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Rep. William A. Hatch
Chair, Joint Legislative Committee on Administrative Rules
Office of Legislative Services
Administrative Rules
25 Capitol Street, Room 219
Concord, NH 03301-6312

RE: Rulemaking Notice 2019-162
Puc 900 Rules, Net Metering for Customer-Owned Renewable Energy
Generation Resources of 1,000 Kilowatts or Less
NHPUC Docket No. DRM 19-158

Comments of Public Service Company of New Hampshire d/b/a Eversource Energy

Dear Mr. Hatch:

On April 28, 2020, the New Hampshire Public Utilities Commission (“Commission”) filed for approval of a Final Proposal pertaining to its readoption, with amendment, of New Hampshire Code of Administrative Rules, CHAPTER Puc 900. The development of this Final Proposal followed a lengthy stakeholder process in which Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) actively participated.

While in general Eversource has no substantial concerns with the amendments as proposed by the Commission in its Final Proposal, Eversource is submitting these comments to note a particular rule in need of clarification prior to approval and adoption. In Eversource’s assessment, revising and clarifying the language of the Final Proposal is necessary to avoid a potential unintended consequence that would result in unduly disparate treatment of individuals covered by the rule. Eversource was not able to address this matter during the process before the Commission because the final language of the proposed rules was not known until the time the Commission submitted its March 12, 2020 request for an amended fiscal impact statement, by which time Eversource understood that the process before the Commission had ended. Eversource would not object to conditional approval of the rules subject to addressing the items set out below.

The specific rule in question is the proposal regarding Puc 903.03, which Eversource has included in its entirety as Attachment 1 to this letter. Eversource has two concerns with this rule. First, Eversource believes there is an ambiguity in proposed Puc 903.03(c) that should be clarified. Presently, the relevant portion of the rule reads as follows:

(c) Multiple projects located on the same or adjacent and contiguous parcels of land that are owned by the same person or entity or an affiliate of said person or entity and are interconnected behind separate retail electricity meters shall be considered separate facilities, if each such project is being or has been developed

The placement of the phrase “that are owned” within this passage creates an ambiguity. It is not clear whether this ownership applies to the identified “projects” or to the “parcels of land” or both. Eversource believes the rule was intended to apply to projects, and would offer that amending the passage as follows best serves its purpose and intent:

(c) Multiple projects ~~located on the same or adjacent and contiguous parcels of land~~ that are owned by the same person or entity or an affiliate of said person or entity, **and which are located on the same or adjacent and contiguous parcels of land, and which** are interconnected behind separate retail electricity meters shall be considered separate facilities, if each such project is being or has been developed

The second item Eversource wishes to raise with Puc 903.03 is of more substance. The Commission’s proposed rule is intended to avoid circumstances where parties may attempt to inappropriately modify projects or land rights to create eligibility for net metering where it would not otherwise exist. Eversource supports the goal of the rule. However, in tracing the analysis that would need to be done to determine whether certain projects are legitimately eligible for net metering treatment, Eversource has discovered that the rule appears to inadvertently result in projects being treated in an unintended and conflicting manner.

Pursuant to the proposed Puc 903.03(a) and Puc 903.03(c), multiple projects located on the same or adjacent parcels of land are deemed a single project for examining net metering eligibility unless those projects meet certain criteria. Among the identified criteria are provisions pertaining to joint or affiliated ownership, as well as a provision examining whether relevant property lines have been “subdivided, modified, or otherwise altered within the ten years immediately preceding the submission of a project interconnection request to the distribution utility.” Puc 903.03(a)(2). If the property lines have been modified within ten years, rule Puc 903.03(a) appears to presume that multiple projects will be treated as a single project unless the exception in Puc 903.03(c)(5) applies. That exception states that the single project presumption will be reversed if “the project owner has provided written documentation demonstrating that such subdivision, modification, or alteration was not undertaken for the purpose of affecting the eligibility of the project for net metering or that it was otherwise unrelated to the development of electric generation facilities.” Thus, for projects with affiliated ownership, Puc 903.03(a) and Puc 903.03(c) create a presumably unintended result that may be best explained using an example.

Assume, for example, Scenario A in which projects of affiliated owners are proposed to be built on adjacent parcels that have never been altered or subdivided. Assume, also, Scenario B in which projects of affiliated owners are proposed to be built on adjacent parcels that were subdivided fewer than 10 years ago, but for a purpose demonstrably unrelated to net metering eligibility. The rules would create different results for Scenario A and B. The projects in

Scenario A would be deemed a single facility per Puc 903.03(a). The projects in Scenario B, however, would be considered separate facilities per the exception of Puc 903.03(c)(5). All else being equal, there is no material difference in Scenario A and Scenario B and both should be treated the same under the rules. Given this inconsistent result, it is not entirely clear to Eversource how the rules would be applied in practice.

