

**STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION**

Electric and Gas Utilities

2018-2020 Statewide Energy Efficiency Plan

Docket No. DE 17-136

**Motion to Compel Data Responses**

NOW COMES the Office of the Consumer Advocate (“OCA”), a party in this docket, and moves pursuant to N.H Code Admin. Rules Puc 203.09(i) and Puc 203.07 to compel Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”) to provide complete responses to certain data requests previously interposed by the OCA. In support of this Motion the OCA states as follows:

**I. Introduction**

This contested administrative proceeding concerns a three-year plan, previously approved in this docket via Order No. 26,095 (January 2, 2018), by which the state’s electric and natural gas utilities must comply with their obligations as joint administrators of ratepayer-funded energy efficiency programs to achieve the objectives of the Energy Efficiency Resource Standard (“EERS”) adopted by the Commission in 2017. *See* Order No. 25,932 (August 2, 2016) in Docket No. DE 15-137 at 50 (finding that “cost-effective energy efficiency is a lower-cost resource than other energy supply”). On September 14, 2018, the subject utilities jointly filed a

proposed 2019 update to the previously approved three-year plan. The Commission issued a supplemental order of notice on September 20, 2018, thereafter conducting a prehearing conference on October 5, 2018 with the customary technical session following. At the technical session, the parties and Commission Staff agreed on a proposed procedural schedule that calls, among other things, for the immediate commencement of discovery subject to a 14-day response period. The OCA therefore issued a set of data requests to the utilities on October 5 with the expectation of receiving responses on or before October 19, 2018.

On October 15, 2018, PSNH circulated objections to three of the OCA's data requests that were specifically tendered to the Company. As required by Rule Puc 203.09(i)(4), the OCA immediately contacted PSNH in an effort to resolve the discovery dispute informally. Through counsel, the OCA communicated in writing with PSNH; as discussed more fully below, these discussions did not resolve the dispute. Therefore, as required by Puc 203.09(i)(4), the OCA hereby certifies that it has made a good faith effort to resolve this discovery dispute, regrettably without success.

## **II. The Applicable Standard**

Applying the analogous rule from the Superior Court, along with the "liberal discovery" principles applicable to civil proceedings in New Hampshire, the Commission has previously declared that a party seeking to compel discovery in a PUC proceeding must show simply that "that the information being sought . . . is relevant to the proceeding or is reasonably calculated to lead to the discovery of

admissible evidence.” *Consolidated Communications Holdings, Inc.*, Order No. 25,997 (March 7, 2017) in Docket No. DT 16-872 at 12 (citations omitted). The Commission will deny a motion to compel the production of data only if it “perceive[s] of no circumstances in which the requested data would be relevant.” *Id.* (citations omitted).

### **III. Data Request OCA 2-12**

OCA Data Request 2-12 referenced the Marginal Cost of Service Study (“MCOSS”) filed with the Commission on July 16, 2018 and requested “all supporting workpapers in live excel format.” PSNH objected to this data request on the ground that seeks “data or information which is not relevant to the issues in this docket concerning the approval of the 2019 plan update.” PSNH also objected on the ground that OCA is seeking “confidential and proprietary information of a third party.” The Company also claimed that responding would be “burdensome in the context of this case.”

In a message received on October 15, 2018, PSNH pointed out that the MCOSS was submitted in another docket (DE 16-576, the Commission’s ongoing net metering proceeding) and argued that the MCOSS was not prepared for the purpose of addressing the issues implicated by the instant proceeding. PSNH further indicated that it will provide “some information behind the filed material in the cost of service study” but will not provide “the entire, proprietary model of our consultant.”

