

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 06-061

**INVESTIGATION INTO
IMPLEMENTATION OF THE ENERGY POLICY ACT OF 2005**

Order on Motion for Rehearing of Order No. 24,763

ORDER NO. 24,785

August 31, 2007

I. PROCEDURAL HISTORY

This docket was commenced in compliance with the Energy Policy Act of 2005 (EPAcT 2005) which was signed into law on August 8, 2005. EPAcT 2005 required appropriate state regulatory authorities to make determinations whether to implement five new federal standards. *See*, 16 U.S.C. § 2621 (d) (11), (12), (13), (14) and (15). In Order No. 24,763 (June 22, 2007) we made determinations regarding two of the five standards, namely, smart metering and interconnection of customer-owned generation facilities to the electric distribution utility. With respect to smart metering, which comprises time-based rates and advanced meters, we enunciated a general policy objective and indicated that decisions regarding utility-specific applications of that policy would be made on a case-by-case basis.

On July 23, 2007, Public Service Company of New Hampshire (PSNH) filed a motion for rehearing regarding our determinations on time-based metering and rates. On July 27 and 31, 2007, Granite State Electric Company d/b/a National Grid (National Grid) and Unitil Energy Systems, Inc. (UES), respectively, filed letters supporting PSNH's motion for rehearing.

II. POSITIONS OF THE PARTIES

A. PSNH

In its initial comments in this proceeding, PSNH contended that prior state action by the Commission in Docket No. DE 03-013, which resulted in the installation of advanced meters and the offering of optional time-based tariff services for large customers, made it unnecessary for the Commission to take any further action with respect to smart metering. PSNH also indicated that the Commission could simply decline to implement a smart metering standard.

Furthermore, among its other comments, PSNH opposed time-based rate requirements for smaller customers and argued that potential savings to such customers would likely be too small to justify the expense or inconvenience of smart metering technology.

In its request for rehearing, PSNH argued that Order No.24,763 (the Order) was issued without proper procedural protections. PSNH asserted, among other things, that 16 U.S.C. 2621 (b)(1) requires that the Commission make its determination after a hearing. PSNH also argued both that the Order establishes a new administrative rule without following the administrative rulemaking requirements of RSA 541-A, and that the parties did not have an opportunity to: 1) present detailed substantive information concerning the new federal standards; 2) present direct and rebuttal evidence; 3) or cross-examine witnesses.

In addition, PSNH raised a number of substantive objections to implementing time-based rates and deploying advanced meters. For instance, characterizing the Order as a mandate to implement time-based rates for all customers, PSNH contended that a mass conversion of existing meters at a substantial cost would be required. Further, PSNH stated that its billing system is incapable of preparing bills utilizing a time-based rate structure, and that shortcoming would require several years and major expenditures to remedy. PSNH also stated that it does not

have sufficient data to design new rates to implement a time-based rate mandate and that a draft tariff proposal could result in the unintentional shifting of millions of dollars in energy costs among customers. Finally, PSNH argued that the Order does not make findings on a number of key rate design issues needed to develop time-based tariffs.

B. National Grid

On July 27, 2007, National Grid filed a letter supporting PSNH's motion for rehearing, concurring with many of the arguments raised by PSNH.

C. Unitil

On July 31, 2007, Unitil also filed a letter supporting PSNH's motion for rehearing, concurring with many of the arguments raised by PSNH.

III. COMMISSION ANALYSIS

We commenced this proceeding, pursuant to federal law, to consider the possible implementation of five new federal standards, and we note that this proceeding is consistent with express authority delegated to the Commission in RSA 378:7-a, as amended effective May 11, 2007. There is still much to do in the larger process of investigating and implementing a policy regarding time-based rates and advanced meters. We expect that this docket, which had a consensus on scope and that has, thus far, included initial comments, the opportunity for discovery, and reply comments, will lead to further adjudication and rulemaking as appropriate.

In an effort to facilitate that larger process, we grant rehearing to the extent of setting a hearing for October 10, 2007. We will provide parties the opportunity to pre-file written testimony for that hearing by September 17, 2007. We direct Staff to work with the parties to develop an opportunity for discovery on the testimony through a technical session[s] prior to hearing. The hearing will afford the opportunity to present evidence, subject to cross-

examination, on the 19 issues agreed to by the parties in the June 6, 2006 scoping document concerning time-based rates and advanced meters.

