

THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION
ELECTRIC DISTRIBUTION UTILITIES

Consideration of Changes to the Current Net Metering Tariff Structure, Including Compensation
of Customer-Generators

Docket No. DE 22-060

NEW HAMPSHIRE DEPARTMENT OF ENERGY POST-HEARING REPLY BRIEF

The New Hampshire Department of Energy (“DOE” or “Department”) files this post-hearing reply brief pursuant to the Public Utilities Commission’s (“Commission” or “PUC”) procedural order issued on August 23, 2024, directing parties to the above-captioned docket to submit reply briefs by October 18, 2024.

I. INTRODUCTION

The Commission’s order issued on August 23, 2024, directed parties to submit post-hearing briefs by October 4, 2024, with the opportunity to submit reply briefs by October 18, 2024. Public Service Company of New Hampshire d/b/a Eversource Energy; Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty; Unitil Energy Systems, Inc.; the Office of the Consumer Advocate (“OCA”); Clean Energy New Hampshire (“CENH”); Conservation Law Foundation (“CLF”); Granite State Hydropower Association; Standard Power of America; and Walmart Inc. (collectively, the “Settling Parties”) filed a joint brief supporting the recommendations contained in their Settlement Agreement (“Settlement Agreement” or “Settlement”) filed on August 1, 2024. CLF filed a supplemental brief in addition to the Settling Parties’ joint brief. The Department and the Community Power Coalition of New Hampshire (“CPCNH”) each filed briefs as well.

The Department files this reply brief to address arguments made in CLF’s supplemental brief regarding the Settling Parties’ proposed 20-year legacy period.

II. ANALYSIS

A. The Current Alternative Net Metering Tariff (“NEM 2.0”) End Date of 2040 Should Stay in Place While a New Tariff is Explored and Developed

In its initial brief, the Department laid out its recommendations that the Commission maintain the current alternative net metering compensation tariff (“NEM 2.0”), approve the application fee proposal submitted by the Settling Parties, and direct the joint utilities to develop a time-of-use rate (“TOU”) proposal for net metering customers through a stakeholder and data collection process to commence following the issuance of a final order in this docket. As part of its recommendation that the Commission maintain NEM 2.0 until a TOU rate proposal is developed, the Department recommended that the Commission permit current NEM customers as well as any new NEM customers to continue to receive compensation under the current tariff structure until 2040 (“Legacy Period”) consistent with the current tariff; with the opportunity to consider adjusting legacy periods as part of a further proceeding within the next couple of years. The Settling Parties recommended that any new NEM customers who sign up until a new tariff is developed be allowed to lock in to the current NEM 2.0 tariff structures for a 20-year period from the date they begin net metering.

Part of the Department’s concern with the Settling Parties’ proposal is that there is not sufficient evidence that offering 20 years of a certain guaranteed compensation structure for new NEM customers will not harm customers overall. CLF’s supplemental brief characterizes the Settling Parties’ testimony on legacy periods as “unrefuted” and “undisputed.”¹ But this

¹ Docket No. DE 22-060, Tab 119, Conservation Law Foundation Supplemental Post Hearing Brief at 4-5.

testimony was refuted and disputed. CLF further argues that although the DOE testified it did not agree with the settling parties' evidence on legacy periods, neither the DOE nor any other party introduced evidence to refute the Settling Parties' testimony about the 2040 legacy period creating uncertainty for developers.²

The Department does not believe that the key question for the Commission to address is whether or not the 2040 legacy period creates uncertainty for developers. Rather, the Department believes the Commission's ultimate consideration should be whether the legacy period proposed by the Settling Parties better satisfies the considerations of RSA 362-A:9 than the current 2040 legacy period. The Department does not believe there is sufficient evidence that it does.

RSA 362-A:9, XVI(a) describes the Commission's task in reviewing new alternative net metering tariffs. This task is as follows:

In developing such alternative tariffs and any limitations in their availability, the commission shall consider: balancing the interests of customer-generators with those of electric utility ratepayers by maximizing any net benefits while minimizing any negative cost shifts from customer-generators to other customers and from other customers to customer-generators; the costs and benefits of customer-generator facilities; an avoidance of unjust and unreasonable cost shifting; rate effects on all customers; alternative rate structures, including time-based tariffs pursuant to paragraph VIII; whether there should be a limitation on the amount of generating capacity eligible for such tariffs; the size of facilities eligible to receive net metering tariffs; timely recovery of lost revenue by the utility using an automatic rate adjustment mechanism; and electric distribution utilities'

² Docket No. DE 22-060, Tab 119, Conservation Law Foundation Supplemental Post Hearing Brief Footnote 5.

administrative processes required to implement such tariffs and related regulatory mechanisms.

