

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DG 17-152**

**LIBERTY UTILITIES (ENERGY NORTH NATURAL GAS) CORP. d/b/a LIBERTY**

**2017 Least Cost Integrated Resource Plan**

**Final Order on 2017 LCIRP, and Denial of Motions for Rehearing**

**O R D E R N O. 26,702**

**October 12, 2022**

On October 2, 2017, Liberty Utilities (Energy North Natural Gas) Corp. d/b/a Liberty (Liberty) filed its five-year Least Cost Integrated Resource Plan (LCIRP) for the planning period ending no later than October 1, 2022. The lengthy procedural history of this docket, culminating in a belated hearing on Liberty’s LCIRP on August 18, 2022, is recounted in Order No. 26,284 and does not bear repeating here. In Order No. 26,284, the Commission denied a settlement agreement reached among some—but not all—of the parties to this docket.<sup>1</sup> The rejected settlement agreement included a request the Commission approve Liberty’s 2017 LCIRP “without making any specific findings as to the LCIRP’s compliance with the specific provisions of RSA 378:38 or :39.” Settlement Agreement at 3¶2.2. It also would have required Liberty’s next LCIRP to comply with nine working group recommendations, some of which the Commission disagreed with. Settlement Agreement at 3–4¶2.3; Order No. 26,284 at 4–9. Order No. 26,284 also rejected a request to extend Liberty’s filing of its next LCIRP because the Commission lacks statutory authority to grant such relief.

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<sup>1</sup> Liberty, the Office of Consumer Advocate (“OCA”), and the New Hampshire Department of Energy (“DOE”) signed the settlement. Mr. Terry Clark, an intervenor in the docket, and the Conservation Law Foundation (“CLF”) did not.

On September 29, 2022, the Commission conditionally waived certain filing requirements for Liberty's next LCIRP, pursuant to its waiver authority in RSA 378:38-  
a. The waiver was conditioned upon Liberty supplementing its initial LCIRP with the remaining required elements of RSA 378:38 by May 1, 2023. Liberty filed a new LCIRP on October 3, 2022, which the Commission filed in a new docket, DG 22-064.

By separate filings on September 29, 2022, the OCA objected to the waiver and sought rehearing of Order 26,284 on various grounds. On October 6, 2022, Terry Clark objected to the OCA's motion for rehearing. Terry Clark subsequently withdrew his objection to the OCA's motion for rehearing and August 9, 2022, response to the settlement agreement on October 7, 2022. Also on October 7, 2022, CLF filed a separate motion for rehearing. The Commission consolidates its order on these various motions and objections and disposes of them as follows.

**A. THE OCA AND CLF MOTIONS TO REHEAR DENIAL OF THE SETTLEMENT AGREEMENT ARE MOOT.**

"Generally[,] a matter is moot when it no longer presents a justiciable controversy because issues involved have become academic or dead." *Londonderry Sch. Dist. SAU # 12 v. State*, 157 N.H. 734, 736 (2008) (quoting *In re Juvenile 2005-212*, 154 N.H. 763, 765 (2007)); accord *In re Verizon New England, Inc.*, 92 N.H. P.U.C. 335, Order No. 24,780 (2007).

RSA 378:38 requires each electric and natural gas utility to file an LCIRP "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." Liberty filed its LCIRP on October 2, 2017; its planning period expired on October 1, 2022. At the time the settling parties proposed their agreement on July 20, 2022, little more than two months remained in the planning period. As of the writing of this order, the planning period is entirely over, and Liberty has filed a new plan for the next five-year period.

An LCIRP is by definition a plan—a forward-looking forecast. The Commission’s obligation with respect to LCIRP filings—and the only truly live issue within an LCIRP docket—is to determine whether they conform to statutory requirements under RSA 378:39. The utility of a plan expires with its planning period. Here, that expiration date was October 1, 2022. There can be no denying that “planning” for a period that elapsed entirely in the past is, at best, an academic exercise, and at worst a dead issue. The same is true of a retroactive determination by the Commission as to whether an expired plan conformed to RSA 378:39.<sup>2</sup> RSA 541-A:38’s encouragement of informal settlement cannot reasonably be extended to the settlement of entirely dead issues. The Commission, therefore, declines to rehear its denial of the Settlement Agreement as moot.

