

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 19-126

NORTHERN UTILITIES, INC.

2019-2024 Integrated Resource Plan

Order on the Office of Consumer Advocate's Motion for Rehearing

O R D E R N O. 26,688

September 19, 2022

In this order the Commission denies the Office of Consumer Advocate's motion for rehearing and clarifies Order No. 26,664.

I. PROCEDURAL HISTORY

On August 8, 2022, the Commission issued Order No. 26,664 (Order), which accepted the Working Group Report and adopted the report with modifications. The Working Group Report contained recommendations for changes to be made in Northern Utilities Inc.'s (Northern's) next LCIRP. The Order also extended the deadline for Northern to file its next LCIRP until March 31, 2023. On August 17, 2022, the Office of the Consumer Advocate (OCA), moved pursuant to RSA 541:3 for rehearing and, in the alternative, for clarification of the Order. On September 7, 2022, Northern filed a motion for rehearing of the Order. On September 13, 2022, the Commission suspended the Order. See Order No. 26,683.

II. BACKGROUND

As part of the May 27, 2020, Settlement Agreement (Settlement), the settling parties agreed to convene a working group (Working Group) to discuss, among other things, potential approaches and recommendations regarding the assessment of environmental, economic, and health-related impacts in LCIRPs, as required under

RSA 378:37–40 (the LCIRP Statute). The settling parties agreed to provide Working Group recommendations to the Commission proposing guidance regarding expectations under the LCIRP Statute for future LCIRPs. The Commission issued Order No. 26,382 (July 23, 2020), approving the Settlement and imposing a deadline of July 1, 2021, for the settling parties to file a report of the Working Group discussions and any agreement reached on the content of future LCIRP filings. Order No. 26,382 also set a deadline of July 1, 2022, for Northern to file its next LCIRP.

Following requested extensions of these two deadlines, the Working Group submitted its final report to the Commission on March 31, 2022. The settling parties (Northern, OCA, and DOE) claimed that the Working Group Report provides a reasonable road map for Northern and other parties to understand the requirements and expectations of the LCIRP Statute. The settling parties requested that the Commission accept the Working Group Report and approve its recommendations for inclusion in Northern’s next LCIRP.

The Order stated that the Commission was modifying the working group’s recommendations and providing “guidance on the contents of future Least Cost Integrated Resource Plans.” Order No. 26,664 at 1. The Order responded to the Working Group’s eight principal recommendations.

- Recommendation 1: Evaluate incremental energy efficiency as a potential resource alternative and look for opportunities for C&I customer fuel switching.

The Order clarified that the scope of ratepayer funded energy efficiency was established legislatively and suggested that Northern’s LCIRP should be consistent with legislative guidance. The Order also found that promoting fuel switching was beyond the scope of an LCIRP.

- Recommendation 2: Evaluate renewable natural gas (RNG) as an alternative to traditional fuel supply explore certified gas (CG).

The Order supported this recommendation but clarified that RNG would need to be lowest cost in order to be included as a supply resource in an LCIRP.

- Recommendation 3: Assess resources in terms of environmental impacts by documenting the greenhouse gas (GHG) impacts of evaluated resources in terms of emissions (MMT CO₂e) created or avoided and an estimate of associated monetary impact.

The Order supported this recommendation but limited the scope of this inquiry to emissions caused by leakage from the Northern distribution system.

- Recommendation 4: Assess public health impacts in terms of the health effects of local air quality (AQ) impacts of evaluated resources by documenting SO_x, NO_x and PM_{2.5}, projecting health impacts and estimating the monetary impact.

The Order supported this recommendation but clarified that these impacts should be based upon leakage of pollutants from the Northern distribution system.

- Recommendation 5: Assess economic development impacts by estimating direct, indirect, and induced jobs created from a resource and the associated economic development impact.

The Order supported this recommendation but clarified that Northern's analysis should not involve the independent development of complex economic models. Instead, Northern should rely upon models and economic data already available and should target jobs in New Hampshire.

- Recommendation 6: Expand Northern's evaluation methods to include review of environmental, public health and economic development impacts of resource alternatives. Northern may separately present customer financial costs and evaluated societal costs due to environmental, public health and economic impacts.

The Order referenced the earlier clarification of Recommendations 3, 4 and 5.