#### **A.**

**A. Geo-targeting is a critical issue in this docket, even in the “update” phase.**

The question of geo-targeting ratepayer-funded energy efficiency projects, so that they are deployed specifically to allow PSNH and the other electric utilities to avoid distribution circuit upgrades that would be more expensive for ratepayers than the energy efficiency measures, is an issue the OCA is entitled to raise in this docket via discovery, testimony and cross-examination at hearing. RSA 374-F:3, X, which is the first statute cited in the Commission’s September 20, 2018 Order of Notice, explicitly requires that “[u]tility sponsored energy efficiency programs should target cost-effective opportunities that may otherwise be lost due to market barriers.” In the case of geo-targeted energy efficiency, the market barrier that prevents the targeting of cost-effective opportunities for energy efficiency to avoid or defer otherwise necessary capital investments is the information asymmetry that flows from the utilities, particularly PSNH, providing the parties to this proceeding with as little information as possible regarding its next five years’ worth of planned capital investments and the supporting information used to determine those investments — precisely what the OCA is seeking with this data request.

Order No. 25,932, approving the settlement agreement that called for the creation of the EERS, adopted the three-year-plan paradigm but also noted that annual “update” proceedings would “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 41. With respect to the issues that are the

subject of this motion, two such changes or advancements warranting adjustment of the programs have occurred since the issuance of Order No. 25,923.

First, the submission of the PSNH MCOSS is precisely the sort of change or advancement contemplated by this language because it provides a potential basis, entirely lacking prior to PSNH's July 16, 2018 submission, for identification of capital projects with sufficient lead time to serve as pilot candidates for deployment of geo-targeted energy efficiency measures as a means of improving, and therefore updating, the EERS implementation plan. For example, in response to a data request last year regarding inclusion of non-wires alternative pilots in the 2018-20 Plan, PSNH stated that geo-targeted energy efficiency may be an appropriate resource for inclusion in non-wire alternative pilots, but that "without locations determined [and] the needs that are required ... it is not possible to provide more detailed recommendations at this time." Joint Utility Response to OCA 1-8, Parts A and B.

The MCOSS and its supporting analysis and workpapers will provide exactly those locations and need descriptions which PSNH admitted would be necessary, especially for the OCA and our consultant, to form more detailed recommendations regarding specific geo-targeting project locations and needs for inclusion in our testimony.<sup>1</sup> Furthermore, the study represents a significant change in circumstances because prior to its development, PSNH had only "predict[ed] the

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<sup>1</sup> Thus PSNH is incorrect in its supposition, expressed in its October 15, 2018 communication to the OCA, that the disputed discovery requests "appear aimed at gathering information related to potentially adding new programs, or seeking to play a role in Eversource's distribution planning processes."

required investments in bulk stations and distribution stations to meet expected peak load with sufficient confidence within a timeframe of two to three years.” MCOSS at 5. The newly filed MCOSS instead projects the Company’s planned capital investments as far out as five years. This is important because generally more than two or three years’ worth of lead time is necessary to identify and deploy geo-targeted energy efficiency as a means of deferring capital investments.<sup>2</sup> For example, below is a table summarizing the geo-targeting, or non-wires alternative (“NWA”), screening criteria in various states as of January 2015; the majority of the criteria require a lead time of three or more years for NWA deployment.<sup>3</sup>

	Must Be Load Related	Minimum Years Before Need	Maximum Load Reduction Required	Minimum T&D Project Cost	Source
<b>Transmission</b>					
Vermont	Yes	1 to 3 4 to 5 6 to 10	15% 20% 25%	\$2.5 Million	Regulatory policy
Maine	Yes			>69 kV or >\$20 Million	Legislative standard
Rhode Island	Yes	3	20%	\$ 1 Million	Regulatory policy
Pacific Northwest (BPA)	Yes	5		\$3 Million	Internal planning criteria
<b>Distribution</b>					
PG&E (California)	Yes	3	2 MW		Internal planning criteria
Rhode Island	Yes	3	20%	\$ 1 Million	Regulatory policy
Vermont	Yes		25%	\$0.3 Million	Regulatory policy

<sup>2</sup> The Commission should take note of the limited range of projects PSNH listed in response to the Commission’s directive to “identify all distribution circuits or substations that are planned for upgrades within the next 5 years.” Order No. 26,029 at 64. Available at: <https://tinyurl.com/EversourceProjects>. Notably, *this list of projects, which was filed in November 2017, contains only two projects with a start date later than 2019.*

