

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 17-136

ELECTRIC AND GAS UTILITIES

2018-2020 New Hampshire Statewide Energy Efficiency Plan; 2019 Plan Update

Order Denying Second Motion to Compel Data Responses

ORDER NO. 26,196

November 30, 2018

In this Order, the Commission denies the Second Motion to Compel Data Responses filed by the Office of the Consumer Advocate.

I. PROCEDURAL HISTORY

The Commission approved the 2018-2020 Statewide Energy Efficiency Plan (2018-2020 Plan) in Order No. 26,095, dated January 2, 2018. On September 14, 2018, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities, New Hampshire Electric Cooperative, Inc., Public Service Company of New Hampshire d/b/a Eversource Energy, Unitil Energy Systems, Inc., Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, and Northern Utilities, Inc., filed an update to the 2018-2020 Plan (2019 Update). The 2019 Update was submitted in accordance with a three-year cyclical Energy Efficiency Resource Standard (EERS) process approved in Order No 25,932 in Docket No. DE 15-137.

In Order No. 26,192 (November 16, 2018), the Commission denied a Motion to Compel Data Responses (First Motion) filed by the Office of the Consumer Advocate (OCA) on the grounds that geo-targeting of energy efficiency (EE) programs is outside the scope of the 2019 Update review. This Order addresses the OCA's Second Motion to Compel Data Responses (Second Motion), involving a data request that seeks utility information also for the purpose of

exploring geo-targeted EE programs. The procedural history of this case prior to the filing of the Second Motion is set forth in Order No. 26,192 and will not be repeated here.

On October 17, 2018, the OCA propounded Data Request OCA 3-7 on each of the regulated electric distribution utilities.¹ OCA 3-7 is set forth below:

Reference EESE Board resolution of July 11, 2017 directing the utilities to “consider adding certain pilot projects to the Plan, e.g., geo-targeting,” and to “review similar programs ongoing in other states to determine how the results of those pilot programs may inform efforts in New Hampshire.” For every circuit and each substation operated by each regulated electric distribution utility, please provide the following:

- a. the nameplate capacity (MW);
- b. the portion of nameplate capacity at which demand is viewed to be high enough to trigger the need for a capacity upgrade (i.e. the number of MW of demand considered to be maximum capacity for planning purposes, including accounting for the need to reserve capacity provide redundancy to other areas and/or for other reasons);
- c. the 2018 (year to date) peak demand (MW), including the day and time of day it occurred;
- d. the actual peak demand (MW) for each of the five previous years (2012 through 2017), including the day and time of day that they occurred;
- e. The actual average annual rate of growth in peak demand from 2012 through 2018;
- f. Forecast peak demands for each of the next 10 years (if not available for 10 years, please provide for as many years as it is available);
- g. The forecast compound average annual rate of growth for the next 10 years (or for as many years as forecast if that is less than 10 years – please specify if less than 10 years);
- h. The estimated year – if any – at which a capacity expansion is forecast to be needed to address peak demand growth; and

¹ The regulated electric utilities are Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities, Public Service Company of New Hampshire d/b/a Eversource Energy, and Unitil Energy Systems, Inc. (collectively, the Joint Utilities).

- i. The estimated cost of the capacity expansion identified in the response to the previous sub-part of this question.

The Joint Utilities objected to OCA 3-7 on October 26, claiming it sought information that is not relevant to this docket and would not lead to admissible evidence, that the request was based on an incorrect assumption, and that compliance with the request would be unduly burdensome and time-consuming in this proceeding. The parties subsequently exchanged emails seeking to resolve the objection but were unsuccessful.

On October 31, 2018, the OCA filed its Second Motion. On November 5, Conservation Law Foundation (CLF) and Acadia Center submitted a Joinder in support of the OCA's Second Motion. Eversource and Liberty each filed an objection to the Second Motion on November 9. Unifil filed an objection on November 13.

II. POSITIONS OF THE PARTIES

A. OCA

In its Second Motion, the OCA states that it issued Data Request OCA 3-7 to explore non-wires alternatives (NWAs) to distribution investments, including geo-targeting of EE measures. With respect to the question of relevance, the OCA incorporates the arguments from its First Motion, primarily that NWAs and geo-targeting of EE could allow utilities to avoid more costly distribution circuit upgrades, which is a “quintessential example of what properly deployed ratepayer-funded [EE] can do,” and therefore should be explored in this proceeding. The OCA disagrees with the Joint Utilities' narrow interpretation of what is eligible for review in connection with the 2019 Update.

