

BEFORE THE  
STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

ELECTRIC AND GAS UTILITIES

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

Docket No.: DE 22-060

**RESPONSE OF PETITIONER  
TO THE  
OBJECTION OF THE  
DEPARTMENT OF ENERGY**

NOW comes the Petitioner Bright Spot Solar, LLC (the "Petitioner") who respectfully submits its response to the Objection filed by the New Hampshire Department of Energy (the "DOE"), and states in response as follows:

1. That the essential argument in the DOE's Objection is that your Petitioner did not previously intervene in this Docket #: De 22-060, and therefore should not be allowed to offer evidence in a rehearing in a docket that is more than two years old. It further asserts that the evidence the Petitioner sought to introduce had already been heard and considered by this Public Utilities Commission ("Commission") in rendering Order 27,074 (the "Order").

2. In support of its first argument, the DOE utilized the cases of *Appeal of Gas Serv., Inc.* and *Dumais. v. State* to assert that there is no good reason for your Petitioner to seek rehearing. Unlike your Petitioner in this docket, in both of those cited cases the entity that petitioned for rehearing under RSA 541:3 were already direct parties to the action. As participants, they had the opportunity to provide evidence and/or identify specific matters upon which the finder of fact may have erred. Since your

Petitioner as a non-party to the proceedings did not offer evidence or seek to affect the Order, the cites cases by the DOE are not germane to whether your Petitioner's Petition for Rehearing should be heard or granted. To argue that since the Petitioner was not a party to the proceedings should disqualify it from seeking a rehearing of an order that affects the Petitioner's business ignores the specific purpose of RSA 541:3 that allows a person or entity "directly affected thereby" to challenge the outcome in a proceeding in which it did not take part.

3. The essential argument of the DOE is that the Petitioner seeks to introduce evidence already considered by the Commission. That argument is without merit. The Petitioner seeks to introduce evidence that the Commission's Order specifically said it did not have, to wit specific evidence of how the Order may affect the ability of a large solar developer (like your Petitioner) (Order at Page 23: "... the Commission does not believe that the Joint Parties and CPCNH have submitted sufficient evidence...") or a small customer of solar equipment (Order at Pages 25-26; "...the Commission finds that the Joint Parties and CPCNH have likewise failed to meet their burden.."). That deficiency in the evidentiary record is exactly what your Petitioner seeks to provide as a first-person witness as to how the Order may have detrimental affect on (a) solar developers and/or (b) small customers to procure financing that is essential to any project, large or small.

4. By repeatedly arguing that the Petitioner, essentially, "could have" intervened earlier during the course of this Docket<sup>1</sup> and introduce evidence if it had participated imposes an obligation on a party that does not exist. RSA 541:3 only requires that a petitioner be "directly affected" by an order of the Commission, not that it participate at all prior stages of the docket.

5. The DOE's arguments seem to imply that anyone who may be "directly affected" by any proceedings before the Commission should intervene and be a party in order to protect their interests. It further seems to imply that any person or entity that may be "directly affected" should foresee that an outcome of an adjudicative hearing may

---

<sup>1</sup> See DOE's Objection at paragraphs 12, 13, 14, and 15.

have a "direct affect" upon them. Any such argument is not supported by law; otherwise the legislature would have never granted a person or entity rights to petition for a rehearing under RSA 541:3.

6. In its final several objections, the DOE argues that the Petitioner should not be entitled to introduce new evidence, but must instead solely rely upon evidence in the record. That is not a factual statement of the law, as under a 541:3 rehearing it is permissible to introduce "new evidence that was "unavailable prior to the issuance of the underlying decision." *Hollis Telephone, Inc.*, Order no. 25,088 at 14 (April 2, 2010), cited in *Public Service Co. of New Hampshire*, Order no 25,846, DE 11-250 (December 3, 2015).

7. Your Petitioner responds that the new evidence regarding how financing requires a legacy period is exactly what the Commission found lacking. Further, as to the Petitioner's argument regarding the cost-shifting analysis, the argument of the Petitioner that his is a novel concept that it cannot find present in any deliberations before this Commission and offers a new approach at looking at the economic affect on how the utility and ratepayers benefit from how little of the grid it utilized to delivery distributed energy to, literally, next door neighbors while the utility collects full delivery fees under the tariff. Finally, until the Order was issued the Petitioner would have no ability to foresee that the Commission may consider a new alternative energy tariff that potentially would have a shorter legacy period than that in NEM 1.0 or 2.0. If a new alternative energy tariff is enacted without a legacy period similar to the existing December 31, 2040, your Petitioner asserts that it would destroy his business as both a developer of solar projects and as a large marketer of solar tracker arrays throughout the state.

8. As to the legal sufficiency of there being matters that were "overlooked or mistakenly conceived"<sup>2</sup> the Petition asserts that the Commission erred in two ways. First, when conducting the analysis of the "costs and benefits of customer-generator facilities" the Commission added a word into the statute when applying the eight (8) factors set

---

<sup>2</sup> Objection at Page 2, citing *Dumais v. State*.

forth in RSA 362-A:9, XVI, in that it only utilized economic costs and benefits, and ignoring non-economic factors such as public health. The Petitioners argument is that by "reading into the statute words that do not appear" and added "language that the legislature did not see fit to include." (Order at Page 12, citing *Polonsky* at 229). By limiting its analysis to solely economic factors the Commission erred as a matter of law by excluding the non-economic evidence offered at the hearing and which the sole member of the Petitioner, an asthma sufferer, may offer at rehearing.

9. Finally, Petitioner raised the error by the Commission in omitting the word "new" in the last clause of the Orders set forth in the Order. The statutory authority of granted in RSA 362-A:9, XVI (a) is to "continue to review and develop new alternative net metering tariffs." By omitting the word "new," the Commission may have potentially opened the door to changing all net metering tariffs. Such an error warrants review and correction under the format of the Petition for Rehearing.

10. For the foregoing reasons, your Petitioner moves that this Commission deny the Objection of the Department of Energy and approve the Petition for Rehearing.

11. Notice: This pleading was prepared with the assistance of a New Hampshire attorney.

Respectfully submitted on this the 3<sup>rd</sup> day of January, 2024.

By:   
Name: W. Packy Campbell, Member  
Bright Spot Solar, LLC  
PO Box 77, Farmington, NH 03835  
Phone: 603-765-9101  
Email: [packy@brightspot.solar](mailto:packy@brightspot.solar)

CC: I hereby certify that a copy of this Response to Objection of the DOE was delivered to the Service List of record on this date in Docket DE 22-060.