The most straightforward resolution, in Eversource's opinion, is to delete Puc 903.03(c)(5). In Eversource's estimation, the deletion of Puc 903.03(c)(5) achieves the intended aim of the proposed Puc 903.03, while avoiding the inconsistent outcomes described. Moreover, deleting Puc 903.03(c)(5) eliminates scenarios where utilities and/or the Commission would be required to make a determination that subdivision, modification, or alteration of a parcel "was not undertaken for the purpose of affecting the eligibility of the project for net metering or that it was otherwise unrelated to the development of electric generation facilities." Though there would be occasions where such a determination is straightforward and indisputable, there would be others where that determination is subjective and based upon limited or inconclusive documentation. Eversource requests the removal of Puc 903.03(c)(5). Alternatively, should the deletion of Puc 903.03(c)(5) be deemed inadequate by the Commission for any reason, Eversource is prepared to work with the Commission and stakeholders on other revisions that would achieve the desired goals while avoiding the undesired outcomes.

Eversource supports the goal of assuring that all properly eligible projects receive the net metering treatment to which they are entitled. Eversource's intent in making these comments is to assure that the rules for net metered projects are consistent and fair, and that they will be understood by utilities, project developers, customers, and the Commission. As noted above, Eversource would not object to the conditional approval of the rules subject to addressing the items identified in this submission.

Thank you for your assistance with this matter. If you have any questions about this matter, please do not hesitate to contact me.

Very truly yours,



Matthew J. Fossum
Senior Regulatory Counsel

CC: Scott Eaton, Administrative Rules Director
Michael Morrell, Senior Committee Attorney
Cheryl Walsh, Administrative Assistant

ATTACHMENT 1

Puc 903.03 Where Multiple Projects Are Deemed a Single Facility.

(a) Except as otherwise provided in (c) below, projects consisting of electricity generating equipment powered by an eligible renewable energy source or that employ a heat led combined heat and power system, and located behind separate retail meters, shall be deemed to be one facility for purposes of net metering eligibility if the projects are owned by the same person or entity or an affiliate of said person or entity and are located on the same parcel of land or adjacent and contiguous parcels of land, unless each of the following conditions applies:

- (1) Each project is located on a separate parcel of land;
- (2) The property boundaries of each parcel of land have not been subdivided, modified, or otherwise altered within the ten years immediately preceding the submission of a project interconnection request to the distribution utility;
- (3) Each project is owned by a separate individual or by a separate and unaffiliated corporation, limited liability company, or other legal entity; and
- (4) Each project is interconnected with the utility distribution system through a separate interconnection point and with a separate meter.

(b) The restrictions set forth in (a) above shall apply to two or more projects notwithstanding any phased approach to development or different construction schedules for such projects.

(c) Multiple projects located on the same or adjacent and contiguous parcels of land that are owned by the same person or entity or an affiliate of said person or entity and are interconnected behind separate retail electricity meters shall be considered separate facilities, if each such project is being or has been developed:

- (1) Such that not less than 50 percent of the annual generation output is to serve the on-site load of existing or new retail electric customers;
- (2) To participate in a different electric generation program, such as net metering, direct producer-to-consumer retail sales of electric power, or wholesale sales of electric power;
- (3) Using a solar photovoltaic system that is limited in size to that which will fit on the roof and exterior envelope of the building or buildings served by the retail electricity meter through which the system is interconnected to the electric distribution system;
- (4) Using distinct and different electricity generating technologies and equipment that can be operated independently; or
- (5) On parcels of land for which the property boundaries have been subdivided, modified, or otherwise altered within the ten years immediately preceding the submission of a

project interconnection request to the distribution utility, if the project owner has provided written documentation demonstrating that such subdivision, modification, or alteration was not undertaken for the purpose of affecting the eligibility of the project for net metering or that it was otherwise unrelated to the development of electric generation facilities.

(d) As used in this section, “affiliate” means any of the following:

(1) Any person or entity that directly or indirectly owns, controls, or holds with power to vote a majority of the outstanding voting securities or such minority thereof as to give such person substantial control of another person or entity;

(2) Any person or entity that is directly or indirectly owned, controlled, or held by any person or entity described in (1) above through either power to vote a majority of the outstanding voting securities or such a minority so as to maintain substantial control of such person or entity;

(3) Any person or entity with which another person or entity has a management or service contract or arrangement that provides such person or entity with effective control over the management, supervision, or operation of the other person or entity; or

(4) Any person or entity who or which actually exercises effective control over the management, supervision, or operation of another person or entity.