THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

ELECTRIC AND GAS UTILITIES

2018-2020 New Hampshire Statewide Energy Efficiency Plan

Docket No. DE 17-136

OBJECTION TO MOTION TO COMPEL DATA RESPONSES

NOW COMES Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource" or the "Company") and, pursuant to Puc 203.07 and Puc 203.09, hereby objects to the Motion to Compel Data Responses (the "Motion") filed on October 17, 2018 by the Office of Consumer Advocate ("OCA"). The OCA's motion ignores the OCA's own prior agreements and is otherwise incorrect on both the facts and law. Moreover, it is based upon unfounded, and unsupported, assumptions and contentions. The Motion should be denied. In support of this submission, Eversource says the following:

1. The instant matter relates to New Hampshire's electric and gas utilities' delivery of energy efficiency programs under the NHSaves programs for the Energy Efficiency Resource Standard ("EERS") adopted by the Commission. The EERS was adopted through a settlement agreement among numerous parties, including the OCA, and approved by the Commission in Order No. 25,932 (August 2, 2016) in Docket No. DE 15-137. Pursuant to the requirements of that settlement agreement, the utilities submitted a three-year plan covering calendar years 2018 through 2020, which was approved by the Commission in Order No. 26,095 (January 2, 2018) in Docket No. DE 17-136. That three-year plan was to be updated for each of the years 2019 and 2020. On September 14, 2018, the utilities filed the plan update for calendar year 2019.

2. The settlement agreement establishing the EERS specified the scope of review for the update filings for 2019 and 2020 as well as the agreed upon process. Specifically, the settlement agreement provides:

> 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.

April 27, 2016 Settlement Agreement in Docket No. DE 15-137 at 8. That process and scope was repeated by the Commission in Order No. 25,932 where it stated:

> The Settlement Agreement requires the filing of annual updates during the three-year EERS plan periods, for Commission review and approval. The review process would be akin to the process currently used to review mid-period submissions in the Core dockets. Such annual update filings will serve as an opportunity to adjust programs and targets and address any other issues that may arise from changes or advancements, including evaluation results, state energy code changes, and federal standard improvements.

Order No. 25,932 at 42. Accordingly, the process and scope of the update filings, such as the filing in issue here, has been set out and agreed to and governs the update filings.

3. On October 5, 2018, the OCA commenced its discovery on the 2019 update filing by submitting nearly 30 questions to the utilities, including a number of questions directed specifically to Eversource.[1] On October 15, 2018, Eversource timely objected, or partially objected, to three of the OCA's questions. All three questions relate to the marginal cost of service study Eversource filed in Docket No. DE 16-576 pursuant to Order No. 26,029 (June 23,

[1] Eversource notes that as of the date of this submission the utilities have received more than 130 questions relating to the update filing, ***not*** including the various sub-parts or sub-questions. This number is notable for two reasons: first, despite this being only an update of a previously approved plan, the number of questions far exceeds that issued relating to the initial plan approval; and, second, it is multiples greater than the number issued in the abbreviated Core docket submissions that were to serve as models for this review.

2017), relating to net metering. Rather than have the Commission rely upon descriptions of the questions and objections, copies of the questions and Eversource's objections are included as Attachment A to this submission. Primarily, Eversource's objections were based upon relevance, but raised other concerns. On October 18, 2018, the OCA and Eversource exchanged emails relating to these objections. Copies of the email exchange are included in Attachment B to this submission. Apparently unable to resolve the matter, the OCA filed the Motion. Despite its length and tone, the Motion does nothing to demonstrate why the information sought is relevant to this docket, or why Eversource's objections were not appropriate. Accordingly, the Motion should be denied.

4. "In a discovery dispute, the Commission applies by analogy the standard applicable to litigation in Superior Court, which requires a party seeking to compel discovery to show that the information begin sought is relevant to the proceeding or is reasonably calculated to lead to the discovery of admissible evidence." *Public Service Company of New Hampshire*, Order No. 25,334 (March 12, 2012) at 9. "In general, discovery that seeks irrelevant or immaterial information is not something we should require a party to provide." *Public Service Company of New Hampshire*, Order No. 24,895 (September 17, 2008) at 4 (quotation and brackets omitted).

