

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 22-2954-PET

Petition of the Department of Public Service
to open a proceeding to initiate EEU Demand
Resources Plan proceeding for the 2024-2026
and 2027-2029 performance periods

DEPARTMENT OF PUBLIC SERVICE
RESPONSE TO EFFICIENCY VERMONT MOTION

On September 29, 2023, Efficiency Vermont filed a motion seeking interim authorization to continue the delivery of certain Vermont Public Utility Commission (“Commission”) approved Act 151 programs beginning January 1, 2024, while the Commission reviews implementation of Act 44. The Commission asked Efficiency Vermont and other participants to address the following issues as part of any comments.

1. Please address whether Act 151 or Act 44 grant the Commission the authority to grant Efficiency Vermont’s request.

Act 44 was signed into law and took effect on June 1, 2023. The act provides for an additional three years, 2024-2026, of the pilot program established in 2020 Acts and Resolves No. 151, originally applicable to years 2021-2023, that allows the use of Energy Efficiency Charge (“EEC”) funds for greenhouse gas emissions reduction programs.

The Vermont Department of Public Service (“Department”) had considerable engagement with Efficiency Vermont in the weeks leading up to its filing of the motion and reviewed its October 11, 2023 responses to the Commission’s September 29, 2023 questions.

The Department opposes Efficiency Vermont’s motion because neither Act 151 nor Act 44 provide for an extension of 2021-2023 Act 151 programs into the 2024-2026 timeframe as requested by Efficiency Vermont. The motion implies that because certain

programs and budgets were approved by the Commission under Act 151 for the 2021-2023 performance period, a streamlined process can facilitate Commission approval of a six-month extension of the same programs (with different budgets) under Act 44. The motion is in conflict with both Act 151 and Act 44 because neither provides for such an extension.

2. 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. Please address how this proposed expenditure will alter spending, program activities, and performance goals for the 2024 budgets approved on September 26, 2023, in Case No. 22-2954-PET.

Efficiency Vermont should provide an estimate of what the impact would be on spending, program activities, and performance goals for the 2024 budgets that were approved on September 26, 2023 in Case No. 22-2954-PET. However, an assessment of 2024 budget and performance goal impacts alone is not sufficient to meet the mandate of Act 44 which in Section 1(a) provides:

The electric resource acquisition budget for an entity appointed to provide electric energy efficiency and conservation programs and measures pursuant to 30 V.S.A. § 209(d)(2)(A) for the calendar years 2021– 2026 shall be determined pursuant to 30 V.S.A. § 209(d)(3)(B).

In other words, Act 44 requires the Commission to consider Act 44 greenhouse gas emissions reduction programs enabled to be funded with the electric EEC within in the full suite of proposed EEC-funded programs. As such, Act 44 requires tradeoffs be assessed when evaluating whether to fund greenhouse gas emissions reduction programs with the electric EEC and that the suite of proposed cost and benefits be judged against the requirements of 30 V.S.A. § 209(d)(3)(B) so long as other conditions of Act 44 are also met.

The charge established by the Commission pursuant to this subdivision (3) shall be in an amount determined by the Commission by rule or order that is consistent with the principles of least-cost integrated planning as defined in section 218c of this title. As circumstances and programs evolve, the amount of the charge shall be reviewed for unrealized energy efficiency potential and shall be adjusted as necessary in order to realize all reasonably available, cost-effective energy efficiency savings. In setting the amount of the charge and its allocation, the Commission shall determine an appropriate balance among the following objectives; provided, however, that particular emphasis shall be accorded to the first four of these objectives: reducing the size of future power purchases; reducing the generation of greenhouse gases; limiting the need to upgrade the State's transmission and distribution infrastructure;

minimizing the costs of electricity; reducing Vermont's total energy demand, consumption, and expenditures; providing efficiency and conservation as a part of a comprehensive resource supply strategy; providing the opportunity for all Vermonters to participate in efficiency and conservation programs; and targeting efficiency and conservation efforts to locations, markets, or customers where they may provide the greatest value.

