

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DE 12-139

NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC.

Request for Waiver of Net Metering Rule Puc 901.02 (b)

Order *Nisi* Addressing Rules Puc 901.02(b) and Puc 903.02 (i)(1)

O R D E R N O. 25,426

October 19, 2012

On May 23, 2012, New Hampshire Electric Cooperative, Inc. (NHEC) filed a letter requesting a waiver of New Hampshire Code of Admin Rules Puc 901.02(b), a provision of Chapter Puc 900, Net Metering of Customer-Owned Renewable Energy Generation Resources of 1000 Kilowatts or Less. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, is posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2012/12-139.html>.

Puc 901.02(b) reads as follows:

Puc 903.02(h) through (k) shall only apply to net surplus electricity fed into the distribution system that accumulates during the 12 monthly cycles preceding the March 2012 billing cycle and subsequent billing cycles.

Puc 903.02 subsections (h) through (k) implement RSA 362-A:9, V, a statutory provision which states that, when a customer-generator's net energy metered generation facility has fed a net energy surplus to the distribution system (that is, when more electricity is fed into the distribution system than is received), the customer can (1) accept a credit in the amount of such surplus for use in subsequent billing cycles, or (2) elect to be paid by the electric distribution utility for the surplus "at rates that are equal to the utility's avoided cost for energy and capacity

to provide default service as determined by the commission . . .” Pursuant to Puc 903.02(h), customer-generators with a net surplus in excess of 600 kilowatt-hours (kWh) are eligible to elect payment according to the calculation of avoided costs approved by the Commission and described in Puc 903.02(i).

NHEC interprets Puc 901.02(b) as barring customer-generators from receiving payment for any surplus accumulated prior to April 2011. Therefore, NHEC said it would have to maintain separate surplus accounts, or “banks,” one for the surplus accumulated prior to April 2011, at significant cost to its billing system. Therefore, NHEC requested a one-time waiver of Puc 901.02(b) so that its net metered members would receive payments for any surplus energy deliveries of 600 kWh or more which accumulated earlier than April 2011.

If the waiver were granted, NHEC would include all net surplus electricity in the avoided cost payment calculations for the period ending March 2012 regardless of when the electricity was produced. According to NHEC, the total surplus balance of all its net-metered accounts as of March 31, 2011 was 11,092 kWh, which would result in less than \$1,000 in total additional payments to net metered customers. NHEC stated that the waiver would benefit these net metered customers, and its other members as well, because NHEC would not have to change its billing system at the expense of all its members. NHEC explained that it would calculate the amount to be paid to each eligible customer consistent with the calculations set forth in Puc 903.02(i).

In Staff’s review of the applicant’s request it was noted that NHEC identified 13 net metering customer-generators who had accumulated a net surplus of 600 kWh or more and who would be eligible to elect payment for the calculated avoided cost of the power.

Staff then contacted Public Service Company of New Hampshire (PSNH), Granite State Electric Company (GSEC), and Unitil Energy Systems, Inc. (UES) to determine how each company had dealt with the net surplus balances that may have existed prior to April 2011 for net metering customer-generators. Staff reported that the electric distribution utilities had either (1) included the pre-existing surplus balances in the calculation of the surplus balances at the end of each customer-generator's March 2012 billing cycle, or (2) the surplus at the end of the March 2012 billing cycle had accumulated only in the twelve preceding billing cycles. According to Staff, the utilities generally agreed that it would be an administrative burden to separately track surplus balances in existence prior to April 2011 and balances occurring after April 2011, especially given the relatively small economic value of potential surplus of each net metering customer.

Based on these inputs, Staff on August 20, 2012, recommended that NHEC's request for a waiver be considered as a request for clarification of the rule, based in part on the fact that, while NHEC said in its filing that the request was for a "one-time" waiver of the rule, NHEC had also stated its intent to apply the same treatment to customers who had not yet accumulated a 600 kWh or more surplus as of the end of the March 2012 billing cycle and would be eligible for payments in future years. In other words, once a customer-generator accumulated a surplus of at least 600 kWh, no matter when the surplus was incurred, NHEC intends to offer eligible customers the option to be paid for the excess energy. Staff noted that this treatment is consistent with its understanding of how the other New Hampshire electric utilities plan to handle similar surplus balances.