5. Before addressing the specific questions and objections in issue, a few general concerns are worthy of describing. First, and as noted above, the scope of and process for this plan update filing was agreed to in a settlement signed by the OCA. That settlement notes that these updates are to be used to adjust programs and targets, or address issues that arise from advancements such as evaluation results, state energy code changes, and/or federal standard improvements.[2] The updates are not intended for the purposes of introducing new programs or

[2] Eversource notes that settlement agreement uses the term "including, but not limited to" when describing the types of "advancements" that might serve as a basis for raising other issues in these

making wholesale revisions to the existing programs.[3] Despite this scope as set out in a settlement to which the OCA is a signatory, the OCA's questions are not designed to elicit information about the 2019 plan filing or the programs covered by it. Rather, they concern another document, and are clearly for the purposes of adding new programs or otherwise influencing Eversource's distribution planning processes. The OCA initially attempts to distance itself from arguments that it is attempting to add new programs or influence Eversource's distribution planning processes, *see* Motion at footnote 1. However, in an effort to establish a nexus with this filing, the OCA argues that the information sought is relevant to considerations about "capital-asset alternative[s] for nonwires projects" and that it is looking to identify pilot candidates for deployment of geo-targeted energy efficiency. Motion at 5-6, 8. Irrespective of their merits, the creation of pilot programs for capital-asset alternatives or geo-targeted energy efficiency are not adjustments to any programs or targets in the plan and do not come from advancements such as evaluation results, state energy code changes, or federal standard improvements. The OCA's questions and propositions are outside the scope of this docket. The OCA is attempting to inject a new and substantially different program and planning issue into this case despite its agreement to the contrary.[4]

---

update filings. In the context of statutory interpretation, the New Hampshire Supreme Court has repeatedly stated that "The use of the phrase 'including, but not limited to' in the statute limits the application of the statute to the types of items therein particularized." *In re LaRocque*, 164 N.H. 148, 152 (2012). It would be strained, at best, to contend that a marginal cost of service study submitted in a separate, unrelated docket by only one utility is of the same type as "advancements" such as evaluations of existing energy efficiency programs, changes in state energy codes, and improvements in federal standards relating to energy efficiency.

[3] While the various parties to the settlement agreement could otherwise agree to amend the purposes of the update filings to allow for things like the introduction of new programs, no such separate agreement exists here.

[4] Eversource notes that this at least the second time in recent months the OCA has attempted to undermine a settlement to which it is a party when that settlement proves inconvenient. In July, the OCA contended that its proposition relative to the handling of certain tax benefits should be followed despite the language in a settlement it signed based upon its contention that although a settlement is generally contractual in nature, such a conclusion does not obtain in proceedings before

6. Secondly, as a general matter, the Commission has stated its position that it will:

> compel answers to data requests directed toward the party if the requests are related to the testimony of its sponsored witness. PSNH also directed questions at parties that are *un*related to the testimony sponsored by those parties. We will generally not compel answers to those requests because they do not seek evidence relevant to that party's witness and they could not provide impeachment evidence. Although it is possible that a party has information relevant to this docket but unrelated to the testimony of that party's witness, we must draw some boundaries around discovery in this case.

Public Service Company of New Hampshire, Order No. 25,646 (April 8, 2014) at 5 (italics in original, underline added). In this case, the OCA's questions are directed not to any witness or any document filed in in this case, but to a separate document not referenced or relied upon anywhere in the 2019 update filing. As in the case cited above, the OCA is not seeking information relevant to any party witness nor information that would provide any impeachment evidence. Being aware of the existence of a document does not make it relevant to this proceeding, and the Commission should not accept the OCA's baseless claims of relevance to support its requests.