Regarding the claimed “incorrect assumption” in the data request, the OCA maintains that this relates to the preamble in OCA 3-7, which references the Energy Efficiency and Sustainable Energy (EESE) Board resolution of July 11, 2017, “directing the utilities to consider

adding certain pilot projects to the Plan *e.g.*, geo-targeting.” The OCA acknowledges that, although the EESE Board has “no authority to compel, direct or require the utilities to do anything,” its resolution nonetheless put the Joint Utilities on notice that stakeholders had advised them to explore geo-targeted EE programs in the 2018-2020 EE Plan, and the utilities ignored that direction.

With respect to the Joint Utilities’ claim that responding to OCA 3-7 would be unduly burdensome and time-consuming, the OCA notes that the Joint Utilities do not deny having the information requested. Rather, the OCA asserts that the Joint Utilities “simply [do] not want to provide” the information requested. The OCA argues that, if the Joint Utilities have resources to engage in detailed objections to OCA 3-7 and other data requests that were the subject of the First Motion, then they have the resources to respond to OCA 3-7.

B. CLF and Acadia Center

In their Joinder to OCA’s Second Motion to Compel, CLF and Acadia Center state that information requested in OCA 3-7 is relevant because targeted EE is “squarely within the scope of concern” and that the EERS settlement agreement in DE 15-137 both contemplates and provides for the consideration of various programmatic matters in annual updates, “particularly in this early launch period of the EERS.” CLF and Acadia Center understand that the information requested exists and should be readily available as a result of prior directives in the Commission’s net metering proceeding, Docket No. DE 16-576.

C. Eversource

Eversource states that the Second Motion only repeats or amplifies the same arguments in OCA’s First Motion. Eversource reiterates the positions taken in its first objection, *i.e.*, the information sought is not relevant to any EE program proposed in the 2019 Update and the EESE

Board gave no directive that such a program be included in the 2019 Update. According to Eversource, the settlements and orders that established the three-year cyclical EE process limited update reviews to program adjustments such as those outlined in its 2019 Update, and excluded new programs such as geo-targeted EE measures. Eversource states that deployment of NWAs, such as geo-targeting of EE measures, should follow distribution planning, not precede it, which is what OCA seeks here. Eversource asserts that the data request is burdensome because it asks for detailed information about every circuit and substation on its system, and it has over 400 feeder circuits, many more downstream circuits, and more than 170 substations. According to Eversource, the creation and collection of the requested information “would require extensive manual effort to produce.”

D. Liberty

Liberty does not object in principle to providing the requested data, but, like Eversource, Liberty argues that OCA 3-7 seeks information that is outside the scope of this proceeding and therefore is not relevant. Liberty asserts that the scope of this docket was delineated in the September 20, 2018, Supplemental Order of Notice, which states that the 2019 Update raises issues concerning whether the proposed programs described therein are reasonable, cost-effective, and in the public interest. According to Liberty, the 2019 Update does not include a geo-targeted EE program, and therefore any inquiry into such a program is beyond the scope of this proceeding and therefore irrelevant. Liberty argues that the OCA acknowledges that OCA 3-7 seeks information about a “yet-to-be-proposed program,” which the OCA’s own witness suggests would take two or three years to fully explore. Finally, Liberty states that its engineering department would need several weeks to compile the requested information, which is well beyond the normal 10-day discovery response time in Commission proceedings.

E. Unitil

Unitil states that the information sought does not relate to any program included in the 2019 Update and therefore is not relevant to this proceeding. Unitil recaps the settlements and orders that established the EERS triennial process, and argues that a plan update docket is not an appropriate forum for exploring a new program, as the OCA seeks to do with the information requested in OCA 3-7. Unitil maintains that allowing such an inquiry would erase the current distinction between three-year plans and annual updates and effectively create a series of one-year plans, a result not contemplated by the EERS settlement. According to Unitil, allowing one party to a settlement to reopen the terms of that settlement and demand inclusion of terms and obligations that could have been raised in the underlying settled matter would undermine the Commission's well-established policy favoring settlements. Unitil asserts that geo-targeting of EE measures to avoid distribution circuit upgrades is fundamentally a distribution planning issue, which it anticipates will be addressed in the Commission's grid modernization docket, IR 15-296. Unitil confirms it would have no objection to providing the requested information in a relevant docket.

