STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 22-2954-PET

Petition of Vermont Department of Public Service to open an EEU Demand Resource Plan proceeding for the 2024-2026 and 2027-2029 performance periods	

Order entered: 11/02/2023

<u>ORDER ADDRESSING EFFICIENCY VERMONT'S AND BURLINGTON ELECTRIC DEPARTMENT'S REQUESTS TO EXTEND ACT 151 PROGRAMS</u>

I. INTRODUCTION

For the 2021-2023 performance period, the Vermont Public Utility Commission ("Commission") granted approval for Efficiency Vermont and the City of Burlington Electric Department ("BED") to implement greenhouse gas emission reduction programs as authorized by Public Act No. 151.[1]

In today's Order, we deny Efficiency Vermont's and BED's requests for interim authorization and funding to continue the delivery of certain approved Act 151 programs into the 2024-2026 performance period. However, we grant Efficiency Vermont's request to carry over a limited amount of Act 151 funds for expenditure into the 2024 budget year.

II. BACKGROUND

Act 151 requires the Commission to authorize a qualifying Energy Efficiency Utility ("EEU") to spend a portion of its electric resource-acquisition budgets, in an amount to be determined by the Commission but not to exceed $2,000,000 per year, on programs, measures, and services that reduce greenhouse gas emissions in the thermal energy or transportation sectors. [2]

In 2021, the Commission approved Demand Resources Plans ("DRPs") for the 2021-2023 performance period for Efficiency Vermont and BED that included Act 151 programs.[3]

[1] Vermont Public Act No. 151 (2020 Vt. Adj. Sess.).
[2] Vermont Energy Investment Corporation ("VEIC") serves as Efficiency Vermont, which provides energy efficiency services throughout the state except for in BED's service territory. BED provides energy efficiency services to its customers.
[3] *See* Case No. 19-3272-PET, Order of 5/27/21 and Order of 8/26/21.

Public Act 44 was signed into law and took effect on June 1, 2023. Act 44 provides for an additional three years, 2024-2026, of the pilot program established in Act 151 that allows the use of electric energy efficiency charge funds for greenhouse gas emissions reduction programs.

On September 26, 2023, the Commission approved DRPs for the 2024-2026 performance period for Efficiency Vermont and BED in this proceeding. The approved DRPs do not include activities related to Act 44.

On September 29, 2023, Efficiency Vermont filed a request seeking interim authorization to continue the delivery of certain Commission-approved Act 151 programs beginning January 1, 2024, while the Commission reviews implementation of Act 44.

On October 17, 2023, the Vermont Department of Public Service ("Department") filed comments on Efficiency Vermont's request.

On October 17, 2023, BED filed a request to extend its Act 151 programs.

On October 17, 2023, Vermont Senator Christopher Bray filed a public comment.

On October 24, 2024, Efficiency Vermont filed reply comments to the Department's October 17 comments.

On October 26, 2023, Efficiency Vermont and BED separately filed proposed schedules for the review of proposed revisions to an EEU's DRP to reflect Act 44 programs.

III. Requests for Extension

Efficiency Vermont

Efficiency Vermont requests to continue several Act 151 initiatives during the period the Commission is reviewing its Act 44 programs for approval. Efficiency Vermont represents that it expects to fully expend all available Act 151 program funds authorized in Case No. 19-3272-PET by the end of 2023. Efficiency Vermont estimates that the continuation of Act 151 activities may incur up to $1,205,000 in ongoing costs through the second quarter of 2024. Efficiency Vermont anticipates filing a motion by mid-November to amend its DRP, approved by the Commission on September 26, 2023, to reflect Act 44 programs.

Specifically, Efficiency Vermont seeks to have authorization to continue to incur labor and expenses in the following program areas:

- Up to $85,000 for electric vehicle dealership infrastructure incentives to pay for commitments on projects already identified that are not expected to be complete until 2024;
- Up to $250,000 to continue paying midstream electric vehicle dealership sales incentives to eligible members of the electric vehicle dealer network established under Act 151 programs;
- Up to $710,000 to continue deploying the low-income fuel-switch program for the customers who have registered and are currently on a wait-list for the program services established under Act 151 authorization; and
- An estimated $160,000 for ongoing labor costs to serve the above-referenced programs through the second quarter of 2024.

