rates, and customer bills. *Id.* at 21, lines 19-20.

13. There are some situations in which capital expenditures can be used instead of operating expenditures, and vice versa; hence the importance of considering both for planning purposes. *Id.*, lines 24-26; see also Tr. 2 at 63, lines 17-19 (Eversource witness Lavelle Freeman acknowledging that the Company's grid modernization initiative is "outside of the capital budget").

14. Default energy service currently represents two-thirds of the bills of Eversource's residential customers in New Hampshire (among those reliant on such service) and, therefore, ignoring the costs associated with default energy service would mean foregoing significant opportunities to reduce electricity costs and customer bills. *Id.* at 22, lines 7-10.

15. While neither Eversource nor the Commission have much control over the price of wholesale electricity as obtained for the provision of default energy service, they have a great deal of control over the quantity of default energy service that is purchased by retail customers. *Id.* at lines 12-15.

16. Eversource's LCIRP assumes that efficiency savings yielded by the NHSaves energy efficiency programs as funded by the system benefits

- charge (“SBC”) will reduce the Company’s retail load, but the LCIRP does not consider the potential for *additional* savings related to energy efficiency – i.e., those funded by the Company itself. *Id.* at 23, lines 7-9.
17. Nevertheless, it is likely there are many more cost-effective energy efficiency savings, and additional savings from demand response initiatives, none of which receive consideration in the LCIRP. *Id.* at 9-11.
18. The witnesses Eversource tasked with presenting the LCIRP to the Commission lacked even a basic familiarity with the NHSaves programs, and, thus, the essential concept of energy efficiency – the idea that producing more work per unit of energy consumed could be the least-cost option for addressing incremental demand – plays no role in this utility’s least-cost planning efforts beyond ‘checking the box’ by incorporating the effects of the ratepayer-funded NHSaves programs into their demand forecasts. Tr. I at 99, line 24 and 100, line 1 (Eversource witness Gerhard Walker stating “don’t quote me on the specific name of the program”); *id.* at 100, lines 6-11 (Walker admitting he did not know whether Eversource invests any of its own capital in energy efficiency).
19. Incremental energy efficiency savings – i.e., savings not funded via the SBC and included in the NHSaves programs – may be especially important in the context of NWAs, in which targeted programs can achieve a significant amount of savings. *Id.* at 24, lines 1-2.

20. If the Company achieved such savings via NWAs, Eversource could then seek to recover the costs associated with achieving these savings via a base rate case or other cost recovery method separate from the SBC.
21. As with incremental energy efficiency, the Eversource LCIRP does not evaluate opportunities for increasing the amount of distributed generation available on its New Hampshire distribution grid. *Id.* at lines 16-17.
22. Nor does the LCIRP consider the potential for distributed storage facilities, even in the context of NWSes, even though the experience in other states suggests there are likely to be cost-effective storage opportunities. *Id.* at 25, lines 7-8 and 13-17.
23. The Eversource LCIRP does not evaluate building electrification technologies, nor opportunities associated with electric vehicles (“EVs”). *Id.* at lines 20-22 and 26 at line 4.
24. Although building electrification initiatives and EVs cause increases in electricity demand overall, it would be possible for Eversource to design rates that would optimize charging patterns and demand generally so as minimize any adverse impacts. *Id.* at 26, lines 7-16.
25. Generally, distributed energy resources were not subject to comprehensive evaluation in the Eversource LCIRP and thus were not considered in all cases where they might provide potential benefits.⁶

⁶ Eversource witness Russell Johnson offered a startlingly forthright admission of this deficiency on the second day of hearings. He testified, in the course of describing examples, that “instead of upgrading the conductor, making bigger conductors, or putting CapEx or reclosers out there, we have the option to use the PV [i.e., distributed generation in the form of solar photovoltaic panels] to help

26. Nor does the LCIRP consider systematically how smart grid investments and smart grid programs could enable the promotion of increased levels of cost-effective DERs to reduce system costs. *Id.* at 18-21.
27. The LCIRP indicates that Eversource will provide a grid modernization plan that will allow for the integration of distributed energy resources, but the LCIRP does not make clear when this plan will materialize. *Id.* at 22-24.
28. The LCIRP discusses grid modernization in only an abstract and general fashion, without any details about the benefits and costs of such technologies. *Id.* at 27, lines 16-17.
29. Although Appendix J of the LCIRP addresses grid modernization, and discusses various technologies that are available, this part of the LCIRP describes applicable investment plans only in general fashion. *Id.* at 28, lines 9-14.
30. Nevertheless, grid modernization investments can obviate the need for investments in traditional distribution plant and such investments can also enable the incorporation of greater levels of DERs which, in turn, can achieve downstream savings on transmission and distribution costs as well as energy costs. *Id.* at 23-26.

