

**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 SECOND MOTION TO COMPEL DATA RESPONSES

Pursuant to N.H. Admin. Rules Puc 203.07, and Puc 203.09, Unitil Energy Systems, Inc. (“Unitil” or the “Company”) respectfully objects to the Second Motion to Compel Data Requests submitted by the Office of the Consumer Advocate (“OCA”) on October 31, 2018. The information that the OCA seeks to compel is not relevant to, and well outside the scope of, the current “update” phase of the above-captioned docket. In support of this Objection, Unitil states as follows:

I. The Limited Scope of the First “Update” Phase of This Docket

1. To properly understand the scope of this “update” phase of Docket DE 17-136, the Commission must first reference the framework put into place by the Commission more than two years ago in Docket DE 15-137. The parties to that docket, including the OCA, the Commission Staff, Unitil, and the other New Hampshire electric and gas utilities¹ (the “Utilities”), joined in a comprehensive settlement agreement establishing an Energy Efficiency Resource Standard (“EERS”) to facilitate the implementation of energy efficiency programs in New Hampshire. DE 15-137, Energy Efficiency Resource Standard, Settlement Agreement at 1-3, 7-9 (April 26, 2016); see generally DE 15-137, Energy Efficiency Resource Standard, Order (August 2, 2016).

¹ Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities, Public Service Company of New Hampshire d/b/a Eversource Energy, New Hampshire Electric Cooperative, Inc., and Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, and Northern Utilities, Inc.

The EERS Settlement Agreement required that the State’s electric and gas utilities, including Unitil, file by September 1, 2017 a “comprehensive plan for the implementation of an EERS on January 1, 2018.” DE 15-137 Settlement Agreement at 7.

2. The EERS Settlement Agreement further established a framework in which the EERS is implemented on a triennial basis. Thus, in developing the first “comprehensive plan” for implementation on January 1, 2018, the Utilities incorporated certain statewide savings goals for the first 3-year EERS period, with future goals to be “determined in the planning process related to the second and any subsequent 3-year periods.” DE 15-137 Settlement Agreement at 7, 8.

3. Notwithstanding the settling parties’ agreement that the Utilities’ would file comprehensive EERS plans on a triennial basis, the EERS Settlement Agreement also provides for annual “update” filings, to be considered by the Commission in an “abbreviated” process. DE 15-137 Settlement Agreement at 8; see also DE 15-137 Order at 42. “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.” DE 15-137 Settlement Agreement at 8; see also DE 15-137 Order at 42.

4. This Commission approved the EERS Settlement Agreement, finding that its terms were consistent with applicable law, and specifically agreed with and approved the use of three-year planning periods:

Three years is long enough to afford more stability and continuity in program delivery, which will help customers and other stakeholders plan their efficiency investments, but not so long as to limit the Commission’s flexibility to adjust savings targets in response to changes in market conditions or other developments during that time.

DE 15-137 Order at 49-50, 56.

5. The Utilities filed a 2018 – 2020 Energy Efficiency Plan (the “Three-Year Plan”) for Commission approval on September 1, 2017 in accordance with the provisions of the EERS Settlement Agreement. DE 17-136, 2018-2020 New Hampshire Statewide Energy Efficiency Plan, Order Approving Settlement Agreement at 2 (Jan. 2, 2018). The Three-Year Plan was developed in consultation and collaboration with a variety of stakeholders, including the Energy Efficiency and Sustainable Energy Board (the “EESE Board”). Id.

6. On December 8, 2017, all of the parties to the above-captioned Docket filed a comprehensive Settlement Agreement calling for approval of the Three-Year Plan with some modifications, “and otherwise addressing all issues in [the] case.” DE 17-136, Order Approving Settlement Agreement at 14. All parties to this Docket, including the OCA, signed the Three-Year Plan Settlement Agreement. Id. As the Commission noted in its analysis, “[t]he parties acknowledge[d] that the Three-Year Plan includes a comprehensive, cost-effective portfolio of [energy efficiency] programs.” Id.² Though the OCA submitted pre-filed testimony in connection with the Three-Year Plan, the testimony did not substantively advocate for or otherwise discuss the inclusion of “geo-targeted” energy efficiency as a component of the Three-Year Plan.

