

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

**Development of New Alternative Net Metering Tariffs and/or Other Regulatory
Mechanisms and Tariffs for Customer-Generators**

Docket No. DE 16-576

Motion for Designation of Staff Advocates Pursuant to RSA 363:32

NOW COMES the Office of the Consumer Advocate (“OCA”), a party in this docket, and moves pursuant to RSA 363:32, I and N.H. Code Admin. Rules Puc 203.07, for an order designating witness and outside consultant Stan Faryniarz, Sustainable Energy Division Director Karen Cramton, and Staff Attorney David Wiesner as Staff Advocates in this proceeding. In support of this Motion the OCA states as follows:

1. RSA 363:32 authorizes, and in some circumstances requires, the New Hampshire Public Utilities Commission (“Commission”) to designate members of the agency’s staff as “staff advocates” or “decisional employees” upon request of a party to an adjudicative proceeding. When a Commission staffer is designated as a staff advocate she or he is “specifically assigned to advocate as a party with respect to issues arising in an adjudicative proceeding,” RSA 363:30, VIII, and is prohibited pursuant to RSA 363:35 from advising the Commission, its presiding officer, its individual commissioners, or any other decisional employee with respect to matters at issue in the case. Staff advocates are

subject to the statutory prohibition of *ex parte* communications with decisional employees. RSA 363:34.

2. Pursuant to RSA 363:32, I, the Commission *must* designate one or more of its employees as staff advocates upon the request of a party if “such members of its staff may not be able to fairly and neutrally advise the commission on all positions advanced in the proceeding.” In addition, under RSA 363:32, II the Commission *may* make such designations upon the request of a party for “good reason.” For this purpose, the term “good reason” includes but is not limited to circumstances in which “the proceeding is particularly controversial and significant in consequence; the proceeding is so contentious as to create a reasonable concern about staff’s role; or it appears that such designations may increase the likelihood of a stipulated agreement by the parties.” *Id.*
3. This is a contentious proceeding of high visibility. The Commission was specifically directed to open this proceeding by the Legislature. *See* RSA 362-A:9, XVI, XVII and XVIII as adopted by 2016 N.H. Laws Ch. 31 (H.B. 1116). In exchange for agreeing to lift the previously applicable statutory cap on customer-sited distributed generation, the Legislature instructed the Commission to consider a broad menu of issues (including the need to address “the avoidance of unjust and unreasonable cost shifting”) and develop new “alternative tariffs” for so-called “net metering” (i.e., permitting customer-generators to receive full retail credit for net exports of energy to the grid). Not including the OCA and the state’s three electric distribution utilities, the docket attracted nearly 30 motions to intervene, all granted; among the parties to the docket are national and regional organizations that represent the solar industry, municipalities, nonprofit organizations and legislators. The eyes of the nation are on this proceeding. *See, e.g.,* New Hampshire

Public Radio, “The Accidental History of Solar Power” (Jan. 5, 2017), available at <http://outsideinradio.org/episodes/>.

4. The parties filed hundreds of pages of direct testimony on October 24, 2016, the date specified in the Commission’s procedural schedule. Thousands of pages of discovery have been provided, both before and after the initial testimony. Mr. Wiesner and Ms. Cramton presided over a series of technical sessions without expressing any opinions as to the merits of any concepts or proposals presented by any of the parties.
5. Staff declared itself for the first time on December 21, 2016 by availing itself of the opportunity to file “rebuttal” testimony. This testimony, prepared by outside analyst Stan Faryniarz of the consulting firm Daymark Energy Advisors, was indeed rebuttal in the sense that it critiqued and largely rejected the direct testimony filed by the parties in October (although typically rebuttal is an opportunity reserved to witnesses who did not remain silent when given an opportunity to submit direct testimony).
6. Though the 136 pages submitted by Mr. Faryniarz on behalf of Staff is the most voluminous set of testimony offered by any single witness in this proceeding to date, the essence of his recommendations can be found at page 79 (Bates page 80) of his filing.