mitigate the impacts the PV is having on the system. The technology exists. But we don't have the DERMs [i.e., a "distributed energy resource management system"] to be able to ensure that this is orchestrated in the right way." Tr. 2 at 34, lines 11-18.

31. Grid modernization investments can also be useful in addressing other goals such as improved reliability, resilience, and operational efficiency. *Id.* at 29, lines 3-5.
32. The Eversource LCIRP does not analyze utility scale renewable resource opportunities. *Id.* at 29, lines 9-10.
33. Nevertheless, it is likely that there are additional utility-scale renewable resources, beyond those associated with New Hampshire's renewable portfolio standard, that would help achieve some of the state's energy policy goals as enumerated in RSA 378:37 – particularly those related to safety, health, and the physical environment of the state. *Id.* at 23-26.
34. The Eversource LCIRP contains no analysis of opportunities for reducing the cost of default energy service. *Id.* at 30, lines 13-14.
35. Nevertheless, there may be opportunities for improving Eversource's practices for procuring default energy service, thereby saving customers significant amounts of money, and reducing their exposure to price volatility. *Id.* at lines 23-24 and 29 at lines 3-4.
36. Eversource has satisfied the core standard in RSA 378:38 that it provides an assessment of distribution system requirements, addressing such needs in various appendices and other places, but this discussion is diffuse and does not yield clarity about how, overall, the Company views its needs, options, and alternatives. *Id.* at 31, lines 18-14, 32 at lines 1-19, and 33 at lines 1-11.

37. Eversource made its filing of October 18, 2022 – i.e., the supplement in and accompanying written testimony appearing as exhibit 8 – because the utility had concluded that the preceding filings did not meet the requirements of the LCIRP statute. Tr. 1 at 77, lines 3-11.
38. Accordingly, with respect to the question of what constitutes the LCIRP pending before the Commission for approval in this docket, Eversource relies on the LCIRP as originally filed in 2020 (exh. 1), the supplement filed on March 31, 2021 (exhibits 3 and 4) and the filing of October 18, 2022 (exh. 8). *Id.* at 79 lines 14-18.
39. The net result of relying on these three filings – assuming the propriety if treating them as collectively comprising one single LCIRP – is submission that is disorganized, confusing, and not conducive to understanding how Eversource plans to deploy available options so as to advance the state’s energy policy. Tr. 1 at 242, line 24 to 2433, lines 1-5 (Freeman stating that “the intent is to provide all of the information . . . where you can trace from the forecasts, to the violation, to the alternatives of a solution, to the preferred [i.e., the chosen solution] but the results “could be much more organized,” something the Company regards as a “lesson learned”).⁷

⁷ On the second day of hearings in this docket, Eversource’s witnesses and attorneys clearly having regrouped in the wake of a first day that laid bare the deficiencies in the Company’s LCIRP, Mr. Freeman of Eversource offered a heartfelt apology from the stand. Addressing Chairman Goldner, Mr. Freeman stated:

I clearly heard you yesterday, and maybe even today, about the deficiencies in the plan that we presented. That view of the high level of planning, of how all of the projects aggregate into the plan, is not something that has historically been presented in the LCIRP the way it

40. There was extensive discussion at hearing of exhibits 3 and 4 – a voluminous filing comprising supplemental materials – and as a result it was conclusively established that this exhibit documents the Company’s

was developed. I understand that this is something you would like to see. And going forward, that is something that I can commit to provide.

But I do apologize that the LCIRP developed from previous versions, there were discussions, tech sessions, settlements, we had additional things that were included. And, so, it kind of developed almost like Frankenstein’s monster. And I own a big part of that. But I will do a *mea culpa* here.

