

**BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 22-060

Electric Distribution Utilities

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

**New Hampshire Department of Energy
Motion for Clarification of Supplemental Order of Notice Issued November 18, 2024**

Pursuant to New Hampshire Code Admin. Rule Puc 203.07, the New Hampshire Department of Energy (“Department” or “DOE”) hereby moves the Public Utilities Commission (“Commission”) to clarify its Supplemental Order of Notice (“Supplemental Notice”) issued in this matter on November 18, 2024. This Supplemental Notice states that the Commission will consider additional changes to the net metering tariff in this docket pursuant to RSA 362:A-9, XVI, RSA 374:2, and RSA 378:7, and establishes three phases of review of these changes.

In support of this Motion, the Department states as follows:

I. Introduction

The Commission opened the above-captioned docket on September 20, 2022, stating that, “[a]s a result of legislation enacted in New Hampshire during the 2022 legislative session, including SB 261-FN and HB 1599-FN, as well as the anticipated receipt of the Value of Distributed Energy Resources (VDER) Study in October 2022, the Commission has determined that it should consider amendments to the net metering tariffs applicable to customer-generators.”¹ The VDER Study was filed into the

¹ See Docket No. DE 22-060, Tab 1, Commencement of Adjudicative Proceeding and Notice of Prehearing Conference at p. 1

docket on October 31, 2022, and a lengthy process ensued to address the issues raised in the September 20, 2022 Commencement of Adjudicative Proceeding and Notice of Prehearing Conference. In addition to the three regulated New Hampshire electric distribution utilities (“Joint Utilities” or “Utilities”), the Department, and the Office of the Consumer Advocate (“OCA”), nine parties petitioned for and were granted intervenor status. The Commission held Prehearing Conferences on January 5, 2023, and April 11, 2024; three stakeholder sessions were held between February 2023 – April 2023; two addendums were filed to the VDER Study – one on June 8, 2023, and one on February 22, 2024; record requests were issued by the Commission on June 21, 2023, and April 24, 2024; the Joint Utilities filed direct testimony on August 11, 2023; several parties filed testimony on December 6, 2023, as well as rebuttal testimony on January 30, 2024; settlement discussions were held among the parties; position statements were filed by the parties on August 1, 2024; several parties filed a settlement agreement on August 1, 2024; final hearings were held on August 20, 2024, and August 22, 2024; and post-hearing briefs were filed on October 4, 2024, with reply briefs filed on October 18, 2024.

On November 18, 2024, the Commission issued Order No. 27,074 Order on Net Metering (“Order”).² The Order largely maintained the current (“NEM 2.0”) compensation structure, authorized the implementation of interconnection application fees, and, “[e]stablish[ed] further process to consider additional changes to the net-metering tariff as part of the Commission’s ongoing obligation to develop and improve net-metering tariffs in New Hampshire.”³ The Commission issued a Supplemental Order of Notice that same day, “to provide notice that it will consider additional changes to the net metering tariff in this docket pursuant to RSA 362-A:9, XVI, RSA 374:2, and RSA

² Docket No. DE 22-060, Tab 124

³ Id. at p. 1

378:7.”⁴⁵ The Commission further stated in the Supplemental Notice that it, “will consider several issues raised by the parties’ filings that the Commission believes require further consideration as part of the Commission’s obligations under RSA 362-A:9, XVI.”⁶

In the Supplemental Notice, the Commission describes several issues it wishes to further address in this docket. The Commission organized consideration of these issues into three phases with staggered timelines for addressing the issues. The Department moves now to request that the Commission clarify several points regarding these issues.