F. Expanded Docket

In a Statement of Legal Position submitted on November 1, the OCA suggested that the issue of geo-targeting of EE measures could be explored in this docket if the schedule were supplemented with a secondary track. A secondary track would allow for at least two rounds of discovery beginning in January 2019, at least three technical conferences involving stakeholder collaboration to agree upon which projects provide the best candidates to implement on a pilot basis, and a Commission hearing on any proposed pilot program by May 1, 2019.

Eversource stated that it is not opposed to exploring opportunities where geo-targeted EE could potentially be part of a solution to distribution system needs. Eversource believes that distribution system needs first must be identified before geo-targeting of EE measures is proposed to address those needs. Eversource therefore does not support a secondary track in this proceeding to undertake such an inquiry. Liberty stated that acceptance of the secondary track proposal “would resolve Liberty’s objection.” Until did not address the OCA’s secondary track proposal.

III. COMMISSION ANALYSIS

As set forth in Order No. 26,192, the Commission favors a “liberal” approach to discovery, but irrelevant, immaterial, or unduly repetitious evidence may be excluded. *See* Order No. 26,192 at 4. Parties are required to show that “the information being sought in discovery is relevant to the proceeding or is reasonably calculated to lead to the discovery of admissible evidence.” *Id.* Discovery that seeks “irrelevant or immaterial information is not something we should require a party to undertake.” *Id.* As in the earlier Order, the essential question before us is whether a review of geo-targeted EE programs is within the scope of the 2019 Update, and therefore relevant, or outside the scope of the 2019 Update, and therefore not relevant.

The 2019 Update was filed in accordance with the regulatory framework that the Commission established for EERS, consisting of three-year-long EE plans with two annual update filings. That framework is a product of a settlement among the parties to the EERS settlement in DE 15-137, which provides that:

During the first triennium, and for each 3-year period of the EERS thereafter, annual update filings shall be submitted for review by the Commission in an abbreviated process substantially similar to the mid-period submissions presently used in the Core dockets. Such annual update filings shall serve as an opportunity to adjust programs and targets and address any other issues that may arise from advancements, including but not limited to, evaluation results, state energy code

changes, and/or federal standard improvements.

EERS Settlement at 8. In approving that settlement, the Commission stated:

An abbreviated annual plan update process during the trienniums, like the process we currently use for the Core dockets, is appropriate and will enable the stakeholders some flexibility to respond to developments in the energy efficiency market during that time.

Order No. 25,932 at 62.

The EERS framework envisions that every three years, a full EE plan will undergo scrutiny by stakeholders and the Commission. In contrast, the process established for the two annual updates was presented and approved as “abbreviated.” The EERS framework does not envision significant changes in EE program design or implementation during our review of the annual plan updates.

In Order No. 26,192, we found that the issue of geo-targeting of EE programs falls outside the scope of this annual update review proceeding. Geo-targeting of EE measures was not included in the 2018-2020 Plan, and would require more resources to analyze than the abbreviated process would allow. For the same reasons, we find that the information sought by OCA 3-7, which is requested by the OCA for the purpose of exploring the potential for geo-targeting of EE measures, is not relevant and is not likely to lead to the discovery of relevant evidence for the 2019 Update. Accordingly, we deny the OCA’s Second Motion. Because we find that the information requested falls outside the scope of this docket, we do not review whether the data request is burdensome.

With regard to the proposed secondary track for reviewing a geo-targeted EE pilot program in this proceeding, in Order No. 26,192 we found that the issue of geo-targeting of EE programs falls outside the scope of this annual update review proceeding. We noted that the process established for the two annual updates is abbreviated and the EERS framework does not

envision significant changes in the annual plan updates. Establishing a secondary track in this docket to review a geo-targeted EE pilot program would be contrary to those findings and we therefore decline to do so here.

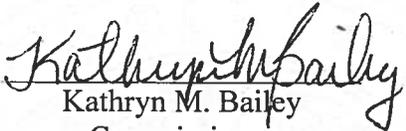
Based upon the foregoing, it is hereby

ORDERED, that the OCA's Second Motion to Compel Data Responses is DENIED.

By order of the Public Utilities Commission of New Hampshire this thirtieth day of November, 2018.



Martin P. Honigberg
Chairman

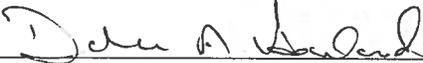


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director