**B. THE OCA’S OBJECTION TO LIBERTY’S WAIVER REQUEST IS DENIED.**

RSA 378:38 requires LCIRPs to include, as applicable, seven elements. RSA 378:38, I–VII. RSA 378:38-a allows the Commission by order to “waive for good cause any requirement under RSA 378:38, upon written request by a utility.” In Order No. 26,684 the Commission acknowledged the short timeline between the Commission’s order on Liberty’s 2017 LCIRP and the due date for Liberty’s next LCIRP. The Commission signaled a willingness to entertain a motion from Liberty to waive the requirements of RSA 378:38, IV–VII, provided that Liberty timely file an LCIRP including the elements of RSA 378:38, I, II, III, and supplement its LCIRP with the remaining elements by May 1, 2023. Liberty filed just such a request on September 22, 2022, and the Commission granted it on substantially the terms laid out in Order No. 26,684 in a procedural order on September 29, 2022.

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<sup>2</sup> The fact that Liberty has already filed a new plan only further reinforces the Commission’s conclusion that Liberty’s 2017 LCIRP is no longer a live issue before it.

The OCA's objection is based upon two arguments: that the Commission prematurely granted Liberty's request without waiting for the 10-day objection deadline in Puc 203.07 to elapse; and that the LCIRP is not a "homework assignment" to be completed over the course of several months.

As to the first argument, the OCA correctly notes that the Commission did not wait for the full objection deadline to elapse, nor did it waive the deadline under Puc 201.05. A procedural foul, on its own, is not a basis for rehearing. The foul must result in prejudice. *See, e.g., Debonis v. Warden*, 153 N.H. 603, 606–07 (2006) (declining to overturn parole board's denial of parole where would-be parolee could not plead or prove that procedural irregularity prejudiced him). The OCA has not alleged any prejudice caused by the Commission's early granting of Liberty's motion. Moreover, the purpose of an objection is so that a party to a proceeding may make the tribunal aware of arguments against the movant's request. Because the OCA has now made those arguments and the Commission will consider them here, there is no prejudice. The Commission's premature granting of Liberty's motion without waiver of the objection deadline, although a regrettable procedural oversight, is not a basis to deny Liberty the relief it sought.

The OCA's second argument fares no better. It consists largely of assertions that the LCIRP is not a "homework assignment" and that the Commission has "collaborated" with Liberty to "do an end-run around RSA 378:40." The OCA, however, cites to no statute, rule, or case requiring a utility's initial LCIRP to also be its final LCIRP. The Commission, likewise, can find no support for the proposition that an LCIRP can never be amended or supplemented while it is before the Commission for review. Indeed, the Commission is not aware of any LCIRP docket in recent memory in which the initially filed LCIRP was identical to the finally approved LCIRP. If it were, in

fact, the case that a utility could not modify its initial LCIRP, there would be no purpose in settlement negotiations among parties to modify the terms of that LCIRP. In addition, RSA 378:38 specifies the deadline by which a utility must file its LCIRP. A utility must file its LCIRP no later than five years after its prior LCIRP and no later than two years after any prior Commission approval of its LCIRP. Nothing in the statute prohibits a utility from more frequent LCIRP filings.

Most fundamentally, however, RSA 378:39-a grants the Commission authority to grant this waiver for good cause. The OCA's objection lacks any mention of the Commission's acceptance of the good cause stated in Liberty's motion. The OCA's objection is, therefore, denied and the Commission's conditional grant of Liberty's waiver request remains in place.<sup>3</sup>

**C. LIBERTY MAY FILE ITS 2022 LCIRP NOTWITHSTANDING A LACK OF A FINAL COMMISSION ORDER ON ITS 2017 LCIRP.**

Under RSA 378:38, all gas and electric utilities "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." Thus, the statute contemplates two possible timelines. Either a utility will (a) submit a plan, receive commission approval, and file its next LCIRP within two years of that approval; or (b) submit a plan and submit a subsequent plan within five years. Because Liberty last filed an LCIRP on October 2, 2017, RSA 378:38 required it to file its next LCIRP on October 1, 2022. It has done so by filing its next LCIRP on October 3, 2022, the next business day after October 1, 2022. RSA 21:35.

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<sup>3</sup> The Commission declines to address inflammatory allegations of "collaboration."

CLF argues that the Commission may not allow Liberty to file a new LCIRP until the Commission approves Liberty's 2017 LCIRP. Nothing in any of the LCIRP statutes, however, speaks to the Commission "allowing" a utility to file anything. The legislature required Liberty to file its LCIRP, and Liberty complied. It did not need the Commission's permission to file, and the Commission did not grant it permission. CLF's argument on this issue misapprehends what has occurred.

**D. THE OCA'S AND CLF'S MOTIONS TO REHEAR THE OTHER ASPECTS OF ORDER NO. 26,284 ARE DENIED AS UNRIPE.**

The remaining bulk of the OCA's and CLF's motions are devoted to various arguments that the Commission's guidance for Liberty's 2022 LCIRP is *ultra vires*, erroneous, or must otherwise be reconsidered. They argue variously that it is unlawful for the Commission to issue an order in one LCIRP docket providing guidance on future LCIRP filings and that the Commission has misread various portions of the LCIRP statute.

