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21 JUL '17 AM 11:54

July 21, 2017

Ms. Debra A. Howland  
Executive Director  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, New Hampshire 03301

Re: Docket No. DE 16-576  
Development of New Alternative Net Metering Tariffs, &c.

Dear Ms. Howland:

As you know, the Commission issued Order No. 26,029 in the above-referenced proceeding on June 23, 2017, addressing after an extensive evidentiary hearing the directive of the General Court to develop new tariffs to replace the traditional "net metering" paradigm that has historically applied to customer-generators who export surplus energy to the grid. *Inter alia*, Order No. 26,029 concluded that when a customer-generator receives a capacity allocation "while the new alternative net metering tariff is in effect," the customer will be "grandfathered" at the applicable net metering design and structure then in effect through December 31, 2040." Order No. 26,029 at 51 (noting that this approach was a common element of the two settlement agreements offered at the hearing).

The Commission noted that two issues related to grandfathering had not been addressed in the settlements:

(1) whether a subsequent sale or other ownership transfer of the house, building or property upon which the DG [distributed generation] system is installed, or a subsequent sale or other ownership transfer of the DG system itself, would entitle the new owner to continue to be net-metered under the grandfathered tariff provisions, and (2) whether subsequent expansions of or modifications to DG systems would be entitled to net metering under the grandfathered tariff provisions.

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*Id.* The Commission therefore invited the parties to comment on these issues within 30 days. Please treat this letter as the response of the Office of the Consumer Advocate (OCA) to that invitation.

At the outset the OCA wishes to make clear its understanding as to how the grandfathering provisions affect customer-generators who receive capacity allocations prior to the September 1, 2017 effective date of the new tariff provisions. As the Commission noted at page 56 of the Order, since it is unlikely the utilities will be able to implement the new tariff provisions on that date, “the tariff commencement date effectively services as a cut-off date for grandfathering of projects under the current standard tariffs.” It is the OCA’s understanding that these current standard tariffs will continue to apply to these customer generators through the end of 2040. *See* Exh. 5 (Utility/Consumer Coalition Settlement Agreement ) at 7-8 (providing for such treatment). In other words, the OCA understands the grandfathering rule adopted at page 51 of the Order to apply to *all* customer generators in New Hampshire.

With respect to the first question posed by the Commission, the OCA believes that the objective of just and reasonable rates is best served if successor owners of DG installations are allowed to take advantage of the grandfathering rule rather than being subject to whatever terms and conditions would apply to a new installation at the time of the transfer. To do otherwise would, in our judgment, present unhelpful impediments to real estate transfers and/or would unfairly limit the extent to which a transferring owner could obtain via the sale price the net present value of the income stream associated with the grandfathered rate. The Commission should, however, specify that the acquiring owner relinquishes the right to grandfathered rate if the system is moved to a different location.

The second question, which concerns the expansion of grandfathered systems, is a somewhat more complicated issue. Circumstances of DG owners change and, thus, it is reasonable to build in some capability for system expansion under grandfathered rates. However, allowing limitless expansion under grandfathered rates would invite gaming and raises the specter of the very sort of unfairness the General Court tasked the Commission with addressing in Docket No. DE 16-576.

Based on the experience of other states, particularly Arizona and California, the OCA requests that the Commission authorize customer-generators to expand their system capacities by up to ten percent without losing the right to grandfathered rates, provided that such expansion does not disqualify a small customer-generator within the meaning of N.H. Code Admin. Rules Puc 902.19 from remaining in that category (i.e., peak generating capacity of not more than 100 kilowatts) or, likewise, does not disqualify a large customer-generator pursuant to Rule Puc 902.15 from remaining in that category (i.e., peak generating capacity of not more than 1 megawatt). In our judgment, this approach is suitably fair and flexible.

The OCA has not had the opportunity to consult with other parties prior to developing the reasonable recommendations we have made above. Accordingly, we reserve the right to request that the Commission conduct evidentiary proceedings prior to resolving these issues should there be significant disagreements among the parties that cannot be easily and speedily resolved.

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Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Maurice Kreis". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

D. Maurice Kreis  
Consumer Advocate

cc: Service List