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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: Robert A. Doyle, Chairman
John Espindola
Keith Kurber II
Robert M. Pickett
Janis W. Wilson

In the Matter of the Tariff Revision Designated as) TA544-8 Filed by CHUGACH ELECTRIC) ASSOCIATION, INC.)	U-23-047
_____)	ORDER NO. 7
In the Matter of the Tariff Revision Designated as) TA422-121 Filed by CHUGACH ELECTRIC) ASSOCIATION, INC.)	U-23-048
_____)	ORDER NO. 7

**ORDER ACCEPTING ENSTAR’S SUR-REPLY, DENYING
MOTION FOR EXPEDITED CONSIDERATION AS MOOT,
AND DENYING RENEWABLE ENERGY ALASKA
PROJECT’S MOTION TO COMPEL AND FOR
SCHEDULING MODIFICATION**

BY ADMINISTRATIVE LAW JUDGE NOLAN S. OLIVER:

Summary

I accept ENSTAR Natural Gas Company, LLC’s (ENSTAR) Sur-reply. I deny Renewable Energy Alaska Project’s (REAP) motion for expedited consideration as moot. I deny REAP’s motion to compel discovery and to modify the procedural schedule.

Background

On December 18, 2023, REAP served its second set of discovery requests on Chugach Electric Association, Inc. (Chugach) seeking information on various usage data by Chugach customers on a per meter basis.¹ On December 22, 2023, Chugach,

¹*Renewable Energy Alaska Project’s Motion to Compel and for Scheduling Modification*, filed January 29, 2024 (REAP’s Motion), Exhibit 4.

1 REAP, and the Attorney General, Regulatory Affairs & Public Advocacy Section (RAPA)
2 met to discuss the discovery request. On December 28, 2023, Chugach objected to the
3 request on various grounds. Chugach also stated that it was “verifying whether and how
4 it can provide the requested data, and will supplement this response.”² On January 22,
5 2024, Chugach filed a supplemental response objecting to REAP’s second set of
6 discovery requests on various grounds.³

7 On January 29, 2024, REAP filed a motion to compel Chugach to produce
8 substantive discovery requests submitted by REAP.⁴ REAP also requests that the
9 procedural schedule be modified to allow REAP time to utilize the discovery.⁵ REAP filed
10 a motion for expedited consideration, asking the Commission to issue a decision on
11 REAP’s Motion by February 13, 2024.⁶

12 On January 31, 2024, RAPA filed a response to REAP’s Motion stating that,
13 if the Commission were to grant the motion, the extended deadline for responsive
14 testimony should be provided to all parties.⁷

15 On February 5, 2024, Chugach, ENSTAR, and Matanuska Electric
16 Association, Inc. (MEA) filed oppositions to REAP’s Motion.⁸ On February 6, 2024,

18 ²REAP’s Motion, Exhibit 5.

19 ³REAP’s Motion, Exhibit 6.

20 ⁴REAP’s Motion.

21 ⁵REAP’s Motion at 1.

22 ⁶*Motion for Expedited Consideration of REAP’s Motion to Compel and for*
23 *Scheduling Modification*, filed January 29, 2024 (Motion for Expedited Consideration).

24 ⁷*Office of the Attorney General’s Response to Renewable Energy Alaska Project’s*
25 *Motion for a Scheduling Modification*, filed January 31, 2024.

26 ⁸*Chugach Electric Association, Inc.’s Opposition to Reap’s Motion to Compel*
Discovery, filed February 5, 2024 (Chugach’s Opposition); *Opposition to Renewable*
Energy Alaska Project’s Motion to Compel and for Scheduling Modification (ENSTAR’S
Opposition), filed February 5, 2024; *Matanuska Electric Association, Inc.’s Opposition to*
Renewable Energy Alaska Project’s Motion to Compel, filed February 5, 2024 (MEA’s
Opposition).

