

STATE OF VERMONT
PUBLIC SERVICE BOARD

EEU-2016-03

2016-2017 Demand Resources Plan Proceeding)

Order entered: 3/30/2017

**ORDER RE: CONSERVATION LAW FOUNDATION MOTION TO ALTER AND
MOTION FOR RELIEF FROM ORDER**

I. INTRODUCTION

On October 27, 2016, the Vermont Public Service Board (“Board”) issued an Order (the “October Order”) regarding resource-acquisition scenario modeling. On November 8, 2016, Conservation Law Foundation (“CLF”) filed a motion to alter or amend the Order, or in the alternative to provide relief from operation of certain aspects of the Order (the “CLF Motion”) with respect to the use of electric energy efficiency charge (“EEC”) funds. In this Order we deny the CLF Motion.

II. BACKGROUND AND PROCEDURAL HISTORY

On June 17, 2016, the Board issued an Order opening this proceeding to develop Demand Resources Plans (“DRPs”) for Vermont’s three energy efficiency utilities (“EEUs”). A DRP is a set of year-by-year resource-acquisition (“RA”) savings goals for demand-side electricity, natural gas, and thermal-energy and process fuels (“TEPF”), as well as RA and development and support services (“DSS”) budgets. This process will result in a set of long-term assumptions pursuant to which each EEU will operate.

Following the submission of proposals, a workshop to discuss proposals, and subsequent written comments, the Board issued the October Order determining, among other things, the savings scenarios to be modeled by the EEUs. These scenarios will be used to inform later decisions in this proceeding and, ultimately, will inform the budgets and savings goals adopted by the Board for each EEU.

On November 8, 2016, the CLF Motion was filed.

On December 2, 2016, the City of Burlington Electric Department (“BED”) filed a response to the CLF Motion.

On December 7, 2016, Vermont Public Power Supply Authority (“VPPSA”), the Vermont Department of Public Service (“Department”), and Vermont Energy Investment Corporation (“VEIC”) filed responses to the CLF Motion.

On December 16, 2016, VEIC filed a reply to responses concerning the CLF Motion.

No other filings addressing the CLF Motion have been received.

III. PARTICIPANTS’ POSITIONS

CLF Motion

CLF requests that the Board amend its October Order, or in the alternative provide relief from operation of the Order regarding stated limits that “the use of EEC funds for investments in such end uses [electrification of transportation and thermal loads] is subject to statutory restrictions...”¹ CLF contends that there is no statute that specifically limits the use of EEC funds for the electrification of transportation or thermal loads, and that the October Order cites no statute that creates such a limit. CLF argues that absent a specific statutory restriction, the electric EEC funds should be available for all end uses that meet the statutory objectives. CLF requests that the Order be amended to remove the above language, and maintains that this proceeding should include consideration of increased electrification of transportation and thermal loads and the greenhouse gas emissions associated with those end uses.

CLF states that 30 V.S.A. § 218c sets forth the broader energy efficiency planning requirements, and maintains that this section contains no language that limits or precludes either thermal or transportation end uses from being part of a comprehensive energy efficiency program. CLF states that 30 V.S.A. § 209(d) sets forth the general scope and jurisdiction regarding energy efficiency, and that Section 209(d)(3)(C) specifically allows the Board to authorize the use of energy efficiency funds for reducing fossil fuel use for space heating by supporting electric technologies. Taken together, CLF argues that Title 30 specifically includes thermal efficiency investments, provides for reducing fossil fuel use through strategic

1. October Order at 13.

electrification of thermal uses, and includes process fuel energy efficiency. CLF maintains that use of fossil fuels for transportation is a process fuel — the “process” being transportation. Alternatively, CLF contends that use of electricity for transportation is an electricity end use that would be included in the broader electric energy efficiency scope. Under either argument, CLF maintains that transportation end uses are included in the overall scope of energy efficiency end uses.

Based on this reasoning, CLF contends that there is no reason, including any “statutory restrictions,” to exclude transportation and thermal efficiency end uses and measures from the modeling scenarios.