Mr. Faryniarz states:

Staff recommends that the Commission consider whether the current and near-term levels of cost-shifting are significant enough to address at this time or rather, given the current relatively low levels of DG resource penetration, whether an approach based on the net metering compensation mechanism currently in place should be sustained for the nearer term until DG resource penetration levels increase to a threshold (e.g., 10% of utility peak load) that might result in more substantial cost-shifting.

Id. at lines 12-13 (also recommending that nonbypassable charges be made truly nonbypassable for DG customers regardless of any export credits they obtain under the existing net metering regime).

7. The merits of this recommendation aside, it is a highly controversial position in the context of this docket. Staff has adopted positions that are consistent with those of the solar industry and allied nonprofits, which have generally argued in their testimony that the Commission should leave the status quo in place because the utilities have failed to produce evidence of unreasonable cost-shifting that requires an immediate solution. In contrast, the utilities, the OCA and the City of Lebanon have proposed various alternative tariffs, concluding to various extents that in light of H.B. 1116 the Commission should take prompt steps to reduce the shifting of costs from customers with distribution generation to those without distributed generation.
8. The language of RSA 362-A:9, XVII as added by H.B. 1116 includes explicit and time-limited directives: Within ten months of the effective date of the legislation, the Commission “*shall* issue an order initially approving or adopting [the] alternative tariffs, which may be subject to change or adjustment from time to time” (emphasis added). *See also id.* at XVI (“the Commission *shall* initiate a proceeding to consider alternative net metering tariffs” but “*may*” waive or modify certain statutory size limits, terms and conditions, etc. and “*may* approve time and/or size limited pilots of alternative tariffs”) (emphasis added). There is, at the very least, a colorable argument to be made that the Commission lacks the discretion to make the determination suggested by Mr. Faryniarz that the Commission stick with the net metering regime “currently in place” and leave entirely to the future, and the development of a better body of evidence, the

implementation of new tariffs and rate structures. Leaving merits of this argument to one side, in the circumstances it is clear this is a textbook example of a situation in which “the proceeding is particularly controversial and significant in consequence” and “the proceeding is so contentious as to create a reasonable concern about staff’s role” pursuant to RSA 363:32.

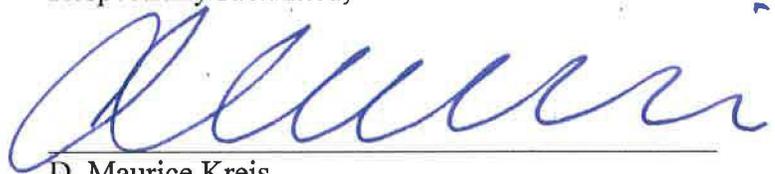
9. For the foregoing reasons, pursuant to RSA 363:32 the Commission should designate Mr. Faryniarz as a Staff Advocate. Further, based on the assumption that it is Mr. Wiesner and Ms. Cramton who have been working with Mr. Faryniarz and who approved his testimony, it is appropriate for the Commission to designate them as Staff Advocates as well so that he has adequate supervision and so as to facilitate settlement discussions in which Staff should participate. *See* RSA 363:32 (authorizing designations that will “increase the likelihood of a stipulated agreement by the parties”). In so doing, the Commission would be assuring a fair process to all parties and giving the public, and the Legislature, confidence that the Commission’s responsibilities under H.B. 1116 are being discharged in a fully neutral and fair manner.
10. The OCA is authorized to state that the City of Lebanon and the New England Ratepayers Association, as parties to the proceeding, concur with this motion.

WHEREFORE, the OCA respectfully request that this honorable Commission:

- A. Enter an order designating Consultant Stan Faryniarz, Staff Attorney David Wiesner and Division Director Karen Cramton as Staff Advocates in this proceeding pursuant to RSA 363:32, and

B. Grant any other such relief as it deems appropriate.

Respectfully submitted,



D. Maurice Kreis
Consumer Advocate

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January 12, 2017

Certificate of Service

I hereby certify that a copy of this Motion was provided via electronic mail to the individuals included on the Commission's service list for this docket.



D. Maurice Kreis