

**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 Bright Spot’s Motion for Rehearing and Clarification

ORDER NO. 28,100

February 10, 2025

On November 18, 2024, the Commission issued Order No. 27,074, which ruled on a number of recommendations about proposed changes to the currently effective net metering tariff (NEM 2.0) submitted by the parties to this docket based on evidence adduced at an evidentiary hearing in August 2024. On December 18, 2024, Bright Spot Solar, LLC (Bright Spot), which was not a party to this docket at the time of the hearing, moved for rehearing and clarification of Order No. 27,074 under RSA 541:3.¹ Specifically, Bright Spot: moves: (1) for rehearing of the Commission’s ruling rejecting a proposed rolling “legacy period” for NEM 2.0, under which any individual who interconnects under NEM 2.0 could continue to operate pursuant to the terms of that tariff for twenty years from the date of interconnection; and (2) for clarification of an ordering clause in which the Commission stated its intention to review and develop net metering tariffs pursuant to its statutory obligations. The New Hampshire Department of Energy (DOE) objected, arguing that Bright Spot has not shown “good

¹ On November 18, 2024, the same day it issued Order No. 27,074, the Commission issued a supplemental order of notice, in which it advised the public that it would consider additional changes to the net metering tariff in future stages of this proceeding. In that supplemental order, the Commission stated that interested individuals could file a petition to intervene in the later stages of this proceeding by January 2, 2025. On December 17, 2024, Bright Spot filed a petition to intervene pursuant to the supplemental order. The Commission has since granted that motion.

reason” for rehearing as required by RSA 541:3.² For the reasons that follow, the Commission DENIES the motion for rehearing and clarification.

I. BACKGROUND

The Commission draws the following background information from the docket and Bright Spot’s motion. The Commission only includes information relevant to Bright Spot’s motion and the Commission’s analysis thereof.

Although the Commission made several rulings in Order No. 27,074, Bright Spot only argues for rehearing of the Commission’s ruling related to the so-called “legacy period” for NEM 2.0.³ For brief background, the Commission approved NEM 2.0 in Order No. 26,029 (June 23, 2017) in Docket No. DE 16-576. The central aspect of NEM 2.0 is that it establishes a formula for compensating net-metered customer-generators, which are statutorily defined as utility customers who provide energy back to the grid through some form of renewable energy. *See* RSA 362-A:1-a, II-b. Although the NEM 2.0 formula does not set fixed compensation amounts, it does guarantee that customer-generators can sell their electricity to the electric distribution utilities at the default service price, which is often higher than the market rate. Consistent with Order No. 26,029, any individual who enrolls in NEM 2.0 is eligible to operate under the terms of that tariff until December 31, 2040, regardless of the date of interconnection.

² The DOE also challenges whether Bright Spot, which was not a party at the time of the hearing, was a “person directly affected” by Order No. 27,074, and thus eligible to move for rehearing under RSA 541:3. Because the Commission denies the motion on alternative grounds, it will not address this issue in this order. Accordingly, the Commission makes no conclusions as to whether Bright Spot is eligible to move for rehearing under RSA 541:3 in the first instance.

³ Although Bright Spot challenges several additional aspects of Order No. 27,074, such as the legal standard that the Commission applied in reviewing alternative net metering tariffs, it did not argue that the Commission should reconsider any of its other actual rulings. Because resolution of Bright Spot’s other arguments in motion would not impact the outcome of Order No. 27,074, the Commission will not address those arguments in this order on the motion for rehearing.

On September 21, 2022, the Commission convened this docket through a public notice of a commencement of an adjudicative proceeding to consider whether changes to net metering tariff were appropriate under RSA 362-A:9. In that notice, the Commission set a deadline of December 7, 2022, for interested individuals to file petitions to intervene. Numerous individuals, including several representing the solar industry, moved for intervention, and the Commission granted all motions for intervention filed by the applicable deadline. In April 2024, the Commission issued an order scheduling a two-day final hearing on August 20 and 22, 2024 and established a schedule for the parties to file their recommendations on how the Commission should adjust the net metering docket by August 1, 2024.