1 Golden Valley Electric Association, Inc. filed a joinder to all three of the oppositions.⁹ On
2 February 7, 2024, Homer Electric Association, Inc. filed a joinder to all three oppositions.¹⁰
3 On February 8, 2024, the City of Seward d/b/a Seward Electric Services filed a joinder to
4 all three oppositions.¹¹

5 On February 7, 2024, REAP filed a response to the oppositions to REAP's
6 Motion.¹² On February 9, 2024, ENSTAR filed a sur-reply to REAP's Response.¹³ REAP
7 filed a non-opposition to ENSTAR's Sur-reply.¹⁴

8 Discussion

9 ENSTAR's Sur-reply

10 Motions for leave to file reply or other pleadings not specifically authorized
11 are considered on a case-by-case basis to determine if there is a good cause to allow a
12 reply.¹⁵ Due to the additional detail provided by ENSTAR and REAP's non-opposition to
13 it, I find there is good cause to allow a reply and accept ENSTAR's Sur-reply.

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16 ⁹*Golden Valley Electric Association, Inc.'s Joinder in Matanuska Electric*
17 *Association, Inc.'s Opposition to Renewable Energy Alaska Project's Motion to Compel,*
18 *ENSTAR's Opposition to Renewable Energy Alaska Project's Motion to Compel and for*
Scheduling Modifications, and Chugach Electric Association, Inc.'s Opposition to Reap's
Motion to Compel Discovery, filed February 5, 2024.

19 ¹⁰*Joinder of Homer Electric Association, Inc. in MEA, CEA, and ENSTAR*
Oppositions to REAP Motion to Compel, filed February 7, 2024.

20 ¹¹*Joinder of Seward Electric Services in Opposition to REAP Motion to Compel*,
filed February 8, 2024.

21 ¹²*REAP's Response to Opposition to its Motion to Compel and for Scheduling*
Modification, filed February 7, 2024 (REAP's Response).

22 ¹³*ENSTAR's Request to Accept Sur-reply and Sur-reply to REAP's Response to*
23 *Opposition to its Motion to Compel and for Scheduling Modification*, filed February 9, 2024
(ENSTAR's Sur-reply).

24 ¹⁴*REAP'S Non-opposition to ENSTAR's Motion to Accept Sur-reply*, filed
February 12, 2024 (REAP'S Non-Opposition).

25 ¹⁵*Order U-18-024(13), Order Granting Motion to Strike, Granting in Part Petition*
26 *for Confidential Treatment, and Requiring Filing*, dated October 15, 2018.

1 Motion for Expedited Consideration

2 REAP filed a motion asking for expedited consideration of REAP's Motion,
3 requesting that the Commission issue a decision to REAP's Motion by February 13,
4 2024.¹⁶ I was not able to meet the date requested by REAP. Therefore, the request for
5 expedited consideration is moot. The request is denied.

6 Legal Standard

7 All relevant evidence which, in the opinion of the presiding officer, is the
8 best evidence reasonably obtainable, with due regard to its necessity, availability, and
9 trustworthiness, is admissible.¹⁷ A party may obtain discovery from another party
10 regarding any matter, not privileged, that is relevant to the subject matter of the
11 proceeding, if the matter is admissible in evidence or appears reasonably calculated to
12 lead to the discovery of admissible evidence.¹⁸ Discovery may be limited if the burden
13 and expense of the requested discovery outweighs its likely benefit.¹⁹

14 The Commission must have a full and adequate record on which to make a
15 decision in any docket. In order to accomplish that goal, the Commission needs the free
16 and open exchange of information during the discovery process. Although the formal
17 Rules of Civil Procedure do not govern the Commission, it looks to those principles in
18 decisions regarding discovery disputes.²⁰

21 ¹⁶Motion for Expedited Consideration.

22 ¹⁷3 AAC 48.154(a).

23 ¹⁸3 AAC 48.141.

24 ¹⁹3 AAC 48.141.

25 ²⁰3 AAC 48.154(a); Order U-06-002(6), *Order Granting the Attorney General's*
26 *Motion to Compel Production, Denying Request for Oral Testimony, Finding Moot the*
Motion for Decision, Holding in Abeyance Walker's Motions to Compel and for Sanctions,
Granting Unopposed Motion to Extend Statutory Timeline, and Affirming Bench Ruling
Adopting Proposed Procedural Schedule, dated May 25, 2006.