As an initial matter, we note that these two arguments are contradictory. The parties may not coherently argue that it is unlawful for the Commission to specify the filing requirements of a future LCIRP unless it specifies the parties' preferred filing requirements. Logically, either the Commission may issue binding requirements for future filings, or it may not. In this case, it may not—and has not.<sup>4</sup> The settlement agreement proposed language that would have *required* Liberty's 2022 filing to conform to nine recommendations. Settlement Agreement at 3¶2.3 ("Liberty's next LCIRP *shall* meet the following recommendations:") (emphasis added). Order 26,284

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<sup>4</sup> The OCA's citation to phrases in the order that it believes make the order binding are unavailing. Commission orders do not create precedent. *See Appeal of Public Serv. Co. of N.H.*, 141 N.H. 13, 22 (1996). Even if the Commission had issued an order purporting to be binding on a future LCIRP, it would not be. Here, the Commission has expressly disclaimed any binding nature of Order No. 26,284.

included no requirements. The order included guidance as to what Liberty's next filing "should" include, but expressly does not prejudge any aspect of it.<sup>5</sup>

"[R]ipeness relates to the degree to which the defined issues in a case are based on actual facts and are capable of being adjudicated on an adequately developed record." *State v. Exxon Mobil Corp.*, 168 N.H. 211, 263 (2015) (quoting *Appeal of City of Concord*, 161 N.H. 344, 354, (2011)). The New Hampshire Supreme Court finds "persuasive the two-pronged analysis used by other jurisdictions that evaluates the fitness of the issue for judicial determination and the hardship to the parties if the court declines to consider the issue." *Id.* (quoting *Appeal of State Employees' Assoc.*, 142 N.H. 874, 878 (1998)).

Here, the Commission has not applied its interpretations of the LCIRP statute to any LCIRP. Liberty has filed a 2022 LCIRP subject to the Commission's conditional waiver, and the Commission is currently reviewing that submission. The Commission expects Liberty to supplement that initial filing with the remaining elements by May of next year. But until that submission is received, there are no "actual facts...capable of being adjudicated" with respect to the LCIRP elements in dispute. *See Exxon*, 168 N.H. at 263. These purely speculative arguments about a document that no party has yet seen are not fit for our determination. Moreover, the parties will have a complete opportunity to litigate whether Liberty's full 2022 LCIRP complies with the statute in Docket DG 22-064. Their arguments will be fully heard and considered before the Commission issues any order approving or denying the next LCIRP. They suffer no hardship by waiting to raise their arguments when they can be applied to an actual

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<sup>5</sup> We note that even if we were to issue an order agreeing with each and every argument by the OCA and CLF with respect to their interpretations of the LCIRP statute, that order would be no more binding on Liberty's future LCIRP than the order presently on file. The relief that the parties seek in their motions would be no relief at all.

completed LCIRP. The parties' arguments about the Commission's guiding interpretations of the LCIRP statute are, therefore, unripe and their motions for rehearing are denied.

**E. LIBERTY'S 2017 LCIRP IS DENIED AS MOOT**

As already outlined extensively above, Liberty's 2017 LCIRP covers a planning period that expired by operation of law on October 1, 2022. There is no remaining period of time to which the 2017 LCIRP can apply. It is, therefore, denied as moot.

**F. CONCLUSION**

As fully explained above, no live controversy remains in this docket. The planning period of Liberty's 2017 LCIRP has expired by operation of law, and the 2017 LCIRP is moot. The issues raised by the parties are either moot, or better raised in the context of Liberty's next LCIRP review proceeding, DG 22-064. The Commission declines to expend additional resources on the purely academic exercise of "planning" for a period of time that has passed.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the Liberty LCIRP considered in this Docket No. DG 17-152 is hereby DENIED as moot, and this Docket is to be CLOSED; and it is

**FURTHER ORDERED**, that the OCA's motion for rehearing is DENIED; and it is

**FURTHER ORDERED**, that the OCA's objection to Liberty's request for waiver is rejected and the conditional waiver remains in place; and it is

**FURTHER ORDERED**, that CLF's motion for rehearing is DENIED; and it is

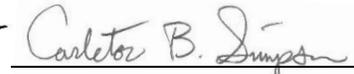
**FURTHER ORDERED**, that to the extent any of the various motions may yet be within the objection deadline of Puc 203.07, the Commission waives that deadline

pursuant to Puc 201.05 as serving the public interest and in furtherance of the efficient resolution of matters before it for substantially the reasons laid out herein.

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



Daniel C. Goldner  
Chairman



Carleton B. Simpson  
Commissioner

# Service List - Docket Related

Docket#: 17-152

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