

THE STATE OF NEW HAMPSHIRE

before the

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION  
REVOLUTION ENERGY LLC and SANBORN REGIONAL SCHOOL DISTRICT  
JOINT REQUEST FOR WAIVER OF  
N. H. CODE ADMINISTRATIVE RULE PUC 2507.04(c)

**Introduction**

Pursuant to N.H. Code Admin. Rule Puc § 201.05, Revolution Energy LLC and Sanborn Regional School District hereby jointly request a waiver of the requirement that the applicant and owner of a thermal renewable energy system be “the end use customer of provider of electricity located in New Hampshire” and the “owner of the system” at the site of the system for which a rebate is sought. The Requestors assert that the waiver will serve the public interest and compliance with the rule would be onerous or inapplicable given the circumstances of the affected parties. In support of the request, the Requestors provide the following:

1. Revolution Energy LLC (“Revolution”) is New Hampshire Limited Liability Corporation with its offices in Dover N.H. and is an end user of electricity in New Hampshire and the owner of the systems subject to this waiver request.

2. Sanborn is a Regional School District (“Sanborn”) comprised of the Towns of Kingston and Newton and as part of the SAU 17 manages the facilities of four schools for the citizens of these towns, is an end user of electricity in New Hampshire and the customer at the site of the customer-sited resources subject to this waiver request.

3. In Order No. 25,151 the Commission established the Commercial and Industrial Renewable Energy Rebate Program (October 1, 2010). The majority of the proceeding (DE 10-212) focused on the rebate levels and other restrictions which form the basis of the program. This program includes thermal renewable energy projects. The program purposes are laid out in RSA 362-F:10(VIII), which is the basis for the implementing of rules found at N.H. Code Admin. Rule Puc § 2500. In particular, N.H. Code Admin. Rule Puc § 2507.03 lays out the several

purposes of these rebate programs. The prerequisites for requesting a rebate under this program are found Puc Rule § 2507.04(c), requiring, in summary, the requestor to be a New Hampshire based entity, the end user of electricity at the site, and the owner of the system. This request focuses on an innovative financing/ownership structure that is prohibited under the Rules and requires this waiver request to be filed as the owner of the system is not the end user of electricity at the site.

4. The applicable rules cited in this waiver request are included in Appendix A: Regulatory Sources for reference.

### **Jurisdiction**

This joint request is filed in accordance with Puc 201.05 Waiver of Rules. The commission shall waive the provisions of any of its rules, except where precluded by statute, upon request by an interested party if the commission finds that the waiver serves the public interest *and* the waiver will not disrupt the orderly and efficient resolution of matters before the commission. Puc Rule 201.05(a). Further, the commission, in determining the public interest shall waive if (1) compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; *or* (2) the purpose of the rule would be satisfied by an alternative method proposed. Puc Rule 201.05(b).

In this request, Revolution Energy LLC (herein after as “Revolution”) and Sanborn Regional High School (herein after as “Sanborn”) are seeking a waiver to the requirement that the applicant be the owner of the system as well as the customer at the electric meter connection point at the physical site of the project eligible for the rebate which is present in the list of requirements for Puc Rule 2507.04(c)(2) and (3). The parties in the joint application are Revolution and Sanborn, both New Hampshire entities, represent the owner of the system and the end-use customer at the site, respectively, and both take electricity from a provider in New Hampshire. Under this project, however, the owner of the system does not take electricity at the site of the projects. The proposed structure of the projects is related to financing and is creating

the need for the waiver. The structure has many benefits that satisfy the intent and purpose of the rules and the program itself. Accordingly, the parties respectfully request this waiver.

### **The Commercial and Industrial Rebate Program**

During the proceedings on the development of the program (Order 25-151, October 1, 2010) there was discussion about the requirements that the applicant for the rebate also be the owner of the system and the customer at the meter behind which electrical systems were located. One interpretation of these requirements was that this provision applied to off-grid applications. Another issue related to third party financing/ownership structures known as power purchase agreements, where a third-party finances, installs and owns a system on a host property. In the Order, the Commission noted this discussion:

“11. At least two stakeholders emphasized the importance of the third-party ownership model for renewable energy systems, and that there is a conflict with third-party owned systems being eligible for a rebate under current Commission rules (Ref. Puc 2507.04(c)(3)).”

