**STATE OF NEW HAMPSHIRE**
**PUBLIC UTILITIES COMMISSION**

**DE 15-271**

**EXAMINATION OF ELECTRIC DISTRIBUTION UTILITY INTERCONNECTION AND QUEUE MANAGEMENT PROCESSES FOR NET-METERED CUSTOMER GENERATORS**

**Order Approving Net Metering Program Capacity Allocation Procedures**

**O R D E R N O. 25,874**

**March 22, 2016**

In this Order, we approve uniform and consistent procedures for electric distribution utility management of queues and waitlists for eligible customer-generators to enter net metering programs under RSA 362-A:9. We direct Eversource Energy, Liberty Utilities, and Unitil Energy Systems to implement these procedures within 30 days of the date of this Order.

## I. PROCEDURAL HISTORY

Commission Staff filed a memorandum on June 19, 2015, recommending that the Commission open an investigation or other appropriate proceeding to examine the meaning and effect of the phrase "first-come, first-served" with respect to the 50 megawatt aggregate requirement for net energy metering tariff availability under RSA 362-A:9, 1. Staff noted that a number of the electric distribution utilities in the State had exceeded or were approaching their share of the statutory net metering limit, due to recent increases in proposed solar photovoltaic installations and hydroelectric plants switching to group net metering. Staff indicated the primary potential objective of this proceeding would be to develop uniform, just, and reasonable guidelines for utility management of net metering applicant queues.

The Commission issued an Order of Notice that made the electric distribution utilities mandatory parties to this proceeding and scheduled a prehearing conference and two stakeholder

technical sessions. On July 30, 2015, the Commission held a prehearing conference at which the three regulated electric distribution utilities, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource); Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities (Liberty); and Unitil Energy Systems, Inc. ( Unitil), were present, along with Staff and the Office of the Consumer Advocate (OCA). In addition, appearances were entered by NHSolarGarden.com, LLC ( Solar Garden); New Hampshire Sustainable Energy Association (NHSEA); Borrego Solar Systems, Inc. (Borrego); ReVision Energy, LLC (ReVision); Freedom Logistics, LLC d/b/a Freedom Energy Logistics ( Freedom); Clifton Below on behalf of One Court Street Associates, Vital Communities, Energy Emporium, Erik Russell, Hana Massecar and Marie McCormick (Below); and The Alliance for Solar Choice (TASC). No objection was made to the petitions to intervene filed by those parties, and the Commission granted their intervention requests.

Stakeholder technical sessions were conducted by Staff on July 21, July 30, and August 6, 2015, following which a proposed set of Net Metering Program Capacity Allocation Procedures (Procedures) was developed by Staff with input from the electric distribution utilities and other interested parties, and circulated for stakeholder review. On December 3, 2015, Staff filed a memorandum recommending that the Commission schedule a public hearing to receive comment on the proposed Procedures from parties in the docket and other interested stakeholders. A public comment hearing was held on January 7, 2016. Written comments on the proposed Procedures were accepted following the hearing and responsive comments were accepted thereafter. Written comments were filed by Solar Garden, Borrego, TASC, and the OCA; and by Eversource, Liberty and Unitil filing jointly.

This Order and prior docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at http://www.puc.nh.gov/Regulatory/Docketbk/2015/15-271.html.

## II. DESCRIPTION OF PROPOSED PROCEDURES

The proposed Procedures would apply to all projects with an existing allocation of net metering program capacity and to all projects seeking an allocation on or after the effective date of the Procedures. In this context, a program capacity allocation effectively represents a portion of the utility-specific share of the 50 MW aggregate net metering statutory limit. RSA 362-A:9, I. Any projects with an existing allocation as of the effective date would have 30 days to demonstrate compliance with all applicable milestones and other requirements otherwise required by the Procedures. If a project were to fail to demonstrate full compliance with all such applicable milestones and requirements within 30 days, its net metering allocation would be terminated and a new allocation would not be granted unless and until full compliance had been demonstrated, and only if and to the extent there was available net metering capacity when the new allocation was requested.

For purposes of the Procedures, an applicant must be a "customer" of the electric distribution utility, defined as "a customer of the [utility] or a customer representative with authority to act on behalf of the customer for the task described." Each applicant must be a customer in good standing with the interconnecting utility (e.g., the customer must not have been issued any disconnect notices during the preceding 12 months).

A different set of requirements and procedures is proposed to apply to four separate types of projects, defined in terms of their size and current operational status. "Type A" projects are those that are 10 kilowatts (kW) or less in generation capacity. "Type B" projects are those that

are greater than 10 kW and up to 100 kW in generation capacity. "Type C" projects are those that are greater than 100 kW and up to 1,000 kW in generation capacity. "Type D" projects are those that are already complete and operational and are owned by eligible customer-generators that plan to commence net metering as a group host pursuant to RSA 362-A:9, XIV, and N.H. Code Admin. Rules Puc 909.