As one of their recommendations, a coalition of parties recommended that the Commission replace the existing fixed “legacy period” in NEM 2.0 with a rolling, twenty-year legacy period that would commence on the date of interconnection. Although this proposal would affect all customer-generators, regardless of their size and type of energy, Bright Spot’s motion relates to larger-scale commercial solar installations. The Commission will therefore solely address the arguments and findings related to that type of customer-generator.

The proponents of the recommendation argued that it was necessary because commercial solar developments would not see a return on the initial investment within a reasonable period of time unless they were able to receive compensation for their electricity at the above-market rates guaranteed in NEM 2.0 for an extended number of years. As a result, the proponents argued, third-party lenders would not provide funding to commercial solar projects absent the proposed twenty-year legacy period. When asked at hearing why the proponents specifically proposed a twenty-year legacy period, at one least witness testified that the twenty-year period was consistent with

the standard financing period that investors would consider when evaluating the profitability of a project. See Order No. 27,074 at 20.

The Commission evaluated the proposal pursuant to RSA 362-A:9, XVI, which, among other standards, requires the Commission to establish net metering terms that maximize the benefits of distributed energy resources while minimizing cost-shifting from net-metered to non-net-metered customers. Applying this standard, the Commission ruled against the proposal in Order No. 27,074. The Commission found that the parties had failed to introduce evidence demonstrating that absent this legacy period, commercial solar installations would not recoup their investments within a reasonable time or that individuals and lenders would not invest in commercial solar projects in New Hampshire.

In addition, as is relevant to Bright Spot's motion for clarification, the Commission approved several parties' proposals to consider additional changes to the net metering tariff in further stages of this docket and, in an ordering clause, stating that it would do so "pursuant to its obligation to continue to review and develop net metering tariffs under RSA 362-A:9, XVI." Order No. 27,074 at 33.

Finally, in its motion for rehearing, Bright Spot represents that it is wholly owned by W. Packy Campbell and is New Hampshire's largest seller and installer of dual action solar tracker arrays for the production of electricity. Bright Spot's motion further represents that Mr. Campbell has significant experience obtaining finance capital from third-party lenders to either purchase the trackers or construct and install them. Thus, Bright Spot maintains that Mr. Campbell is very familiar with the loan underwriting requirements needed to satisfy third-party lenders regarding the cash flow projections from the sale of net metered electricity that are needed to procure finance capital to fund projects.

II. ISSUES AND ANALYSIS

Bright Spot moves for both rehearing of the Commission's finding related to the legacy period and clarification of the ordering clause related to further process. The Commission will consider each request in turn.

A. Motion for Rehearing

Bright Spot moves for rehearing under RSA 541:3 on two grounds, namely that: (1) it should be allowed to supplement the record with additional evidence; and (2) the Commission made an erroneous finding on the evidence before it. The Commission will consider argument each separately.

i. Request to Supplement the Record

With respect to its first argument, Bright Spot notes that the Commission rejected the twenty-year legacy period based on its finding that there was insufficient evidence that it was necessary to secure investment in distributed energy installations in New Hampshire. Bright Spot contends that based on his experience and knowledge obtaining financing for solar projects in this state, Mr. Campell would testify that a lengthy, rolling legacy period (such as the proposed twenty-year period) is important to ensure that commercial solar installations are able to obtain financing and that this evidence could support a finding that the proposed legacy period was appropriate. Bright Spot Mot. for Rehearing at 13–14.