1 REAP's Motion

2 REAP seeks from Chugach: 1) the service addresses including ZIP codes
3 of its accounts or meters, 2) monthly kilowatt-hour consumption totals by account or meter
4 for the test year, 3) applicable tariff numbers for each account, 4) monthly coincident peak
5 data by account or meter for the test year, 5) monthly non-coincident peak data by
6 account or meter for the test year, and 6) applicable customer charges for the test year.²¹

7 REAP states that it is "highly likely that it will be necessary to create a new customer class
8 and/or establish non-flat rates in one or more customer classes" and that the information
9 it is requesting will be necessary for a rate redesign.²² In support of the position that a
10 new customer class is highly likely, REAP attached the affidavit of Dr. Antony Scott. Dr.
11 Scott states that since the proposed rates between the two service territories do not
12 closely match, "it is a matter of algebra that the twin requirements in the acquisition
13 order...all but require the creation of a new customer class, establishing non-flat rates
14 within one or more customer classes, or both."²³

15 REAP states that this information is commonly available to intervenors in
16 rate cases in other jurisdictions and is commonly used in rate design.²⁴ As such, REAP
17 states that the information is well within the scope of discovery.²⁵

18 Chugach's Opposition

19 Chugach argues that REAP's Motion should be denied.²⁶ Chugach states
20 that it has already produced extensive hourly load data by district and rate class.²⁷

21 ²¹REAP's Motion, Exhibit 4 at 7-9.

22 ²²REAP's Motion at 12.

23 ²³REAP's Motion, Exhibit 3 at 2.

24 ²⁴REAP's Motion at 10-11.

25 ²⁵REAP's Motion at 10.

26 ²⁶Chugach's Opposition at 1.

27 ²⁷Chugach's Opposition at 1.

1 Chugach states that it has already provided an Excel file containing Chugach load data
2 by district and rate class for every hour of every day between April 1, 2022, through
3 March 31, 2023.²⁸ Chugach states that this is the format in which the data actually exists
4 and was the data used by Chugach in developing the proposed rates.²⁹

5 Chugach states that REAP's request would require Chugach to conduct
6 extensive new analyses to further disaggregate rate class data down to the level of every
7 service address for every one of Chugach's 113,000 meters.³⁰ Chugach asserts that it is
8 not obligated to create datasets in response to a discovery request.³¹ Chugach maintains
9 that to comply with REAP's request would require Chugach to spend thousands of dollars
10 and more than 140 hours of employee and consultant time and resources.³² Chugach
11 argues that REAP's request is unduly burdensome because aggregated customer usage
12 data has already been provided to the parties.³³

13 ENSTAR's Opposition

14 ENSTAR argues that REAP's Motion should be denied as it seeks
15 information outside the allowable scope of discovery under 3 AAC 48.154.³⁴ Further,
16 ENSTAR states that the cases REAP uses to support its argument are misplaced.³⁵
17 ENSTAR states that the cited Michigan settlement contains the express condition that it
18 cannot be referenced in any way as a precedent.³⁶ ENSTAR also argues that the

20 ²⁸Chugach's Opposition at 3.

21 ²⁹Chugach's Opposition at 3.

22 ³⁰Chugach's Opposition at 3.

23 ³¹Chugach's Opposition at 5.

24 ³²Chugach's Opposition at 12.

25 ³³Chugach's Opposition at 12.

26 ³⁴ENSTAR's Opposition at 3.

³⁵ENSTAR's Opposition at 3.

³⁶ENSTAR's Opposition at 4.