Efficiency Vermont maintains that winding down existing Act 151 programs by December 31, 2023, only to then restart new Act 44 programs targeted at the same markets shortly thereafter in 2024, will result in customers and delivery partners facing unnecessary disruptions and cost increases. Efficiency Vermont contends that the disruptions will create lost opportunities, discourage participation, and adversely affect program results and activities to the detriment of ratepayers and the public.

Efficiency Vermont argues that the Commission can authorize ongoing expenses in 2024 for the above-identified projects on the basis that these program initiatives were previously reviewed and found to satisfy the requirements of Act 151. Efficiency Vermont supports this argument by noting that the substantive requirements for approval of programs under Act 151 have been carried forward in Act 44. Consistent with the Act 44 requirement, Efficiency Vermont's electric resource-acquisition budgets for the 2024-2026 performance period do not exceed its electric resource-acquisition budgets for the 2021-2023 performance period, adjusted for cumulative inflation. To continue to implement its identified Act 151 activities, Efficiency Vermont anticipates managing its budget largely as it has been authorized over the 2021-2023 performance period without substantial changes to current spending amounts. Accordingly, Efficiency Vermont contends that its proposal to continue the identified Act 151 initiatives during the interim period should be found to meet the requirements for authorization established under Act 44. Efficiency Vermont further contends that because the Commission took administrative notice of the record developed in Case No. 19-3272-PET in this proceeding, the record evidence provides the factual background to consider Efficiency Vermont's request.

Efficiency Vermont contends that the continued implementation of Act 151 activities will have minimal disruption to its approved DRP for the 2024-2026 performance period. Efficiency Vermont states that it will still seek to deliver its programs approved in the DRP, albeit at lower levels. Recognizing that all programs are managed toward the total three-year budgets and performance targets and that EEUs have flexibility to reallocate their electric resource-acquisition budgets among their resource-acquisition programs, Efficiency Vermont maintains that the 2024 program year can be managed without disruption to include Act 151 activities.

Efficiency Vermont further argues that it is within the Commission's authority to grant a request for the time-limited continuation of certain programs because Act 44 does not provide for any specific procedure to be used by the Commission in the exercise of the authority conferred under the Act and because Act 44 does not require that an EEU bring a single request for such authorization or define the manner or time for making such a request. In addition, Efficiency Vermont maintains that Act 44 does not call for a review process that is more rigorous than the process conducted to approve the existing Act 151 programs.

If the request for continuation of Act 151 activities in 2024 is not granted, Efficiency Vermont requests that the Commission authorize it to defer up to $200,000 in costs from 2023 that can be paid in the 2024 budget year. Efficiency Vermont contends that it is generally following EEU practice to carry forward project expenditures into the next budget year but argues that for this program it needs Commission approval. Efficiency Vermont states that these costs have accrued through the normal processes of program implementation and project pipeline development for programs expected to continue through 2024 and were anticipated to be invoiced to the fiscal agent in 2024. Efficiency Vermont notes that this limited request is approximately 3.3% of the authorized funding for Act 151 activities and less than 0.4% of the total budgets funded by the energy efficiency charge. Efficiency Vermont maintains that without authorization to defer these costs to the next budget period, Efficiency Vermont will need to terminate incentive agreements for individual project commitments which may result in eroding trust among partners and lead to poor customer experiences.

BED

BED requests to continue several Act 151 initiatives during the period the Commission is reviewing BED's Act 44 programs for approval. BED represents that it expects to fully expend all available Act 151 program funds authorized in Case No. 19-3272-PET by the end of 2023. BED estimates that the continuation of Act 151 activities may incur up to $180,000 in ongoing costs through June 30, 2024. BED anticipates filing by November 17, 2023, revisions to its DRP, approved by the Commission on September 26, 2023, to reflect Act 44 programs.