<sup>3</sup> Neme, C. and Grevatt, J. Energy Futures Group, on behalf of Northeast Energy Efficiency Partnerships’ Evaluation, Measurement, and Verification Forum. Energy Efficiency as a T&D Resource: Lessons from Recent U.S. Efforts to Use Geographically Targeted Efficiency Programs to Defer T&D Investments. (January 2015) Page 64. Table 5. (Describing various NWA screening criteria as requiring at least three years prior to the in-service date of the identified need as sufficient lead time to ensure project viability.) Available at: [https://neep.org/sites/default/files/products/EMV-Forum-Geo-Targeting\\_Final\\_2015-01-20.pdf](https://neep.org/sites/default/files/products/EMV-Forum-Geo-Targeting_Final_2015-01-20.pdf)

Second, the Commission should bear in mind that the 2018-20 Plan settlement agreement was filed on December 8, 2017. Since that date, the Commission issued guidance on its preferred treatment of NWAs, leading to precisely the type of change or development that warrants readjustment of the ratepayer-funded energy efficiency programs. Three weeks prior to the filing of the 2018-20 settlement, the Commission issued a Secretarial Letter seeking comments on whether technology-agnostic NWAs, including those that employ targeted energy efficiency, should occur under the auspices of the NWA pilots required in the Commission's alternative net metering tariff order. *See* Secretarial Letter of Nov. 17, 2018 in Docket No. DE 16-576 at 1. Thus, at the time the settlement agreement calling for approval of the 2018-2020 EERS implementation plan was being negotiated in late November and early December of last year,, the question of whether the NWA Working Group established in Docket No. DE 16-576 was the appropriate venue for considering energy efficiency-focused NWAs was unresolved. After the Commission's April 30, 2018 decision in Docket No. DE 16-576, we now know the answer to that question is "no," and furthermore understand the Commission's preference for addressing technology-specific NWAs in dockets related to that specific technology. *See* Order No. 26,124 (April 30, 2018) in Docket No. DE 16-576 at 16 (deferring consideration of non-distributed generation (DG) NWAs to another context, but suggesting Docket No. DE 16-576 stakeholders "also consider implementing one or more demonstration projects using DG plus storage to address distribution system capacity upgrade avoidance or deferral").

The evidence from NWA projects in other jurisdictions overwhelmingly suggests that energy efficiency is the most appropriate resource with which to pilot such projects.<sup>4</sup> For the initial piloting of NWAs, we believe ratepayers would benefit most from projects that are primarily focused on energy efficiency, rather than being technology agnostic, because: (1) energy efficiency is the resource most likely to succeed in deferring or avoiding an otherwise necessary capital project, and (2) because New Hampshire already has a framework for administration, marketing, delivery, and evaluation of ratepayer funded energy efficiency programs — a framework we address annually for opportunities for improvement in *this* docket.<sup>5</sup> If energy efficiency will be the primary capital-asset alternative for non-wires projects, as experiences elsewhere indicate it should be, then the most appropriate docket to address such pilots is the instant one.

More importantly, visibility regarding the planned capital projects of the investor owned utilities, and the geographic targeting of energy efficiency investments such visibility will enable, are *highly relevant* to our statewide programs and the instant docket for three reasons.

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<sup>4</sup> St. John, Jeff, GreenTechMedia, “A Snapshot of the US Gigawatt-Scale Non-Wires Alternatives Market” (citing a \$4,995 study published by GTM Research suggesting that “[m]ore specified NWA capacity has been scheduled or deployed through energy efficiency measures than from all other technologies combined,” and that as of August 2017, the overall measure mix for NWA projects that had thus far identified their capacity source was 274 MW of energy efficiency, 56 MW demand response, 8 MW solar photovoltaics, and 5MW energy storage), available at <https://tinyurl.com/GTM-NWA-Article>.