1 Commission should protect granular information about non-party customers from
2 disclosure without those customers' consent or waiver.³⁷

3 MEA's Opposition

4 MEA argues that REAP's Motion is baseless and irrelevant.³⁸ MEA states
5 that REAP's only purported basis for the requested information is Dr. Scott's assertion
6 that creating a new customer class or non-flat rate requires the information.³⁹ MEA states
7 that this is an "incredibly vague and unfounded basis" for the requested information.⁴⁰
8 MEA notes that there is no discussion provided by REAP why aggregated anonymous
9 data cannot be used for the rate design REAP thinks it would need to propound.⁴¹

10 MEA continues that REAP fails to show that the requested information is
11 relevant to the matter at issue.⁴² MEA argues that REAP's claim of relevance is Dr.
12 Scott's statement regarding "algebra" and provides no basis for the Commission to find
13 that the personal data is relevant to this matter as opposed to aggregated anonymous
14 information compiled by group or category.⁴³ MEA also asserts that the information
15 REAP requests would not be admissible, and therefore is outside the scope of
16 discovery.⁴⁴

21 ³⁷ENSTAR's Opposition at 6.

22 ³⁸MEA's Opposition at 4.

23 ³⁹MEA's Opposition at 3-4.

24 ⁴⁰MEA's Opposition at 4.

25 ⁴¹MEA's Opposition at 4.

26 ⁴²MEA's Opposition at 5-6.

⁴³MEA's Opposition at 5.

⁴⁴MEA's Opposition at 6.

1 REAP's Reply

2 REAP argues that its intent to offer a proposed rate design is squarely within
3 the scope of this proceeding.⁴⁵ REAP states that RCA regulations contemplate that
4 intervening parties may propose alternative rate designs and cites to 3 AAC 48.550(a),
5 which states:

6 "[T]he [C]ommission will, in its discretion, consider requests to increase or
7 decrease the fixed charge when the electric utility or any other party submits
8 to the commission appropriate justification and analysis which relates to its
pricing objectives."

9 REAP states that since it signaled in its petition to intervene that it intended
10 to propose "innovative rate structures" and that the Commission accepted its intervention,
11 REAP has the right to make proposals for an improved rate design to the Commission.⁴⁶

12 REAP notes that third party analysts have previously been provided with
13 disaggregated Alaska customer usage data, citing two instances of ENSTAR doing so.⁴⁷
14 In the first, REAP states that ENSTAR provided the GasDay Project with 24 million
15 individual meter reading records spanning from 1996 to 2014. In the second, REAP
16 states that ENSTAR provided university research including specific information for each
17 customer, including personally identifiable data.⁴⁸ REAP states that a similar
18 confidentiality agreement to those used by ENSTAR would be sufficient to provide REAP
19 with the requested data.⁴⁹

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23 ⁴⁵REAP's Response at 7.

24 ⁴⁶REAP's Response at 8.

25 ⁴⁷REAP's Response at 5.

26 ⁴⁸REAP's Response at 5.

⁴⁹REAP's Response at 6.

1 REAP states that any delay in the proceedings is attributable to Chugach.⁵⁰
2 REAP states that it first sent its discovery requests on November 20, 2023, twelve days
3 after REAP was allowed to intervene.⁵¹ REAP states that Chugach has not made any
4 attempt to provide a partial response to its request and took until January 22, 2024, to
5 object to each subpart of its requested data set.⁵²

6 REAP argues that Chugach has not established that the requested
7 production involves an undue burden.⁵³ REAP states that Chugach has not provided
8 sufficient detail as to its estimate of “more than 140 hours of labor” and fails to provide
9 how many employees or consultants would be engaged in the work and how many days
10 it would take to produce the data.⁵⁴ REAP states that it is very likely that Chugach will
11 need to perform the work at some point given the board’s directive to investigate rate
12 designs over the next year and a half.⁵⁵

13 ENSTAR’s Sur-reply

14 ENSTAR states that both instances cited by REAP are distinguishable.⁵⁶
15 ENSTAR states that REAP’s reference to ENSTAR’s relationship with the GasDay Project
16 is not comparable to REAP’s instant request as ENSTAR spent months developing data
17 accumulation and reports to provide the GasDay Project with the necessary information
18 while protecting customer information.⁵⁷ ENSTAR states that the information provided to
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21 ⁵⁰REAP’s Response at 9.

