

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 17-152

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

Least Cost Integrated Resource Plan

**Interim Order Denying Settlement Agreement and Establishing Filing Date for
Next Least Cost Integrated Resource Plan**

ORDER NO. 26,684

September 14, 2022

In this interim order, the Commission denies a settlement agreement filed by Liberty (EnergyNorth Natural Gas) Corp. d/b/a Liberty (Liberty, or the Company), the Office of the Consumer Advocate (OCA), and the New Hampshire Department of Energy (DOE) on July 19, 2022 (Settlement Agreement), regarding this Least Cost Integrated Resource Plan (LCIRP) proceeding. This order also specifies that Liberty shall file its next LCIRP with the Commission no later than the close of business on Monday, October 3, 2022, the next business day after Sunday, October 2, 2022, which is the five-year anniversary of filing of the LCIRP in this docket, and guidance for this new filing.

I. BACKGROUND

On July 19, 2022, Liberty, the OCA, and the DOE filed the Settlement Agreement in response to a Commission inquiry, made at the June 21, 2022, status conference for this proceeding, regarding the potential for a settled disposition of this matter. On July 20, 2022, the Commission issued a procedural order scheduling a hearing regarding the Settlement Agreement on August 18, 2022. This hearing was held as scheduled, where representatives of the Company, the OCA, the DOE, and the Conservation Law Foundation (CLF) appeared, along with Mr. Terry Clark. CLF and

Mr. Clark indicated their opposition to the Settlement Agreement, while testimony and oral arguments in support of the Settlement Agreement were provided by Liberty and DOE, and oral argument in support of the Settlement Agreement was provided by the OCA. (Collectively, the signatories to the Settlement Agreement, namely Liberty, DOE, and the OCA, will be referred to as the "Settling Parties").

Two provisions of the Settlement Agreement are germane to the Commission's analysis below. First, Section 2.2 of the Settlement Agreement states, "[w]ithout taking a position as to [the] LCIRP's compliance with RSA 378:37–39, the Settling Parties recommend that the Commission approve Liberty's 2017–2022 LCIRP and do so without making any specific findings as to the LCIRP's compliance with the specific provisions of RSA 378:38 or :39." Hearing Exhibit 12 at Page 3. Also, the Settlement Agreement specifies, in Section 2.7, that "[t]he Settling Parties agree that good cause exists for the Commission to extend the deadline for Liberty's next LCIRP pursuant to RSA 378:38-a, to be filed consistent with the terms of this Settlement Agreement, until the earlier of either (1) six months after the Commission issues an order on the merits in this docket, or (2) six months following the October 2, 2022, deadline for filing Liberty's next LCIRP, and that the Settling Parties support Liberty's request for such an extension."

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at

<https://www.puc.nh.gov/Regulatory/Docketbk/2017/17-152.html>

II. COMMISSION ANALYSIS

A. Settlement Agreement

Any Commission approval of a settlement agreement must comport with the underlying statutory standards governing the disposition of the case in question. *See, e.g., Appeal of Campaign for Ratepayers Rights & a.*, 145 N.H. 671, 677-679 (2001). In our interpretation of our statutory duties and authorities under New Hampshire Law, we are guided by the New Hampshire Supreme Court's approach to statutory interpretation, which holds that when multiple statutes deal with a similar subject matter, they are to be construed so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statute. *Petition of Public Serv. Co. of N.H.*, 130 N.H. 265, 282 (1988).

In this instance, the provisions of RSA 378:38, 378:38-a, 378:39, and 378:40 govern our approach to the Settlement Agreement's terms. As a threshold matter, RSA 378:39 clearly states: "[t]he [C]ommission *shall* review least-cost resource plans in order to evaluate the consistency of each utility's plan with this subdivision, in an adjudicative proceeding." RSA 378:39 (emphasis added). Approving Section 2.2 of the Settlement Agreement would constitute a violation of this statutory mandate. Furthermore, RSA 378:38 clearly states: "...each...natural gas utility...shall file a least cost integrated resource plan with the [C]ommission within 2 years of the [C]ommission's final order regarding the utility's prior plan, and *in all cases within 5 years of the filing date of the prior plan.*" RSA 378:38 (emphasis added). With this statutory language specifying "*in all cases*", we will not adopt the Settlement Agreement's extension of the filing deadline for the next LCIRP, which will fall on Monday, October 3, 2022, the next business day after the 5-year anniversary of the filing of the Company's last LCIRP, or October 2, 2022. *See* RSA 21:35.

