

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 16-576

Electric Distribution Utilities

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

Order Suspending Low-Moderate Income Pilot Program Development

ORDER NO. 26,297

October 8, 2019

In this order, the Commission suspends the requirement for electric distribution utilities to develop low-moderate income solar pilot programs for a period of two years, until July 1, 2021, in order to avoid potential duplication with recently-enacted statutory amendments before the market has had an opportunity to respond to those legislative initiatives. If, by July 1, 2021, at least two low-moderate income community solar projects have not been developed in a utility's service territory, then that utility will be required to file a pilot program by October 1, 2021, that meets the criteria specified in Order 26,029.

I. PROCEDURAL HISTORY

On August 9, 2019, Commission Staff (Staff) filed a memorandum recommending that the Commission consider modification of Order No. 26,029 (June 23, 2017) (June 2017 Order) to eliminate the requirement that each of the three regulated electric distribution utilities develop a low-moderate income (LMI) solar pilot program, because such pilot programs would be duplicative of recently-enacted statutory amendments.

A public hearing on Staff's recommendation was held on August 27, 2019, and oral comments were received. Following the hearing, written comments were submitted jointly by Conservation Law Foundation, Clean Energy NH, New Hampshire Legal Assistance, Revision

Energy, and Vote Solar (collectively, Joint Commenters). Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) also submitted written comments.

Staff's recommendation and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are available on the Commission's website at <http://puc.nh.gov/Regulatory/Docketbk/2016/16-576.html>.

II. POSITIONS OF THE PARTIES AND STAFF

A. Staff

Staff recommended that the Commission eliminate the requirement for the utilities to develop LMI solar pilot programs, because that development would be duplicative and potentially inconsistent with recently-enacted legislation. Staff highlighted the Commission's directive in the June 2017 Order that the utilities and Staff develop LMI solar pilot programs "that are consistent with, and not duplicative of, any such other programs and projects required under enacted legislation." Staff Recommendation at 1-2 (citing the June 2017 Order at 63). According to Staff, two examples of such legislation are Senate Bill 129, enacted as 2017 N.H. Laws Chapter 226 (SB 129), and Senate Bill 165, enacted as 2019 N.H. Laws Chapter 271, known as the "Low-Income Community Solar Act of 2019" (SB 165). *Id.* at 2-3.

Staff noted that SB 129 has been implemented through the issuance of requests for proposals (RFPs) for the competitive selection for grant funding of renewable energy projects directly benefitting LMI customers, allocating not less than 15 percent of the Renewable Energy Fund on an annual basis. *Id.* at 2 (citing Order No. 26,113 (March 19, 2018) and Order No. 26,214 (January 25, 2019) issued in Docket DE 17-172). According to Staff, the SB 129 grant program has funded six projects through two RFPs, but it has not been fully subscribed, with \$150,000 of available funding carried forward from the last fiscal year into the current fiscal year. *See* Transcript of Hearing on August 27, 2019 (Tr.) at 9-10. Staff maintained that under-

subscription of the LMI grant program “suggests that there may not be enough [LMI] solar projects that are ready, even when grant funding is offered.” *Id.*

SB 165 provides incentives for LMI community solar projects in the form of a net metering rate adder and on-bill credits. *See* RSA 362-A:9, XIV(c). SB 165 became effective on July 1, 2019, and Staff is currently working with stakeholders to develop rules revisions to implement the statutory amendment. Tr. at 7, 11. According to Staff, “it’s not yet clear how the market will respond to the SB 165 incentives,” but a “robust market” response is expected. *Id.* at 10.

Staff argued in particular that Eversource’s proposed Clean Innovation Community Solar Pilot Proposal pending in Docket No. DE 19-104 (Eversource LMI Pilot) is duplicative with other programs required and incentives provided under enacted legislation, because it provides for: an on-bill credit for group hosts and members involved in LMI community solar projects; incentives directed to LMI projects; direct benefits to LMI customers from competitively-selected renewable energy projects; and collection of data to inform future net metering tariff development. Staff Recommendation at 3. In response to Eversource’s continued interest in promoting its LMI Pilot, Staff confirmed its view that a final decision should not be made about that proposal in this docket; rather, even if the LMI pilot program requirement is eliminated in this docket, “that does not prejudice the final disposition of” the Eversource LMI Pilot, which is pending in “a different docket, with a different schedule, and ... will go forward on its own merits.” Tr. at 25-26.

Staff also read into the record a statement from Senator Dan Feltes, a prime sponsor of SB 165, indicating his wish that it be conveyed to the Commission “that the elimination of current or proposed pilots was not intended by SB 165.” *Id.* at 11.

B. Joint Commenters

The Joint Commenters oppose elimination of the LMI pilot program development as required under the June 2017 Order. They stated that any specific utility solar pilot proposal can be rigorously reviewed to ensure it advances the state's policy goal of increasing access to the benefits of solar for LMI customers. Any concerns can be raised in the specific docket in which the utility pilot proposal is filed, and the Commission could reject any pilot proposal it finds to be duplicative. The Joint Commenters expressed support for Senator Feltes' statement read into the record at the hearing indicating it was not the intent of the SB 165 sponsors to eliminate any current or proposed LMI solar pilot programs.

C. Eversource

Eversource maintained that its proposed LMI Pilot is not duplicative of the statutory requirements in SB 165. The Eversource LMI Pilot includes a mechanism for utilizing existing resources with the Eversource billing system and the New Hampshire Electric Assistance Program, to enroll low income customers and ensure that direct benefits are delivered to those customers. Eversource stated it would be in the best interest of customers that its LMI Pilot proposal move forward, regardless of the determination in this docket relative to the requirements of the June 2017 Order. According to Eversource, it is entitled to recover the prudently-incurred costs of developing and implementing its LMI Pilot, and the Commission should make that clear in its order on Staff's recommendation.

