

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 06-061

**INVESTIGATION INTO IMPLEMENTATION OF STANDARDS IN
THE ENERGY POLICY ACT OF 2005**

Order Concluding Investigation

Q R D E R N O. 24,893

September 15, 2008

APPEARANCES: Gerald M. Eaton, Esq. on behalf of Public Service Company of New Hampshire; Alexandra E. Blackmore, Esq. on behalf of Granite State Electric Company d/b/a National Grid; Gary M. Epler, Esq. on behalf of Utilil Energy Systems, Inc.; August Fromuth on behalf of Halifax American Energy Company; Rubin and Rudman LLP by Karla J. Doukas, Esq. on behalf of Wal-Mart Stores East, L.P.; Pentti Aalto and Roy Morrison *pro se*; Amy L. Ignatius, Esq. on behalf of the New Hampshire Office of Energy and Planning; Office of Consumer Advocate Meredith A. Hatfield, Esq. on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. on behalf of Commission Staff.

I. PROCEDURAL HISTORY

The Commission opened this docket with an order of notice issued on April 4, 2006 announcing the beginning of an investigation into whether to adopt any of the five new energy standards contained in the federal Energy Policy Act of 2005 (EPAct). The EPAct amended the Public Utility Regulatory Policies Act (PUPRA) by directing state utility commissions to decide whether to implement the following energy standards: net metering, diversity of fuel sources, fossil fuel generation efficiency, time-based metering and communications (also called “smart-metering” or “advanced metering infrastructure” or “AMI”) and interconnection.¹

The Office of Consumer Advocate filed a letter on April 25, 2006 stating that it would be participating in the docket on behalf of residential ratepayers. Public Service Company of New Hampshire (PSNH), Utilil Energy Systems, Inc. (UES) and Granite State Electric Company

¹ The five standards are codified as 16 USC §2601 (d) (11), (12), (13), (14) and (15).

d/b/a National Grid (National Grid) participated in the docket. The following additional parties filed motions to intervene, all of which were granted: Wal-Mart Stores East; Hunt Technologies, Inc.; Pentti Aalto and Roy Morrison; Granite State Hydropower Association; Constellation Energy Commodities Group, Inc and Constellation NewEnergy, Inc.; Halifax-American Energy Company; and the New Hampshire Office of Energy and Planning.

The Commission held a prehearing conference on May 16, 2006 and, following a number of technical sessions and party comments, the Staff developed a document which delineated the proposed scope of the investigation, which was filed with the Commission on July 25, 2006. On August 4, 2006, the Commission approved the scoping document and agreed to limit the initial phase of the docket to smart metering and interconnection.²

Following months of discovery, technical sessions and a hearing, the Commission issued Order No. 24,819 (January 22, 2008) which addressed the smart metering standard. The Commission concluded that “the potential benefits of time-based rates deserve further inquiry to determine how best and on what schedule to implement the federal standard” and that “[t]he most important of the issues is determining which form of time-based rate is appropriate for each utility and for each customer class, based on an analysis of the associated costs and benefits.” The Commission indicated that each utility would be required to conduct a cost-benefit analysis of time-based rates and smart meters, and that one or more dockets would be opened to further these goals.

In Order No. 24,819, the Commission also directed Staff to submit its recommendation regarding the interconnection standard. On March 7, 2008, Staff filed its recommendations which, among other things, suggested that the parties convene to “work toward a standardized set

² See Order No. 24,763 (June 22, 2007) for more information on the procedural history of this docket.

of interconnection procedures for projects of 10 kVA or smaller based on the Massachusetts Interconnection Standards. On May 13, 2008, Staff filed a report of a technical session among the parties describing certain areas of technical agreement, indicating that the utilities would develop a common draft tariff, and noting that Staff would take steps to initiate a rulemaking proceeding to address changes to N.H. Code Admin. R. Puc 900, the Commission's rules governing net energy metering.

On May 13, 2008, Staff filed a recommendation with respect to the remaining three standards – fuel diversity, fossil fuel generation efficiency, and net metering – which the Commission deferred for later consideration. Staff opined that the N.H. legislature and the Commission had adopted comparable standards, thereby waiving the need for the Commission to conduct further investigation into the standards.

The Commission issued a secretarial letter on June 4, 2008 requesting that parties file comments on Staff's recommendation by June 18, 2008. PSNH filed a letter on June 18, 2008 expressing agreement with Staff's recommendation. This order addresses Staff's recommendations regarding the standards for net metering, fuel diversity and fossil fuel generation efficiency.

II. POSITIONS OF THE PARTIES AND STAFF

A. Commission Staff

Staff noted that the EPAct gives state commissions until August 8, 2008 to complete consideration and make a determination as to whether or not to adopt any standard included in the law. Staff pointed out that the EPAct "grandfathers" prior state action if (1) the state implemented the standard or a comparable standard, (2) the state commission has conducted a proceeding considering implementation of the standard or a comparable standard, or (3) the

state's legislature voted to implement the standard or a comparable standard. 16 U.S.C. § 2622

(d). The EPAct states that, if one of these conditions is met with respect to a standard, the obligation of a state commission is waived and no new consideration process is required. Staff opined that, with respect to net metering, fuel diversity and efficiency in electric generation facility operation, either the N.H. legislature or the Commission has adopted a comparable standard, thus eliminating the need for the Commission to further consider the standards.

i. Net Metering

The net metering standard in the EPAct is described as follows:

"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).