BED

BED states that CLF’s Motion seeks to allow the use of EEC funds and TEPF funds for measures that would otherwise be characterized as “Tier III” measures (e.g., electric vehicles, cold climate heat pumps) under Vermont’s Renewable Energy Standard (“RES”). BED contends that the use of EEC or TEPF funds for such Tier III measures is contrary to the intent of the RES, which places the Tier III obligation on Vermont electric distribution utilities (“DUs”), differentiates between DUs and energy efficiency entities, and penalizes the DUs for failing to meet Tier III targets. BED warns that adopting CLF’s recommendation would result in the unnecessary duplication of efforts and would increase the DUs’ risk of failing to meet the aggressive RES Tier III targets. BED further states that the RES statute recognizes that Tier III projects should not encroach on traditional EEC program investments.

With respect to the term “process fuels,” BED maintains that, while not defined in statute, the term has always been construed to mean fuels used for manufacturing processes, not for use of transporting people or goods.

For these reasons, BED supports the Board’s October Order and recommends that the CLF Motion be denied.

VPPSA

VPPSA argues that several provisions in Section 209 indicate that the legislative intent was for electric EEC funds to be used to provide electric efficiency services to ratepayers, and that since their inception, the EEUs have operated under this premise. VPPSA observes that funding for TEPF efficiency services is addressed in Section 209(e), which is distinct from the section authorizing the appointment of EEUs and the use of the EEC. VPPSA contends that Section 209 contemplates different funding streams for electric efficiency services and thermal and transportation efficiency services, and argues that this statutory distinction between funding streams must be maintained.

VPPSA notes that pursuant to Section 209(d)(3)(C), electric EEC funds could be used “to reduce the use of fossil fuels for space heating by supporting electric technologies that may increase electric consumption, such as air source or geothermal heat pumps” if certain specific statutory criteria are met, implying that such use of funds is otherwise not permissible. VPPSA argues that consideration of using EEC funds for electrification of the heating sector should not be considered as part of the DRP proceeding. Further, VPPSA observes that Section 209(d)(3)(C) addresses home heating and does not address transportation measures.

VPPSA notes that through Act 56, the Legislature tasked the electric DUs with reducing their customers’ fossil fuel consumption by delivering energy transformation projects under the RES. If the EEUs were already authorized to offer such programs utilizing electric ratepayer funds, VPPSA argues that Tier III of the RES would be duplicative. VPPSA contends that this indicates the Legislature did not intend EEC funds to be used for space heating and transportation end uses, and that authorizing the EEUs to deliver thermal and transportation services using electric EEC funds would put the DUs in direct competition with the EEUs for energy savings. VPPSA states that competition between the DUs and the EEUs would undercut the effectiveness of each set of utilities and would not be in the best interest of ratepayers.

Department

The Department recommends that the Board deny the CLF Motion. The Department contends that CLF seeks relief from language in the October Order that is not the holding and

does not serve as a primary basis for the Board's decision. The Department states that the Board's Order focused on the modeling of certain savings scenarios, which in turn will provide information to the Board and participants in assessing the eventual budget and savings goals for the EEU's. The Department notes that CLF does not seek reversal of the Board's decision on scenarios, and argues that CLF therefore does not seek an alteration to the Order or relief from the ruling that the Order imposed.

According to the Department, the language that is the subject of the CLF Motion is "dictum" and did not form the basis of the Board's ruling. Further, the Department argues that CLF has not demonstrated why "relief" from the operation of the October Order is necessary. Rather, the Department states that the language is a broad legal statement and has no impact on the operation of the Order. Therefore, the Department recommends that the CLF Motion be denied because CLF is not entitled to the relief it seeks.

Turning to the substance of the language, the Department argues that the Board's statement is correct and is grounds to deny the CLF Motion. The Department contends that statutory restrictions in fact do limit the use of electric EEC funds, as well as TEPF funds, for investments in electrification of thermal and transportation loads. For example, the Department notes that the electrification of transportation — a fuel-switching activity that reduces fossil fuel consumption — would be at odds with the criteria enumerated in Section 209(d)(3)(B) because funding the electrification of transportation with the electric EEC would not reduce the size of future power purchases or limit the need to upgrade the state's transmission and distribution infrastructure. The Department observes that transportation-related measures that produce incremental electricity savings relative to an established baseline — such as incrementally more efficient charging stations — would be an allowed use of electric EEC funds.

The Department states that Section 209(e)(2)(B)(i) defines "thermal energy" as "the use of fuels to control the temperature of space within buildings and to heat water." The Department contends that transportation could not reasonably be included in that definition. Further, while acknowledging that the term "process fuels" is not defined by statute, the Department maintains that process fuels have long been accepted in the Vermont energy efficiency realm as fuels used

in commercial and manufacturing processes. The Department argues that CLF's assertion that transportation is a process is "linguistic sleight of hand" that is presented without support.

