

**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 Motion to Compel Data Responses

ORDER NO. 26,192

November 16, 2018

In this order, the Commission denies the Motion to Compel Data Responses filed by the Office of the Consumer Advocate on October 17, 2018.

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. (collectively, the Utilities) filed an update to the 2018-2020 Plan (2019 Update).

By Secretarial Letter issued October 16, 2018, the Commission approved a procedural schedule for the review of the 2019 Update. The procedural schedule allowed other parties to serve data requests on the Utilities regarding the 2019 Update. The Office of the Consumer Advocate (OCA) issued data timely requests to Eversource. Three of those data requests, OCA 2-12, OCA 2-13, and OCA 2-14, sought information about a marginal cost of service (MCOS) study that Eversource had filed on July 16, 2018, in DE 16-576, which pertains to net

metering. Eversource objected to the three requests and, on October 17, 2018, the OCA filed a Motion to Compel (Motion). Eversource filed a timely Objection.

II. POSITIONS OF THE PARTIES AND STAFF

A. OCA

In its Motion, the OCA asserts that the information sought in the three data requests will allow it to explore the question of targeting energy efficiency (EE) programs geographically, which the OCA believes will allow utilities to avoid costly distribution circuit upgrades. The OCA asserts that geo-targeting of EE programs is required by the electric restructuring statute and thus is relevant in this 2019 Update proceeding. The OCA submits that geo-targeting of EE programs was not ripe for review when the Commission reviewed the 2018-2019 Three-Year Plan, because the MCOS study had not yet been prepared and, therefore, the Commission had not yet ruled whether geo-targeted EE would be considered in the net metering docket, DE 16-576.¹

According to the OCA, a 2009 amendment to RSA 374-F:4, VIII(e) shows that the legislature implicitly determined that the proper context for piloting geo-targeted EE is the existing EE regulatory framework. The 2009 amendment allows the cost of “targeted, energy efficiency ... programs and incentives that are part of a strategy to minimize distribution costs” to be recovered through either the distribution charge or the system benefits charge, whereas prior law allowed such costs to be recovered only through the distribution charge. The OCA also states that the Commission and parties were put on notice that non-wires alternatives are an important EE-related issue.

¹ In *Development of New Alternative Net Metering Tariffs and/or Other Regulatory Mechanisms and Tariffs for Customer-Generators*, Order No. 26,124 at 15 (April 30, 2018), the Commission deferred the consideration of unrestricted non-wires alternative implementation (which would include geo-targeted EE) to contexts other than its investigation of net metering, such as grid modernization or utility integrated resource planning.

The OCA argues further that the MCOS study is not proprietary, noting that appropriate safeguards exist to protect any confidentiality; that Eversource's claim that the information requested is too burdensome to produce is not supported; and that none of the information requested is protected by the attorney-client privilege or the work product doctrine.

B. Eversource

In its Objection, Eversource argues that the information sought by the OCA is not relevant to this proceeding. Eversource notes that the 2018-2020 Plan was approved and implemented pursuant to a settlement agreement in DE 17-136 which the OCA signed. Eversource argues that the Energy Efficiency Resource Standard (EERS) settlement agreement in DE 15-137, which the OCA also signed, limits annual plan updates to programs included in the underlying three-year plan; and that geo-targeted EE is a new program, not an update. Geo-targeting EE was not included in the portfolio of programs proposed and approved in the 2018-2020 Plan. Eversource points out that the EERS settlement in DE 15-137, requires updates to be reviewed in an abbreviated process.

Eversource further asserts that the OCA's questions are not directed to any testimony or to any document filed in this docket. Eversource challenges the OCA's assertion that parties were put on notice that geo-targeted EE was an issue to be considered in this docket. Eversource states that OCA seeks information that Eversource does not have and would not create as part of its regular business. Last, Eversource objects that the OCA would have it provide the information in the same format used by another utility (Southern California Edison).

C. Staff

Staff took no position on the Motion or Objection.

III. COMMISSION ANALYSIS

When considering discovery disputes, we are guided by RSA 541-A:33, II, which sets out the standard for admission of evidence in administrative proceedings. Any oral or documentary evidence may be received, but the presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. Agencies shall give effect to the rules of privilege recognized by law. *See also* RSA 365:9 (Commission not bound to the technical rules of evidence). N.H. Code of Admin. Rule. Puc 203.23 incorporates these statutory standards.