This issue appeared to have some support for further review in the future as a restriction that may warrant review in order to promote third-party financing/ownership mechanisms known as power purchase agreements. Revolution Energy LLC participated in these proceedings and presented testimony on these mechanisms, their support at the federal level and in other jurisdictions in the country and their effectiveness as methods for leveraging other incentives, making renewable energy systems affordable to a wider range of customers – specifically non-profits, government entities and moderate income residents who are unable to access tax-based incentives at the federal level or shoulder the burden of up-front costs for such systems.

Although the Commission highlighted the impending RFP for renewable energy systems, it mentioned that the purpose in this forthcoming process will focus on giving “all renewable technologies an opportunity to seek REF support...on a competitive basis.” This indicates that the goal for the RFP is more about technological neutrality versus a financing structure. As a

result, the parties are seeking this waiver to allow the projects to secure rebates under the existing Commercial and Industrial Renewable Energy Rebate Program and assert that the request for a waiver will serve the program objectives and goals and the public interest.

Revolution and Sanborn are both interested parties seeking a rebate under the Commercial and Industrial Rebate pursuant to Puc 2500 and have filed four applications for four thermal projects under the program's two-step process.

### **Background and the Parties**

Sanborn Regional School District is the public school system for Kingston and Newton, NH. Consisting of four schools, Memorial Elementary, D.J. Bakie Elementary School, Sanborn Regional Middle School and Sanborn Regional High School, the district provides educational services to students from K-12. The district currently has 1,950 students enrolled between the four schools.

Revolution Energy LLC is a for profit limited liability company that designs, installs, finances, manages and owns renewable energy systems to facilitate renewable energy system deployment and ownership for non-profit and for-profit entities through leverage of available incentives and capital. Formed in 2008, Revolution Energy has installed solar projects at Exeter High School and East Kingston Elementary as well a combined heat and power system at Seacoast School of Technology. Current projects underway include the Great Bay Community College in Portsmouth New Hampshire. Revolution employs the third-party mechanism known as power purchase agreements (PPAs) and service contracts to develop these thermal and electrical energy generation and conservation projects.

The PPA model is an effective tool for renewable energy system deployment in New Hampshire; one that is supported by several states and the federal energy officials as an effective way to deploy such systems. The traditional model for the PPA is based on electric generation, but Revolution has now expanded the model to thermal systems. Despite these benefits, this model is not entirely consistent with the PUC Rules 2500, most of which appear to be related to

electrical systems – which although represent the source of the funds, have only an indirect relation to the deployment of thermal renewable energy systems that displace fossil fuel usage for domestic hot water and space heating.

The structure of the projects include Revolution as owner and Sanborn as the end use customer under a PPA arrangement for 10 years, with an option to purchase that may be executed starting with year six of the arrangement. The structure of PPA is rigidly governed by the Internal Revenue Code. As such that the project is also eligible for the 30% Federal Income Tax Credit for Renewable Energy Property as modified by Section 1603 of the Recovery Act, recently extended to the end of 2011. Although Sanborn is a non-profit and not eligible for the grant, Revolution, as a for-profit company, is eligible and will pass these incentives to Sanborn in the form of a lowered PPA rate. This lowered rate, coupled with the state rebate, allows Sanborn to deploy a larger system and reap greater savings than with standard financing or capital expenditures associated with the displacement of oil-based heating. The PPA model is more effective and efficient than standard financing or capital expenditures because the host is not responsible for the complexities and costs of financing, maintenance or operation of the system. The owner is obligated to keep the system for the term of the contract, maintain the system, and insure its operation. By leveraging the tax-based incentives, the overall cost of the system is also reduced.