BED maintains that it will deliver all of its programs approved in its DRP at lower levels, with one exception, to reflect the Act 151 fund reallocation. BED states that its income-eligible programs will not be affected by the proposed reallocation. BED contends that supplemental Act 151 funding has been instrumental to its efforts to accelerate its Renewable Energy Standard Tier 3 program participation and that without additional Act 151 funding, Tier 3 participation would have been materially lower in 2022 and 2023.

BED maintains that ending its Act 151 programs will result in significant disruptions to its partners' operations (i.e., heat-pump installers and electric vehicle dealerships) and will create lost opportunities to reduce greenhouse gas emissions. BED also maintains that stopping its Act 151 programs would create program communication challenges, confuse customers, and slow Burlington's progress toward addressing climate challenges.

BED argues that the Commission has statutory authority to grant its request. BED asserts there is good cause to grant its request because it would provide the EEUs the funding necessary to sustain existing and approved Act 151 programs while the Commission reviews implementation of Act 44. BED adds that the substantive requirements for Act 151 program approval have been carried forward into Act 44. Because BED is not proposing any immediate modifications to its approved Act 151 programs and Act 44 reauthorizes the Commission to approve relevant programs for another three years, BED argues the Commission is authorized to approve BED's request.

IV. Participants' Responses and Comments

Department Comments

The Department recommends that the Commission deny Efficiency Vermont's request for an extension of Act 151 programs approved in the 2021-2023 performance period into the 2024-2026 timeframe. The Department maintains that Act 151 and Act 44 do not provide a streamlined process for the Commission to approve a six-month extension of Act 151 programs (with different budgets).

The Department maintains that Efficiency Vermont should address how the proposed Act 151 expenditures will alter spending, program activities, and performance goals for the approved DRP for the 2024-2026 performance period. The Department further maintains that an assessment of budgets and performance goal impacts alone is not sufficient to meet the mandate of Act 44 because Section 1(a) of Act 44 requires that the tradeoffs be assessed when evaluating whether to fund greenhouse gas emission reduction programs and that the suite of proposed cost and benefits be judged against the requirements of 30 V.S.A. § 209(d)(3)(B). In addition, the Department contends that Section II(3)(E) of the Process and Administration of an Energy Efficiency Utility Order of Appointment (the "Process and Administration document") requires that a DRP proposal include several elements and that to be actionable by the Commission a proposal to implement Act 44 programs must include these elements. [4] The Department further contends that an Act 44 proposal is not actionable unless it includes programs for the full 2024-2026 timeframe.

The Department argues that the Commission should not consider Efficiency Vermont's request in advance of a detailed proposal to implement Act 44 programs that includes a demonstration of how the programs meet the Act 44 criteria and an evaluation of the tradeoffs implicit in the proposal. The Department maintains there have been significant changes in the regulatory and policy context surrounding the transportation and thermal sectors and it should not be presumed that programs that were approved in 2020 should automatically be approved to continue, particularly at the previously proposed budget amounts.

[4] The current version of the Process and Administration document was approved by the Commission on December 27, 2022, in Case No. 22-1647-PET.

The Department recommends that the Commission require Efficiency Vermont to file a detailed proposal supporting Efficiency Vermont's request to implement Act 44 programs for the full 2024-2026 performance period. In such a proceeding, the Department notes that it will seek to establish a schedule with the opportunity to serve discovery, file responsive testimony and legal briefs, and request a hearing if needed. The Department recommends that any proposal to implement Act 44 programs include the following:

1. Quantified budgets and benefit-related tradeoffs and a discussion of how the Act 44 proposal better meets (or continues to meet) 30 V.S.A. § 209(d)(3)(B);
2. How the Commission's decision on the minimum performance requirement addressing electric system benefits affects the performance of baseline electric portfolio programs approved on September 26, 2023, and a comparison of this baseline performance to the performance anticipated under the Act 44 proposal;
3. Proposed changes to electric quantifiable performance indicators ("QPIs") and minimum performance requirements approved on September 26, 2023;
4. Proposed additional QPIs and minimum performance requirements associated with Act 44; and
5. Estimated electric rate and bill impacts resulting from the DRP approved on September 26, 2023, compared to those estimated under the Act 44 proposal.