We do note that we have not reached a ruling on the question of this currently pending LCIRP's compliance with the governing statutory standards. This will be accomplished in this docket, in a separate Order in the future. The review of Liberty's 2017 LCIRP in this docket is proceeding in the ordinary course, but has not been completed, for the purposes of RSA 378:40. We also note that Liberty's predecessor plan remains on file and was approved by the Commission in accordance with the provisions of RSA 378:38 and 378:39. *See* Order No. 25,762 (February 9, 2015).

B. Initial Parameters for Next LCIRP Filing

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. Going forward, the Commission expects conformity by Liberty to the supply and capital plans developed through the LCIRPs and rate cases, and will expect sufficient notice and justification for any material deviations from those plans.

The recent trend of the rapid growth of supply costs and utility rate base seen across New Hampshire utilities is of significant interest to the Commission. Going forward, we will consider how each utility's capital investments align with its LCIRP and thus support the goal of securing the least cost resources and minimizing the rate impacts for customers, by taking a unified review of rate cases and LCIRPs. We find that this approach is consistent with the General Court's requirement in RSA 378:40 that a Commission-approved LCIRP be on file before a change in rates may occur.

It is the Commission's objective to consider LCIRPs as a useful component of the capital planning process for Liberty. We recognize that each company has its own supply portfolio and capital planning processes, and we neither seek to upend nor dictate how companies make such decisions, but rather connect the statutorily

required LCIRP with each company's internal capital planning process as is generally described and approved by the Commission in rate cases. We will require that Liberty conduct its planning processes in a manner consistent with the LCIRP Statute with a thoughtful approach to both supply and capital investments. It is a fact of economic life that the fuel supply and delivery infrastructure are not hermetically sealed from each other. *Cf. FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 281 (2016) ("It is a fact of economic life that the wholesale and retail markets in electricity, as in every other known product, are not hermetically sealed from each other.")

Although uniformity in the formatting of summary documents across LCIRPs would facilitate Commission review, Liberty may provide all necessary supporting documents in the format that is used for their internal process. Thus, what Liberty submits to the Commission need be little more than the same documentation and format that Liberty's senior leadership, Board of Directors, and/or relevant subcommittees review. When necessary, the Commission will consider requests for confidentiality pursuant to the terms of RSA Chapter 91-A and Commission rules.

The LCIRPs represent a critical juncture for the Commission to ensure that each utility it regulates is making investments in a supply portfolio that has been adopted specifically for the distribution system owned and operated by the utility, providing a holistic approach that enables customers to benefit from the least cost resources available through a system operated in an efficient manner. For this evaluation, we are interested in two views, a functional view and a project view.

- For the functional view, Liberty should show planned investments in supply portfolio options coupled with any necessary capital investments, including maintenance, system improvements (meters, main replacements, etc.), system expansion, new capacity (pipeline, storage), and any other major category the Company believes would be useful to the Commission.

- For the project view, Liberty should include descriptions of any planned supply contracts as well as capital projects costing \$200,000 or more as well as aggregated projects by asset type for smaller investments.

Liberty's summaries should include a supply and capital planning time horizon looking out ten years and history for the previous five years, with such expenditures and investments expressed for each year in dollars. Liberty's load forecasts should continue to be 10-year forecasts and include the most recent five years of history.

On an annual basis, beginning the January 1 following Liberty's next and subsequent LCIRPs, the Commission will require Liberty to file LCIRPs that consider the interdependent supply and capital investment summaries as described above, the status of major expenditures and investments (such as supply contracts and associated capital allocations), and a discussion of the functional and project view as compared with Liberty's prior approved LCIRP capital plan.

The statutory standards of the LCIRP statute provide further guideposts for the content to be provided by Liberty as part of its next LCIRP filing. The Commission makes clear 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. The Commission elaborates on these standards, as outlined below:

Energy Efficiency (EE) is currently subsumed within the Energy Efficiency Resource Plans for both electric and natural gas utilities operating in New Hampshire, with maximum ratepayer funding levels set legislatively. As a result, we do not expect the LCIRP process to conflict with that policy decision by exploring additional ratepayer funding sources for EE.

Further, we do not find that promoting C&I customer fuel switching at a company or system-wide level is within the scope of the LCIRP. However, LCIRPs may

consider C&I demand-side fuel switching programs focused on providing natural gas at the lowest possible cost on a project-by-project basis.

Furthermore, under RSA 378:39, Liberty may include Renewable Natural Gas as a potential supply option; however, we caution that such resources should be evaluated in the same manner as other least cost options considered by the Company in their LCIRP.

