

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: December 3, 2015

AT (OFFICE): NHPUC

NHPUC 3DEC15PM4:17

FROM: Michael Sisto, Utility Analyst *MJS*
Elizabeth Nixon, Energy Analyst *EN*

SUBJECT: One-time Waiver of Puc 909.07(b)

TO: Martin P. Honigberg, Chairman
Robert R. Scott, Commissioner
Kathryn M. Bailey, Commissioner
Debra A. Howland, Executive Director and Secretary

CC: David K. Wiesner, Staff Attorney

Summary

In this memorandum, Staff recommends that the Commission (1) waive the mandate of Puc 909.07(b) that certain host registrations “shall expire” for failing to file a 2015 annual report by October 1, 2015, and (2) extend until 30 days after the decision is issued, the deadline for affected hosts to file their 2015 annual reports. The basis for this recommendation is that Staff inaccurately informed some hosts that they need not file annual reports in 2015 because their systems were not operating in 2014.

Background

The Legislature authorized group net metering with the July 2013 passage of SB 98, which added RSA 362-A:9, XIV. The new law directed the Commission to “establish the process for registering hosts, including periodic re-registration, and the process by which changes in membership are allowed and administered.” RSA 362-A:9, XIV(a). In January 2015, the Commission adopted the final version of Puc 909 to “establish the process,” among other objectives. (Puc 909.07 and 909.10 are reproduced below.) Relevant to this recommendation, Puc 909.07(a) requires hosts to file annual reports “on or before [April 1]¹ of each year after registration.” Failure to timely file an annual report gives the utility authority to cease its payments to the host. Puc 909.07(a). If the host fails to cure its default and file an annual report by October 1, the “host’s registration shall expire without further action by the commission.” Puc 909.07(b).

¹ Puc 909.07(a) actually sets a March 15 deadline, but the March 15 date is inconsistent with an April 1 deadline for annual reports contained in Puc 909.10. Given the conflict, Staff intends to enforce the later deadline until a rule change cures the inconsistency.

The Commission approved more than 40 host applications in 2014. According to Puc 909.07, these hosts were required to file annual reports by April 1, 2015. Some of these hosts, however, did not generate electricity in 2014 -- although they were approved hosts, they had not completed construction of their system and/or were not interconnected with the utility by the end of 2014. They will be referred to as “unconnected hosts.” A number of these unconnected hosts did not file annual reports by April 1 and did not cure their default by October 1, 2015. A plain reading of Puc 909.07(b) indicates their registrations “expire[d] without further action by the commission.”

The problem that gives rise to this recommendation is that Staff informed some unconnected hosts that they did not have to file an annual report in 2015. Staff improperly interpreted the requirement to file “each year *after registration*” as if the rule said “each year *after the system became operational*.” Staff’s incorrect advice seemed like a practical accommodation for those hosts whose systems had not begun operation. An unconnected host would have no 2014 generation data to report, and information about its members’ loads during 2014 would be irrelevant if the system did not operate that year. *See* Puc 909.10(a) (required information for annual report). Staff later realized, however, that other information required in the annual report would be important for the utility and Commission to know, such as membership or system changes. Staff’s accommodation was thus an incorrect reading of the rule.

Absent the waiver requested in this recommendation, the registrations of these unconnected hosts would expire, they would have to re-apply for host status, and they would risk losing their ability to net meter given the net metering limitation of RSA362-A:9. This burden and possible loss of their ability to net meter would be unfair, especially to the extent they relied on statements from Staff.

Staff thus recommends that the Commission waive Puc 909.07(b) as to the unconnected hosts and grant them until 30 days after the decision is issued to file their 2014 annual reports. Staff recommends that any unconnected host failing to meet this one-time extension granted would then be subject to the automatic expiration provision of Puc 909.07(b). Going forward, Staff expects that all hosts, whether operating or not, will be required to file annual reports as provided in Puc 909.07 and 909.10.

The Commission may grant a waiver of its rules upon a finding that the “waiver serves the public interest” and “will not disrupt the orderly and efficient resolution of matters before the commission.” Puc 201.05(a). “In determining the public interest, the commission shall waive a rule if: (1) Compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or (2) The purpose of the rule would be satisfied by an alternative method proposed.” Puc 201.05(b). Staff submits that the waiver requested here will not disrupt any matter before the Commission, that adherence to Puc 909.07 “would be onerous” and unfair given the circumstances of the unconnected hosts described above, and that “the alternate method proposed” of a one-time amended deadline of 30 days after the decision is issued will satisfy the purpose of the rule. **Puc 909, adopted January 8, 2015.**

Puc 909.07 Annual Report.

(a) Each host shall file with the commission, on or before March 15 of each year after registration, an annual report that contains the information required by Puc 909.10, and shall simultaneously send a copy to the host's distribution utility. Failure to timely file an annual report shall authorize the distribution utility to cease making the payments provided for in Puc 909.08 until the host files its annual report, as described in Puc 909.08(e) and (f).

(b) A host's registration shall expire without further action by the commission if the host fails to file an annual report by October 1 of the year the annual report is due.

(c) The commission shall notify the appropriate utilities of hosts whose registration expired under (b) above.

Puc 909.08 Duties of the Distribution Utility.

* * *

(e) If the host's registration is suspended under Puc 909.11, or if the host fails to timely file an annual report required by Puc 909.07(a), the distribution utility shall cease making payments due under this chapter beginning with the billing cycle * * *.

Puc 909.10 Host's Annual Report.

(a) On or before April 1 of each year, beginning the year after the host received a registration number, all hosts shall provide the commission, with a copy to the distribution utility, an annual report containing the following information, covering the immediately preceding calendar year:

(1) Any changes to the information required by Puc 909.09;

(2) As to those members who joined the group * * *;

(3) As to those members who left the group during * * *; and

(4) A calculation, with supporting documents, of the total electricity generated by the host's facility, the host's load, the load of each member used to offset the host's generation, and the combined load of all the members.

Cayes, Sheredith A

From: Cayes, Sheredith A
Sent: Thursday, December 03, 2015 4:17 PM
To: PUC - Draft Order Group
Cc: Nixon, Elizabeth; Sisto, Michael; Wiesner, David K
Subject: One-time Waiver of PUC 909.07(b)
Attachments: One Time Waiver of PUC 909.07(b).pdf

Attached please find a staff recommendation memo.

Sheredith Cayes
NH Public Utilities Commission
21 S. Fruit St., Suite 10
Concord NH 03301-2429
603-271-6031
Sheredith.Cayes@puc.nh.gov