The Commission does not find that Bright Spot has shown it is entitled to rehearing on the grounds that it would present additional evidence on rehearing that was not presented at the original hearing. In order for the Commission to grant a motion for rehearing, it must find that "good reason for the rehearing is stated in the motion." RSA 541:3. If a party argues that it has good cause for rehearing on the basis that it wants to supplement the record with additional evidence, it must "explain why

the new evidence it wishe[s] to present at a rehearing could not have been presented at the original hearing.” *Appeal of Gas Serv.*, 121 N.H. 797, 801 (1981); *O’Loughlin v. N.H. Personnel Comm’n*, 117 N.H. 999, 1004 (1977).

In its motion, Bright Spot has made no argument as to why the evidence it wishes to present could not have been presented during the original hearing. Nor does the Commission find that the circumstances would support such a conclusion in any case. Notably, the proposal Bright Spot is in favor of was supported by a number of well-resourced and capable parties where the interests of solar developers were well represented. Those parties had every opportunity and incentive to present evidence related to the profitability of commercial solar installations and financing requirements. And, while the Commission appreciates that Mr. Campbell has extensive experience financing solar projects, the existing parties to the docket could have obtained and presented similar evidence. Thus, the type of evidence Bright Spot wishes to add to the record could have been provided at the original hearing.

In addition, despite the September 2022 order of notice providing a generous three-month timeframe for the filing of petitions to intervene, Bright Spot did not seek intervention status. Had a petition to intervene been granted, Bright Spot could have submitted evidence. Even without intervenor status, Bright Spot could have submitted a public comment in favor of the proposal. In April 2024, the Commission scheduled public hearings for August 20 and 22, 2024, providing five months’ notice to the parties and interested members of the public, and laid out the process for the parties to file recommendations several weeks in advance to allow for consideration of the proposals. The proposal for the twenty-year legacy period was submitted in early August, thus providing at least three weeks’ notice that the Commission would consider the issue at the August hearing. Bright Spot, however, made no appearance

in this docket until December 17, 2024, one month after the Commission issued its order and several months after the evidentiary hearing. Based on this procedural history, and the lack of any explanation in its motion, the Commission sees no reason why the company could not have intervened or otherwise participated in this docket prior to the evidentiary hearing in August 2024.

In sum, the Commission concludes that Bright Spot has failed to explain why the additional evidence it seeks to provide the Commission could not have been provided at the original hearing and therefore finds that Bright Spot has not shown good cause for rehearing under RSA 541:3 on this basis. *See Appeal of Gas Serv.*, 121 N.H. at 801.

ii. Improper Evidentiary Finding

Second, Bright Spot argues that a finding within Order No. 27,074 was unsupported by the record. In particular, Bright Spot challenges the Commission's statement that: ". . . the absence of a twenty-year legacy period for net metering compensation levels will not itself present investors from entering into long-term financing arrangements." Bright Spot Mot. for Rehearing at 13 (quoting Order No. 27,074 at 25). Bright Spot argues that the "record does not show that any evidence to support this declaration was offered; the declaration appears to come out of nowhere." *Id.*

The Commission disagrees with Bright Spot's characterization of the Commission's statement within the context of Order No. 27,074. The Commission's statement was not a factual finding. In context, the Commission was observing the truism that the absence of a legacy period for NEM 2.0 would not itself prevent third-party lenders from financing commercial solar installations. Put another way, third-party lenders could, if they wanted to, still finance commercial solar installations

absent a twenty-year legacy period. In fact, the vast majority of investment in the United States occurs without government guarantees about compensation levels. A twenty-year legacy period would be an aberration from how most markets operate and is therefore not inherently necessary to ensure a secure lending environment.

The proponents of the twenty-year legacy period argued that it was necessary for this particular industry because commercial solar installations in New Hampshire would either not be profitable or would not otherwise be an attractive investment opportunity for third-party lenders in the absence of a guarantee about the compensation levels in NEM 2.0. While either of these points could be true, they must be proven with actual evidence. The Commission carefully considered the proponents' evidence to support these arguments. The Commission's *factual finding* was that the record did not support the implementation of a twenty-year legacy period. Order No. 27,074 at 26–27.

The Commission notes that it made the challenged observation in order to differentiate the parties' arguments related to the need for a secure lending environment and lenders' desire to see a return on their investment within twenty years with the need for twenty years of compensation under the specific terms of NEM 2.0. In its challenged statement, the Commission was attempting to clarify that these are separate issues.

Accordingly, as the challenged statement was not a factual finding, Bright Spot has not shown good reason for rehearing on this basis. In addition, as Bright Spot has not shown good reason for rehearing on either ground it raised in its motion, the Commission DENIES Bright Spot's motion to the extent it seeks rehearing of Order No. 27,074.

B. Motion for Clarification

Bright Spot also moves for clarification of one of the ordering clauses in Order No. 27,074. Specifically, the Commission stated it would issue an “order of notice to review and adjudicate additional proposals related to the net-metering program and tariffs pursuant to its obligation to continue to review and develop net-metering tariffs under RSA 362-A:9, XVI.” Bright Spot notes that RSA 362-A:9, XVI states that the Commission “shall continue to develop and periodically review *new* alternative net metering tariffs,” and contends that the Commission omitted the word “new” in its recitation of its statutory obligations. Bright Spot requests that the Commission “amend the Order to clarify and confirm that it shall ‘continue to review and develop *new* net-metering tariffs’ under RSA 362-A:9, XVI.” Bright Spot Mot. for Rehearing at 14–15.

To the extent necessary, the Commission notes that it fully intends to comply with RSA 362-A:9, XVI, agrees that the statute states that the Commission shall review and develop “new alternative net metering tariffs,” and acknowledges that, in paraphrasing its statutory obligations, the Commission did not use the word “new,” or, for that matter, the word “alternative.” That said, the Commission does not believe it is necessary to amend its order or otherwise clarify the challenged clause. In the context of the order, in which the Commission was stating that it was going to issue a supplemental order of notice to consider future changes to the net metering tariff, the Commission’s recitation of its statutory authority was substantively correct. The Commission was clearly referring to forward-looking changes to the net metering tariff. At no point did the Commission state an intention to change the net metering tariff terms for existing customer-generators, nor does the Commission believe that is a reasonable reading of the Commission’s order. In sum, because the Commission finds

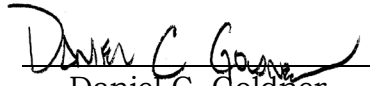
that, in context, its statement was substantively correct and clear under any reasonable reading of the order, the Commission will not amend Order No. 27,074 to clarify its meaning.

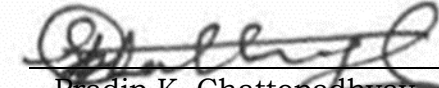
Accordingly, the Commission DENIES Bright Spot's motion to the extent it seeks clarification of Order No. 27,074.

Based upon the foregoing, it is hereby

ORDERED, that Bright Spot's Motion for Rehearing and Clarification is **DENIED**; and it is

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


Daniel C. Goldner
Chairman


Pradip K. Chattopadhyay
Commissioner

Service List - Docket Related

Docket#: 22-060

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Email Addresses

ClerksOffice@puc.nh.gov
nhregulatory@eversource.com
denise@colonialpowergroup.com
HerbArcher3@gmail.com
bargetsinger@keyesfox.com
pasbury@kearsargeenergy.com
Christopher.aslin@doj.nh.gov
robertbackus05@comcast.net
sabaker@trccompanies.com
tomb@crossborderenergy.com
andrew.belden@eversource.com
Clifton.Below@CommunityPowerNH.gov
eborden@synapse-energy.com
lbourgoine@revisionenergy.com
mbrown@consumerenergyalliance.org
eburgess@strategen.com
rburke@nhla.org
brian.callnan@communitypowernh.gov
Mark@colonialpowergroup.com
glenn@scenicnursery.net
carroll@unitil.com
clyde.carson@gmail.com
pchernick@resourceinsight.com
jessica.chiavara@eversource.com
dclapp@revisionenergy.com
samuel.crawford@navigant.com
ariel.crowley@navigant.com
edward.davis@eversource.com
debski@unitil.com
Deana.Dennis@CommunityPowerNH.gov
Energy-Litigation@energy.nh.gov
paul.b.dexter@energy.nh.gov
james.diluca@eversource.com
downesm@unitil.com
eisfeller@unitil.com
joshua.w.elliott@energy.nh.gov
emerson@primmer.com

