

THE STATE OF NEW HAMPSHIRE

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May 13, 2008



Debra Howland  
Executive Secretary and Director  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, New Hampshire 0330

Re: DE 06-061 – Energy Policy Act of 2005  
Investigation of the Implementation of Standards of the Energy Policy Act of 2005  
Staff's Recommendation

Dear Ms. Howland:

Attached please find Staff's recommendation regarding the Net Metering Standard, Fuel Diversity Standard and Efficiency in Generation Standard of the Energy Policy Act of 2005.

Please let me know if you should have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Suzanne Amidon".

Suzanne Amidon  
Staff Attorney

cc: Service list

# STATE OF NEW HAMPSHIRE

## Inter-Department Communication

DATE: May 13 , 2008

AT (OFFICE): NHPUC

**FROM:** Suzanne Amidon  
Staff Attorney

**SUBJECT:** Docket No. DE 06-061  
Investigation into Federal Standards/Energy Policy Act of 2005  
Net Meter, Fuel Diversity, and Efficiency in Generation  
Staff Recommendation

**TO:** Commissioners  
General Counsel  
Debra Howland

**CC.** Tom Frantz, Director of the Electric Division

In July, 2005 the U.S. House of Representatives and Senate passed the Energy Policy Act of 2005 (EPAAct), which was signed into law on August 8, 2005. Among the many things in the law, the EPAAct added five new standards to the Public Utilities Regulatory Policies Act (PURPA) of 1978. 16 U.S.C. § 2601 et seq. The Commission has considered the first two standards—time based metering and interconnection—in Docket No. DE 06-061, *Investigation into Federal Energy Policy Act of 2005*. See Order No. 24,763 (June 22, 2007). The three remaining standards are net metering, fuel diversity and fossil fuel generation efficiency.<sup>1</sup>

The EPAAct provides state commissions until August 8, 2007 to begin consideration or to set a hearing date to initiate a proceeding, and until August 8, 2008 to complete consideration and make a determination as to whether or not to adopt the additional standards.

The EPAAct grandfathers prior state action if (1) the state implemented the standard or comparable standard, (2) the state commission has conducted a proceeding considering implementation of the standard or comparable standard, or (3) the state's legislature voted to implement the standard or comparable standard. 16 U.S.C. 2622 (d). If these conditions are met with respect to a standard, the obligation to consider the standards is waived and no new consideration process is required.

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<sup>1</sup> The three standards are codified as 16 U.S.C. § 2621 (d) (11), (12) and (13).

Staff reports that, with respect to each of these standards, the N.H. legislature or the Commission has taken prior action, thereby eliminating the need for the Commission to consider the adoptions of these standards. The discussion follows.

**Net Metering:** “Each electric utility shall make available upon request net metering to any electric consumer that the electric utility serves. For purposes of this paragraph, the term ‘net metering service’ means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.” 16 U.S.C. §2621 (d)(11).

The New Hampshire legislature enacted net energy metering legislation, RSA 362-A:9, in 1998 as part of RSA Chap. 362-A, Limited Electrical Energy Producers. The Commission promulgated net metering rules, N.H. Code Admin. Rules Puc 900, to implement the law.

One of the purposes of RSA 362-A is to encourage the production of supplemental electrical power through small scale sources, and, therefore, RSA 362-A:9 requires net metering of small customer-sited sources. In 2007, the legislature amended RSA 362-A:9. (Chapter 174, Session Laws of 2007). Chapter 174 expanded net metering to include all customer-sited renewable energy generation with a total peak generating capacity of not more than 100 kilowatts, increasing the cap from 25 kilowatts, and allowed such generation to total up to one percent of the associated electric utility’s annual peak energy demand, replacing the previous limit of 0.05 percent.

The enactment of Chapter 174 constitutes the legislative action implementing a net metering standard and, therefore, the Commission’s obligation to consider implementation of a net metering standard is waived.

**Fuel Sources:** “Each electric utility shall develop a plan to minimize dependence on [one] 1 fuel source to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies including renewable technologies.” 16 U.S.C. §2621 (d)(12)

As noted in the discussion regarding net metering, the legislation previously enacted RSA Chap. 362-A, Limited Electrical Energy Producers. The purpose of this law is to “provide for small scale and diversified sources of supplemental electrical power to lessen the state’s dependence upon other sources which may, from time to time, be uncertain” and to encourage and support the development of electrical production using renewable fuels. RSA 362-A:1. The legislature amended RSA 362-A in 2006 to expand the definitions of eligible renewable fuels, and further amended the law in 2007 by expanding the opportunity for net metering with customer sited sources as described above.

The legislature also enacted RSA Chap. 362-F, Renewable Energy Portfolio Standards, in 2007. The purpose of RSA 362-F is to simulate investment in low emission renewable energy generation technologies and to lower dependence on fossil fuels.

Finally, electric utilities are required to file least cost integrated resource plans (LCIRP) which are intended to include diversity of energy sources. RSA 378:37.

Both the amendments to RSA 362-A and the enactment of RSA 362-F meet the purposes of the federal standard for fuel diversity. Therefore, the Commission's obligation to consider this standard is waived.

**Fossil Fuel Generation Efficiency:** "Each electric utility shall develop and implement a 10 year plan to increase the efficiency of its fossil fuel generation." 16 U.S.C. §2621 (d)(13).

Following restructuring of the electric industry in New Hampshire, the only utility owning generation units is Public Service Company of New Hampshire (PSNH). PSNH owns base, intermediate and peaking generation units producing electric power with fossil fuels. While PSNH prepares a LCIRP with a planning period of 5 years, Staff reviews PSNH generation unit operating efficiency annually in connection with the company's stranded cost charge and energy service charge reconciliation filings. (*See*, for example, Docket No. DE 07-057, Order No. 24,805 (December 7, 2007)). In these reconciliation proceedings, Staff has retained the services of The Liberty Consulting Group to conduct an engineering review of plant operation and replacement power costs. These annual reviews and the resulting recommendations are intended to result in improvements in PSNH's generation efficiency on both the short and long term.

The Commission action in conducting the reconciliation proceedings meets the federal standard to increase the efficiency of fossil fuel generation. Therefore, the Commission's obligation to consider this standard is also waived.

## **Conclusion**

Based on the foregoing analysis, Staff's position is that the Commission has no obligation to investigate the net metering, fuel diversity or generation efficiency standards because there is prior state action on the standards which waives the requirements of EPAct.

Please let us know if you have any questions.