Tr. 2 at 19, lines 6-22. The Office of the Consumer Advocate sincerely appreciates the sincerity and integrity Mr. Freeman had to summon in order to offer such a forthright statement of personal responsibility while under oath at a public hearing before the utility’s regulator. At the same time, it is worth nothing that (1) the apology did not come from the Company’s senior management, and (2) Mr. Freeman’s statements offer further support for a finding that the disorganized and fractured submission that the Company apparently considers its LCIRP does not, as a factual matter, meet the requirements of the statute.

Mr. Freeman implied that his company was blindsided by prior Commission guidance. He is incorrect. While it is true that, historically, the Commission has focused its LCIRP review on utility planning processes, rather than utility resource deployment decisions, see, e.g., Order No. 26,362 in Docket No. DE 19-139 (June 3, 2020) at 9 (approving settlement in most recent Eversource LCIRP proceeding because the agreement “prescribes a reasonable approach to the revised planning criteria”), none of the Commissioners who signed that order remain on the Commission. Since June 3, 2020, the Commission has repeatedly made clear it now considers the LCIRP statute as requiring the agency to evaluate resource deployment *decisions* rather than planning *processes*. The Commission issued its first such order on August 8, 2022. *See* Order No. 26,664 (Aug. 8, 2022) in Docket No. DG 19-126 at 16 (“The Commission views an LCIRP as the opportunity for the utilities it regulates to work with interested parties to evaluate capital plans that secure reliable and least-cost service for ratepayers The recent trend of the rapid growth of utility rate base is of significant concern.”). *See also* Order No. 26,666 (Aug. 15, 2022) in Docket No. DE 20-002 (to similar effect); Order No. 26,684 (Sept. 14, 2022) in Docket No. DG 17-152 at 4 (“As a threshold matter and starting point, the Commission views an LCIRP as the opportunity for the utilities it regulates to work with interested parties to evaluate supply and capital plans that secure reliable and least-cost service for ratepayers.”); Order No. 26,689 (Sept. 19, 2022) in Docket No. 19-126 at 8 (rejecting argument of Northern Utilities that it was not adequately notified of how the Commission interprets the LCIRP statute and concluding that “[n]o party can plausibly claim surprise regarding consideration of future LCIRPs”). Moreover, at nearly the same time the Commission was issuing its flurry of orders clarifying that it is now taking the LCIRP statute seriously, the OCA submitted its prefiled written testimony on August 19, 2022 (tab 45 and exhibit 18) similarly asserting that RSA 378:37 *et seq.* requires the submission of an LCIRP that lists and prioritizes resource deployment options. Thus Eversource had ample warning, well in advance of hearing, of the circumstances that prompted Mr. Freeman’s apology.

evaluation of certain capital projects on a case-by-case basis. Tr. I at 212 through 228.

41. Similarly, exhibit 8 consists entirely of a project-by-project analysis of certain projects, not intended to suggest a holistic approach to deploying resource options but, rather, in an effort to convince the Commission that the LCIRP as already on file met the criteria for Commission review in section 39 of the statute. Tr. 1 at 235, lines 5-10 (Eversource witness Lavelle Freeman characterizing this exhibit as a “project by project analysis” addressed to the RSA 378:30 standards.⁸

42. With respect to NWAs, Eversource limits its consideration to projects that are related to aging or failed equipment, can be completed in less than three years, and must cost \$3 million or more. *Id.* at 83, lines 5-13.

43. Eversource has agreed to consider a different set of NWA evaluation criteria -- standards that are likely to expand the number of NWA projects to be considered as potentially cost-effective, but the Company has neither agreed it will definitely implement those standards in the future nor are those standards before the Commission now as part of the current LCIRP. Tr. 3 at 36, lines 10-24.

44. Responsibility for approving the LCIRP, as indicative of the Company’s overall plan for provision of service on a least-cost basis while still complying with the state energy policy enumerated at RSA 378:37, is not

⁸ Mr. Freeman actually referred to section 38 but, in context, it is clear he really meant section 39.

vested in a single company employee; rather, various sections of what Eversource has submitted for approval here are the responsibility of various Company officials. *Id.* at 87, lines 14-16 (identifying Russell Johnson and Lavelle Freeman as the highest Eversource officials offering testimony); *id.* at 88, lines 14-19 (confirming that the president of Eversource New Hampshire, Douglas Foley, had not personally approved the LCIRP as, at the time, he had only recently taken office); *id.* at 90, lines 15-18 (Johnson testifying that he “assist[s]” in the development of Eversource’s capital budget as the person responsible for “distribution line components” and merely “coordinates the assembly” of the overall capital budget).