7. The Utilities filed the first Update (the “2019 Update”) to the Three-Year Plan on September 14, 2018. Consistent with the EERS Settlement Agreement and the Three-Year Plan Settlement Agreement, as well as the Commission Orders approving those Settlement Agreements, the 2019 Update “provides information regarding changes or adjustments from the information provided for 2019 in the 2018 – 2020 Plan.” DE 17-136, 2019 Update at 5 (Sept. 14, 2018).

² The Settlement Agreement also “allow[ed] for further study of several important complex, issues,” with “annual update filings provid[ing] for Commission review of any plan changes resulting from those further inquiries.” DE 17-136, Order Approving Settlement Agreement at 18. Issues for “further study” included performance incentives, financing and funding mechanisms, New Hampshire’s benefit / cost test, and lost base revenues. DE 17-136, Settlement Agreement at 10-11 (December 8, 2017). They did not include new or additional pilot programs or, specifically, “geo-targeted” energy efficiency measures.

8. On September 20, 2018, the Commission issued a Supplemental Order of Notice for 2019 Plan Update. DE 17-136, 2018-2020 New Hampshire Statewide Energy Efficiency Plan, Supplemental Order of Notice for 2019 Plan Update (Sept. 20, 2018). The Commission framed the scope of the 2019 Update review phase as follows:

The filing raises, *inter alia*, issues related to RSA 374-F:3, X and whether the proposed programs in the 2019 Plan Update are reasonable, cost effective, and in the public interest; whether the proposed programs will properly utilize funds from the Energy Efficiency Fund as required by RSA 125-O:23; and whether, pursuant to RSA 374:2, the Electric Utilities' and Gas Utilities' proposed calculations of performance incentives and lost base revenues are just and reasonable and comply with Commission orders.

DE 17-136, Supplemental Order of Notice for 2019 Plan Update at 3. Put succinctly, the Commission has narrowly defined the scope of this docket to a review of the proposed programs in the 2019 Update, which represent a continuation of the programs unanimously agreed upon by the settling parties and approved by the Commission in the Three-Year Plan. This narrowly defined scope is consistent with the underlying intent of the Three-Year Plan framework established by the Commission, which is to promote “stability and continuity in program delivery,” and in turn “will help customers and other stakeholders plan their efficiency investments.” DE 15-137 Order at 56.

II. 2019 Update Discovery and Data Request OCA 3-7

9. The Commission Staff and intervenors to this update phase of DE 17-136 propounded approximately 145 data requests upon the Utilities in multiple sets over several weeks of rolling discovery. The OCA alone propounded 32 data requests, many with multiple subparts. Until objected to only one of the OCA's data requests, OCA 3-7, which included nine sub-parts:

Reference EESE [Energy Efficiency and Sustainable Energy] 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
- i. The estimated cost of the capacity expansion identified in the response to the previous sub-part of this question.

OCA 3-7 (emphasis added).

10. Unitil joined in an objection to OCA 3-7 with Eversource and Liberty Utilities on the grounds that the information sought by the OCA is not relevant to the instant update phase of this Docket or reasonably calculated to lead to the discovery of admissible evidence.³

³ Unitil notes that, while the requested information is indeed voluminous and technical in nature, the Company believes that it can respond to data request OCA 3-7 without incurring “undue burden,” to the extent that it maintains the requested information in the form requested by the OCA, and thus does not join in that component of the Utilities’ objection.

III. Standard of Review

11. To prevail on its motion to compel, the OCA must demonstrate that Data Request OCA 3-7 seeks facts that are admissible in this proceeding or are reasonably calculated to lead to discovery of admissible evidence. DT 16-872, Consolidated Communications Holdings, Inc., Order Granting Motion to Compel at 12 (March 7, 2017). “Discovery is not the time to argue policy or advocate for the final result but merely to seek and respond to factual matters that may lead to admissible evidence.” Id. In ruling on a motion to compel, the Commission “enjoy[s] broad discretion in the management of discovery,” and will deny a motion to compel if it “perceive[s] of no circumstance in which the requested data would be relevant.” Id.

IV. OCA 3-7 Seeks Information That is Not Relevant to the Review of the 2019 Update and is Not Reasonably Calculated to Lead to the Discovery of Admissible Evidence

12. The OCA has acknowledged that “[t]he question of geo-targeting ratepayer-funded energy efficiency projects, so that they are deployed specifically to allow . . . electric utilities to avoid distribution circuit upgrades” is an issue that it intends to pursue in the course of this abbreviated update phase of DE 17-136, and that OCA 3-7 was propounded in furtherance of that objective. DE 17-136, OCA Motion to Compel at 4 (Oct. 17, 2018). Specifically, the OCA has indicated that it intends to propose or advance the piloting of non-wires alternatives (“NWAs”) in this Docket, id. at 8, an intent that is borne out by the prefiled testimony submitted by the OCA on November 2, 2018.