7. Turning to the specific questions in issue, OCA's question 2-12 requests the full, working model underlying the cost of service study. As already described, the cost of service study is not relevant to the review of the 2019 plan and, therefore, any supporting information is not relevant. In the Motion, however, the OCA sets out a lengthy series of only somewhat related contentions, few of which have anything at all to do with this docket, to justify its request. For example, the OCA attempts to demonstrate the relevance of obtaining this model through arguments that a non-wires alternative pilot should be injected in this docket based upon a few chosen words of a data request response which the Commission has not seen. Moreover,

---

the Commission, and any settlement agreement may be avoided so long as some measure of process is followed. *See* July 25, 2018 Transcript in Docket No. DE 18-049 at 99-100.

the OCA does so even though the Commission has already opted not to pursue a review of such issues and in so doing set out the venues it believed would be most appropriate for that review, which do not include energy efficiency program filings. *See* Order No. 26,124 (April 30, 2018) at 15 ("Therefore, we defer consideration of unrestricted NWA implementation, whether on a pilot or full-scale basis, to another context, such as grid modernization or utility integrated resource planning."). Further, the OCA contends that studies on non-wires pilots (which, again, do not belong here) support those pilots. The unfounded presumption of the OCA is that the existence of these studies makes this entirely new issue relevant here in some way. The OCA also attempts conjure relevance based upon its contention that the word "targeted" as contained in RSA 374-F:4, VIII(e) should, or must, be read as referencing "geo-targeted" and that this reading somehow compels the insertion of a new program into the 2019 plan update. The law does not say that, and the OCA wishing that it would does not make it so. *See Eaton v. Eaton*, 165 N.H. 742, 745 (2012) (The Court "will not consider what the legislature might have said or add language that the legislature did not see fit to include."). None of the OCA's examples do anything to show why the cost of service study, or underlying model, are relevant here.[5]

8. Perhaps the most troubling argument raised by the OCA to support its request for the working model is also the most self-serving. The OCA argues that "the Commission and the parties to this proceeding have been on notice that non-wires alternatives are an issue of import for the statewide programs because the issue has come up several times during the discussions

[5] With respect to Eversource's objection relating to the burden of providing the information, given the abbreviated nature of this proceeding, the production of such a model, even if it could be claimed to be relevant or necessary (which it cannot), would require the production of a significant number of proprietary spreadsheets and model analyses, many of which would not be self-explanatory and could require extensive additional follow on questions or consultations. The burden of undertaking such a process for disclosing a confidential model in this docket is undue, unreasonable, and unwarranted.

regarding, and development of, the statewide programs." Motion at 11. In support, the OCA points to two items. First, a presentation given in 2015 (prior to the adoption of the EERS to which the OCA agreed, and prior the approval of the present three-year plan) by a current member of the OCA's staff; and second, a "resolution" of the Energy Efficiency and Sustainable Energy ("EESE") Board.[6] Neither of these items supports any claim that Eversource's marginal cost of service study holds any meaning here. The presentation from 2015 was one of many relating to an EERS generally.[7] The OCA's contention is that three lines on one slide of this document produced in 2015, which was among numerous documents submitted for review, created sufficient notice that Eversource (and other parties) should have expected to include geo-targeted pilots in this 2019 plan update. Carrying this strained premise further, the OCA then contends that this "notice" makes questions about a cost of service study that was not made any part of this plan filing, relevant. With respect to the "resolution" of the EESE Board, the document referenced is a list of recommendations made on July 11, 2017 by the EERS Committee of the EESE Board which, according to the EESE Board's July 21, 2017 minutes, was adopted by the Board.[8] According to its minutes, the EESE Board was then to take those recommendations and submit a letter to the Commission and the utilities. July 21, 2017 Minutes of the EESE Board at 2.[9] But the EESE Board sent no letter, and thus no additional detail on the EESE Board's position was provided. Even putting aside the lack of additional communication,

---

[6] The OCA also points to its own prior testimony as meaningful, though it, too, references the pilot programs the Commission is not pursuing. The OCA's reference to its own prior testimony on a program not being pursued can hardly be said to be supportive of any claims makes here.

[7] This presentation was among many included in the ***non-docketed*** information relating to the potential adoption an EERS, which can be found here: http://www.puc.state.nh.us/Electric/DE15-137-non-docketed.html.

[8] The Consumer Advocate served as the Chair of EERS Committee at that time.