II. Phase I

A. Customer-Generator Definition

The first issue the Commission proposes for review, as part of “Phase I” (“Phase I, Issue A” or “Issue A”), is, “how the electric distribution utilities define a customer-generator, including whether changes are appropriate to that definition going forward.”⁷ The Commission asks, “[f]or example, how would the utilities classify a single customer who owns three solar installations on a parcel of land that individually have generating capacities of less than 100 kWh, but collectively have more than 100 kWh? Would the utilities define that as three small customer-generators, or

⁴ Docket No. DE 22-060, Tab 125, Supplemental Order of Notice at p. 1

⁵ RSA 362:A-9, XVI enumerates the process by which the Commission is to develop and periodically review new alternative net metering tariffs. RSA 374:2 requires that charges made by public utilities be just and reasonable. RSA 378:7 dictates the process for the Commission to follow, “[w]henever the commission shall be of opinion, after a hearing had upon its own motion or on motion of the department of energy or upon complaint, that the rates, fares or charges demanded or collected, or proposed to be demanded or collected, by any public utility for service rendered or to be rendered are unjust or unreasonable, or that the regulations or practices of such public utility affecting such rates are unjust or unreasonable, or in any wise in violation of any provision of law, or that the maximum rates, fares or charges chargeable by any such public utility are insufficient...”

⁶ Docket No. DE 22-060, Tab 125, Supplemental Order of Notice at p. 1

⁷ Id. at p. 2

one single large customer-generator? What if the installations were located on separate lots? What if the customer-generators have subsidiaries or other entities that they control?”⁸

The definition of “customer-generator” itself is enshrined in statute. RSA 362-A:1-a, II-b defines a “customer-generator” as, “an electric utility customer who owns, operates, or purchases power from an electrical generating facility either powered by renewable energy or which employs a heat led combined heat and power system, with a total peak generating capacity of up to and including one megawatt, except as provided for a municipal host as defined in paragraph II-c, that is located behind a retail meter on the customer's premises, is interconnected and operates in parallel with the electric grid, and is used to offset the customer's own electricity requirements. Incremental generation added to an existing generation facility, that does not itself qualify for net metering, shall qualify if such incremental generation meets the qualifications of this paragraph and is metered separately from the nonqualifying facility.”

The Department believes that the other questions raised by the Commission on the issue of the customer-generator definition are already addressed in the Puc 900 rules, specifically Puc 903.03 “Where Multiple Projects Are Deemed a Single Facility.”

Puc 903.03 dictates that multiple projects that are located on the same parcel of land or adjacent and contiguous parcels of land, and are owned by the same person or entity or an affiliate of said person or entity, shall be considered one facility⁹ unless they meet an enumerated set of

⁸ Id.

⁹ Puc 902.13 “Facility” means the electricity generating equipment, powered by renewable energy or that employs a heat led combined heat and power system, interconnected with the electric distribution system through any one retail meter or more than one retail meter, installed or to be installed in accordance with Puc 903.03.

conditions.¹⁰ Puc 902.20 defines large customer-generators as customer-generators “whose **facility** has a total maximum generating capacity greater than 100 kilowatts alternating current up to and including one megawatt.” [emphasis added] Puc 902.26 defines small customer-generators as customer-generators “whose **facility** has a total maximum generating capacity of not more than 100 kilowatts alternating current.” [emphasis added] Thus, in the Commission’s example of a single customer who owns three solar installations on a parcel of land that individually have generating capacities of less than 100 kWh,¹¹ but collectively have more than 100 kW, the projects would have to meet the delineated conditions in Puc 903.03 in order to be considered separate facilities and therefore qualify as small customer-generators. If they do not meet the conditions, they would be considered a single facility under Puc 903.03 – and thus, consistent with Puc 902.20, would be considered a large customer-generator.

Of note, after the creation of the Department of Energy, jurisdiction and administration over the Puc 900 rules transferred to the Department and will ultimately be developed into En 900 rules. The Department recently opened a proceeding to allow for stakeholder suggestions and input as it drafts En 900 rules, with the intention of beginning a formal rulemaking in October 2025.¹²¹³ In developing the En 900 rules, the Department will consider whether RSA 362-A:9 requires any modifications to 903.03, pursuant to RSA 362-A:9, X(b).

¹⁰ Puc 903.03 (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...”

¹¹ The Supplemental Notice refers to “kWh,” but in the context of the Commission’s questions the Department understands the intended reference to be to “kW” rather than “kWh.”