Approving the Settling Parties' legacy period proposal inherently requires the Commission to find that a rolling 20-year legacy period better satisfies the above considerations than the current status quo of 2040. In support of their legacy period proposal, the Settling Parties offered evidence focusing on its necessity in order for developers to receive financing for new net metering projects. The Settling Parties' arguments in support of their proposal, explicitly and implicitly, appear to say:

- 1) Scenarios provided by one anonymous developer, and which solely include projects greater than 1 MW,³ are sufficiently representative of all net metering projects in New Hampshire;
- 2) The calculations, inputs, and assumptions used to develop those scenarios are accurate, reliable, and sufficiently applicable to all new net metering customers, regardless of size;
- 3) These scenarios, along with similar testimony from the Settling Parties at hearing⁴, are sufficient to demonstrate that net metering-eligible projects will not get built in New Hampshire without the 20-year legacy period they propose;
- 4) The potential opportunity to revisit net metering legacy periods in a proceeding two years from now does not sufficiently mitigate these concerns;

³ See Docket No. DE 22-060, Tab 103 Joint Parties Settlement Agreement on Net Metering Tariff, Attachment B at Bates 28-29; See also Docket No. DE 22-060, Tab 114, Transcript of Hearing Held 8/20/2024 at pp. 155-156

⁴ See, for example, Docket No. DE 22-060, Tab 114, Transcript of Hearing Held 8/20/2024 at p. 136, 140-142, 159-160

- 5) Existing facilities that sign up for net metering should also be entitled to a 20-year legacy period;
- 6) Providing developers and financiers with twenty years of a guaranteed compensation structure balances the interests of customer-generators and non customer-generators for the next twenty plus years as intended by RSA 362-A:9; and
- 7) Providing a twenty-year legacy period to new net metering projects will result in less unjust and unreasonable cost-shifting than maintaining the 2040 end date.

To be clear, as stated in pre-filed testimony, in testimony at hearing, and in its initial post-hearing brief, the Department supports the current net metering tariff.⁵ Other than the proposed legacy period, the Department is in alignment with all of the recommendations put forward by the Settling Parties in their Settlement. The Department's concerns lie in uncertainty that guaranteeing a NEM 2.0 compensation structure for any newly net-metered project for twenty years results in benefits that will ultimately outweigh any potential costs. The Department does not believe the Settling Parties have offered sufficient evidence to show that this is the case and thus recommends that the Commission keep the current 2040 end date until any new legacy periods are able to be explored further alongside a proposed TOU net metering compensation structure in a new proceeding informed by further data and experience.

III. CONCLUSION

⁵ See Docket No. DE 22-060, Tab 62, New Hampshire Department of Energy Testimony of Elizabeth R. Nixon, Mark P. Toscano and Deandra M. Perruccio at Bates 6; Tab 115 Transcript of Hearing Held 8/22/24 at pp. 25-26; and Tab 117, New Hampshire Department of Energy Initial Post Hearing Brief p. 3 and 12-13.

WHEREFORE, for the reasons set forth above, the Department of Energy reiterates the recommendations included in its initial brief and respectfully recommends that the Public

Utilities Commission:

- 1) Maintain the currently effective alternative net metering tariff for all DG systems less than 5 MW;
- 2) Maintain the current legacy period end date of 2040;
- 3) Direct utilities and stakeholders to work to develop appropriate net metering time-of-use rates;
- 4) Allow net metering customers to be placed on currently available time-of-use rates, applicable and appropriate;
- 5) Approve the application fee proposal presented in the Settlement Agreement submitted by the Settling Parties; and
- 6) Grant such further relief as is just and required.

Dated: October 18, 2024

Respectfully submitted,

New Hampshire Department of Energy

By its Attorneys,

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Certificate of Service

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included in the Commission's service list for this docket on this date, October 18, 2024.

/s/ Alexandra K. Ladwig

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