<sup>5</sup> In fact, PSNH notes in its most recent Least Cost Integrated Resource Plan (LCIRP) that the Company’s energy efficiency team, presumably the same employees who plan, administer, market, and evaluate the statewide programs we are reviewing in this docket, meet annually with the System Planning and Field Engineering team to discuss capital projects to geo-target. *See*, PSNH 2015 LCIRP at 12 (June 2015), available at <https://tinyurl.com/Eversource-2015-LCIRP>

First, it has been the policy of this Commission since its 1997 restructuring plan to embrace geo-targeted energy efficiency investments in the form of non-wires alternatives. For example, in 1997, as a result of the belief that “the competitive market will be much more successful in serving the need for energy efficiency than the utility funded program of the past,” the Commission’s restructuring plan directed the utilities to “cap the levels of DSM spending for each utility at their latest approved levels and, as they prepare upcoming energy efficiency filings, to keep in mind [the Commission] expect[s] ratepayer funded energy efficiency programs to be phased out within two years from the implementation of retail choice.”<sup>6</sup> However, the Commission explicitly concluded that restructured electric utilities should embark upon targeted demand-side management programs that would defer or eliminate otherwise necessary distribution system investments, stating:

We do find it appropriate for transmission and distribution companies to integrate specific targeted energy efficiency programs, along with distributed generation, into their transmission and distribution planning. *We believe there are instances when targeted demand side management can reduce capital expenditures by deferring or avoiding costly transmission or distribution investments.*

*Id.* at 112-113 (emphasis added).

Second, the statutory framework within which the New Hampshire’s ratepayer funded energy efficiency programs are rooted – RSA Chapter 374-F -- expressly contemplates geo-targeted investment in energy efficiency, and was even

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<sup>6</sup> New Hampshire Public Utilities Commission. Restructuring New Hampshire’s Electric Utility Industry: Final Plan. (February 1997) Pages 112. Available at: <https://tinyurl.com/NH-PUC-Restructuring-Plan>

revised in 2007 to ensure recovery of such investment can occur through either the system benefit charge (SBC) or distribution rates. Section 4 of the Restructuring Act (RSA 374-F:4) as originally adopted in 1996 provided that “[t]argeted conservation and load management programs and incentives that are part of a strategy to minimize distribution costs shall be included in the distribution charge, and not included in a system benefits charge.” RSA § 374-F:4, VIII (e) (as adopted by 1996 N.H. Laws Ch. 129). In 2009, the general court amended this language to read as it does today:

Targeted conservation, energy efficiency, and load management programs and incentives that are part of a strategy to minimize distribution costs may be included in the distribution charge or the system benefits charge, provided that system benefits charge funds are only used for customer-based energy efficiency measures, and such funding shall not exceed 10 percent of the energy efficiency portion of a utility's annual system benefits charge funds. A proposal for such use of system benefits charge funds shall be presented to the commission for approval. Any such approval shall initially be on a pilot program basis and the results of each pilot program proposal shall be subject to evaluation by the commission.

RSA § 374-F:4, VIII (e) (as adopted by 2009 N.H. Laws Ch. 236:3).

Both versions of the statute stress the value of targeted demand side management programs to minimize distribution costs, with the primary difference between the two being the funding source. In the initial version of the statute, targeted programs were required to be funded via distribution rates. In the more recent version, targeted programs may be funded through distribution rates *or* the system benefits charge, subject to certain limitations.

Allowing the SBC charge to include geo-targeted demand-side investments, rather than relying solely distribution rates to cover these costs, amounts to an implicit determination by the General Court that the proper context for piloting such projects is the regulatory framework, marketing channels, and workforce capacity that New Hampshire has already developed for its SBC-funded energy efficiency programs. Any other method for piloting such programs would be unnecessarily duplicative and not the most cost-effective use of ratepayer funds.

Third, 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 regarding, and development of, the statewide programs. During a July 20, 2015 technical session in Docket No. DE 15-137, Northeast Energy Efficiency Partnerships gave a presentation at the request of Commission Staff on “Guiding Principles and Messaging” for the EERS, which identified targeting of constrained portions of the transmission and distribution grid as an opportunity for the EERS.<sup>7</sup> More recently, after extensive discussions and listening sessions surrounding development of the 2018-20 Plan, the EERS Committee of the Energy Efficiency and Sustainable Energy (EESE) Board adopted a resolution calling on the utilities to add geo-targeting to their EERS pilot projects.<sup>8</sup> The EESE Board approved the resolution

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<sup>7</sup> Treat, N. and Buckley, B. Northeast Energy Efficiency Partnerships. Presentation to the New Hampshire Public Utilities Commission on EERS Guiding Principles and Messaging. Slide 10. Available at: [https://neep.org/sites/default/files/resources/DE%2015-137%20-%20NEEP%20Guiding%20Principles\\_1.pdf](https://neep.org/sites/default/files/resources/DE%2015-137%20-%20NEEP%20Guiding%20Principles_1.pdf).

