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February 05, 2020

Ms. Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, New Hampshire 03301-7319

RE: DRM 19-158
Net Metering Rules Revision

Ms. Howland,
This letter is in response to the Commission's January 10, 2020 letter inviting written comment on the Draft Final Proposal of revisions to Puc 900 to reflect statutory amendments and Public Utility Commission orders from previous years. This latest round of changes primarily addresses the implementation of on-bill crediting and low-moderate income community solar projects.

The Office of the Consumer Advocate (OCA) commends the PUC Staff, specifically the Sustainable Energy Division, for conducting a rulemaking process that incorporated and responded to stakeholder comments. The proposed rule is a coherent and understandable interpretation of SB 165 that appears to reflect the intent of the legislation. Our office has one addition to the rules regarding interconnection applications to assist in the development of low-moderate income community solar projects. We also do not support a change made in the final draft regarding projects on adjacent properties and urge the Commission to adopt the previous version prepared by staff.

904.02 Interconnection Application:

The current structure for determining interconnection costs is a barrier for small customer-generators and especially for low-moderate income projects. The rules require finalized information for all aspects of the project for the interconnection application, which triggers a study from the utility to determine cost. Low-income projects trying to use grant funding under SB 129 (2017 N.H. Laws ch. 226) must confirm they have grant funding before they can finalize their projects sufficiently to confirm all of the connection detail currently required under the interconnection application. Utility costs have often come in many times higher than originally projected increasing the total costs of the project by twenty percent. There needs to be a way to increase the transparency and provide more information to potential customer-generators to determine if investing in the technology for their community is feasible.

Providing an interconnection application with less information (for instance one that does not include the exact manufacturers, models, and certifications for code compliance) where the utility is still required to provide an estimate of the interconnection cost can address this issue. Since our last comment letter, the Office of the Consumer Advocate has worked with several utilities and other stakeholders to draft a modification to Puc 904:02. Adding such a provision to the rule will help inform the public that cost information is available from their utilities while ensuring that the utilities cooperate in providing that information. The goal is to provide small community solar projects enough information to determine whether a project in the proposed location is financially viable.

The OCA has worked on the proposed interconnection application addition in response to the rulemaking purpose seeking to effectuate SB 129 (2017 N.H. Laws ch. 226) and SB 165 (2019 N.H. Laws ch. 271). This addition does so by addressing one of the barriers for low-moderate income community solar projects. However, the proposed rule addition is done for "small customer-generators" which are those with projects 100kW and smaller. The proposed rule does not limit the change to low-moderate income projects because communities that are starting the process of developing a project for their neighborhood or manufactured housing cooperative may not know at the outset of the process whether or not the project will qualify as low-moderate income until they have completed the not insignificant work of collecting income verification from potential members. Yet, to bring a proposal to their community members they need to have an idea of the cost of the project.

Proposed Addition to 904:02 as a new subsection (e)
"A small customer-generator may submit an interconnection application to its distribution utility when it does not have all of the details of the project. The distribution utility shall still use the normal process to determine estimated costs for interconnection under 904.04(e) so long as the following information is provided: 1) all of 904.02(c)(1); 2) subsections (a), (c), (d)*, and (f) within section 904(c)(2); 3) the estimated installation date; 4) whether the system will use a new meter or existing meter; and 5) a diagram indicating the location of the proposed generator connecting to either an existing or proposed meter. Estimated costs may be modified by the utility after evaluation of the completed final application if relevant inputs have been modified."

*As a side note, for clarity, 904.02(c)(2)(d) should specify alternating current.

Eversource recommended adding the following sentence or similar language: "The applicant assumes the risk that the submittal of an incomplete application, and subsequent revision of that application, may lead to inefficiencies in the processing of that application." The OCA accepts that addition.

Eversource indicated they were fine with the concept and made proposed additions that we have incorporated. They would prefer that the concept be limited to LMI projects to limit any potential misuse. However, while we are proposing the project to facilitate LMI projects we do not think that limitation is feasible for the reasons identified above.

Liberty indicated that they support the proposal with the modifications that are included above. In response to Unitil's comments submitted on February 4, 2020, the OCA would note that 1) the current proposal uses existing definitions of small customer-generator at 100 kW and 2) the proposal is intended to help facilitate low-moderate income community solar projects which are

primarily sized between 50kW and 100kW so the 25kW concession offered does not meet the needs the OCA is proposing to address.

Section 903.03 Where Multiple Projects Are Deemed a Single Facility
This addition to the rules does not enact or facilitate any PUC orders or new statutory language. The addition is being considered because utilities across the state have vastly different policies which creates confusion and uncertainty for developers. We support the December 12, 2019 version of the proposed rule, attached below because it enacts the most conservative policy of the utilities thereby creating certainty for developers while not overstepping in a manner that inhibits the rights of individual property owners. We do not think it is appropriate for the PUC to restrict ratepayer property rights by forestalling their ability to use their land for a net metering project with its own interconnection meter regardless of what their neighbors may be doing.