The Department suggests an alternative to granting an extension to Act 151 programs would be to consider the option of Efficiency Vermont booking Act 44 costs in the first six months of 2024 and deferring payment until after the three-year proposal goes through the Commission's process. In such a case, if ultimately a lesser budget is approved, the Department recommends that VEIC be responsible for covering any costs above and beyond what is ultimately approved.

The Department states that it is not recommending a "shutdown" of programs. Instead, the Department believes a pause is necessary until the full scope of Act 44 activities can be assessed. During that time, the Department recommends that the Commission order Efficiency Vermont to pause contract extensions or make new contracts or agreements with partners and customers (i.e., incentive agreements, memoranda of understanding, and midstream incentives).

The Department points out that the thermal programs approved under Act 151 are already stalled with customers on waiting lists due to demand exceeding the budgets for these services.

Senator Bray Comments

Senator Bray supports the requests to extend Act 151 programs filed by Efficiency Vermont and BED. Senator Bray raises several concerns that the review process to implement Act 44 programs may cause programmatic harm if it were to disrupt the programs and efforts already underway. First, Senator Bray contends that Act 44 is an explicit effort to continue the programmatic initiatives authorized by Act 151 and that any procedural choice to implement this law in a manner that causes disruption to the work authorized by Act 151 would be contrary to legislative intent. Second, Senator Bray maintains that disruptions will cause economic impacts, including additional start-up costs and have serious negative impacts on the personnel implementing the programs paused, and will frustrate interested citizens and businesses by the withdrawal of offers and programs previously announced. Third, Senator Bray contends that an extension honors the General Assembly's sense of urgency—expressed in Acts 151 and 44—for gaining experience in addressing greenhouse gas reductions in the thermal and transportation sectors. Fourth, Senator Bray notes that an extension is consistent with the Commission's position articulated in its Act 62 report for the need to make progress of the sort provided for by Acts 151 and 44 and consistent with the views expressed by the Commission and General Assembly recognizing the need for a comprehensive program addressing both thermal and transportation emissions. Senator Bray maintains that Acts 151 and 44 function as active research "laboratories" that will help identify and design the cost-effective comprehensive programs envisioned by both the Commission and the General Assembly. Finally, Senator Bray maintains that the provisions of Acts 151 and 44 contain compelling language regarding the General Assembly's desire for rapid implementation reflected in the compulsory and urgent language used in the two bills, both of which use "shall" rather than "may" to define the Commission's role.

V. Discussion and Conclusion

As discussed further below, we deny BED's and Efficiency Vermont's request for interim authorization and funding to continue the delivery of certain approved Act 151 programs into the 2024-2026 performance period. We conclude that the plain language of Acts 151 and 44 does not grant the Commission the authority to extend Act 151 programs and spending in advance of our review and determinations of an EEU's proposal for Act 44 programs.

However, recognizing the intent of Act 44 was to extend Act 151 programs, we grant Efficiency Vermont's request to carryover a limited amount of Act 151 funds for expenditure into the 2024 budget year and encourage parties to propose time-efficient schedules for our review of Act 44 proposals.

Act 44 provides for an additional three years, 2024-2026, of the pilot program established in Act 151 for years 2021-2023, which allows the use of energy efficiency charge funds for greenhouse gas emission reduction programs. Specifically, Act 44 requires the Commission to authorize an EEU to spend a portion of its electric resource-acquisition budgets for the 2024-2026 performance period on programs, measures, and services that reduce greenhouse gas emissions in the thermal energy or transportation sectors. An EEU must demonstrate that the proposed amount of the resource-acquisition budgets to be spent on Act 44 programs, measures, and services is reasonable and that programs, measures, and services meet the five requirements identified in Section 1(b) of Act 44, which include some changes from those in Act 151.

