

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Electric and Gas Utilities

2018-2020 Statewide Energy Efficiency Plan

Docket No. DE 17-136

Liberty's Objection to the OCA's Second Motion to Compel Data Responses

Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities ("Liberty" or the "Company"), through counsel, respectfully objects to the OCA's *Second Motion to Compel Data Responses*.

Liberty does not object to producing the requested information in principle, and Liberty welcomes the consideration and evaluation of geo-targeting energy efficiency measures as an NWA, but Liberty does object to the Second Motion to Compel because of the limited scope of this docket and because of the limited time available in which to gather the substantial information that is responsive to OCA 3-7. The Commission's acceptance of the OCA's proposal for a "secondary track" in this docket would resolve Liberty's objection.

In support of this current objection to the Second Motion to Compel, however, Liberty states as follows:

1. The OCA seeks an order compelling Liberty's response to the following data request:

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).

2. Liberty joined the utilities’ objection that the request did not seek information relevant to this docket and that timely production of the requested information would be “unduly burdensome.”
3. The OCA’s second motion to compel challenged those assertions.

OCA 3-7 Does Not Seek Evidence Relevant to this Docket.

4. Relevance is an appropriate objection to data requests. All agree that the moving party, the OCA here, must demonstrate the information sought is relevant to the particular proceeding or is reasonably calculated to lead to the discovery of admissible evidence. Motion at 2-3. OCA 3-7 data request does not seek relevant information for three related reasons.

5. First, the determination of relevance in this docket begins, and should end, with the Commission's September 20, 2018, Supplemental Order of Notice. The paragraph defining the scope of the Commission's review of the 2019 Plan Update reads, in its entirety, as follows:

The filing raises, *inter alia*, issues related to RSA 374-F:3, X and [1] whether the proposed programs in the 2019 Plan Update are reasonable, cost effective, and in the public interest; [2] whether the proposed programs will properly utilize funds from the Energy Efficiency Fund as required by RSA 125-O:23; and [3] 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. Each party has the right to have an attorney represent the party at the party's own expense.

Supplemental Order of Notice for 2019 Plan Update at 3 (numbering and emphasis added).

6. Through the Supplemental Order of Notice, the Commission notified the parties that the scope of its review will be limited to whether the "proposed programs" in the 2019 Plan Update [1] are reasonable and cost effective, [2] are a proper use of the Energy Efficiency Fund, and [3] whether the utilities' calculations of performance incentives and lost base revenues are compliant.

7. Since Liberty did not include a geo-targeted energy efficiency pilot as a “proposed program” in the 2019 Plan Update, Liberty’s response to OCA 3-7 will not yield relevant information.

8. Second, the OCA acknowledged that OCA 3-7 seeks information about a yet-to-be-proposed program. *See* Second Motion to Compel at 7 (“Nothing in [the 2016 Settlement Agreement’s] language, with its explicit authorization for program adjustments, precludes the signatories from asking the Commission to adjust the current menu of ratepayer-funded energy efficiency programs”). The OCA has thus conceded that its data request is not relevant to any of the proposed programs, and that it seeks the information to develop a future program to be implemented at some later time. Information relevant to a future program is not relevant to the Commission’s review of the “proposed programs” in the 2019 Plan Update.

9. Third, OCA witness Chris Neme proposed “that the New Hampshire utilities develop pilot NWA initiatives, employing just efficiency resources.” Testimony of Chris Neme, filed November 2, 2018, at Bates 230. Mr. Neme did not make a particular proposal that the Commission could meaningfully review now, but suggested a process for getting such programs under way:

Q. Could such a pilot be completed in 2019?

A. No. A pilot NWA should have a duration of at least two years and ideally a little longer than that (perhaps three years being ideal). That way, there is enough time to plan, enough time to adjust strategy mid-stream as some program strategies are shown to work better and others worse than expected, and enough time to build momentum in the market.

Id.

10. The OCA echoed this suggestion of an expanded timeline in its November 1, 2018, legal memorandum:

[T]he Commission should ... supplement the current procedural schedule in 17-136 with a secondary track that will employ a collaborative process to identify candidate capital projects to be deferred or avoided through piloting of geo-targeted energy efficiency investments. That procedural schedule should include (a) at least two rounds of discovery, with the first beginning in early January, (b) at least three technical conferences where the parties to work collaboratively to agree upon which projects will provide the best candidates, and (c) a hearing date to consider approval of specific pilots no later than May 1, 2019.

Office of the Consumer Advocate Statement of Legal Position Regarding Geo-Targeted Energy Efficiency Pilots and the 2019 Energy Efficiency Program Plan Update, Recommendation 8, at 18.

11. Liberty does not object to an expansion of this docket to consider geo-targeted energy efficiency (indeed, Liberty made substantial progress on such a pilot in the context of its battery storage docket). Until such an expansion in scope occurs, however, OCA 3-7 does not seek evidence that is relevant to the issues now before the Commission.

Responding to OCA 3-7 would be Unduly Burdensome.

12. A motion to compel may also be denied if production of the requested information is “unduly burdensome.” *See Public Serv. Co. of N.H.*, Order No. 25,595 at 6 (Nov. 15, 2013) (“we also consider whether the response would be unduly burdensome for the respondent to compile”).
13. Compiling the information necessary to respond to OCA 3-7, which seeks detailed technical information about Liberty’s entire distribution system, would take the engineering department several weeks, well beyond the normal discovery response time of 10 days, and

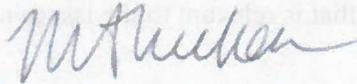
perhaps not in sufficient time for review in this abbreviated docket, even if it was relevant. Therefore, the Second Motion to Compel responses to OCA 3-7 should also be denied because responding would be unduly burdensome.

14. Liberty can compile the information responsive to OCA 3-7 over a longer period of time and welcomes the evaluation of geo-targeting energy efficiency measures over that longer period. However, Liberty suggests that this should occur on the “secondary track” that the OCA proposed to occur between January and May, 2019.

WHEREFORE, Liberty respectfully asks that the Commission:

- A. Deny the OCA’s second motion to compel as to Liberty; and
- B. Grant such other relief as is just and reasonable.

Respectfully submitted,
Liberty Utilities (Granite State Electric) Corp.
By its Attorney,

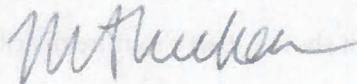


Date: November 9, 2018

By: _____
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Certificate of Service

I hereby certify that on November 9, 2018, a copy of this objection has been electronically forwarded to the service list.



By: _____
Michael J. Sheehan