¹² See RUL 2024-005 – Department of Energy Chapter En 900 Rules Net Metering for Customer-Owned Renewable Energy Generation Resources of 1,000 Kilowatts or Less. [Rulemaking Proceedings | NH Department of Energy](#)

¹³ The Department also opened a separate proceeding to examine and assess draft rules to be adopted for the purposes of setting uniform procedures for distributed energy resources (“DER”) that are proposed for interconnection to the electrical

As RSA 362-A:1-a, II-b and Puc 903.03 appear to answer the questions raised by the Commission in Phase I, Issue A, and as the Department has jurisdiction over the Puc 900 rules and has an open proceeding to develop them into En 900 rules, the Department requests that the Commission clarify whether it still desires to address this issue in the context of this proceeding, and, if so, how the Commission intends to consider the issue. If these explanations do not answer the Commission’s questions regarding this issue, the Department requests that the Commission further clarify what it seeks to address in this proceeding concerning this issue.

B. Small v. Large Customer-Generator Categorization

It appears to the Department that this issue (“Phase I, Issue B”) may be based on a misunderstanding of the Community Power Coalition of New Hampshire (“CPCNH”)’s testimony at hearing, and can hopefully be clarified without further process. The Department’s understanding is that, in the portion of the hearing cited by the Commission,¹⁴ Mr. Below was discussing rate classes – i.e., small vs. large customer groups - not customer-generator size – i.e., small vs large customer-generators. Later in the hearing, Mr. Below clarified that he was talking about two different kinds of customer groups: customer-generators vs. default service customer groups.¹⁵ Additionally, customer-generator categorization is already included in the 900 rules. Puc 902.15, 902.20, and 902.26 define “generating capacity,” “large customer-generator,” and “small customer-generator,” respectively.¹⁶

infrastructure of New Hampshire’s investor-owned utilities. This will include consideration of interconnection topics that are currently included in the Puc 900 rules. See RUL 2024-007 [Rulemaking Proceedings | NH Department of Energy](#)

¹⁴ The Commission cites Trans. (Day 1) at 184 – the Department assumes the Commission is actually referring to Day 2 at 184

¹⁵ See Docket No. DE 22-060, Tab 115, Trans. (Day 2) at 286

¹⁶ Puc 902.15 “Generating Capacity” means, for inverter-based units, the maximum generating capacity alternating current kilowatt rating of the inverters, and for other interconnections, the nameplate capacity kilowatt rating of the generating

Like Issue A above, should the above explanation answer the Commission’s questions regarding Phase I, Issue B, the Department requests that the Commission clarify whether it still desires to address this issue in the context of this proceeding, and, if so, how the Commission intends to consider the issue. If the explanations do not answer the Commission’s questions regarding this issue, the Department requests that the Commission further clarify what it seeks to address in this proceeding concerning this issue.

D. Net Metering Hardware and Processing

In Phase I, Issue D, the Commission states that it will, “review the net metering hardware and processing used by the utilities and consider whether any changes are necessary in this docket.”¹⁷ Here, the Department requests that the Commission clarify the type of changes it envisions as well as the relevant authority allowing it to make such changes. The Department is concerned that such changes may overlap with issues the Department is considering in its En 900 and En 1000 rules proceedings¹⁸. For example, an issue that has been discussed in the En 900 proceeding is adding some clarification to the 900 rules regarding bi-directional metering system requirements pursuant to RSA 362-A:9, III. Puc 903.02(f) goes into further detail regarding metering practices for customer-generators, and the Department may consider updates or modifications to those rules as

facility. Puc 902.20 “Large Customer-Generator” means a customer-generator whose facility has a total maximum generating capacity greater than 100 kilowatts alternating current up to and including one megawatt. Puc 902.26 “Small Customer-Generator” means a customer-generator whose facility has a total maximum generating capacity of not more than 100 kilowatts alternating current.

¹⁷ Docket No. DE 22-060, Tab 125, Supplemental Order of Notice at p. 4

¹⁸ The Department has opened RUL 2024-005 to address development of the En 900 rules, which will cover net metering topics unrelated to interconnection. Interconnection issues related to net metering will be considered in RUL 2024-007 as part of developing the En 1000 rules. These proceedings were originally opened as a result of recent legislation requiring revisions to the 900 rules, including SB 391 (2024) requiring the Department of Energy to open a proceeding to examine and assess draft rules to be adopted for the purposes of setting uniform procedures for distributed energy resources that are proposed for a customer generator’s interconnection to the electrical infrastructure of New Hampshire’s investor-owned utilities. Information and documents regarding both proceedings can be found on the Department’s website: [Rulemaking Proceedings | NH Department of Energy](#)