VEIC

VEIC supports the CLF Motion. VEIC argues that the issue is whether to remove the October Order language referenced by CLF, which VEIC observes does not form a part of the Board's ruling concerning the scenarios to be modeled. VEIC contends that sufficient review of the topic of electrification of transportation has not occurred, and that removal of this specific end use from the EEU's mandate to provide cost-effective energy efficiency services is beyond the scope of the Order.

In the event that the Board is not inclined to remove the subject language, VEIC recommends that the Board convene further proceedings to investigate the electrification and transportation energy efficiency measures.

VEIC states that the scenarios to be reviewed in this proceeding do not include such measures. Further, VEIC agrees with the Department that the referenced language is dictum and is not relied upon in the resolution of the issues in the Order. Accordingly, VEIC maintains that the challenged language can be removed from the Order without affecting the Board's ruling on the scenarios.

VEIC argues that the matters related to Tier III services are outside the scope of this investigation and recommends that the Board not pursue such issues in this proceeding. VEIC recommends that the Board defer resolution of the questions concerning the scope of an EEU's authority to offer fuel-switching energy efficiency services or the relationship of such services to Tier III activities.

IV. DISCUSSION AND CONCLUSION

Legal Standard

CLF filed its Motion pursuant to V.R.C.P. 59(e) and V.R.C.P. 60(b)(1) and (6).

Pursuant to V.R.C.P. 59(e), motions to alter or amend a judgment must be filed not later than 10 days after entry of the judgment.

Pursuant to V.R.C.P. 60(b), on motion and upon such terms as are just, the Board may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

...

(6) any other reason justifying relief from the operation of the judgment.

Discussion

As discussed in the October Order, CLF recommended that one of the scenarios to be modeled in this proceeding focuses specifically on greenhouse gas emissions, which CLF contends should be a driver of efficiency investments. CLF stated that greenhouse gas emissions are affected by the source of the electricity as well as the electricity end use. CLF provided examples of scenarios where greenhouse gas emissions would be different – e.g., if electricity were used for an increase shares of transportation or thermal uses. In the October Order, the Board did not direct any EEU to model CLF's proposed scenario, noting that it was directing the EEUs to report greenhouse gas emissions reductions as an output of each of their scenarios. With respect to CLF's examples, the Board noted that "the use of EEC funds for investments in such energy end-uses is subject to statutory restrictions." CLF asks the Board to remove the quoted language from the October Order, or in the alternative, to grant relief from operation of the Order regarding that language.

The referenced language did not form the basis of the Board's decision to not direct any EEU to model CLF's proposed scenario. The Board's decision was based on its determination that the EEUs would report greenhouse gas emission reductions as an output of each of their scenarios, and on the fact that the Department's energy efficiency potential study would also report greenhouse gas emission reductions for each of the study scenarios. Accordingly, the Board stated that it did not believe the expenditure of additional ratepayer resources on modeling CLF's proposed scenario was justified. CLF has not asked the Board to reconsider this ruling. Accordingly, we deny the CLF Motion because the relief it seeks would not alter the effect of the October Order.

With respect to the remainder of the comments, we make the following observations.

Pursuant to Section 209(d)(3)(C), electric EEC funds could be used “to reduce the use of fossil fuels for space heating by supporting electric technologies that may increase electric consumption, such as air source or geothermal heat pumps” if certain specific statutory criteria are met. The Board opened an investigation on July 31, 2014, to make a determination as to whether the Board would authorize the use of electric EEC funds to reduce fossil fuel use for space heating by supporting electric technologies that may increase electric consumption.² On July 1, 2015, on the recommendation of VEIC following passage of Act 56,³ the Board closed its investigation without making affirmative findings under the criteria enumerated in Section 209(d)(3)(C).⁴ Accordingly, unless and until the Board makes such affirmative findings, the EEU’s are not authorized to support such technologies for the purpose of reducing fossil fuels for space heating. Therefore, incorporating those technologies for that purpose into the electric EEC modeling would not be a productive use of limited ratepayer funds.