sam@cleanenergynh.org
sfeigenbaum@kearsargeenergy.com
kfiori@nexamp.com
kfriend@nexamp.com
furino@unitil.com
sandra.gagnon@eversource.com
Robert.Garcia@libertyutilities.com
erik.gilbert@navigant.com
aglaserschhoff@synapse-energy.com
golding@communitychoicepartners.com
cgordon@revisionenergy.com
egreen@clf.org
austin.perea@arcadia.com
harringt1@metrocast.net
nhaslett@revisionenergy.com
bhavumaki@synapse-energy.com
b.hayden@standardpower.com
isabelle.hazlewood@eversource.com
greg@clearpath.energy
alex.hill@dunsky.com
steveh@revisionenergy.com
steveh@revisionenergy.com
dholt@consumerenergyalliance.org
mhorne@hcc-law.com
jameskw@nhbfa.com
jkennerly@seadvantage.com
jack.kenworthy@waldenrenewables.com
david@clearpath.energy
bking31415@gmail.com
nkrakoff@clf.org
donald.m.kreis@oca.nh.gov
anirudh.kshemendranath@dunsky.com
rlabrecque@agiliasenergy.com
alexandra.k.ladwig@energy.nh.gov
clane@synapse-energy.com
alesko@preti.com
dlittell@bernsteinshur.com
Business.Agent@ibew490.org
t.macdowell@standardpower.com
manzelli@nhlandlaw.com
alexmarquez146@gmail.com
pmartin2894@yahoo.com
smaslansky@nhcdfa.org
erik.mellen@eversource.com
Erica.Menard@libertyutilities.com
tmichelman@seadvantage.com

mmineau@essexhydro.com
clayaz23@gmail.com
info@mainstreetbookends.com
elizabeth.r.nixon@energy.nh.gov
amanda.o.noonan@energy.nh.gov
ran@essexhydro.com
jim_obrien@tnc.org
ocalitigation@oca.nh.gov
joliver@vermontlaw.edu
sormsbee@colonialpowergroup.com
ipahl@icloud.com
palma@unitil.com
austin.perea@arcadia.com
katherine.peters@eversource.com
nathan@votesolar.org
melissa.price@eversource.com
katherine.provencher@eversource.com
kim.quirk@gmail.com
brian.rice@eversource.com
Katherine.roberge@eversource.com
bross@consumerenergyalliance.org
Melissa.Samenfeld@libertyutilities.com
michael.sheehan@libertyutilities.com
sshensstone-harris@synapse-energy.com
david.j.shulock@energy.nh.gov
karen.sinville@libertyutilities.com
michael.j.sisto@energy.nh.gov
chris@cleanenergynh.org
jsohn@safarienergy.com
sprague@unitil.com
stettenheim@norwichtech.com
anthony.strabone@libertyutilities.com
taylorp@unitil.com
teamnh@energyservicesgroup.net
mark.p.toscano@energy.nh.gov
stower@nhla.org
mulin@revisionenergy.com
Charles.J.Underhill@oca.nh.gov
jvanrossum@clf.org
jpvitello@gmail.com
tanya.p.wayland@energy.nh.gov
dweeks@revisionenergy.com
david.wiesner@eversource.com
twoolf@synapse-energy.com
Adam.Yusuf@Libertyutilities.com