Staff noted that the current version of the Puc 900 rules does not address pre-existing net surplus energy balances and, therefore, absent this clarification, the utilities are faced with the administrative burden of separately tracking and treating surplus balances based on when they originated. Staff said that it was reasonable to interpret Puc 901.02(b) as including any pre-existing surplus balance as part of accumulation that occurs during the 12 month billing cycles preceding the March 2012 billing, regardless of when the balances occurred. According to Staff, this interpretation of the rule is consistent with the requirements of RSA 362-A:9, V and will simplify the record keeping and calculations involved in determining the annual compensation for surplus balances.

In examining NHEC's request, Staff identified another section of the Puc 900 rules, Puc 903.02 (i)(1), that may require clarification. Puc 903.02(i)(1) reads in part as follows:

On or before April 15 of each year, the commission shall publish on its website its calculation of the rates for avoided costs of energy and capacity for the previous year ending March 31 to be used by utilities to calculate the economic value of surplus net metered generation for the previous year which may be paid or credited starting in the May billing cycle...

Staff noted that the phrase "to calculate the economic value of surplus net metered generation for the previous year" can be strictly interpreted as taking the annual avoided cost rates and applying them only to twelve months of net metered generation. Such an interpretation would require that the economic value of any surplus generation from prior periods would be calculated using the avoided cost rates for the applicable twelve-month periods.

Staff described the problem with this interpretation as follows. First, the applicable avoided cost rate would differ for each separate twelve-month period, thus requiring the affected utility to separately calculate excess generation that occurred in a different period. Second,

customer surplus balances can increase or decrease during a twelve-month period, and it may take a period of years for a customer to accumulate a surplus of 600 kWh or more. Because there would be different avoided cost calculations for each of the twelve-month periods over which the surplus was produced, the utility would have to ascertain how much of the surplus was produced during each twelve-month period and then calculate the economic value applicable to that time period. According to Staff, it would be administratively burdensome and complex for a utility to separately calculate the economic value of the amount of surplus accumulated during each twelve-month period, if the qualifying surplus were produced over several twelve-month periods. Staff asserted that it would be less burdensome and consistent with RSA 362-A:9, V to interpret the rule as requiring that, when a customer-generator has accumulated a surplus in excess of 600 kWh at the end of a March billing cycle, the affected utility could pay the entire surplus balance at the avoided cost rate posted by the Commission as of April 15 of the same calendar year.

Staff recommended that if the Commission agreed with its recommended clarifications of Puc 901.02(b) and Puc 903.02(i)(1), the Commission issue an Order *Nisi* that would apply not only to NHEC, but also to UES, PSNH and GSEC. According to Staff, if any of the utilities disagreed with the proposal, an Order *Nisi* would allow such utility to request a hearing regarding the proposed clarification. Staff stated that its recommendations are consistent with the requirements of RSA 362-A:9, V and would simplify the record keeping and calculations involved in determining the annual compensation to customer-generators with a qualifying net surplus.

We note that the purpose of the net metering rules (Chap. Puc 900) is to implement the provisions of RSA 362-A:9. One section of that statute, RSA 362-A:9, V, provides that customer-generators who have accumulated a net energy surplus be offered on an annual basis an election to be paid or credited for the surplus at the utility's avoided cost. The statute leaves it to the Commission to determine the frequency of payment and the general implementation of the statute. RSA 362-A:9, V and RSA 362-A:9, X. We adopted the rules at issue in 2011 and this is the first year in which utilities have had to comply with the rules. Based on the unforeseen administrative complexity of a strict reading of the rules, we find that it is appropriate to provide guidance to the electric distribution utilities on how they should implement the requirements of the rules. We will separately address Puc 901.02(b) and Puc 903.02(i)(1).

Puc 901.02 (b), states that the payment option envisioned by RSA 362-A:9, V is only available with respect to "net surplus electricity fed into the distribution system that accumulates during the 12 monthly billing cycles preceding the March 2012 billing cycle and in subsequent billing cycles." A plain reading of the words indicates that utilities may only consider surplus accumulated beginning with the April 2011 billing cycle in determining whether a customer-generator has reached the 600 kWh threshold. We have determined that NHEC's initial request to waive Puc 901.02(b) should be granted, but that the waiver should apply to all electric distribution utilities and continue until such time that the rule is amended.