We conclude that Acts 151 and 44 do not provide the Commission with the authority to grant a six-month extension of Act 151 programs approved for the 2021-2023 performance period as requested by Efficiency Vermont and BED. Efficiency Vermont's and BED's requests do not include the requisite evidence and analysis to support a Commission determination on the statutory factors. First, both Efficiency Vermont and BED have not provided a demonstration as to why their proposed Act 44 budgets are appropriate. Second, Efficiency Vermont's and BED's proposals have not addressed the changes to the statutory factors in Section 1(b) that occurred in Act 44. Further, neither entity addressed important changes that ocurred since our approval of Act 151 programs, including changes in yield rates (cost of savings), changes in technical reference manual measure characterizations, or changes in the minimum performance requirement addressing electric system benefits. Therefore, we find that Efficiency Vermont's and BED's reliance on our approval of their initial Act 151 funding for programs, measures, and services is, as articulated by the Department, insufficient as a basis for us to make such a determination today under Act 44.

In addition, we are required under Act 44 to consider greenhouse gas emission reduction programs within the full suite of programs funded by the energy efficiency charge and assess the proposed cost and benefits against the requirements of 30 V.S.A. § 209(d)(3)(B). We agree with the Department that there have been significant changes in the regulatory and policy context surrounding the transportation and thermal sectors and that it is important to examine Act 44 programs in this context rather than automatically approve programs determined appropriate for the 2021-2023 performance period.

We recognize that the intent of Act 44 is to continue some of the programs started under Act 151. We note that any pause or delay in Act 44 programs at the start of 2024 will not result in an absence of statewide efforts to reduce greenhouse gas emissions through electric-based programs. For example, Vermont electric distribution utilities will continue with their Tier 3 efforts. BED indicates that its Act 151 funding has been instrumental in its efforts to accelerate Tier 3 participation.

In addition, to help reduce the effects of any delay in Act 44 program implementation, we approve Efficiency Vermont's request to defer up to $200,000 in costs from 2023 that can be paid in the 2024 budget year. Efficiency Vermont states that these costs have accrued through the normal processes of program implementation and project pipeline development for programs expected to continue through 2024. These costs are approximately 3.3% of the authorized funding for Act 151 activities and less than 0.4% of the total budgets funded by the energy efficiency charge. The carryover of limited funds and expenditures into the next performance period is an allowed practice, with Commission approval, under the EEU Order of Appointments and the Process and Administration document.[5] We conclude that the allowance for carryover applies to funds approved for Act 151 activities. We advise that this approval does not allow Efficiency Vermont to initiate contract extensions or make new contracts or agreements with partners and customers.

Finally, to avoid delay in the implementation of Act 44, we encourage Efficiency Vermont and BED to file proposed amendments to their approved DRPs to reflect Act 44 by

[5] *See* VEIC Order of Appointment, Section III, issued in Case No. 22-1647-PET, Order of 1/27/23; Process and Administration document at Section IV.1.B.

mid-November as they have planned.[6] Proposals should address the requirements of Act 44 and should be responsive to the five points raised in the Department's October 17 comments and summarized above. We also encourage parties to include a proposed schedule that allows the Commission to conduct a substantive review of the amended DRP proposals, but also identifies opportunities to expedite the proceeding and limit the delays in implementing Act 44 programs. To that end, we note that Efficiency Vermont and BED have already filed separate proposed schedules.

SO ORDERED.

[6] We note that Act 44 took effect on June 1, 2023. Efficiency Vermont and BED could have already filed full or partial Act 44 proposals so that the Commission could have reviewed requests for the implementation of Act 44 in advance of the 2024-2026 performance period.

Dated at Montpelier, Vermont, this 2nd day of November, 2023.

Anthony Z. Roisman	)	PUBLIC UTILITY
	)	
Margaret Cheney	)	COMMISSION
	)	
J. Riley Allen	)	OF VERMONT

OFFICE OF THE CLERK

Filed: November 2, 2023

Attest: ______________________________
Clerk of the Commission

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

PUC Case No. 22-2954-PET - SERVICE LIST

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