### **Waiver Request**

Pursuant to N.H. Code Admin. Rule Puc § 201.05, the parties request this waiver and submit that the waiver would serve the public interest and compliance with the rule would be onerous or inapplicable given the circumstances of the affected parties. The applicant for the rebate is Revolution Energy LLC, who is a commercial entity in New Hampshire and an end use customer of a utility in New Hampshire and the owner of the projects, but is not the “customer” with respect to the rule’s definition of a customer-sited source, namely “a source that is interconnected on the end-use customer’s side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer.” NH PUC § 2502.17. The host of the projects, Sanborn Regional School District, is however, the end use customer of

the energy produced and of electricity at the site of the generation system but is not the owner of the systems. This disconnection is the source of the waiver.

The parties are seeking a waiver to the Puc § 2507.04 Customer-Sited Projects provision. In this section the Rules provide the following:

“(a) The provisions of this part shall apply to customer-sited generation of up to 100 kW in gross nameplate capacity or equivalent thermal output.

(b) Persons seeking funds for customer-sited projects from the renewable energy fund shall apply according to this section.

(c) An applicant shall be:

(1) A residential, commercial, industrial, institutional, or public entity in New Hampshire;

(2) An end use customer of provider of electricity located in New Hampshire; and

(3) The owner of the proposed project.”

The waiver is not specifically precluded by authorizing statute for the program as found at NH RSA 362-F:10. There is no provision in this statute that tie rebates from the Renewable Energy Fund to end-use customers who must also be owners of the systems at the end use site. The term “end-use customer” is defined in the statute but is only referred to in the standards and classes and found in sections RSA 362-F:3 and 362-F:4, respectively. With respect to “customer-sited source”, this provision is limited to reference in Renewable Energy Certificates (RSA 362-F:6 & 7) and is not specifically included in the provisions establishing the Renewable Energy Fund, RSA 362-F:10. The commission rules, however, at Puc Rule 2507.04, quoted above, tie these concepts together through the requirements of the commission to administer and distribute the funds.

The renewable energy systems that are the subject of the waiver are thermal renewable energy systems used for space heating. The proposed systems pre-heat fresh air taken into the school facilities with sunlight – displacing oil-based heating demand in four separate projects at the Sanborn High School. The subject site is a high school facility that is not used or occupied during the summer, which would make it ineligible for a solar domestic hot water system. (See

Step 1: Incentive Pre-Approval, Item 23, page 2 of 7). As such, this proposed system is the most effective way to deploy renewable thermal technology under this program. Although the requirement for the owner to be the end user of electricity from a provider in New Hampshire at the site is carefully related to the source of funds and benefits derived from an electrical renewable energy system. A similar requirement for thermal systems is less direct and potentially less-critical since the fuel displaced is not electricity. Displacing fossil fuels in heating contexts under the 3<sup>rd</sup> party ownership model, particularly where both parties are New Hampshire entities taking electrical service in the state, satisfies the requirement that the incentive source and benefit are staying within the state and promoting investment in renewable energy and lowering emissions in New Hampshire.

With respect to specific elements of the purpose of the Renewable Energy Fund and RSA 362-F, Renewable Portfolio Standard, the following review of major elements of the Rules and the statute are provided:

- Sanborn Regional School District and Revolution Energy LLC are New Hampshire-based entities and the project will be installed on Sanborn's property, located in New Hampshire.
- Revolution's 3<sup>rd</sup> party ownership model creates a financial mechanism and program that facilitates the expansion of an innovative and economically viable renewable energy technology within the state of New Hampshire. The proposed technology and financial structure is a cost competitive viable heating alternative to fossil fuels for both non-profit and for-profit entities with a potential to offset a substantial amount of fossil fuel costs and emissions while preventing the exportation of energy funds out of the state.
- Solar thermal air systems have the ability to reduce New Hampshire's fossilized fuel sources in public buildings, schools, hospitals and large commercial spaces. The acceptance of this waiver would simultaneously provide significant support for the technology and the financial approach and assist to transform the solar hot air market in New Hampshire while significantly reducing energy expenses. The solar hot air collector is a tested technology with wide deployment in the Canadian climate and is a fuel-free renewable energy system that displaces fossil fuel and related emissions for a period of 3-

years or more due the solid state nature of the systems and lack of moving parts. The systems are scalable and easily maintained.