[9] The July 21, 2017 EESE Board Minutes are available here: http://www.puc.state.nh.us/EESE%20Board/Meetings/2017/072117Mtg/EESE%20Board%20Minutes%20-July%2021%202017%20FINAL.pdf.

however, the recommendation adopted by the EESE Board merely requests "that the Board ***ask*** the utilities ***to consider*** adding certain pilot projects to the Plan, e.g., geo-targeting, strategic energy management, and connected devices & fixtures." Recommendation at 5 (emphases added).[10] Thus, the EESE Board did not "resolve" or "direct" that anything specific happen with respect to the programs the OCA attempts to raise here. Prior to the approval of the existing three-year plan, the EESE Board adopted a recommendation requesting it to ask the utilities to consider certain pilot projects, of which geo-targeting was but an example. From this paltry support, the OCA makes the astounding claim that Eversource's marginal cost of service study (a document not used or relied upon in the plan) is necessary and relevant to the 2019 plan update. Such a contention is far from credible and should not be relied upon to compel production of Eversource's cost of service information in this docket.

9. With respect to the next question, OCA 2-13, the OCA requests the draft of Eversource's marginal cost of service study, any and all communications relating to it, and all invoices relating to it. For all of the above reasons, the study itself is not relevant to this docket, and, therefore, this other information is not relevant. In addition, however, there are more reasons to deny the OCA's Motion for a response to this question. With respect to draft documents, the Commission has on prior occasions rejected attempts to obtain draft documents. In those analyses, the Commission has acknowledged that its review of filed documents generally relates to the final, filed documents, and not drafts. *See, e.g., Public Service Company of New Hampshire*, Order No. 25,174 (November 24, 2010) at 18. Should Eversource ever seek to rely upon this study for any purpose that comes before the Commission, it would rely upon the

[10] Of note, the OCA in both its initial request as well as its motion provides only a Google Drive link to the recommendation itself with no reference to any location where that document may be found publicly.

final, filed version of the study and not upon some draft version of it. Moreover, in this case the OCA's justification for obtaining the draft version is not that the draft itself is relevant for review of any issue in the docket. Instead, the OCA desires to use the draft in an attempt to divine from the ether what Eversource's motives may have been with respect to any changes between the draft and final versions. What the OCA does not do, however, is show why any motivation, assuming it could be mustered up from the OCA's proposed analysis, would inform any part of any review of the items before the Commission in this docket.[11] The draft is not relevant.

10. As to the request for all communications, that request is, on its face, overly broad. While the OCA contends that the request should be limited only to those pertaining to the study, even making that presumption the question is too broad. There is simply no basis to believe that a review of any and every communication relating to the cost of service study would be needed for any legitimate purpose, particularly in this proceeding where the cost of service study is not in issue. Lastly, the invoices and payments relating to the cost of service study are not remotely relevant in this docket. As Eversource noted in its underlying communication to the OCA, Eversource is not seeking cost recovery of anything relating to the study in this docket, so there is no purpose to be served by seeking any invoice or payment information. The OCA's naked speculation in its footnote 11 that the invoices may "likely inform" recommendations the OCA or its consultants "might make" in relation to an item the OCA hopes is relevant, cannot plausibly be accepted as a basis to justify the inclusion of the information here.

[11] As one further note, should Eversource, or any other party, ever ask the OCA for any of its draft materials, whether created by a consultant or otherwise, the OCA has no reciprocal obligation to turn over draft documents. RSA 91-A:5, IX, which applies to the OCA, exempts from public disclosure "Preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of the members of a public body." Thus, if granted, the OCA's motion would not only force disclosure of irrelevant information, it would establish a one-way street for the discovery of draft materials.

11. With respect to question 2-14, the OCA requested extensive data relating to Eversource's capital budgets and distribution planning. The very existence of this request further undermines any claim by the OCA that it is not looking to inject itself into Eversource's distribution planning through the back door of the 2019 plan update review. In making its argument that this information is somehow relevant, the OCA extracts its own hoped-for definition for the word "abbreviated" in an attempt to recast this proceeding as something it is not. The OCA further argues that the underlying settlement agreement to which it is a signatory does not abrogate the law or Commission rules. Of course the settlement does not abrogate the law. But it does bind the OCA as a party to a contract. *See Moore v. Grau*, __ N.H. __, decided August 8, 2018, slip op. at 4 (settlement agreements are contractual in nature and governed by contract law). The scope of this docket is clear, and the OCA should not be permitted to expand it based upon its wish that things were different. The OCA also contends that it is entitled to this data so that it may "urge" the Commission to do certain things. However, in so doing, the OCA evidently believes that it can urge the Commission do things regardless of its prior agreement or a prior Commission order, and that in order to urge the Commission it requires information unrelated to the submission under consideration. Such contentions should be rejected.