With respect to net metering, staff pointed out that the N.H. legislature enacted net metering legislation with the adoption of RSA 362-A:9, Net Energy Metering, in 1998. As required by RSA 362-A:9, V, the Commission promulgated net metering rules, N.H. Code Admin. R. Puc 900, to implement the law. In 2007, the N.H. legislature amended RSA 362-A:1-a and 9 (Chapter 174, 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. Staff stated that the enactment of amendments to RSA 362-A:1-a and 9 constitutes legislative action implementing a net metering standard and, therefore, the Commission's obligation to consider implementation of a net metering standard is waived.

ii. Fuel Diversity

The EPAct describes the fuel diversity standard as follows:

“Each electric utility shall develop a plan to minimize dependence on 1 [one] 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)

Staff noted that the N.H. legislature has also enacted a standard for fuel diversity. First, staff noted that Chapter 174, which amended the net metering law, expanded the definition of eligible renewable fuels that may be net metered by substituting “renewable energy” for “solar, wind and/or hydro energy.” RSA 362-A:1-a, II-b. In addition to this change, Staff pointed out that, in 2007, the N.H. legislature enacted RSA 362-F, Renewable Energy Portfolio Standards, the purpose of which is to stimulate investment in low emissions renewable energy generation technologies by requiring electric service providers to purchase renewable energy certificates (REC) that represent renewable energy generation. Staff stated that the N.H. legislature’s enactment of Chapter 174, Laws of 2007 and RSA 362-F adopt a fuel diversity standard, thereby waiving the Commission’s obligation to further consider the standard.

iii. Fossil Fuel Generation Efficiency

The EPAct describes the fossil fuel generation efficiency standard as follows:

“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).

With respect to fossil fuel generation efficiency, Staff noted that, following electric industry restructuring in New Hampshire, PSNH is the only utility owning generation units. PSNH owns base, intermediate and peaking generation units producing electric power with fossil fuels. Staff pointed out that all electric utilities are required to file least cost integrated resource

plans (LCIRP) with the Commission. RSA 378:38. Staff said that PSNH prepares a LCIRP with a planning period of 5 years.

In addition, Staff said that the Commission reviews the operating efficiency of PSNH's generating units on an annual basis in connection with the company's stranded cost and energy service charge reconciliation filings. Staff stated that in such proceedings, the Commission investigates both plant operation and replacement power costs, with the ongoing goal of improving PSNH's generation efficiency in both the short and long term. According to Staff, this annual review constitutes Commission adoption of a standard comparable to that set forth in the EPAct and, therefore, the Commission's obligation to further consider the fossil fuel generation efficiency standard is waived.

B. Public Service Company of New Hampshire

PSNH filed a letter on June 18, 2008 stating that it agreed with Staff's recommendations. PSNH stated that the N.H. legislature and the Commission have previously addressed these issues and taken action so that consideration of adopting the standards of net metering, fuel diversity or fossil fuel generation efficiency are not necessary nor required by the EPAct 2005.

No other party to the proceeding offered comments regarding Staff's recommendations.

III. COMMISSION ANALYSIS

We have reviewed Staff's recommendations and we agree that, with respect to net metering and fuel diversity standards, the N.H. legislature has considered and taken action to adopt a standard comparable to those established in the EPAct in both cases, and pursuant to the grandfather provision in the EPAct, further consideration of net metering and fuel diversity is not required.

We also agree that further consideration of fossil fuel generation efficiency is not necessary because the Commission reviews fossil fuel generation efficiency in connection with PSNH's annual stranded cost charge and energy service charge reconciliation filing. *See, e.g.*, Docket No. DE 07-057. As Staff notes, following electric utility restructuring, PSNH is the only electric distribution utility in New Hampshire that retains electric generation plants. PSNH's cost of energy service, pursuant to RSA 369-B:3, IV(b)(1)(A) shall be PSNH's "actual, prudent, and reasonable costs of providing such power, as approved by the commission." In addition, the Commission must observe the restructuring policy principles which require utilities to take all reasonable measures to mitigate stranded costs. RSA 374-F:3, XII (c). The Commission applies these standards, requirements and guidelines in its annual review of PSNH's plant operation, fuel supply purchases and purchased power arrangements. The Commission also investigates planned and unplanned outages at all of their generation units, the causes for such outages, and recommends corrective measures to minimize unplanned outages.

The scrutiny given to PSNH's generation operations constitutes the Commission's implementation of a fossil fuel generation efficiency standard, and we agree that our consideration of the standard is not required due to these prior and continuing Commission actions.

Based upon the foregoing, it is hereby

ORDERED, that Staff shall convene a meeting among the parties to this proceeding for the purpose of establishing a working group to facilitate the evaluation and implementation of advanced metering infrastructure and time-based rates in New Hampshire and that such working group make a report to the Commission by December 1, 2008 with regard to next steps toward utility specific cost-benefit analyses regarding such implementation and related matters; and it is

FURTHER ORDERED, that Staff shall draft revisions to Puc 900, the Commission's rules governing net energy metering, and that a rulemaking proceeding shall be opened to consider rule changes with regard to interconnection standards; and it is

FURTHER ORDERED, that the affected utilities complete work on a common draft tariff for interconnection of generating sources of up to 10 KVA and possibly inverter based sources up to 100 KVA as described in the Report of the Technical Session of April 25, 2008 filed on May 13, 2008, and file utility specific tariff based on such common draft by December 31, 2008; and it is

FURTHER ORDERED, that additional review of the energy standards for net metering, fuel diversity and fossil fuel generation efficiency as proposed in the Energy Policy Act of 2005 is not required due to actions of the New Hampshire legislature and the Commission in adopting comparable standards.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of September, 2008.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary