

**STATE OF 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**

Order on DOE Motion for Clarification of Supplemental Order of Notice

ORDER NO. 28,102

February 10, 2025

On November 18, 2024, the Commission issued a supplemental order of notice (Supplemental Notice) in this docket informing the parties and the public that it would review changes to the net metering tariff pursuant to RSA 362-A:9, XVI. On December 18, 2024, the New Hampshire Department of Energy (DOE) moved for clarification of the Supplemental Notice. Specifically, the DOE asked that the Commission clarify both the scope of four of the issues the Commission noticed that it would review and the legal authority under which the Commission intended to review them. The Commission discusses each of the DOE's requests below and clarifies the Supplemental Notice as appropriate.

I. BACKGROUND

By way of brief background, the Commission convened this docket to review changes to the currently effective net metering tariff (NEM 2.0) in September of 2022. In April of 2024, the Commission issued an order requesting that all parties to this docket file recommendations for any changes that they desired the Commission make to NEM 2.0.

One of the parties to this docket, the Community Power Coalition of New Hampshire (CPCNH), submitted several recommendations that the Commission order

the state's electric distribution utilities to develop tariff terms for a broad range of issues, which the other parties would then have opportunity to evaluate and litigate in a future adjudication. In addition, a coalition of parties, which included the three electric distribution utilities, recommended that the Commission sanction a months-long data collection effort by the utilities, with the goal being that the utilities would propose changes to net metering program based on the collected data. This data-collection proposal specifically included that the parties would explore time-of-use (TOU) rates in any future filing, and would collect data to that end.

The Commission held an evidentiary hearing in August of 2024. On November 18, 2024, the Commission issued Order No. 27,074 in which it ruled on the parties' recommendations. Among other rulings, the Commission generally approved both CPCNH's proposal to reconsider additional issues related to the net metering tariff, although it found there should be additional process before the utilities developed new tariff terms, and recommended a data-collection effort that would ultimately result in future recommendations for revisions to the net metering program. Order No. 27,074 stated that the Commission would issue new notice — the Supplemental Notice at issue in the DOE's motion—outlining the issues it would review and the process for doing so.

That same day, the Commission issued the Supplemental Notice. In that Supplemental Notice, the Commission created a three-phase process to consider additional issues related to net metering. Phase I included several issues that the Commission believed to be straightforward and that could be resolved in several months. Because many of the issues in Phase I related to concerns about how the Commission administered the net metering program, the Commission issued a series of record requests to the utilities and requested that the utilities respond by mid-

December. Phase II included the issues recommended by CPCNH. Phase III included the electric distribution utilities data collection effort. The Commission directed the utilities to file a scoping document for the data they intended to collect in this process by mid-January.

On December 3, 2024, the electric utilities filed a motion to stay Order No. 27,074 and the Supplemental Notice until either the close of the statutory period for motions for rehearing or the Commission's resolution of all motions for rehearing, whichever was later. The Commission granted the motion in part.¹ As is relevant to this order, the Commission suspended all deadlines related to the supplemental process except those related to the data requests, which the Commission noted that it desired regardless of any reconsideration of Order No. 27,074. The Commission also scheduled a prehearing conference to finalize the three-phase process it outlined in the Supplemental Notice. On December 18, 2024, the Commission received several motions for rehearing and clarification, including the DOE's instant motion. On December 20, 2024, the Commission received the utilities' partial responses to its data requests, which, with Commission approval, they supplemented on January 21, 2025.

On January 3, 2025, the Commission issued a procedural order in which it stated that the representations in the motions for rehearing and clarification and the utilities' responses to the record requests clarified many of the immediate concerns related to Phase I. The Commission further observed the issues noticed in Phase I could be resolved in the later stages of this proceeding and thus cancelled the

¹ The Commission did not suspend Order No. 27,074 because, with minor exceptions, that order largely retained the status quo and thus there was nothing to suspend. While Order No. 27,074 did authorize interconnection fees, all parties to this docket who appeared at the hearing supported the implementation of those fees and there was thus no reason to assume they would be the subject of a motion for rehearing. Finally, while Order No. 27,074 did sanction additional process in this docket, the actual deadlines for that process were contained in the Supplemental Notice, which the Commission did suspend in relevant part.

schedule for Phase I, continuing the suspension of the deadlines in the Supplemental Notice in the December 5 procedural order. The Commission noted that it would resolve the substantive issues in the parties' motions in subsequent orders, and scheduled a prehearing conference for February 13, 2025 to finalize the issues to review and scheduling for the additional process in this docket.

II. ISSUES AND ANALYSIS

In its instant motion, the DOE moves for clarification of four of the issues in the Supplemental Notice. In each section below, the Commission lays out the relevant issues, explains the DOE's concerns, and provides clarification as appropriate.

A. Definition of Customer-Generator

In the Supplemental Notice, the Commission stated that it would "review how the utilities define a customer-generator, including whether changes are appropriate to that definition going forward." Suppl. Order of Notice at 2. In asking this question, the Commission was specifically interested in how the utilities determined what a constituted a *single* customer-generator for the purposes of determining whether it was a small or large customer-generator when a single entity or related entities owned multiple distributed energy facilities. *See id.* This was relevant because, under NEM 2.0, compensation levels are determined by customer size, and thus whether a related group of distributed energy resources constituted one or several customer-generators could impact the compensation received.

In its motion for clarification, the DOE notes that there is a standard of what constitutes a single customer-generator in New Hampshire Code of Administrative Rules, Puc 903.03. The DOE further represents, citing RSA 362-A:9, X(b), which states that the DOE shall adopt rules to implement the provisions of RSA 362-A:9, that "jurisdiction and administration over the Puc 900 rules transferred to the [DOE] and

will ultimately be developed into En 900 rules.” DOE Mot. for Clarification at 5. According to the DOE, it recently opened a proceeding to allow for stakeholder suggestions and input as it drafts its new En 900 rules, with the intention of beginning a formal rulemaking in October 2025. The DOE states that in developing these rules, it will consider whether RSA 362-A:9 requires any modifications to 903.03, pursuant to RSA 362-A:9, X(b). Based on its understanding of the law, the DOE “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 proceed.” DOE Mot. for Clarification at 6.

In response, the Commission initially notes that we were not only interested in the definition of what constitutes a single customer-generator under the law, but also in how the electric distribution utilities apply those standards. The Commission appreciates the utilities’ responses to the data requests related to those concerns.

More fundamentally, however, the Commission clarifies that it does still intend to review what constitutes a single customer-generator in this docket. Specifically, as part of its review of future changes to the net metering tariff, the Commission will consider the manner in which customer-generators are categorized as single or multiple facilities to the extent the categorization is relevant to setting appropriate compensation levels for customer-generators. In response to the DOE’s argument that this falls outside of the Commission’s jurisdiction, the Commission notes that it has the authority to do so under RSA 362-A:9, XVI, which authorizes the Commission to establish new alternative net metering tariffs.

In the Commission’s view, determining what constitutes a single customer-generator is inseparable from setting appropriate compensation levels under any net metering tariff that recognizes distinctions based on customer sizes. This is for two

related reasons. First, the creation of separate categories of customer-generators was, in the first place, based on facts and assumptions about the characteristics of different sizes of customer-generators with respect to their contributions to avoided costs, their costs to interconnect to the system, and the representation that higher compensation levels were needed to encourage investment. *See, e.g.*, Order No. 26,029, at 55–56 (June 23, 2017) in Docket No. DE 16-576. If the Commission cannot determine what constitutes a single customer-generator through the tariff, and thus have knowledge over what characteristics those customers possess, we cannot determine what categories of customer-generators there should be and what levels of compensation they should receive. Such limitations would therefore inhibit the Commission’s authority to develop new tariffs.

Second, in determining appropriate compensation levels for customer-generators under RSA 362-A:9, XVI, the Commission is obligated to balance the costs of net metering with its benefits to ratepayers. The Commission cannot do so unless it understands the approximate cost of the program. The categorization of customer-generators is relevant to this consideration because how a single customer-generator is defined could affect the overall cost of the program. For example, under NEM 2.0, because the compensation levels are higher for small customer-generators, it is more lucrative to be considered four small customer-generators than one large customer-generator. At the same time, it creates a higher cost for ratepayers. Thus, if the Commission cannot determine what constitutes a customer-generator when setting compensation levels, the Commission cannot determine what the overall costs of the program will be. This would prevent the Commission from developing tariff terms consistent with the standard in RSA 362-A:9, XVI.

For these reasons, the Commission believes that determining what constitutes a single customer-generator is inherently within the Commission's role of reviewing and developing new alternative net metering tariffs under RSA 362-A:9, XVI, at least to the extent that the compensation scheme is differentiated based on customer size. Thus, while considering new net metering tariff terms, the Commission will review what constitutes a single customer-generator to the extent it is relevant to setting appropriate compensation levels, and how the electric distribution utilities apply those net metering tariff terms.

In reaching this conclusion, the Commission acknowledges that RSA 362-A:9, X(b) states that the DOE shall adopt rules to implement RSA 362-A:9. But the Commission does not believe that this provision can be read so broadly as to remove the Commission's authority over matters relevant to setting appropriate compensation levels under alternative net metering tariffs. In other words, the Commission has the authority (and responsibility) under RSA 362-A:9, XVI to establish alternative net metering tariffs, and that authority cannot be limited through the rulemaking provision in RSA 362-A:9, X. A broad reading of RSA 362-A:9, X(b), could potentially give the DOE control over all aspects of the net metering tariff development through the rulemaking process because there is no clear standard of what should be included in a net metering tariff versus a net metering rule set. The Commission does not believe that RSA 362-A:9, X(b) can be read to remove the Commission's authority under RSA 362-A:XVI to determine compensation levels for customer-generators, which, as noted, inherently involves the question of what constitutes a single customer-generator. Therefore, the Commission retains that authority under the statute.

Moreover, the Commission disagrees with the DOE's representation that because the definition of a customer-generator is within the existing Puc 900 rules, the DOE has gained "jurisdiction" over it. RSA 362-A:9, X(b) states that the DOE shall "adopt" rules to enforce the provisions of RSA 362-A:9, not that the DOE gained "jurisdiction" over the existing rule set. Those rules were promulgated prior to the division of the Commission and the DOE, and they were not meant to demarcate the statutory divisions of the two agencies' respective authority.

In light of the foregoing, the Commission will consider the definition of what constitutes a single customer-generator as part of its review and development of new, alternative net metering tariffs under RSA 362-A:9, XVI. The Commission will review this issue in this docket as part of the development of new alternative net metering tariffs, at least to the extent the proposed changes either retain or further the categorization of customers based on generation capacity.

B. Small v. Large Customer-Generator Categorization

In the Supplemental Notice, the Commission stated that it would review "how the electric distribution utilities categorize customer-generators, including whether changes to the categorization are appropriate going forward." Suppl. Notice at 3. The Commission's concerns were based, in part, out of testimony of CPCNH's Chairman Clifton Below that the Commission understood to mean that customer-generators were being categorized based on their consumption and not their generating capacity. *Id.*

In its motion for clarification, the DOE represents that the Commission's concerns appeared to be based on a misunderstanding of Mr. Below's testimony, and that customer-generators were not being categorized based on their consumption.

In response, the Commission appreciates the DOE's clarification of this point because Mr. Below's testimony was unclear. Based on the DOE's motion and the

responses the Commission received to its record requests, the Commission notes the parties' representations and will take sworn testimony at the next opportunity to confirm these representations. The Commission notes that how customer-generators are categorized between small or large customers, including how generation and consumption affect that categorization, is an inherent part of setting compensation levels in a net metering tariff, and thus remains within the Commission's jurisdiction pursuant to RSA 362-A:9, XVI. Therefore, the Commission will review this issue in this docket as part of the development of new alternative net metering tariffs, to the extent the proposed changes either retain or further the categorization of customers based on size.

C. Net Metering Hardware and Processing

In the Supplemental Notice, the Commission stated that it would "review the net metering hardware and processing used by the utilities and consider whether any changes are necessary in this docket." Suppl. Notice at 4. As indicated in the Commission's data requests to the utilities, the Commission had two primary concerns about the hardware. First, the Commission wanted to know where the meters recorded data in a residential setting, particularly if the meters recorded data between the distributed energy installation and the residence or if they only recorded data between the residence and the distribution system. Second, the Commission wanted to understand the time intervals at which the meters were capable of recording data and whether the hardware would be able to implement TOU rates.

In its motion, the DOE notes that it is considering rules related to the net metering hardware in rulemaking proceeding for both the future En 900 and En 1000 rules. Specifically, the DOE notes it is considering clarification of rules regarding bi-directional metering requirements in RSA 362-A:9, III, as well as developing the En

1000 rules for the interconnection of electric energy resources. The DOE is concerned that there could be overlap between the rulemaking processes and the Commission's review of net metering hardware. The DOE therefore requests clarification of whether and how the Commission intends to proceed with this review. In addition, the DOE requests an explanation of whether the Commission's review would implicate or overlap with the DOE's jurisdiction under RSA 362-A:9, X and RSA 362-A:9, XII.

In response, the Commission clarifies that it is interested in reviewing net metering hardware because the types of hardware that utilities use affects both the types of data that the utilities are able to collect about their customers and the type of net metering programs and methods of determining value and compensation that could be implemented in a new net metering tariff. In the Commission's view, it has the authority to do so under RSA 362-A:9, XVI, which authorizes the Commission to develop new alternative net metering tariffs. In addition, the Commission has the authority to approve the recovery of utility investments in new plant pursuant to RSA 378:27 and :28, both of which allow the Commission to approve increases in rates, services, and charges for utility investments that the Commission finds are prudent, used, and useful.