- Recommendation 7: When assessing resource alternatives, identify opportunities to incorporate Non-Pipeline Alternatives that could avoid or defer reinforcements costs associated with distribution system infrastructure and seek to incorporate such opportunities as resource options are developed.

The Order supported this recommendation.

- Recommendation 8: Incorporate new material relating to the recommendations contained in this Report into Northern's LCIRP document in a logical manner, revisit

the structure of Northern's Resource Impact Summary table, and look for opportunities to better label narrative sections to more clearly guide the reader.

The Order supported this recommendation.

III. POSITIONS OF THE PARTIES

A. OCA Motion for Rehearing or Clarification

OCA argues in its motion, that the Commission had no authority to issue such a decision, and further that the Commission's interpretations of the LCIRP statute in the Order are erroneous.

Subject Matter Jurisdiction

The OCA claims that the Commission lacks subject matter jurisdiction to modify the recommendations contained in the Working Group Report or to issue guidance on future Northern LCIRPs. OCA argues that the Commission's authority is limited by statute to reviewing an LCIRP, pursuant to RSA 378:37-39, and to ruling on requests to waive certain provisions of the LCIRP Statute pursuant to RSA 378:38-a. According to the OCA, the LCIRP Statute does not confer any jurisdiction on the Commission to approve, reject or modify, the Working Group recommendations concerning future LCIRPs.

Adequacy of Notice

The OCA argues that the Commission failed to give the parties notice that this docket would consider how the Commission would interpret the LCIRP Statute as to natural gas utilities in particular and other utilities generally. The OCA claims that the Order of Notice in this docket was limited in scope to consideration of the LCIRP submitted by Northern and did not include any broader consideration of the requirements of the LCIRP Statute.

Interpretation of Lowest Reasonable Cost

The OCA claims that the Commission's emphasis on the "lowest reasonable cost" language in RSA 378:37 amounts to a determination that all other aspects of the LCIRP Statute are a "complete nullity." OCA Motion at 7. OCA claims that the Commission's interpretation is erroneous because it ignores other language within the LCIRP Statute describing other goals and objectives beyond least cost.

Limitations on Ratepayer Funded Energy Efficiency

The OCA interprets the Commission's observation in the Order that the legislature has limited ratepayer funded energy efficiency by enacting HB 549, as an impermissible limitation on consideration of all incremental energy efficiency in the context of utility LCIRPs.

Analysis of Greenhouse Gas Emissions

Finally, the OCA takes issue with the Commission's proposed limitation on Northern's analysis of greenhouse gas emissions in LCIRPs to those emissions caused by leakage on the Northern distribution system. The OCA claims that this interpretation of the analysis required in a natural gas utility LCIRP is contrary to the LCIRP Statute which does not limit consideration of environmental factors.

Request for Clarification

In its motion, the OCA concludes that the Order can be clarified in a manner that would address all of the OCA's concerns. The OCA suggests that the Commission declare that none of the discussion of the Working Group recommendations is binding on any party and that all issues regarding the interpretation and application of the LCIRP Statute may be litigated in a future LCIRP.

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)).

We find that none of the OCA’s legal arguments require us to reconsider the conclusions reached in the Order. For clarity we will address the OCA’s specific arguments below.

Subject Matter Jurisdiction

The Commission clearly has subject matter jurisdiction to interpret RSA 378:37–40, the LCIRP Statute, with regard to requirements for Northern’s future LCIRP filings. Statutory authority includes the express language as well as all powers reasonably implied. The PUC is a creation of the legislature and as such is endowed with only the powers and authority which are expressly granted or fairly implied by statute. *Public Service Company of N.H.*, 122 N.H. 1062, 1066 (1982). In addition to

the LCIRP process, the Commission has general supervisory authority over the public utilities it regulates. See RSA 374:1, :2, :3, :4 and :5.

The authority to interpret the LCIRP Statute for the purpose of guiding Northern's future LCIRP filings is fairly implied by the statutory language granting the Commission authority to review utility filings for compliance with the LCIRP Statute. See RSA 378:38–39. Moreover, to the extent that the Commission has a “policy or interpretation, other than rules, formulated or used by [it] in the discharge of its function,” the Commission is required by statute to make such interpretations publicly available, as it has done here. RSA 541-A:16, II(a). Accordingly, we conclude that the Commission has statutory authority to issue the guidance in the Order concerning Northern's future LCIRP filing as well as the modification of the Working Group recommendations for Northern's future LCIRP filings. Because we find the guidance as to future Northern LCIRP filings fairly implied by the language of RSA 378:38–39, the OCA has not provided the Commission with a basis to reconsider or clarify its order on this point.