- Renewable heating deployed under Revolution’s model will stabilize fuel expenses for Sanborn by allowing a fixed annual budget-able energy expense that is below current energy rates with a lower escalation than is projected, creating greater savings over time. Direct environmental benefits will also be achieved through significant reductions in oil consumption for Sanborn. Additionally, significant economic development will occur from the reduction of energy expenses’ exportation by transitioning from a foreign fuel source and by reducing operating expenses for municipalities and school districts. The nature of the financial model allows for increased investment from other parties, allowing for increased and diverse sources of funding. By diverting the up-front costs, the model also dramatically increases the opportunity for participants in renewable energy by making credit-worthy customers that lack significant upfront capital eligible for renewable energy systems.
- By employing the solar hot air technology coupled with the 3<sup>rd</sup> party financial model, the essential components of the project, the waiver will act to encourage the overall fuel diversity in the state by increasing the overall renewable solar thermal installed capacity. This is done by promoting an economical alternative to current non-renewable, non-domestically fueled thermal energy systems.
- This financial structure can be implemented at new or existing buildings and can enhance the market in both sectors. Additionally, projects deployed on government municipal and school facilities provide benefits to all the taxpayers served by the community, this provides an enhanced public benefit. The nature of the of the collaborative approach helps overcome financial burdens associated with high up-front costs and limited annual budget allocations. Leveraging additional tax-based incentives insures the cost-effectiveness of the state rebate program as well as compared to traditional capital financing for public entities.

Granting the waiver will not disrupt the orderly and efficient resolution of matters before the commission because the applications covered are entirely consistent and technically compatible with any other application for a rebate under the program. The waiver requested only

applies to the ownership and end user status and will not present increased complexity in the processing of the application once the wavier is granted.

WHEREFORE Revolution and Sanborn respectfully request that the Commission grant a waiver of N.H. Code Admin. Rule Puc § 2507.04(c) with respect to Revolution’s role as the projects’ owner and Sanborn as the end use customer of electricity at the site of the four projects at Sanborn Regional High School at 17 Danville Drive, Kingston NH to allow the four projects to be eligible for rebates under the Commercial and Industrial Rebate Program authorized by Order 25-151, October 1, 2010, and order such further relief as may be just and equitable.

Respectfully submitted,  
Sanborn Regional School District  
Revolution Energy LLC

Date: \_\_\_\_\_

By: \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that, on the date written below, a copy of the above Request for Waiver was served by electronic mail pursuant to Puc § 203.02 and Puc § 203.11.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clayton R. Mitchell

Appendix A: Regulatory Sources:

Puc § 201.05 Waiver of Rules.

- (a) The commission shall waive the provisions of any of its rules, except where precluded by statute, upon request by an interested party if the commission finds that:
  - (1) The waiver serves the public interest; and
  - (2) The waiver will not disrupt the orderly and efficient resolution of matters before the commission.
- (b) In determining the public interest, the commission shall waive a rule if:
  - (1) Compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or
  - (2) The purpose of the rule would be satisfied by an alternative method proposed.
- (c) Any interested party seeking a waiver shall make a request in writing, except as provided in (d) below.
- (d) The commission shall accept for consideration any waiver request made orally during a hearing or pre-hearing conference.
- (e) A request for a waiver shall specify the basis for the waiver and proposed alternative, if any.

Puc § 2502.13 “Customer-sited source” means “customer sited-source” as defined in RSA 362-F:2, V, namely “a source that is interconnected on the end-use customer’s side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer.”