13. Until’s timely objection to data request OCA 3-7 is appropriate and made in good faith. In developing the EERS standard, the parties to the EERS Settlement Agreement – including the OCA – agreed on a triennial framework in which successive three-year energy efficiency plans would be developed over the course of an extended stakeholder process and presented to the

Commission for approval. See DE 17-136, Order Approving Settlement Agreement at 16 (“Like the settlement approved in the 2016 EERS Order, this Settlement Agreement provides for an independent planning expert to assist, beginning in late 2019, with the development of the next three-year plan [covering program years 2021-2023]. The next plan will be developed through an enhanced stakeholder process, as was the case for the Three-Year Plan presented in this case.”). In the intervening years, the Utilities must file annual updates for the purposes of “adjust[ing] programs and targets and address[ing] any other issues that may arise from advancements, including but not limited to, evaluation results, state energy code changes, and / or federal standard improvements.” DE 15-137 Settlement Agreement at 8; see also DE 15-137 Order at 42. Such updates are to be reviewed in an “abbreviated” process that is clearly not designed or intended for the purpose of incorporating the evaluation of entirely new pilot programs not considered and agreed to collectively by stakeholders in advance of filing,⁴ particularly those that are as technical and complex as “geo-targeted” energy efficiency to avoid distribution circuit upgrades.

14. Unitil recognizes that the Commission favors liberal discovery. Indeed, Unitil and the other Utilities worked diligently and in good faith, over a very compressed period of time, to produce thorough responses to the data requests issued by the intervenors and Staff in connection with the 2019 Update. However, data request OCA 3-7 extends too far beyond the scope of this phase of the Docket, which is intended as a review of the proposed programs in the 2019 Update. The requested information, which seeks extensive and granular engineering data, is not pertinent to any of the 2019 Update programs or the foundational Three-Year Plan programs, and the OCA

⁴ As Eversource explains at length in its Objection filed on November 9, 2018, the “material changes” identified at Bates pages 50 – 51 and cited by the OCA at pages 7 – 8 of its Second Motion to Compel are merely adjustments to existing programs. DE 17-136, Eversource Objection to Second Motion to Compel at 5-6 (Nov. 9, 2018). The OCA does not propose a “material change” to an existing program but, rather, an entirely new pilot program or programs.

does not contend that it is relevant to the review of those programs. Under the OCA's broad reading of the underlying EERS and Three-Year Plan Settlement Agreements, the Commission Orders approving those Settlement Agreements, and the Supplemental Order of Notice in this Docket, any party can use the "abbreviated" annual update process to seek a re-opening and restructuring of the existing three-year plan.

15. As noted above, the triennial plan framework is designed to promote "stability and continuity in program delivery," and "help customers and other stakeholders plan their efficiency investments." DE 15-137 Order at 56. The OCA's interpretation of the foundational agreements and Orders in this case would erase the distinction between the three-year EERS plans, which are the product of an enhanced stakeholder process and establish the next three years of energy efficiency programs to be administered in the State, and the annual filings, which are intended to allow review of necessary updates of the existing plan and programs. The three-year plans would effectively be converted to one-year plans, as parties could utilize the annual update filings to propose favored, and entirely new, initiatives. Such a process would abandon the principles of stability and continuity, and undermine the confidence of customers, stakeholders, and utilities planning energy efficiency investments.

16. This is particularly true in the case of the current Three-Year Plan, which is the result of a lengthy stakeholder process, and which was established by a comprehensive settlement agreement endorsed by all parties to docket DE 17-136 at the time of its submission to and approval by the Commission. As the OCA points out in its Second Motion to Compel, the EERE Board' EERS Committee passed a resolution recommending that the Board "ask utilities to consider adding certain pilot programs to the [2018-2020 Three Year] Plan," including geo-targeting, on July 11, 2017, more than a month and a half prior to the submission of the Three-

Year Plan.⁵ Nevertheless, to the extent that the OCA believed that geo-targeted energy efficiency to avoid distribution circuit upgrades should have been included in the first Three-Year Plan, it had ample opportunity to advocate for its consideration and inclusion following submission of that Plan in September 2017. Though the OCA submitted pre-filed testimony in connection with the Three-Year Plan, it did not substantively discuss the issue of “geo-targeted” energy efficiency.