Further, the Commission's process for meeting the requirements of 30 V.S.A. § 209(d)(3)(B) is, in fact, this Case No. 22-2954-PET, the Demand Resource Plan ("DRP") proceeding. Importantly, Section II(3)(E) of the Commission's Process and Administration of an Energy Efficiency Utility Order of Appointment¹ ("P&A") requires EEU's make DRP proposals and requires the following elements be included.

E. A Demand Resources Plan Proceeding shall include each EEU's submission of a comprehensive DRP proposal accompanied by materials offered in support of its recommendations. An EEU's comprehensive DRP proposal shall include, at a minimum:

- (a) A recommended demand-side resource-acquisition scenario model based on proposed year-by-year resource-acquisition budgets for EEU-specific electricity or natural gas activities, as applicable, for three-, six-, and 9 twenty- year periods. Modeled results shall include year-by-year energy savings, incentives to customers, and greenhouse-gas emissions reductions;
- (b) A recommended demand-side resource-acquisition scenario model for EEU- specific TEPF activities, as applicable, based on estimated budgets for three-, six-, and ten-year periods. Modeled results shall include year by-year energy savings, incentives to customers, and greenhouse-gas emissions reductions;
- (c) Proposed electric or natural gas DSS budgets for three-, six-, and twenty year periods and TEPF DSS budgets for three-, six-, and ten-year periods;
- (d) An estimate of the cost of energy saved compared to other jurisdictions;
- (e) Proposed performance indicators by which the performance of the EEU can be measured over specified time periods;
- (f) Descriptions of the services to be provided by the EEU over the forecast periods;
- (g) Year-by-year budgets for any Customer Credit Program participants;

¹ Approved December 27, 2022 in Case No. 22-1647-PET

- (h) An estimate of rate and bill impacts and total benefits to Vermonters as a result of the proposal;
- (i) The opportunity to propose updates to an EEU's Service Quality and Reliability Plan ("SQRP"). For an EEU that is not a DU, SQRP metrics shall serve as a component of the EEU's QPIs for each performance period; and
- (j) Other items as may be determined by the Commission.

While the Department can appreciate Efficiency Vermont's request for a streamlined and expedited process, the Department believes it is not actionable by the Commission. Further, to be actionable by the Commission and consistent with Act 44, 30 V.S.A. § 209(d)(3)(B), and requirements in the P&A Document for a DRP, Efficiency Vermont must petition the Commission with a proposal to implement Act 44 programs for the full 2024-2026 timeframe.

3. Please address whether the Commission should consider Efficiency Vermont's request in advance of a petition to implement Act 44 programs.

No. The Commission should not consider Efficiency Vermont's request in advance of a detailed proposal to implement Act 44 programs. In order to approve the implementation of Act 44 programs, the Commission needs to receive a full proposal demonstrating how these programs meet the criteria of Act 44 as well as an evaluation of the tradeoffs implicit in the proposal. Efficiency Vermont's filing implies that because it is proposing to continue *existing* programs, the regulatory review should be less than what was required initially under Act 151. The Department maintains that a full review of these greenhouse gas reduction programs is required under Act 44. There have been significant changes in the regulatory and policy context surrounding the transportation and thermal sectors such that it should not be presumed that programs that were approved by the Commission in 2020 should automatically be approved to continue, particularly at the previously proposed budget amounts.

4. Please provide procedural recommendations to address Efficiency Vermont's request, e.g., whether a schedule or the opportunity for legal briefs or hearing is needed.

In accordance with Act 44, 30 V.S.A. § 209(d)(3)(B), and Section II(3)(E) of the Commission's P&A, the Commission should deny the Efficiency Vermont motion. Concurrently, the Commission should order Efficiency Vermont to file a detailed proposal with supporting testimony supporting Efficiency Vermont's request to implement Act 44 programs for the full 2024-2026 period. If the Commission accepts this recommendation, it may wish to emphasize the importance that Efficiency Vermont's filing include a quantification of the following:

1. Budget and benefit related tradeoffs and 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 minimum performance indicator number nine impacts the performance of baseline electric portfolio approved by the Commission on September 26, 2023. Also, a comparison of the baseline performance above to the performance of MPR number nine anticipated under the Act 44 proposal.
3. Proposed changes to electric performance indicators and minimum performance requirements approved by the Commission on September 26, 2023.
4. Proposed additional performance indicators and minimum performance requirements associated with Act 44.
5. Electric rate and bill impacts resulting from the Commission's September 26, 2023 ordered budgets and savings compared to those estimated under the Act 44 proposal.