part of its En 900 proceeding. It would seem unproductive for the DOE and the Commission to be addressing these issues in separate proceedings. The Department therefore requests that the Commission clarify whether there is any overlap between what it seeks to address in this issue and what the Department is considering in its RUL 2024-005 proceeding regarding En 900 rules and its RUL 2024-007 proceeding related to development of En 1000 rules for the interconnection of distributed electric energy resources.¹⁹ To the extent there is any overlap, the Department requests that the Commission clarify further how it intends to proceed in its consideration of Phase I Issue D in light of the Department's ongoing proceedings.

The Department also requests that the Commission clarify whether this issue implicates or overlaps with the Department's jurisdiction under RSA 362-A:9, X and RSA 362-A:9, XII. If the Commission believes those statutes do not apply to anything it intends to consider as part of this issue, the Department requests that the Commission clarify why and clarify the authority it is relying on which allows it to address changes to the net metering hardware used by utilities and customer-generators. The Department believes this clarification is necessary to ensure that the Commission and the Department are not addressing the same issues in simultaneous separate proceedings.

III. Phase II

One of the issues listed under Phase II In its Supplemental Order of Notice is, “[w]hether the net metering tariff should be amended to permit distributed storage to interconnect and be compensated for net metering.”²⁰ In its subsequent November 25, 2024, Procedural Order re: Record Requests, the

²⁰ Docket No. DE 22-060, Tab 125, Supplemental Order of Notice at p. 6

Commission asked, “[w]hat changes are necessary for the metering infrastructure to accommodate net-metering customers’ ability to leverage electricity storage and more instantaneous netting, ideally five-minute intervals or faster, to allow such customers to extract benefits from away and production towards peak demand periods?”²¹ In a December 17, 2024, procedural order clarifying certain record requests, the Commission stated that it, “acknowledges that storage is currently ineligible for participation in net metering,” and explained that allowing storage to participate in net metering, “is an issue that will be decided in this docket.”²²

Here, the Department requests clarification as to the legal authority under which the Commission intends to decide whether to allow storage to participate in net metering. The Department notes that the reason storage cannot currently participate in net metering is because, with the exception of those batteries participating in Liberty Utilities (Granite State Electric) Corp., d/b/a Liberty’s battery storage pilot program as developed in Docket No. DE 17-089, the utilities currently do not possess the capability to ensure that batteries that dispatch energy onto the grid are never charged from the grid.²³ In order to be eligible for participation in net metering, a customer’s facility must, “either be powered by renewable energy or [employ] a heat led combined heat and power system...”²⁴ Thus, the statute itself does not necessarily prohibit battery storage from participating in net metering, as long as the battery is powered by renewable energy. However, since the utilities are currently not capable of ensuring that battery storage systems are charged exclusively from renewable energy sources, storage facilities cannot currently participate in net metering. The Department therefore seeks clarification as

²¹ Docket No. DE 22-060, Tab 128, Procedural Order Re: Record Requests at p. 3

²² Docket No. DE 22-060, Tab 145, Procedural Order Re: Requests for Extension and/or Clarification on Record Requests at p. 2

²³ See also Docket No. DE 22-060, Tab 141, Liberty Utilities (Granite State Electric) Corp., d/b/a Liberty Timeframes for Responses to Commission Information Requests at pp. 1-2

²⁴ RSA 362-A:1-a, II-b

to the finding(s) the Commission believes it needs to make in deciding whether storage can participate in net metering, and under what legal authority such findings are required.

IV. Conclusion

As described herein, the Department requests clarification of certain issues outlined by the Commission in its Supplemental Order of Notice in this proceeding, including corresponding jurisdictional and legal authority. The Department hopes that such clarification may resolve certain issues without further process or provide clearer guidelines as to what the parties to this proceeding should be prepared to address.

WHEREFORE, the Department respectfully requests that the Commission:

1. Clarify the above enumerated issues from the November 18, 2024, Supplemental Order of Notice issued in this proceeding; and
2. Grant such other relief as is just and required.

Respectfully submitted,

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