In Order No. 24,763, we found that “the public good is advanced if we consider smart metering and options for time-based rates.” (p. 19) In accord with that finding, EAct 2005 under Section 1252, “Smart Metering,” (b) “State Investigation of Demand Response and Time-Based Metering,” (16 U.S.C. 2625) amended Section 115 of the Public Utility Regulatory Policies Act of 1978 (“PURPA”) by adding a new subsection (i) as follows:

(i) TIME-BASED METERING AND COMMUNICATIONS.--In making a determination with respect to the standard established by section 111(d)(14), the investigation requirement of section 111(d)(14)(F) shall be as follows: Each State regulatory authority shall conduct an investigation and issue a decision whether or not it is appropriate for electric utilities **to provide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs.** [Emphasis added.]

The bold portion of this section was quoted in the original order of notice in this docket and indicates that the decision to be made by this Commission is whether it is appropriate for electric utilities to provide each of their customers with a time-based meter and rate. However, section 111(d)(114)(F) of PURPA, as inserted by EAct 2005 Section 1252 (a) (16 USCA § 2621) has a somewhat different emphasis:

(14) TIME-BASED METERING AND COMMUNICATIONS.--(A) Not later than 18 months after the date of enactment of this paragraph, **each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods** and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology. [Emphasis added.]

(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others--

(i) time-of-use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year, based on the utility's cost of generating and/or purchasing

such electricity at the wholesale level for the benefit of the consumer. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall;

(ii) critical peak pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and/or purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption;

(iii) real-time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis, reflecting the utility's cost of generating and/or purchasing electricity at the wholesale level, and may change as often as hourly; and

(iv) credits for consumers with large loads who enter into pre-established peak load reduction agreements that reduce a utility's planned capacity obligations.

(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

(D) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

(E) In a State that permits third-party marketers to sell electric energy to retail electric consumers, such consumers shall be entitled to receive the same time-based metering and communications device and service as a retail electric consumer of the electric utility.

(F) Notwithstanding subsections (b) and (c) of section 112, **each State regulatory authority shall**, not later than 18 months after the date of enactment of this paragraph conduct an investigation in accordance with section 115(i) and **issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C).**

The highlighted language refers to providing each customer class, and individual customers upon request, the option for a time-based rate schedule (and consequently a time-based or smart meter). The apparent internal inconsistency in EAct 2005 may contribute to some confusion around our Order No. 24,763. The threshold question we seek to resolve at rehearing is whether it is appropriate to implement the standards set out in subparagraphs (A) and (C) of the PURPA section 111(d)(114(F) standard cited above.

Order No. 24,763, may also have created confusion in two additional respects. First, there are a number of instances where we indicated that we would consider how to implement a particular measure when it may have been more apt to have said we would consider whether, when, and how to implement such a measure. Second, there may be some confusion in the usage of terms relating to the broader notion of time-based rates and the various subsets of time-of-use rates. Rather than attempting to reconcile in this order instances of conceivable inartfulness, we will stay Order No. 24,763 pending hearing and reconsideration of the issues.

To the extent further elucidation is necessary, we state that the Order reflected our intention to pursue the new federal smart metering standard as it relates to regulated electric utilities. It was not our intent to mandate specific action by electric utilities in the absence of a necessary adjudication or a rulemaking; rather, it was our intent to identify a policy direction and describe the actions and further inquiries needed to execute an implementation strategy. This approach is consistent with the notion of a “general statement of policy” as discussed in *Pacific Gas & Electric Co. v. Federal Power Commission*, 506 F.2d 33 (D.C. Ar.1974). The D.C. Circuit interpreted such a statement as “not establishing a binding norm” but one that “announces the agency’s tentative intentions for the future.” Finally, our request for draft tariffs in the Order was intended to give the utilities an opportunity to apprise us of the issues they believed needed to be considered in the implementation phase.

Based upon the foregoing, it is hereby

ORDERED, that a hearing shall be held on October 10, 2007, commencing at 9:00 a.m; and it is

FURTHER ORDERED, that parties may pre-file written testimony by September 17, 2007.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of August, 2007.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Lori A. Normand
Assistant Secretary