In the context of civil litigation, New Hampshire law favors liberal discovery, and consistent with New Hampshire Superior Court Civil Rule 21(b) regarding the scope of discovery, we require parties 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. *See City of Nashua*, Order No. 24,681 at 2 (October 23, 2006) (citing *Investigation into Whether Certain Calls are Local*, Order No. 23,658 (March 22, 2001)). In general, discovery that seeks irrelevant or immaterial information is not something we should require a party to undertake.” *Public Service Co. of N.H.*, Order No. 25,001 at 5 (August 6, 2009) (citing *City of Nashua*, Order No. 24,681 (October 23, 2006)). The essential question before us is whether a review of geo-targeted EE is within the scope of the filed update and therefore relevant, or outside the scope of the filed update and therefore irrelevant.

The Utilities filed their 2019 Update in accordance with the regulatory framework that the Commission established in *Energy Efficiency Resource Standard*, Order No. 25,923 (August 2, 2016). The EERS framework consists of a cycle of three-year-long EE plans with two annual update filings. This framework is a product of a settlement among the parties to a

settlement agreement in Docket No. DE 15-137 (EERS Settlement),² which the Commission approved in Order No. 25,923. The EERS Settlement 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 this framework, 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. For the 2018-2020 Plan (*i.e.* the first triennium), the framework required an elaborate pre-filing collaborative process, facilitated by an independent planning expert. EERS Settlement at 7-8. After many meetings with stakeholders, the utilities provided a draft 2018-2020 Plan in May, 2017. Then the stakeholders participated in a series of weekly meetings in July and August 2017, culminating in the Utilities 2018-2020 Plan filing on September 1, 2017. DE 17-136 EERS Settlement (proposing the 2018-2020 Plan) at 2.³ Even with the substantial pre-filing process, the settlement approving the 2018-2020 Plan established four working groups to continue work on issues surrounding the approved programs,

² http://puc.nh.gov/Regulatory/Docketbk/2015/15-137/TRANSCRIPTS-OFFICIAL%20EXHIBITS-CLERKS%20REPORT/15-137_2016-05-02_EXH_1.PDF.

³ http://puc.nh.gov/Regulatory/Docketbk/2017/17-136/LETTERS-MEMOS-TARIFFS/17-136_2017-12-08_LIBERTY_SETTLEMENT_AGREEMENT.PDF.

which were not resolved in the full process. *Id.* at 10. Considerable stakeholder (including Commission) resources were dedicated to the development of the 2018-2020 Plan.

In contrast, the process established in the EERS Settlement for the two annual updates was presented and approved as “abbreviated.” The EERS Settlement listed evaluation results, state energy coded changes and/or federal standard improvements as some items which the parties agreed would be appropriate for review in a plan update process. Accordingly, the EERS framework envisions that plan updates might include, for example, latest results from Evaluation, Measurement & Verification (EM&V) studies, or program shifts to reflect technological changes such as LED lighting supplanting compact fluorescent lighting products. Projected savings targets might be updated as new avoided cost studies were completed. The EERS Settlement did not call for, and the EERS framework does not envision, significant changes in EE program design or implementation during our review of annual plan updates.

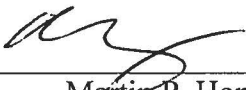
We find that the issue of geo-targeting of EE programs falls outside the scope of this update. Geo-targeting of EE programs was not included in the 2018-2020 Plan, and would require more resources to analyze than the “abbreviated process” contemplated by the EERS framework would allow in the review of an intermediate annual update. The Commission is concerned that considering major program changes each year would be inconsistent with the need to provide Utilities with planning-related certainty and would likely require annual review and adjustment of performance incentive metrics. In addition, EE program continuity is important to help avoid utility customer confusion and/or frustration from EE program being available one year and then not available the next. Order No. 25,932 at 56. Thus, we find that the information sought by the OCA is not relevant and that the OCA’s date requests will not likely lead to the admission of relevant evidence. Accordingly, we deny the OCA’s Motion to

Compel. Because we rule that the information sought falls outside the scope of this docket, we do not review whether the data requests are burdensome and or if the data requests seek information that is proprietary, privileged, or otherwise protected.

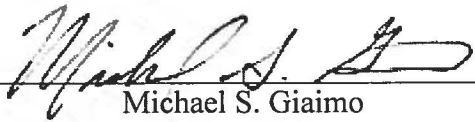
Based upon the foregoing, it is hereby

ORDERED, that OCA's Motion to Compel Data Responses is denied.

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

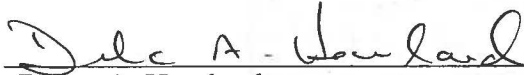


Martin P. Honigberg
Chairman



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director