<sup>8</sup> EESE Board EERS Committee Resolution. July 11, 2017, available at: <https://drive.google.com/file/d/1bxWG1ukQgbJwp2Cls2SgioMilZbnkSYm/view?usp=sharing>

unanimously, with the PUC representative abstaining.<sup>9</sup> Finally, in the OCA's testimony regarding Commission approval of the 2018-20 Plan, witness Jeffrey Loiter included discussion of NWAs relative to the importance of peak demand reduction.<sup>10</sup> In summary, the OCA, the EESE Board, and others have made it clear that such strategies should be incorporated into New Hampshire's energy efficiency programs as a means of maximizing the ratepayer value they are capable of delivering.

Therefore, PSNH's claim that information germane to NWAs in its service territory is outside the scope of this docket in its present posture, and therefore that discovery requests on this subject are objectionable, is entirely self-serving. The Company may wish to avoid this subject, but neither the Commission's previous orders nor any settlement agreement entered into in either DE 15-137 or the instant docket preclude its consideration. The disputed data request seeks information that relevant to the proceeding *and* is reasonably calculated to lead to the discovery of admissible evidence.

With respect to PSNH's claim regarding the proprietary nature of the MCOSS, as PSNH is well aware, the fact that the MCOSS and any supporting documentation contain proprietary materials is not a valid basis for withholding otherwise discoverable information. The Commission's applicable rule governing

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<sup>9</sup> EESE Board Meeting Minutes. July 21, 2017, available at: <https://www.puc.nh.gov/EESE%20Board/Meetings/2017/072117Mtg/EESE%20Board%20Minutes%20-July%2021%202017%20FINAL.pdf>

<sup>10</sup> Loiter, J. Direct Testimony on 2018-20 Energy Efficiency Resource Standard Implementation Proceeding (Docket No. DE 17-136, November 2017) at 12-13, available at: [https://www.puc.nh.gov/Regulatory/Docketbk/2017/17-136/TESTIMONY/17-136\\_2017-11-01\\_OCA\\_DTESTIMONY\\_LOITER.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2017/17-136/TESTIMONY/17-136_2017-11-01_OCA_DTESTIMONY_LOITER.PDF)

discovery provides a workable mechanism for protecting the confidentiality of proprietary information and the OCA is obliged pursuant to RSA 363:28, VI to maintain the confidentiality of materials so designated by the Commission.

OCA is without any basis to respond to the contention that responding to OCA 2-12 would be “burdensome in the context of this case.” The Company has not claimed that it lacks possession of the requested information, that it would have any difficulty retrieving the information from its records and files, or that compiling the information presents any unusual technical challenges in light of the request for “live” spreadsheets or otherwise. The reference to burdensomeness “in the context of this case” amounts simply to a reiteration of the claim that producing discovery related to the MCOSS is beyond the scope of the instant “update” docket. For the reasons already explained, this argument is unpersuasive.

#### **IV. Data Request OCA 2-13**

OCA Data Request 2-13 referenced a June 27, 2018 letter from PSNH to the Commission confirming that the Company had received the MCOSS from its consultants and was subjecting the draft to “final review and refinement.” The OCA accordingly sought the original version of the MCOSS, obviously to limn the extent to which the Company had insisted on revisions. OCA also sought all written communications (with attachments) between the Company and its consultants – a sub-question that can (and should) be reasonably interpreted as related solely to the MCOSS submitted in to the Commission in July. Finally, the

data request sought disclosure of the cost of the MCOSS and any invoices received from the consulting firm in connection with the study.

PSNH objected to this data request on the ground that it is “vague and overly broad.” The Company further claimed that unspecified documents sought via the request “may” be subject to attorney-client privilege or attorney work product privilege. Finally, PSNH argued that the question seeks information that is “not relevant to the issues in this docket concerning the approval of the 2019 plan update.”