D. Office of the Consumer Advocate

The Office of the Consumer Advocate stated it has no firm position whether to eliminate the LMI pilot program development requirement from Order No. 26,029 or to devise another way to move forward.

E. Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities

Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities stated it takes no position with respect to Staff's recommendation to eliminate the requirement for LMI pilot program development.

III. COMMISSION ANALYSIS

In the June 2017 Order, the Commission directed the three investor-owned electric distribution utilities to develop and implement LMI solar pilot programs that would "use monetary bill credits to make the benefits of solar DG system ownership available to [LMI] customers whose circumstances would otherwise not allow them to participate in a net-metered renewable energy project." June 2017 Order at 63. Staff now recommends that the requirement for the utilities to develop LMI pilot programs be eliminated, because "such programs would be duplicative of recently-enacted statutory amendments intended to promote development of LMI renewable energy projects." Staff Recommendation at 1. Commenters either oppose or take no position regarding that proposed elimination.

For the reasons discussed below, we have reconsidered the LMI pilot program development requirement and suspend that requirement for a period of two years from July 1, 2019. Accordingly, we modify the relevant findings and requirements set forth in the June 2017 Order.

We are authorized to modify those findings and requirements under RSA 365:28, which provides that the Commission "may, after notice and hearing, alter, amend, suspend, annul, set aside, or otherwise modify any order made by it." As noted above, a public comment hearing was held and post-hearing written comments were received.

In the June 2017 Order, the Commission noted that SB 129, if enacted, would require a portion of the REF to be used for funding and implementation of certain programs and projects

intended to directly benefit LMI residential electric customers, and the Commission directed the utilities and Staff to develop pilot programs that are “consistent with, and not duplicative of, any such other programs and projects required under enacted legislation.” *Id.* SB 129 has been implemented through competitive solicitations and has funded six projects to date. Staff Recommendation at 2; Tr. at 8-9. The SB 129 grant program, has not been fully subscribed, with \$150,000 of available funding carried forward from the last fiscal year into the current fiscal year. Tr. at 9-10. As noted by Staff, the under-subscription “suggests that there may not be enough low and moderate income solar projects that are ready, even when grant funding is offered.” *Id.*

More recently, SB 165 was enacted and became effective as of July 1, 2019. Staff has begun the process of reviewing with stakeholders potential amendments to the Puc 900 net metering rules intended to implement that legislation. SB 165 provides for a net metering rate adder provided through on-bill credits to group hosts and members for projects that qualify as “low-moderate income community solar projects.” RSA 362-A:9, XIV(c). Eligible projects must directly benefit a group of at least five residential end-user customers, where at least a majority of the residential end-user customers are at or below 300 percent of the federal poverty guidelines, and no more than 15 percent of the projected load for the project can be attributable to non-residential end-user customers. RSA 362-F:2, X-a.

There appears to be substantial overlap between the type of projects anticipated to be included in the LMI pilot programs and those that would be eligible for the on-bill credit adder under SB 165. That overlap creates the potential for duplicative or inconsistent efforts, and related market confusion. We note, however, that SB 165 was only recently enacted and the details of its implementation have not yet been developed through Commission rulemaking. It is

unclear how and when the market will respond to the incentives provided through that legislation, and the extent of the market response may not become evident for a period of time.

We therefore find that utility development of the LMI pilot programs required under the June 2017 Order should be suspended for a period of two years from the effective date of SB 165, i.e., until July 1, 2021. We are limiting the suspension period to two years to give the market time to respond to the recently-enacted legislation. We are in the process of developing revised net metering rules to implement that new legislation, which are expected to be in effect by early 2020. The utilities should know whether eligible LMI community solar projects are being developed in their service territory within the suspension period, and if that development is not occurring, should begin planning a pilot program as contemplated by the June 2017 Order.

Accordingly, if, by July 1, 2021, at least two projects eligible for the SB 165 adder have not been substantially developed in a utility's service territory, then that utility will be required to develop and file for our evaluation an LMI pilot program meeting the criteria specified in the June 2017 Order. If necessary, such pilot programs shall be filed no later than October 1, 2021. We direct each of the three utilities to submit a status report regarding the development of eligible SB 165 projects in its service territory on or before July 1, 2021.

Finally, we clarify that the Eversource LMI Pilot will be evaluated on its own merits in Docket No. DE 19-104, notwithstanding the suspension we order in this docket. In addition, we confirm that Eversource should be entitled to recover its prudently-incurred costs of development of its LMI Pilot proposal to date, consistent with the provisions of the June 2017 Order.

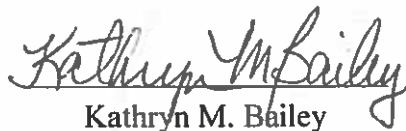
Based upon the foregoing, it is hereby


ORDERED, that the requirement for electric distribution utilities to develop low-moderate income solar pilot programs as required under Order No. 26,029 is suspended for a period of two years until July 1, 2021; and it is

FURTHER ORDERED, that if, by July 1, 2021, at least two projects eligible for the net metering rate adder provided for under Senate Bill 165 have not been substantially developed in a utility's service territory, then that utility shall develop and file by October 1, 2021, an LMI pilot program meeting the criteria specified in Order No. 26,029; and it is


FURTHER ORDERED, that each electric distribution utility subject to Order No. 26,029 shall file a status report regarding the development of eligible Senate Bill 165 projects in its service territory on or before July 1, 2021.

By order of the Public Utilities Commission of New Hampshire this eighth day of October, 2019.


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