45. Eversource considers its planning to be “integrated” because, when it considers potential solutions to a particular need at an individual substation, it does so in a “holistic” way. *Id.* at 102, lines 7-10.
46. A committee of Eversource managers decides, on a specific need-by-need basis, whether to fund any particular substation project – a process that does not involve the consideration of system-wide needs. *Id.* at 104, lines 11-16.
47. An entirely different process governs need for new or replacement distribution lines, *id.* at 104, lines 19-20, and so it is therefore obvious that the assessment of needs for substation projects and distribution line projects are themselves not ‘integrated’ with one another.

48. In other words, each supply-side capital project considered for addition to the Company's distribution network is considered in isolation. *Id.* at 106, lines 12-20 (each project as a "different initiator" and is considered separately), *id.* at lines 21-23 ("Transmission line projects would be initiated by a different group").
49. The Eversource witnesses who testified at hearing had no idea how non-capital projects (e.g., new rate designs) would be evaluated for their potential to substitute for a capital investment, *id.* at 109, lines 12-15 ("it's a good question"); *id.* at 20-22 ("I believe that such an effort would have to be done in a regulatory-type proceeding and environment") and, therefore, there are no instances where non-capital initiatives compete within the planning process for funding as least-cost.
50. Eversource produced no witnesses who could explain to the Commission how anything other than capital projects are planned. *Id.* at 110, lines 5-7 ("we are here in our capacity as planners. And, as planners, we deal with capital projects").
51. Although Eversource has endeavored to understand how much a customer would pay for each additional unit of reliability, *id.* at 112, lines 18-22, this question receives no consideration in the LCIRP pending before the Commission for approval in this docket despite an assertion in the LCIRP that customers are becoming increasingly reliant on interrupted electric service, *id.* at lines 5-7.

Pursuant to RSA 541-A:35, the OCA requests that the Commission issue a ruling as to each proposed factual finding recited above. It does not appear that any of these asserted facts are in dispute.

IV. Conclusion

To a not insignificant degree this brief is unnecessary in the sense that the Commissioners themselves have articulated the reasons why the Eversource LCIRP, as pieced together through several exhibits, is inadequate. At one point Chairman Golder asked the Eversource witnesses: “[W]hat are you showing your executive management? And why doesn’t the Commission and the Parties see something similar?” Tr. 1 at 265, lines 5-8. Soon thereafter, the Chairman mused about having to look to the Department of Energy’s testimony, rather than anything submitted by Eversource, for something as simple as “a capital plan spend by year.” *Id.* at 269, lines 18-23 (describing that as “weird”). The Chairman offered this “encouragement” to Eversource: “really assume that the Commission is like your [corporate executive team]” so “you’re painting with a broad stroke, at a high level.” *Id.* at 269, lines 6-15. While cautioning that the “details” are still “necessary,” *id.*, the Chairman clearly found lacking anything that could be understood as an overall look at the totality of the utility’s resource deployment decisions – or, in the parlance of the LCIRP statute, a plan that is *integrated*.

“[A] big portion of the value of an LCIRP process,” mused Chairman Goldner at hearing, is the “big picture, what’s going on. You have plans for the future. You share that with the parties and with the Commission, and we get our heads around

kind of what you're trying to do. So that, when you come in for a rate case, it's not, you know, DEFCON 1.”⁹ *Id.* at 273, lines 9-17. Exactly.

WHEREFORE, the OCA respectfully request that this honorable Commission:

- A. Reject, pursuant to RSA 378:39, the Least Cost Integrated Resource Plan submitted by Public Service Company of New Hampshire d/b/a Eversource Energy for approval in this docket, and
- B. Grant such further relief as shall be necessary and proper in the circumstances.

Sincerely,



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June 5, 2023

Certificate of Service

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included on the Commission's service list for this docket.



Donald M. Kreis

⁹ For the purposes of clarity, we note here that the “DEFCON” (defense condition) scale is a measure of military alert conditions for use in the event of a national emergency, ranging from DEFCON 5 (normal peacetime readiness) to DEFCON 1 (maximum force readiness). *See* <https://nuke.fas.org/guide/usa/c3i/defcon.htm> .