The information requested via OCA 2-13 is targeted in classic litigation fashion to ensure the OCA’s testimony is informed by the full range of resources that were available to PSNH’s consultant, and to allow the OCA to test the veracity of the MCOSS. The MCOSS cites a number of supporting analyses which are not included in the study, but which were built on an augmented version of analyses that Eversource had already possessed and provided to their consultant. The OCA’s having access to any non-privileged communications between those two parties, and more specifically, any analyses or data attached thereto, is the best way to ensure that the OCA is developing testimony based on the full picture of the capital planning process provided to the consultant, including load forecasts, planning criteria, engineering considerations, changes to said criteria, etc. Furthermore, the OCA is entitled to determine the extent to which the consultants drafting the study were exercising independent judgment and the extent to which they were compelled by their client to revise their observations or recommendations to suit the business

strategy of their client. Some utilities might be inclined to influence a document like the MCOSS so as to relieve pressure on the Company to defer or avoid capital expenses that can be placed into rate base. The OCA would like to verify that PSNH is not such a company. We are entitled to use the discovery process to do so.<sup>11</sup>

The blanket claims of attorney-client and attorney work product privilege are not a valid basis for withholding any information requested via OCA 2-13. The request does not seek attorney-client communications or any documents prepared by the Company's legal counsel. Absent the creation of a privilege log, detailing the extent to which otherwise responsive documents would implicate attorney-client or attorney work product privilege, the mere invocation of these privileges is not a basis for PSNH to avoid the production of these documents. *See, e.g., Pennichuck Water Works, Inc.*, Order No. 24,681 in Docket No. DW 04-048 (Oct. 23, 2006) at 11 (compelling the production of such logs when a party argued that privileges "may" apply).

With respect to the alleged lack of relevance, for the reasons already explained in connection with OCA 2-12 this argument is unpersuasive. While PSNH would obviously prefer that the OCA not use the 2019 plan update to press

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<sup>11</sup> With respect to the contested invoices, the OCA concedes that the prudence of expenses associated with the MCOSS are not at issue in this docket. However, the invoices would likely inform any recommendations the OCA or its consultants might make in their testimony regarding time horizons for forecasted capital investments, load growth forecast granularity, capacity constraint forecast granularity, and many other aspects of the MCOSS analysis that relate to geo-targeted energy efficiency. There may be a point of diminishing returns with respect to the analysis granularity and load forecasting time horizons included in the utility capital plans considered in the MCOSS, so understanding the costs of completing each step of the analysis would inform the recommendations we make in this docket for PSNH, and the other electric distribution utilities, which may not have performed such analysis yet.

for inclusion of geo-targeting in the EERS-funded programs as a refinement of the current plan and its savings goals, the OCA is not precluded from doing so. Ergo, the OCA is not precluded from conducting discovery on this subject, for the reasons already explained in connection with Data Request OCA 2-12.

#### **V. Data Request OCA 2-14**

OCA data request 2-14 provided an excerpt from the MCOSS in which the authors discussed their evaluation of projected load growth associated with specific substations.<sup>12</sup> The data request therefore sought “all supporting materials relative to the analysis performed to determine the marginal cost of capacity constrained areas,” including (but not limited) questions, issues and elements specifically referenced in the MCOSS, i.e.,

- a. Eversource’s budgeted investments for the upcoming planning period (2019-2023);
- b. Information on regional forecasts of annual peak load growth;
- c. Information on known industrial step load additions at specific bulk stations;

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<sup>12</sup> Specifically, the data request quoted the MCOSS as stating that it “uses available information of regional forecasts of annual peak load growth, along with information on known industrial step load additions at specific bulk stations to estimate the share of the system potentially subject to requiring growth-related expansion over the full five-year period as new load materializes. A review of the station loads and nameplate ratings revealed that some of the high-growth distribution areas will have ample station capacity to serve peak loads during the study period,” and that “[t]he Company anticipates that station capacity expansion will be needed in a number of location in order to meet the minimum planning criteria,” and that “[t]he MCOS builds upon an in-depth review of the Company’s budgeted investments for the upcoming planning period (2019 -2023). Our review identified specific bulk station and distribution substation expansion projects. EI [i.e. the consultants] reviewed the nature of these projects and identified the cost associated with capacity expansion in capital planning. These projects generally involve replacement of existing substation transformers with one (or two) larger transformers. These investments intend to address existing or expected overload conditions, serve new step industrial or commercial load additions, and/or offload nearby substations.”