Adequacy of Notice

The Order of Notice announced that the Commission would consider whether the Northern LCIPR complied with the LCIRP Statute. That notice reasonably included consideration of any improvements or changes required in Northern's future LCIRP filings. No party can plausibly claim surprise regarding consideration of future LCIPRs when the Commission reviews an LCIRP. Each of the three Northern LCIRP filings since 2010 have resulted in Commission orders regarding the LCIRP filed in the docket, as well as guidance for future LCIRP filings. See Order Nos. 26,027 (June 19, 2017) at 6–7, 25,641 (March 26, 2014) at 5, and 25,089 (April 5, 2010) at 11–12. Even if these three prior dockets did not exist, the fact remains that the recommendations

were filed together with a request that the Commission approve the recommendations. There could be no clearer notice that the Commission would review the recommendations. Because we find that the notice provided in this docket, as well as the Working Group Report itself, reasonably informed the parties of possible guidance regarding future Northern LCIRPs, the OCA has not provided the Commission with a basis to reconsider or clarify its order on this point.

Interpretation of Lowest Reasonable Cost

The Order does not support OCA's claims that Commission emphasis on lowest reasonable cost causes other statutory requirements to be a nullity. The language in the LCIRP Statute clearly requires the Commission to prioritize lowest cost in choosing resources:

“... Where the commission determines the options **have equivalent financial costs**, equivalent reliability, and equivalent environmental, economic, and health-related impacts, the following order of energy policy priorities shall guide the commission's evaluation:
I. Energy efficiency and other demand-side management resources;
II. Renewable energy sources (SB 424 added including renewable natural gas);
III. All other energy sources.”

RSA 378:39 (emphasis added).

The statutory language requires the Commission to first determine that resources present “equivalent financial costs” before considering the listed energy policy priorities. The Order analyses each of the eight working group recommendations as well as the criteria under RSA 378:38 and :39. All of that analysis addresses factors other than least cost and does not support claims that the Commission fails to consider non-cost factors when reviewing an LCIRP.

In fact, the OCA's motion does not identify any discrete instance in which this is alleged to have happened. Generalized claims without specific supporting facts are not a basis to grant rehearing.

Limitations on Ratepayer Funded Energy Efficiency

The Commission's recognition in the Order of the recent legislative decisions regarding limitations ratepayer funded energy efficiency spending is proper deference to the legislative policy makers. The Order did not limit other non-ratepayer funded energy efficiency or load curtailment programs in the context of a future Northern LCIRP. Such programs might include grants or tariffed energy efficiency and load curtailment offerings in which costs are borne solely by the participating customers and not by ratepayers generally. Because the Order's guidance is consistent with legislative directives, the OCA has not provided the Commission with a basis to reconsider or clarify its order on this point.

Analysis of Greenhouse Gas Emissions

The Commission determined that Northern need not attempt to analyze the environmental impact of its customers' combustion of the natural gas they receive over the Northern distribution system. Natural gas is a fuel with known emissions when combusted. Questions of whether to phase-out the use of natural gas and switch customers to other non-gas fuels in order to reduce emissions, are beyond the scope of the LCIRP Statute. Those environmental concerns are better suited to environmental policy decisions made at the State and Federal level. Instead, the LCIRP Statute is focused on Northern's efficient and least cost operation of its natural gas distribution system. The OCA has not provided the Commission with a basis to reconsider or clarify its order on this point.

Request for Clarification

To the extent it is not clear from the language of the Order, the Order directs Northern to file its next LCIRP in compliance with the Commission's discussion of the Working Group recommendations and guidance on Northern's future LCIRP filings.

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. When Northern submits its next LCIRP, Northern and the parties will have an opportunity, in an adjudicative proceeding, to litigate the adequacy of that LCIRP as well as the Commission’s interpretation of the requirements of the LCIRP Statute.

Based upon the foregoing, it is hereby

ORDERED, the motion for rehearing is DENIED; and it is

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

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



Daniel C. Goldner
Chairman



F. Anne Ross
Special Commissioner

Service List - Docket Related

Docket# : 19-126

Printed: 9/19/2022

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