Puc § 2502.17 “End-use customer” means “end-use customer” as defined in RSA 362-F:2, IX., namely “any person or entity that purchases electricity supply at retail in New Hampshire from another person or entity but shall not include:

- (a) A generating facility taking station service at wholesale from the regional market administered by the independent system operator (ISO-New England) or self-supplying from its other generating stations; and
- (b) Prior to January 1, 2010, a customer who purchases retail electricity supply, other than default service under a supply contract executed prior to January 1, 2007.”

Puc § 2502.28 “Provider of electricity” means “provider of electricity” as defined in RSA 362-F:2, XIV.

Puc § 2502.30 “Renewable energy source” means “renewable energy source” as defined in RSA 362-F:2, XV, namely “a Class I, II, III, or IV source of electricity or electricity displacement by a Class I source under RSA 362-F:4, I(g). An electrical generating facility, while selling its electrical output at long-term rates established before January 1, 2007 by orders of the commission under RSA 362-A:4, shall not be considered a renewable source.” The term “renewable energy source” includes the terms “renewable source” and “source.”

Puc § 2507.03 Renewable Energy Initiatives.

- (a) The commission shall periodically issue a request for proposals for initiatives to be supported by the renewable energy fund. All such initiatives shall be located in New Hampshire.
- (b) In determining whether and to what extent it will dedicate money from the renewable energy fund to proposals submitted pursuant to (a) above, the commission shall consider the extent to which:
  - (1) The initiative is likely to expand or support the production capacity of renewable energy facilities located in New Hampshire;
  - (2) The initiative is likely to be cost-effective;
  - (3) The initiative promotes market transformation, innovation, and energy cost savings;
  - (4) The initiative will reduce New Hampshire's peak load as well as defer or eliminate local utility distribution plant expenditures;
  - (5) The initiative is likely to result in economic development and environmental benefits for New Hampshire;
  - (6) The initiative increases fuel diversity in the production of electricity or thermal energy for consumption in New Hampshire; and
  - (7) The applicant has the capacity to successfully complete the initiative and the significance of the proposed assistance of the renewable energy fund in the viability of the project.

Puc § 2507.04 Customer-Sited Projects.

- (a) The provisions of this part shall apply to customer-sited generation of up to 100 kW in gross nameplate capacity or equivalent thermal output.
- (b) Persons seeking funds for customer-sited projects from the renewable energy fund shall apply according to this section.
- (c) An applicant shall be:
  - (3) A residential, commercial, industrial, institutional, or public entity in New Hampshire;
  - (4) An end use customer or provider of electricity located in New Hampshire; and
  - (3) The owner of the proposed project.
- (d) Applications pursuant to this part shall include the following information:
  - (1) The name, address and telephone number of the applicant;

- (2) The location of the proposed project;
- (3) The name and address of the monitor who will verify installation and production;
- (4) The type of technology used in the proposed project; and
- (5) The nameplate capacity of the proposed project.

(e) Applications shall include a signed contract with a primary installer or vendor that provides customers with a turnkey service.

(f) If the applicant intends to install the project, the applicant shall apply for a waiver from (e) above.

(g) The commission shall notify an applicant by letter if his or her proposal is accepted for funding from the renewable energy fund, including the amount, in dollars, that may be provided through the renewable energy fund.

(h) Prior to receiving any monies from the renewable energy fund, the applicant shall demonstrate that the project is installed and operating by providing an attestation by a monitor or a distribution company that states:

- (1) The project is installed and operating in conformance with applicable codes, including applicable safety, zoning and building codes and has received any required inspections;

- (2) The interconnection between the project and the distribution utility complies with the applicable interconnection, testing, and operational requirements, though not necessarily the net metering requirements, of Puc 900, "Net Metering for Customer-Owned Renewable Energy Generation Resources," or in the alternative, Puc 307.06; and

- (3) The monitor or distribution utility has inspected the installation.

(i) Upon demonstration that the project is installed and operating, the commission shall provide the state treasurer information regarding:

- (1) The name and address of the recipient of the money; and

- (2) The amount of money to be disbursed to the recipient pursuant to (i) above.