Consistent with the Department's procedural recommendations, the Department values the opportunity to review any Act 44 proposal as well as the particular Act 44 initiatives and budgets. As such, the Department anticipates the need to establish a schedule with the opportunity to serve discovery, file responsive testimony, and file legal briefs and a hearing if needed.

5. **Please address whether the request is appropriately addressed in Case No. 22- 2954-PET or Case No. 19-3272-PET.**

If the Commission denies the motion and orders Efficiency Vermont to file a detailed proposal to implement Act 44 programs for the full 2024-2026 period, which is the Department's recommendation, then the Department recommends the directive be made to Efficiency Vermont in this Case No. 22-2954-PET.

If, contrary to the Department's recommendations, the Commission determines Act 151 and Act 44 in fact do provide for the Commission to act on Efficiency Vermont's motion, then the Department requests the opportunity to respond again to question number four above related to the Department's procedural recommendations. For example, as part of its procedural recommendations, the Department anticipates it would have a number of specific questions for Efficiency Vermont about its motion which are not addressed in this filing.

If the Commission determines the motion to be actionable, one alternative to considering an Act 44 proposal for the full 2024-2026 performance period would be to explore the possibility of Efficiency Vermont booking Act 44 costs in the first six months of 2024 and deferring payment until after the full three-year proposal goes through the Commission's process. In such a case, if ultimately a lesser budget was approved the Department would recommend Efficiency Vermont's parent company, Vermont Energy Investment Corporation, be responsible for covering any costs above and beyond what is ultimately approved. In its October 11, 2023 response to the Commission's questions Efficiency Vermont suggests a similar alternative in footnote number one². Therefore, the Commission may wish to ask Efficiency Vermont if the Department's alternative is feasible,

² Efficiency Vermont October 11, 2023 footnote number one indicates "If the Commission determines in the alternative, that Efficiency Vermont's request for continuation of activities in 2024 is not granted, Efficiency Vermont requests the Commission's authorization to defer up to \$200,000 in costs from 2023 that can be paid in the 2024 budget year. These costs have accrued through 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 this more limited request is approximately 3% of the Commission-authorized funding for Act 151 activities. Without authorization to defer these costs to the next budget cycle, Efficiency Vermont would be forced to terminate incentive agreements for individual project commitments, which would have the undesirable effect of eroding trust among partners and leading to poor customer experiences."

and also ask Efficiency Vermont to clarify what is driving the need for the deferment suggested as an alternative, by answering the following additional questions.

1. Has EVT contractually committed to partner/ customer Act 151 incentives totaling \$200,000 greater than the amount approved for the 2021-2023 period?
 - a. If not, is EVT seeking PUC approval to book partner/ customer incentive costs in 2023 and defer payment until 2024 for a total amount that is within the amount approved for the 2021-2023 period?
 - b. What Act 151 initiatives are implicated and why?

Finally, the Department is not recommending a “shutdown” of programs, as characterized by Efficiency Vermont. Instead, the Department believes a pause is necessary until the full scope of Act 44 activities, including proposed budgets and tradeoffs with the recently approved DRP budgets and goals can be assessed by the Commission. During that time, the Department recommends the Commission advise that Efficiency Vermont not initiate contract extensions or make new contracts or agreements with partners and customers (i.e. incentive agreements, MOU’s, midstream incentives) under an assumed scope pursuant to Act 44. Additionally, the Department would point out that the thermal programs approved under Act 151 are already on pause with customers on waiting lists due to demand exceeding the budget for these services.

Dated at Montpelier, Vermont this 17th day of October, 2023.

VERMONT DEPARTMENT OF PUBLIC SERVICE

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