17. The OCA subsequently joined the Staff, the Utilities, and all other parties in the Settlement Agreement that established the goals and programs for the first EERS triennium. The Settlement Agreement, and the Three-Year Plan that emerged from it, set the expectations of the parties and the Commission for the next three years. If, after signing a settlement agreement, any party can seek to reopen the agreement at any time to demand the inclusion of terms and obligations that could have been raised in the underlying settled matter, and that the other settling parties may not have otherwise agreed to, then the Commission’s well-established policy in favor of settlement is undermined. See DE 17-136, Order Approving Settlement Agreement at 16 (“We encourage parties to settle issues through negotiation and compromise because it is an opportunity for creative problem solving, allows the parties to reach a result in line with their expectations, and is often a better alternative to litigation.”).

IV. Unitil Made Its Objection in Good Faith

18. In concluding its Second Motion to Compel, the OCA states that it “regrets that ugly turn this proceeding has taken . . . , as reflected by utility efforts to resist [the OCA’s] legitimate discovery requests.” Second Motion to Compel at 13. Unitil notes that it has objected to only one of the OCA’s discovery requests, on legitimate grounds, and has done so respectfully. Objecting

⁵ The OCA concedes that the EESE Board did not formally transmit the EERS Committee’s recommendations. OCA Motion to Compel at 11.

to a single data request on relevancy grounds is hardly uncommon in the course of discovery, or outside the bounds of good faith. For making this objection, Unitil has been unfairly characterized as: “afraid” of NWAs; “resolutely determined to thwart the OCA’s efforts”; “obdura[te]”, “deliberately attempting to obscure” points made by the OCA; and trying to “get away” with something. Unmentioned in the OCA’s Second Motion to Compel is the fact that Unitil responded in good faith, on its own or jointly with other utilities, to at least six data requests explicitly related to “geo-targeted” energy efficiency,⁶ notwithstanding any reservations that the Company may have had about the relevancy of the subject matter. Unitil has acted in good faith, and the OCA’s implications as to the Company’s motives are unfounded and without basis in the record.

19. Unitil is not “afraid” of NWAs or, specifically, “geo-targeted” energy efficiency measures. In fact, Unitil joined in the Utilities’ response to OCA 2-11, which explains that “[g]eo targeted energy efficiency is typically considered as part of the distribution planning process on a case-by-case basis.” OCA 2-11 (a complete copy of which is attached hereto as Attachment 1). Unitil would have no objection to providing the information requested in OCA 3-7 in a proceeding in which it is relevant. However, in this docket, it is beyond the scope of the update proceeding as established by the settling parties in DE 15-137 and DE 17-136, and in the Commission’s Supplemental Order of Notice.

20. Geo-targeted energy efficiency to avoid distribution circuit upgrades is, fundamentally, a distribution planning issue, and there are proceedings other than the EERS annual update phase that are better suited to examining the more technical aspects of NWA policy. Specifically, the Company anticipates that NWAs will be addressed in ongoing proceedings related to grid modernization in New Hampshire. See generally Docket IR 15-296, Investigation Into Grid

⁶ OCA 2-11; 2-15; 2-16; 3-4; 3-5; 3-6.

Modernization.⁷ However, the information sought by the OCA in data request OCA 3-7 is not relevant to matters within the scope of this docket, and Unitol respectfully requests that the Commission deny the OCA's Motion to Compel.

Respectfully submitted,

Unitil Energy Systems, Inc.

By Its Attorney,



Patrick H. Taylor
Senior Counsel
Unitil Service Corp.
6 Liberty Lane
Hampton, NH 03842-1720
Telephone: (603) 773-6544
Email: taylorp@unitil.com

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⁷ In comments submitted to the Commission regarding the Grid Modernization Working Group Final Report, Unitol explained: "Non-wires alternatives might be available that may provide additional benefits as compared to what has been considered as traditional 'wire' investments. The challenge is valuing the non-wires alternatives with concrete benefits and savings that can be quantified. The consideration by the Company in distribution planning and grid modernization planning will require a comparison of capacity, availability, reliability, functionality, resiliency and life expectancy to other alternatives." IR 15-296, Comments of Unitol Energy Systems, Inc. at 2 (May 19, 2017).