The Commission does not oppose analyses of the environmental impact of greenhouse gas emissions and finds such analyses would be within the LCIRP statute under RSA 378:38, VI and RSA 378:39. We understand this to include the leakage of natural gas and other pollutants from the Liberty distribution system in New Hampshire. We find, however, that an analysis of the emissions caused by Liberty's customers' combustion of the natural gas they receive is a broad inquiry beyond the purpose of the LCIRP. The LCIRP is to assist in planning for natural gas supply and delivery infrastructure, and the consideration of environmental factors, and the cost of mitigating them, are an important part of this process. This consideration, however, must be grounded in the direct operation of the Liberty system in our State and not second or third-order impacts which are beyond the scope of the LCIRP. The Commission sees little benefit in Liberty spending ratepayer money to conduct analyses that do not have the potential to improve its services and operations.

Liberty should assess the health-related impacts of the emissions resulting from leakage (also known as "lost gas" or "unmetered gas") occurring in its distribution system in New Hampshire. Such an assessment would properly fall within the scope of an LCIRP under RSA 378:38, V and RSA 378:39. This assessment should be based on state and federal government reports and peer-reviewed and publicly available reports concerning the public health impacts of emissions at levels similar to those resulting

from leakage from Liberty's distribution system. We will not require Liberty to undertake its own study of those potential health impacts, the funding of which would be beyond the scope of the LCIRP.

Liberty should assess the economic impacts of its distribution system operation and its system upgrades by reporting on direct jobs attributable to Liberty's operations over the last 20 years. Such an assessment would be appropriate under RSA 378:38, VI and RSA 378:39. To the extent that Liberty believes that any of the supply options being considered would create jobs in New Hampshire, Liberty should estimate the direct jobs that would be created by utilizing recent trends and past experience. We will not require Liberty to perform its own economic analysis or develop a complex model, but we will accept such analysis as is available from the US Department of Labor or other governmental resources that Liberty can identify.

In its next LCIRP, Liberty should further seek to identify opportunities to incorporate Non-Pipeline Alternatives (NPAs) that could avoid or defer reinforcement costs associated with distribution system infrastructure and seek to incorporate such opportunities as resource options are developed. NPAs should also include truck and rail transit of propane, CNG, and LNG, as well as storage options (utility-sited storage, and customer-sited storage).

Liberty's next LCIRP should be clear and well-organized and should incorporate new material as discussed in this order. We encourage Liberty to evaluate the areas identified in the above guideposts. As part of its capital planning process, Liberty conducts assessments of proposed investments' environmental, economic and health-related impact to ensure compliance with applicable state and federal laws. The Commission, likewise, expects Liberty to use its same internal resources for the purposes of its LCIRP process, whenever feasible. The Commission does not wish to

see substantial time and resources diverted to issues not directly involved with Liberty's core business or to issues beyond the scope of the Company's LCIRP, though Liberty is welcome to expand its analytical framework for its next LCIRP if additional resource proposals are modest. These guideposts outlined above are not exhaustive and will be supplemented by additional guidance provided in the future final Order for this Docket No. DG 17-152 review proceeding.

The Commission recognizes that the review process for this Docket No. DG 17-152 has faced challenges, and that the time frame before October 3, 2022, is short. In light of this, the Commission specifies that for the purposes of its October 3, 2022, filing, the Company should include: (1) a forecast of future demand, pursuant to RSA 378:38, I; (2) an assessment of demand-side energy management programs, pursuant to RSA 378:38, II; and (3) an assessment of supply options, pursuant to RSA 378:38, II. The Company will have the opportunity to supplement this material during the pendency of this next LCIRP review proceeding. The Commission further requests that in advance of its October 3, 2022, LCIRP submission, the Company submit (no later than September 21, 2022) a waiver request pursuant to the terms of RSA 378:38-a, with a sunset date of April 30, 2023, to enable Liberty to have time to prepare the remaining statutory elements of its next LCIRP, and the other guide posted material discussed in this Order, which will be filed no later than May 1, 2023. RSA 378:38-a.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement filed in this proceeding is hereby DENIED; and it is

FURTHER ORDERED, that Liberty shall file its next Least Cost Integrated Resource Plan filing, as delineated, no later than the close of business on October 3, 2022, which is the next business day after Sunday, October 2, 2022, and the

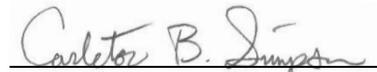
Company submit a waiver request pursuant to RSA 378:38-a, as discussed herein, no later than September 21, 2022; and it is

FURTHER ORDERED, that the current Least Cost Integrated Resource Plan considered in this docket is still on file, and under review, by the Commission.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of September, 2022.



Daniel C. Goldner
Chairman



Carleton B. Simpson
Commissioner

A. Service List - Docket Related

Docket# : 17-152

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