We are authorized to grant a waiver of a rule upon a finding that the waiver serves the public interest and that the waiver does not disrupt the orderly and efficient resolution of matters before the Commission. In determining the public interest, the Commission considers whether

compliance with the rule would be onerous given the circumstances of the petitioner or that the purpose of the rule is satisfied by alternate means. Puc 201.05(a) and (b).

Requiring costly charges in billing systems to “bank” each net metered customer’s surplus production does not serve the public interest. Nor does a requirement to calculate each 12 month period’s excess and avoided cost. Finally, imposing the strictest possible interpretation of the rule could limit the ability of customer-generators to build a surplus amount that would be eligible for payment, and would frustrate the statutory intent to afford customer-generators an opportunity to receive payment for the accumulated energy surplus delivered to the electrical grid.

Based on the foregoing, we conclude that it is reasonable and consistent with the statute to waive Puc 901.02(b) for NHEC and for PSNH, UES and GSEC and for the waiver to remain in effect until such time that the Commission amends the rules. Pursuant to the waiver, electric distribution utilities should consider the entire surplus balance at the end of the March 2012 billing cycle regardless of when it was accumulated in determining whether a customer-generator was eligible to elect payment for the balance. Further, as a result of this continuing waiver, in any future year where the customer-generator has accumulated more than 600 kWh in surplus production at the end of a March billing cycle, that customer-generator would be eligible to elect payment for the surplus regardless of when the surplus was accumulated.

We agree with Staff that Puc 903.02(i)(1) bears some clarification. When interpreting administrative rules, the Supreme Court assigns the plain and ordinary meaning to the words used and considers the interpretation of the rule in the context of the rule as a whole so as not to render a portion of the rule meaningless. And while the Court gives deference to the agency’s

interpretation of its own regulations, the deference is not complete. The Court additionally considers whether the interpretation is consistent with the language and purpose of the rule. *Murdock v. N.H. Personnel Appeals Board* 156 N.H. 732 (2008) at 735.

Though one could read Puc 903.02(i)(1) to require that utilities separately calculate both the amount of surplus for each prior year and the avoided costs applicable to those years, the statute does not expressly require such approach. RSA 362-A:9, V (b) states that a customer-generator “may elect to be paid or credited by the electric distribution utility for its excess generation at rates that are equal to the utility’s avoided costs for energy and capacity” to be determined by the Commission. Requiring utilities to match surpluses to avoided costs by calendar year would impose unnecessary administrative requirements on the utilities and could confuse customer-generators who would otherwise expect to be paid at the most recent avoided cost price calculated and published by the Commission. Interpretation of Puc 903.02(i)(1) to require that utilities pay customer-generators at the then-current avoided cost rate for any surplus of 600 kWh or more, regardless of when the surplus occurred is reasonable and consistent with the statute. The rulings herein shall be applicable to NHEC, PSNH, GSEC and UES in implementing Puc Chap. 900.

**Based upon the foregoing, it is hereby**

**ORDERED** *NISI*, that New Hampshire Electric Cooperative, Inc.’s request for waiver of Puc 901.02(b) is GRANTED consistent with the above findings; and it is

**FURTHER ORDERED**, that, Puc 903.02(i)(1) shall be interpreted consistent with the above findings; and it is

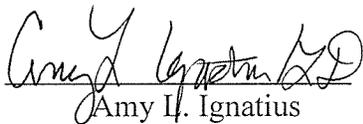
**FURTHER ORDERED**, that the Petitioner shall cause a summary of this Order *Nisi* and a link to the Commission's website where the Order appears in full to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than October 29, 2012 and to be documented by affidavit filed with this office on or before November 15, 2012; and it is

**FURTHER ORDERED**, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than November 5, 2012 for the Commission's consideration; and it is

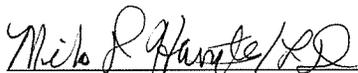
**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than November 12, 2012; and it is

**FURTHER ORDERED**, that this Order *Nisi* shall be effective November 19, 2012, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of October, 2012.



Amy H. Ignatius  
Chairman



Michael D. Harrington  
Commissioner



Robert R. Scott  
Commissioner

Attested by:



Lori A. Davis  
Assistant Secretary