With respect to TEPF programs and measures, we agree with the Department that transportation does not reasonably fit into the category of “thermal energy” as defined in Section 209(d)(2)(B)(i), and that “process fuels” have been associated with commercial and industrial end uses. Even if TEPF funds were available for transportation fuel-switching measures, which is a question that is beyond the scope of the October Order, the language that is the subject of the CLF Motion addressed electric efficiency scenario modeling, and not TEPF scenario modeling.

Nothing in the Board’s October Order prohibits the EEU’s from modeling thermal- or transportation-related measures that produce incremental savings relative to an established baseline.

SO ORDERED.

2. Docket 8311, Order of 7/31/14.

3. Public Act No. 56 (2015 Vt., Bien. Sess.) established the RES.

4. Docket 8311, Order of 7/1/15.

Dated at Montpelier, Vermont, this 30th day of March, 2017.

_____))
 _____))
Robert Cherry))
 _____))
Sarah Johnson))
 _____))

PUBLIC SERVICE
BOARD
OF VERMONT

OFFICE OF THE CLERK

FILED: March 30, 2017

ATTEST: Judith C. Whitney
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@vermont.gov)

PSB Case No. EEU-2016-03 - SERVICE LIST

Participants:

Jeanne Elias, Esq.
Vermont Department of Public Service
112 State Street, 3rd Floor
Montpelier, VT 05620-2601
jeanne.elias@vermont.gov

(for Vermont Department of Public Service)

Melissa Bailey
Vermont Public Power Supply Authority
P.O. Box 126
5195 Waterbury-Stowe Road
Waterbury Center, VT 05677
mbailey@vppsa.com

Brian Buckley
Northeast Energy Efficiency Partnerships
bbuckley@neep.org

Christopher Burns
City of Burlington Electric Department
cburns@burlingtonelectric.com

Brian Cotterill
Vermont Department of Public Service
brian.cotterill@vermont.gov

Neil E. Curtis
Navigant
neil.curtis@navigant.com

William Driscoll
Associated Industries of Vermont
wdriscoll@aivt.org

Shawn Enterline
Green Mountain Power Corporation
shawn.enterline@greenmountainpower.com

Deena Frankel
Vermont Electric Power Company
dfrankel@velco.com

Toben Galvin
Navigant
toben.galvin@navigant.com

James Gibbons
City of Burlington Electric Department
585 Pine Street
Burlington, VT 05401
jgibbons@burlingtonelectric.com

Brian Gray
Vermont Gas Systems, Inc.
bgray@vermontgas.com

Carole Hakstian
Vermont Energy Investment Corporation
chakstian@veic.org

Lauren Hammer
Vermont Gas Systems, Inc.
lhammer@vermontgas.com

Lauren Hierl
Vermont Conservation Voters
info@vermontconservationvoters.org

Mick Hilbert
Vermont Energy Investment Corporation
mhilbert@veic.org

Karen Horne
Vermont Gas Systems, Inc.
khorne@vermontgas.com

Kelly Launder
Vermont Department of Public Service
kelly.launder@vermont.gov

Keith Levenson
Vermont Department of Public Service
keith.levenson@vermont.gov

Sandra Levine, Esq.
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602
slevine@clf.org

Thomas Lyle
City of Burlington Electric Department
tlyle@burlingtonelectric.com

James Massie
Vermont Energy Investment Corporation
jmassie@veic.org

Johanna Miller
Vermont Natural Resources Council
jmiller@vnrc.org

Barry Murphy
Vermont Department of Public Service
barry.murphy@vermont.gov

Adam Necrason
Necrason Group
adam@necrasongroup.com

Morris L. Silver, Esq.
Law Offices of Morris L. Silver, Esq.
P.O. Box 606
Benson, VT 05731-0606
mlsilver@sover.net

Eileen Simollardes
Vermont Gas Systems, Inc.
esimollardes@vermontgas.com

Robert Stephenson
Vermont Energy Investment Corporation
rstephenson@veic.org

Melissa Stevens
Green Mountain Power Corporation
melissa.stevens@greenmountainpower.com

Matthew J. Walker
Vermont Energy Investment Corporation
mjwalker@veic.org

Ben Walsh
Vermont Public Interest Research Group
bwalsh@vpirg.org

David C. Westman
Efficiency Vermont - Vermont Energy Investment Corporation
128 Lakeside Avenue, Suite 401
Burlington, VT 05401
dwestman@veic.org

Michael Wickenden
michael.wickenden@gmail.com

Sarah Wolfe
Vermont Public Interest Research Group
swolfe@vpirg.org