- d. An estimation of the share of the system potentially subject to requiring growth-related expansion over the full five-year period as new load materializes;
- e. The review of the station loads and nameplate ratings; and
- f. On a project by project basis, the specific bulk station and distribution substation capacity enhancements that will be needed in order to meet the minimum planning criteria, along with a description of that criteria, and the current peak loading as a percentage of that criteria, and projected peak loading between 2019 and 2023, and the cost of the investment.

PSNH was asked to provide its response to subpart (f) in excel format, “building upon the template format utilized in Southern California Edison’s Grid Needs Assessment.” In its written communication to the OCA of October 15, PSNH indicated that it would be providing “some” information – concerning budgeted investments, load forecasts, and distribution information – but would not respond to at all to subpart f.

PSNH’s objection to this data request is grounded chiefly in the argument that the data requests seeks information that is “not relevant to the issues in this docket concerning approval of the 2019 plan update.” The objection quoted a passage from Order No. 25,932 describing the plan update proceedings as an “abbreviated annual plan update process” similar to the one previously used to update multi-year plans in the so-called “Core” energy efficiency programs that preceded the advent of the EERS.

“Abbreviated” in this context refers to the expedited nature of these proceedings, which allowed the utilities to make their update filing in September with respect to program changes for effect less than four months later on January 1.

Order No. 25,932 did not, and indeed could not, abrogate the requirements for handling contested cases under the Administrative Procedure Act and the related procedural rules of the Commission. The OCA is entitled to urge the Commission to refine the existing EERS programs so as to provide for geo-targeting of energy efficiency measures. OCA Data Request 2-14 is an attempt to gather information that will be useful to such geo-targeting. PSNH may wish to avoid such a process, and thus avoid having certain rate-base-enhancing investments in distribution plan give way to energy efficiency initiatives, but that preference should not be conflated with the question of relevance.

PSNH also argued in its objection that responding to subpart f of OCA 2-14 “requires speculation” and amounts to an inappropriate attempt to require the Company to “create a new analysis or report on behalf of another.” This objection is devoid of merit. If PSNH does not know the answer to the question at the level of detail requested, that fact alone will be highly probative and the Company should say so. The Commission should direct PSNH to provide full and complete responses to OCA Data Request 2-14, including all of its subparts.

## **VI. Conclusion**

The Commission should not allow PSNH to limit the extent to which the OCA explores the question of energy efficiency as a non-wires alternative to expensive distribution circuit upgrades and, thus, to hamstring the OCA’s ability to present evidence to the Commission on this question. The OCA sent data requests on this subject to all of the electric utilities; only PSNH has objected in this fashion.

Whether or not Eversource regards energy efficiency as tangential to or possibly even a diversion from the utility's core business activities in New Hampshire, the OCA on behalf of residential ratepayers regards the Energy Efficiency Resource Standard as a key aspect of doing business as an electric utility in New Hampshire – particularly for as long as the electric utilities remain the designated program administrators of ratepayer-funded efficiency programs. PSNH's effort to circumscribe discovery, and by implication its effort to narrow the scope of the current update proceeding by rendering certain potentially inconvenient truths out of bounds, would ultimately have due process implications. It would also do a grave injustice to the key objective of the EERS: all cost-effective energy efficiency.

WHEREFORE, the OCA respectfully request that this honorable Commission:

- A. Grant the within motion to compel data responses and direct Public Service Company of New Hampshire to provide timely and complete responses to OCA Data Requests 2-12, 2-13, and 2-4, and
- B. Grant any other such relief as it deems appropriate.

Sincerely,



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October 17, 2018

Certificate of Service

I hereby certify that a copy of this Motion was provided via electronic mail to the individuals included on the Commission's service list for this docket.



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D. Maurice Kreis