

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 24-070

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

Request for Change in Distribution Rates

Order Denying Motion to Compel

ORDER NO. 28,106

February 21, 2025

This order denies a motion to compel filed by the intervenor Community Power Coalition of New Hampshire (CPCNH).

I. BACKGROUND AND POSITIONS

Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) is seeking Commission approval of its requested changes in its distribution rates pursuant to RSA Chapters 374 and 378, filed on June 11, 2024, and noticed by the Commission in Order No. 27,029 (June 28, 2024). On September 5, 2024, the Commission issued Order No. 27,054, granting intervention status to, among others, CPCNH, pursuant to the discretionary intervention standard of RSA 541-A:32, II.

Pursuant to the approved procedural schedule in this proceeding, CPCNH, among other parties, propounded discovery on Eversource. On January 21, 2025, CPCNH filed a motion to compel Eversource's responses to certain CPCNH data requests, which, CPCNH alleged, were not responded to adequately, or at all, by Eversource. (At the time that the motion was made, the governing Commission rule was N.H. Code Admin. R. Puc 203.09(i); as of January 23, 2025, this provision has

been renumbered to N.H. Code Admin. R. Puc 204.03(h), with no substantive change made to the rule).

On January 23, 2025, Eversource filed a timely objection to CPCNH's motion to compel. On January 24, 2025, the Commission issued a procedural order requesting that the other parties to this proceeding file position statements regarding the CPCNH motion and/or Eversource objection by January 28, 2025. No such position statements were filed by any party. On February 10, 2025, the Commission, following a series of procedural motions and counter-motions filed by parties to this proceeding regarding other matters, scheduled a hearing on the CPCNH motion to compel and the Eversource objection for February 18, 2025, which was held as scheduled, and at which representatives of CPCNH and Eversource appeared and offered oral arguments in support of their pleadings.

The motion to compel, Eversource's objection, and related docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at

<https://www.puc.nh.gov/Regulatory/Docketbk/2024/24-070.html>.

In its January 21 motion to compel, CPCNH requested that the Commission compel Eversource's responses to the following data requests: CPCNH 1-7(g); CPCNH 1-7(h) through (l); CPCNH 1-9(b), (d), and (e), initially propounded on Eversource on November 15, 2024; and, CPCNH's following data requests that were reiterations of these November 15 requests, presented as December 17, 2024 follow-up written requests after a technical session was held among the parties on December 15, 2024: CPCNH TECH 1-5; CPCNH TECH 1-8(b) and (c); CPCNH TECH 1-8(f); CPCNH TECH 1-8(g); and CPCNH TECH 1-10.

CPCNH stated that Eversource timely objected to these Data Requests (for the reasons elaborated in Eversource's January 23 objection, as discussed below).

CPCNH, in this motion to compel, presented the following argument in favor of the sought-for material being deemed relevant, and therefore admissible, in this proceeding (*see* CPCNH January 21, 2025 Motion to Compel at 6-7):

“The objected-to information that CPCNH has requested is directly relevant to this docket...In this docket, Eversource requests cost recovery for distribution assets that determine whether and to what extent Community Power Aggregations and Competitive Electric Power Suppliers are fairly allocated Distributed Energy Resource (‘DER’) costs and benefits associated with wholesale supply impacts and, thus, whether non-utility entities can compete to provide DER services including time-varying rates to customers...Eversource requests this cost recovery for additional distribution asset investments to enable it to offer greater DER services to customers and to—ostensibly—better integrate DERs generally into its planning and operations, along with proposed business model reforms including performance incentives related to supporting DER integration...Eversource bases the cost recovery request on load estimates, and it is the utility’s continuing obligation to ensure load estimation and settlement result in fair and accurate allocations to suppliers of the wholesale cost incurred on behalf of the specific customers served by those suppliers...The utility’s obligation includes accurately tracking and allocating DER impacts on hourly energy and daily capacity settlements on a customer- and load asset-specific basis...If the utility were to fail to do so, it would undermine load settlement generally, and increasingly to an extent that would erode the basis for retail market competition and would drive up supplier costs...So, in plain terms, it is fair game to ask for information to help determine if Eversource is meeting this obligation, which is directly relevant to the issues in this docket, including whether their recent load settlement investment was prudently made...Without all the information requested in the objected-to requests in DR Set 1 and TS Set 1, CPCNH is unable to fully review whether Eversource’s rate case filing is just and reasonable and in the public interest pursuant to the standards of RSA 378:27 and RSA 378:28... Pursuant to Puc 203.09(i)(4),

CPCNH certifies that it has made a good faith effort to resolve these discovery issues informally with Eversource on multiple occasions including via telephone and email.” *Id.*

In its January 23 objection to the CPCNH motion to compel, Eversource argued that the material sought in the CPCNH Data Requests at issue in the motion to compel was not potentially admissible in this proceeding, insofar as it related to matters outside of the scope of this proceeding. Eversource stated in its objection that its Connecticut wholesale operations (*i.e.*, interconnection agreements), including the deployment of the ‘Picolo’ market platform- which Eversource stated that it did not propose to implement- and other aspects of its wholesale load-settlement processes had no connection to Eversource’s distribution rates in New Hampshire, and were therefore irrelevant to this proceeding, which was noticed by the Commission to be related to Eversource’s distribution rates. Eversource emphasized that the areas for which CPCNH sought answers were, in the first instance, governed by Federal law through the Federal Energy Regulatory Commission (FERC), and ISO-New England, FERC’s regional market instrumentality. Eversource also made arguments against the CPCNH motion to compel related to the potential for disruption to the proceeding, lack of timeliness, and the potential need for rebuttal testimony development on the part of Eversource. *See Eversource Objection to CPCNH Motion to Compel, January 23, 2025, passim.*

At the February 18, 2025 hearing on this matter, no party other than CPCNH and Eversource took positions regarding this discovery dispute.