As with the categorization of customer-generators, reviewing and sanctioning the types of hardware utilities use is inherent to the Commission's authority to establish new net metering tariffs. For example, all parties to this docket, including the DOE, supported the utilities' proposal for a data collection effort. One goal of that effort is to determine whether net metering TOU rates are desirable and, if so, to submit proposals for them in a future net metering tariff. In order to review such proposals, the Commission must review the net metering hardware the utilities' use to ensure they are compatible with any proposed TOU rate mechanism. Moreover, in light

of the responses the Commission received to the data requests to the utilities, any review of future net metering TOU tariff proposals will likely entail review of the utilities' acquisition of new metering hardware to ensure it is compatible with the proposal and cost effective, as required by RSA 378:28 and RSA 362-A:9, XVI.

In terms of timing, the Commission believes that review of net metering hardware would be appropriate when reviewing potential changes to the net metering tariff that would require hardware adjustments, such as during any review of future proposals for net metering TOU rates.

In response to the DOE's concerns about jurisdiction, the Commission does not believe that this review and consideration interferes with the DOE's statutory authority under either RSA 362-A:9, X or RSA 362-A:9, XII. With respect to RSA 362-A:9, X, that statute reads:

The [DOE] shall adopt rules, pursuant to RSA 541-A, to:

- (a) Establish reasonable interconnection requirements for safety, reliability, and power quality as it determines the public interest requires. Such rules shall not exceed applicable test standards of the American National Standards Institute (ANSI) or Underwriters Laboratory (UL); and
- (b) Implement the provisions of this section.

The Commission does not believe that its review of net metering hardware would interfere with the DOE's establishment of reasonable interconnection requirements related to safety, reliability, and power quality under RSA 362-A:9, X(a). In addition, as the Commission explained above, while it acknowledges that the DOE has rulemaking authority pursuant to RSA 362-A:9, X(b), it does not believe that this statute circumscribes the Commission's authority to review and develop alternative net metering tariffs under RSA 362-A:9, XVI.

With respect to RSA 362-A:9, XII, that statute states that: “Once the [DOE] has established standards for equipment used by eligible customer-generators, electric distribution utilities shall not require any additional standards or testing for transmission equipment as a condition of net metering.” (emphasis added). The Commission will not attempt to delineate the DOE’s exact authority under the statute. But the Commission does not interpret this statute as interfering with the Commission’s authority to review and develop new alternative net metering tariffs or to approve the purchase of new net metering hardware as part of any future proposals for changes to the net metering tariff.

D. Battery Storage

Finally, in the Supplemental Notice, the Commission stated that it intended to consider “whether the net metering tariff should be amended to permit distributed storage to interconnect and be compensated for net metering.” See Supplemental Order of Notice at 6 (quoting CPCNH Post-Hearing Brief at 19).

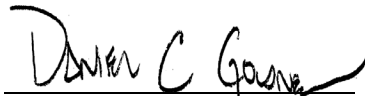
In its motion for clarification, the DOE represents that there is no provision in the law that would prevent battery storage from participating in net metering. Rather, battery storage is currently unable to participate in net metering because (1) RSA 362-A:1-a, II-a defines eligible customer-generators as those who generate electricity through a form of renewable energy; and (2) the “utilities currently do not possess the capacity to ensure that batteries that dispatch energy onto the grid are never charged from the grid.” DOE Motion for Clarification at 9. The DOE therefore seeks clarification “as 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.” *Id.*

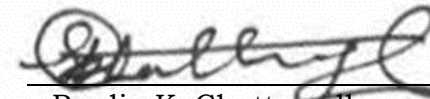
The Commission has the authority to establish new, alternative net metering tariffs that would facilitate the participation of storage in New Hampshire's net metering program pursuant to RSA 362-A:9, XVI. The Commission notes that other states' public utilities allow the participation of storage in their net metering programs, see Pacific Gas and Elec. Co., Electric Schedule: Net Billing Tariff (NBT) Service, https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_SCHEDS_NBT.pdf, (last accessed February 5, 2025), and New Hampshire's utilities could also do so. In terms of findings, RSA 362-A:9, XVI lays out the standard for the adoption of new net metering tariffs. Therefore, the Commission would have to make factual findings that any tariff terms that facilitated storage's participation were consistent with those standards. As there is no record before the Commission, the Commission does not know what exactly the basis for those factual findings would be.

Based upon the foregoing, it is hereby

ORDERED, that, consistent with the DOE's requests for clarification in its motion, the Supplemental Notice is clarified as laid out in this order.

By order of the Public Utilities Commission of New Hampshire this tenth day of February, 2025.


Daniel C. Goldner
Chairman


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Commissioner

Service List - Docket Related

Docket#: 22-060

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