It would be appropriate for the rule to reflect the most conservative of the current utility policies in order to promote certainty for developers. The utilities policies are vastly different. For example, in Liberty territory there is no restriction on whether there are multiple projects on a piece of property or adjacent properties so long as the projects have their own meter and are owned by separate entities. By contrast, the Eversource normal course of business is as follows:

> 5.10.5 For generation equipment in close proximity, Eversource will not accommodate interconnection designs that are inconsistent with or seek to obfuscate or circumvent laws and/or regulations intended to differentiate program participation based on facility size (i.e. nameplate capacity). See 5.10.6 for further clarification.
>
> 5.10.6 To be considered separate projects, each of the following conditions must be satisfied:
> - Each project must be located on a unique parcel of land.
> - The property boundaries of each parcel of land must not have been altered with the intent to obfuscate or circumvent laws and/or regulations intended to differentiate program participation based on facility size (i.e. nameplate capacity). In general, projects on parcels where the boundaries have been altered within the three years immediately preceding the submittal of an Interconnection Request will be required to demonstrate that such alteration was not for the purpose of affecting the eligibility of the project for specific programs or that it was otherwise unrelated to the development of generation facilities.
> - Each project must be owned by a separate legal entity, e.g. LLC.
> - Each project must interconnect with the Eversource system via a separate interconnection point, including a separate meter.

The OCA finds the above policy to be reasonable. We believe that the December 12, 2019 version of the proposed Puc 902.12 and 903.03 reflect that policy and valuable stakeholder recommendations to the October version of the proposed rule. By contrast, identifying projects that are on "adjacent and contiguous parcels of land" as one facility regardless of who owns each portion of property and who owns each project is an infringement of property rights that is not sufficiently justified. Therefore, we advocate that the PUC reinstate the December 12 version below.

OCA Supports Providing a Minimum Allocation to Low-Moderate Income Participants
In addition to supporting, and commending the development of, new section Puc 909.13, Low-Moderate Income Community Solar Projects, the Office of the Consumer Advocate specifically offers support for providing a minimum allocation of the net metering credits in a project that enjoys the benefit of the 3 cent or 2.5 cent low-moderate income adder. The proposed rule, 909.13(h), requires that not "less than 12 percent of the total credit amount allocated to the host and all group members" be distributed to those "members that are residential end-user customers with household income at or below 300 percent of the federal poverty guidelines or affordable housing projects." The previous proposal which the OCA supported was for a minimum allocation of 50% of the actual low-moderate income adder to LMI participants. Vermont Law School proposed a modification that allocated 12 percent of the total credit amount (net-metering credit and LMI adder credit). We believe the 12 percent proposed rule is a much better solution for the following reasons:

1) The administrative cost to utilities to process the percent allocation of a net-metering credit **and** a different percent allocation of the LMI adder credit on every member participant bill would increase the overall burden of the program for ratepayers.
2) By receiving a portion of the overall credit amount LMI participants will benefit the same as other participants when utility prices increase (or be subject to the same downside if the utility prices decrease).
3) While the net-metering credit is grandfathered until 2040, the LMI adder could be modified or eliminated by the legislature at any time. Developers commented that if the LMI adder was eliminated then it would no longer be a low-moderate income project and the LMI participants would likely be removed from the project. In addition, LMI participants will be precluded under proposed rule Puc 909.05(c) from participating in any other net-metering projects.
4) This should be considered a win for the developers as well. The 12 percent credit is roughly equivalent to 50 percent of the LMI adder for 100kW projects but it is actually less than 50 percent of the LMI adder for larger projects – providing more for developers. However, the long term security and share of the upside as energy costs increase is worth developers being able to access additional funds.

To summarize, the Office of the Consumer Advocate recommends that the Commission approve the proposed rules with the addition to 904.02 proposed above and the substitution of the December 12, 2019 draft for PUC 902.12 and 903.03.

Thank you for your consideration of our concerns.

Sincerely,

Christa Shute
Staff Attorney

cc: Service list via electronic mail

Staff Proposed Puc 902.12 and 903.03
12-12-19

Revise Facility Definition (Puc 902.12):

Puc 902.12~~0~~ "Facility" means the electricity generating equipment, powered by renewable energy or that employs a heat led combined heat and power system, interconnected with the electric distribution system through any one retail meter or more than one retail meters ~~that the distribution utility has~~ installed~~,~~ or to be~~would have~~ installed~~,~~ in accordance with Puc 903.03~~the normal course of its business~~.

Add New Section Puc 903.03:

Puc 903.03 Where Multiple Projects Are Deemed a Single Facility.

(a) Except as otherwise provided in (b) and (c) below, projects consisting of electricity generating equipment powered by renewable energy or that employ a heat led combined heat and power system, and located behind separate retail meters, shall be deemed to be one facility if located on the same parcel of land or adjacent and contiguous parcels of land, unless each of the following conditions applies:

(1) Each project is located on a separate parcel of land;

(2) The property boundaries of each parcel of land have not been subdivided, modified, or otherwise altered within the three years immediately preceding the submission of a project interconnection request to the distribution utility;

(3) Each project is owned by a separate individual or by a separate corporation, limited liability company, or other legal entity; and

(4) Each project is interconnected with the utility distribution system through a separate interconnection point and with a separate meter.

(b) The conditions set forth in (a) above shall apply to two or more projects notwithstanding any phased approach to development or different construction schedules for such projects.

(c) Multiple projects located on the same or adjacent parcels of land and interconnected behind separate retail electricity meters shall be considered separate facilities if each such project is being or has been developed:

(1) To serve primarily the on-site load of existing or new retail electric customers;

(2) To participate in a different electric generation program, such as net metering, direct producer to consumer retail sales of electric power, or wholesale sales of electric power;

(3) Using distinct and different electricity generating technologies and equipment that can be operated independently; or

(4) On parcels of land for which the property boundaries have been subdivided, modified, or otherwise altered within the three years immediately preceding the submission of a

project interconnection request to the distribution utility, if the project owner has provided written documentation demonstrating that such subdivision, modification, or alteration was not undertaken for the purpose of affecting the eligibility of the project for net metering or that it was otherwise unrelated to the development of electric generation facilities.