22 ⁵¹REAP’s Response at 10.

23 ⁵²REAP’s Response at 10-11.

24 ⁵³REAP’s Response at 11.

25 ⁵⁴REAP’s Response at 11.

26 ⁵⁵REAP’s Response at 12.

⁵⁶ENSTAR’s Sur-reply at 1-2.

⁵⁷ENSTAR’s Sur-reply at 2.

1 the Alaska Center for Energy and Power required similar amounts of effort as those of
2 the GasDay Project.⁵⁸

3 Denying REAP's Motion

4 I find that REAP has not sufficiently articulated the benefit that its rate
5 design will provide beyond being an alternative proposal. REAP has not adequately
6 explained the need for the requested data beyond that it is required for a rate structure
7 that REAP wishes to propose. I find that REAP has not sufficiently articulated why non-flat
8 rate structure is necessary. REAP also states that its experts estimate it would take a
9 minimum of seven weeks to perform the necessary analysis on the data requested in
10 REAP's Motion which would unduly delay these proceedings.⁵⁹

11 Weighted against REAP's Motion, Chugach states that REAP's request
12 would require Chugach to conduct extensive new analyses to further disaggregate rate
13 class data down to the level of every service address for every one of Chugach's 113,000
14 meters.⁶⁰ Chugach states that to comply with REAP's request would require Chugach to
15 spend thousands of dollars and more than 140 hours of employee and consultant time
16 and resources.⁶¹ REAP does not directly dispute Chugach's estimated time and expense
17 but states only that Chugach's estimate contains insufficient detail.

18 I find that the burden and expense of the requested discovery outweighs its
19 likely benefit. I further find that granting the motion would unduly delay these proceedings.
20 Therefore, I deny REAP's request to compel discovery. Accordingly, I also deny REAP's
21 request for schedule modification.

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24 ⁵⁸ENSTAR's Sur-reply at 2-3.

25 ⁵⁹REAP's Motion at 16.

26 ⁶⁰Chugach's Opposition at 3.

⁶¹Chugach's Opposition at 12.

1 Parties are aware of the procedural schedule and time constraint in these
2 proceedings. This order provides the opportunity to remind parties that they are expected
3 to respond to discovery requests within the time specified in our regulations⁶² by either
4 objecting to a discovering party's request or providing the information requested. A party
5 should not delay the filing of a motion concerning discovery by implying that it might
6 provide the information at a later date. The only acceptable delay in filing a motion
7 concerning discovery (either a motion by the responding party for an order limiting
8 discovery or a motion by the requesting party to compel discovery) is the time it takes for
9 the affected parties to confer in good faith to resolve the dispute.⁶³ Given the established
10 procedural schedule, the time taken by Chugach and REAP to confer in good faith to
11 resolve the dispute should have been numbered in days, not weeks.

12 **ORDER**

13 THE ADMINISTRATIVE LAW JUDGE FURTHER ORDERS:

14 1. *ENSTAR's Request to Accept Sur-reply and Sur-reply to REAP's*
15 *Response to Opposition to its Motion to Compel and for Scheduling Modification*, filed
16 February 9, 2024, by ENSTAR Natural Gas Company, LLC is accepted.

17 2. *The Motion for Expedited Consideration of REAP's Motion to Compel*
18 *and for Scheduling Modification*, filed January 29, 2024, by Renewable Energy Alaska
19 Project is denied as moot.

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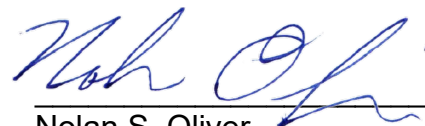
⁶²3 AAC 48.144(b).

26 ⁶³3 AAC 48.144(d).

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3. The *Renewable Energy Alaska Project's Motion to Compel and for Scheduling Modification*, filed January 29, 2024, by Renewable Energy Alaska Project is denied.

DATED AND EFFECTIVE at Anchorage, Alaska, this 26th day of February 2024.



Nolan S. Oliver
Administrative Law Judge



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