II. COMMISSION ANALYSIS

Discovery is “an important procedure ‘for probing in advance of trial the adversary’s claims and [its] possession or knowledge of information pertaining to the

controversy between the parties.” *Johnston v. Lynch*, 133 NH 79, 94 (1990), quoting *Scotsas v. Citizens Insurance Co.*, 109 NH 386, 388 (1969) (internal citations omitted); see also *Yancey v. Yancey*, 119 NH 197, 198 (1979). In ruling on a motion to compel, the Commission “enjoy[s] broad discretion in the management of discovery.” *Valley Green Natural Gas*, Order No. 25,867 at 5, citing *Public Service Co. of N.H.*, Order No. 24,342 at 23 (June 29, 2004) (quoting *YYY Corp. v. Gazda*, 145 NH 53, 59 (2000)). See also RSA 365:9 (Commission not bound by the technical rules of evidence).

To prevail on its motion, CPCNH must demonstrate that it seeks information or facts that are admissible or reasonably calculated to lead to the discovery of admissible evidence. *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 26,307 at 4 (November 6, 2019), citing *Valley Green Natural Gas, LLC*, Order No. 25,867 at 4 (February 17, 2016), and *Public Service Co. of N.H.*, Order No. 25,646 at 3-4 (April 8, 2014) (internal citations omitted). “Discovery is not the time to argue policy or advocate for the final result, but to merely seek and respond to factual matters that may lead to admissible evidence.” *Id.*, citing *City of Nashua*, Order No. 24,485 at 4 (July 8, 2005). Under the Commission’s rules, N.H. Code Admin. R. Puc 204.14, the Commission “shall exclude irrelevant, immaterial, or unduly repetitious evidence, by their own determination or by objection made by a party.” N.H. Code Admin. R. Puc 204.14(d), (*emphasis added*). This standard is grounded in RSA 541-A:33, II, of the New Hampshire Administrative Procedure Act, which states that “...the presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence.” In general, discovery that seeks irrelevant or immaterial information is not something that the Commission should require a party to undertake. *Public Service Co. of N.H.*, Order No. 25,001 at 5 (August 6, 2009), quoting *City of Nashua*, Order No.

24,681 at 2 (October 23, 2006). The essential question before us is whether the CPCNH Data Requests at issue are within the scope of this rate case proceeding and therefore relevant, or outside the scope of this rate case proceeding and therefore irrelevant, and inadmissible. *See Electric and Gas Utilities*, Order No. 26,192 at 4 (November 16, 2018).

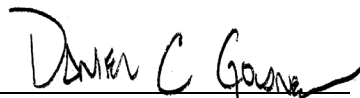
Having reviewed the CPCNH Data Requests in question, the CPCNH motion to compel, and Eversource's objection, we concur with Eversource that the material sought by CPCNH in the Data Requests at issue are beyond the scope of this distribution rate proceeding for Eversource, and therefore irrelevant and inadmissible. Load settlement procedures for Eversource's wholesale energy supply operations, its operations in Connecticut related to interconnection agreements and the deployment of the 'Picolo' market platform are all beyond the scope of this New Hampshire distribution rate case. Therefore, we hold that the CPCNH Data Requests at issue in the motion to compel are not reasonably calculated to lead to the discovery of admissible evidence, insofar as the information sought by these Data Requests are not relevant to the scope of this proceeding. Eversource's further arguments regarding the potential disruption of this proceeding from a Commission grant of the motion to compel are thereby rendered moot. Furthermore, we remind CPCNH to limit its participation in this proceeding going forward to matters that are of foursquare relevance to PSNH's distribution rates and underlying investments. RSA 541-A:32, III. Therefore, the CPCNH motion to compel is DENIED.

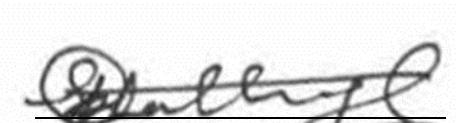
Based upon the foregoing, it is hereby

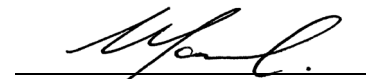
ORDERED, that CPCNH's motion to compel and order Eversource to respond to Data Requests CPCNH 1-7(g); CPCNH 1-7(h) through (l); CPCNH 1-9(b), (d), and (e);

CPCNH TECH 1-5; CPCNH TECH 1-8(b) and (c); CPCNH TECH 1-8(f); CPCNH TECH 1-8(g); and CPCNH TECH 1-10 is DENIED.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of February, 2025.


Daniel C. Goldner
Chairman


Pradip K. Chattopadhyay
Commissioner


Mark W. Dell'Orfano
Commissioner

Service List - Docket Related

Docket#: 24-070

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