12. As to Eversource's objection relating to speculation, the OCA's question asks for, among other things, specific budget and project information going out for five years. As Eversource has described for the OCA, and others, previously, Eversource does not produce budget and project information akin to what the OCA seeks. As described in Eversource's last Least Cost Integrated Resource Plan filing in Docket No. DE 15-248, load forecasts are used to help identify areas where potential capital projects may be needed in the future and once those potential capital projects are identified, all "proposed projects to address load growth and

reliability are presented to local management for review and comment. Once management is convinced of the appropriate solution and scope, the projects are included for consideration in the final budget." Eversource's 2015 Least Cost Integrated Resource Plan, filed June 19, 2015 in Docket No. DE 15-248 at 33. Thereafter, the list of proposed general load growth and reliability projects are combined with basic business requirements, proposed aging and obsolete equipment projects, and new business requirements to produce a complete list of projects proposed for the capital budget. *Id.* Eversource management then prepares a capital budget proposal from this list of projects that meets the energy needs of customers at the lowest reasonable cost and that proposal is presented to the executive management of Eversource Energy (Eversource's parent company) in November of each year. *Id.* Once each operating company has presented its proposed capital budget, the official budget level is confirmed by year end and a final list of capital projects that best meets the needs of customers at the lowest reasonable cost is selected using updated information from projects underway, the approved budget level, and the proposed project list. *Id.* Thus, although as part of conducting the cost of service study Eversource reflected a plan of potential capital additions based on certain assumptions of capital spending, that plan does not translate into particular projects being built at a particular cost in some future year. Rather, consistent with the process described above, proposed capital projects of all types are approved, along with their budgets, on an annual basis as part of a regular budgeting process. Further, not only does the OCA ask for information Eversource does not have or create as part of its regular business, it desires that Eversource provide that information in the same format as some other company provided some other information for some other purpose. Eversource has no obligation to create speculative, new studies for the OCA, and no obligation to do so in the

format the OCA desires. The information sought by the OCA does not belong here and the Commission should not compel its production.

13. As a final item, Eversource challenges much of the unnecessary debasement the OCA attempts to inject into its conclusion regarding Eversource's commitment to energy efficiency in New Hampshire. The ACEEE study the OCA referenced at length during the pre-hearing conference shows that Eversource's affiliates in other states deliver the top performing energy efficiency programs in the country, which they have done for years pursuant to those states' EERS programs. New Hampshire was the last state in New England to adopt an EERS. Thus, though New Hampshire may lag others in the region, that gap will be closed. Further, as shown in the 2019 plan proposal, Eversource has (along with the other New Hampshire utilities) projected that it can achieve the agreed upon goals of the EERS in 2019 at a lower cost to customers than previously anticipated. Eversource clearly and obviously considers energy efficiency as one of its core responsibilities generally and in New Hampshire specifically. Eversource rejects entirely the OCA's unwarranted, unfounded, and unhelpful insinuation that Eversource does not respect the need to conduct these programs well, and the OCA's thinly veiled suggestion that electric utilities should be removed from their current role of cost-effectively delivering energy efficiency programs and services to New Hampshire customers. Such contentions do not advance the goals of the EERS and do nothing to ensure an effective collaborative effort to achieve the best results for New Hampshire's utility customers. The OCA's motion should be denied.

WHEREFORE, Eversource respectfully requests that the Commission:

A. Deny the OCA's Motion to Compel; and

B. Grant such further relief as is reasonable and appropriate.

Respectfully submitted this 26th day of October, 2018.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY

By: _____

Matthew J. Fossum
Senior Counsel
Eversource Energy Service Company o/b/o
Public Service Company of New Hampshire d/b/a
Eversource Energy
780 N. Commercial Street
Manchester, NH 03101
603-634-2961
Matthew.Fossum@eversource.com

CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

October 26, 2018
Date

_____
Matthew J. Fossum