**A. Obtaining an Initial Allocation of Net Metering Program Capacity**

The Procedures set out the specific requirements that must be met by each type of project to obtain an initial allocation of net metering program capacity. Type A projects must meet only minimal application requirements. Type B projects must meet those minimal application requirements and also file "a properly completed and signed Supplemental Review Agreement and [make a] required payment, not to exceed $1,250." Type D projects would receive an allocation upon issuance of a group host registration number by the Commission under the Puc 909 rules.

Type C projects would have to meet a more extensive set of requirements to obtain an initial capacity allocation, including the submission of a pre-application, payment of a non-refundable $500 deposit, filing of a properly completed and signed Generator Interconnection Application and supporting documents, submission of evidence of project site control, filing of a properly completed and signed System Impact Study Agreement, and payment of 100% of the system impact study costs as estimated by the utility. In addition, for Type C projects that are planned to be group net metering projects, the applicant

> shall have submitted to the [utility] evidence of sufficient project-specific customer-members to satisfy the requirements to be issued a group host authorization number under Puc 909. Examples of such evidence include executed power purchase agreements ("PPAs"), other binding agreements between the eligible customer-generator and specific customer-members, issuance of a group host authorization number by the Public Utilities Commission, and/or a description of how the project

> is being developed in response to a completed request for proposals ("RFP") or other completed bid solicitation process through which a municipality seeks to benefit a set of pre-defined utility accounts owned by the municipality.

**B. Retaining an Allocation of Net Metering Capacity**

The proposed Procedures set forth additional requirements that must be met by a project to retain its capacity allocation. Failure of a project to satisfy any of these additional requirements would result in the loss of its allocation, and a new allocation would be granted only when the project has demonstrated full satisfaction of all necessary conditions, and only if and to the extent sufficient program capacity is still available at the time of such demonstration.

Type A and B projects would have to meet two specified milestones: (1) payment of 100% of estimated utility upgrade costs within 30 days of receiving utility approval of the interconnection application, and (2) completion of a fully interconnected and operational project within 12 months of interconnection application approval. Type D projects would have to complete any metering upgrades required by the utility, sign a "metering upgrade agreement," and pay 100% of the utility estimated upgrade costs within 10 days of the issuance date of such cost estimate.

Type C projects would be required to meet a more extensive set of milestones to retain their capacity allocations. Each of the applicable milestone deadlines would be calculated from the first to occur of (i) the date the utility provides the applicant with an Interconnection Service Agreement describing the required utility upgrades and costs, or (ii) the date the utility provides the applicant with the results of its System Impact Study or, if the utility does not provide a formal System Impact Study report, the date on which it provides an estimate of utility upgrade costs. The specific milestones applicable to Type C projects are as follows:

> Milestone #1. Within 30 days, the Applicant shall execute and deliver a signed Interconnection Service Agreement and pay a non-refundable deposit in an

amount equal to the lesser of (i) $50 per kW of capacity, or (ii) 25% of the estimated utility upgrade costs, if any, but not less than $20 per kW of capacity in any case.

Milestone #2. Within 150 days, the Applicant shall pay the balance of the estimated utility upgrade costs, provided that payment of all or a portion of such balance may be required at any time prior to day 150 if deemed necessary by the Utility to support the project construction schedule.

Milestone #3. Within 180 days, the Applicant shall submit to the [utility (Company)] a statement attesting that all non-ministerial project permits and approvals have been obtained, in final and non-appealable form, including, but not limited to, any and all federal, state, and local permits and approvals required for construction and operation of the project, with the exception of building and electrical permits.

Milestone #4. Within 270 days, the Applicant shall submit to the Company copies of issued and effective building and electrical permits, and any other ministerial permits and approvals, related to construction and operation of the project.

Milestone #5. Within 365 days, the project shall be complete, fully interconnected and operational, which includes, but is not limited to, the submission of any testing and commissioning documents requested by the Company, the installation of a utility net meter, and the generation of power on a regular, non-test basis. Projects that are fully constructed and capable of test power operation, but are waiting for final utility interconnection construction as a result of factors beyond their control, shall have this Milestone #5 deadline extended for a reasonable period of time in order to permit such final utility interconnection construction.

Each utility would maintain a project waitlist once it had allocated its full share of the statutory net metering program capacity. A project would be assigned a waitlist number based on the date it satisfied all of the initial requirements for its project type. Projects on the waitlist would be allowed to interconnect and operate with the appropriate metering, subject to all applicable utility requirements and restrictions, but the utility would not be required to treat exported kWh from such projects as net metered in accordance with Puc 900. Instead, other "company-specific terms and conditions for net metering may apply to the exported kWh from such projects, if and to the extent such terms and conditions are adopted and implemented by the

[utility].” If and when net metering program capacity became available, waitlisted projects would be offered the opportunity to enter the program according to their place on the waitlist and the then current amount of available program capacity.

## III. POSITIONS OF COMMENTERS

The Commission received written comments from the three electric distribution utilities, two solar electric system installers, a national trade association representing primarily residential solar installation companies, and the OCA. Commenters were generally supportive of the proposed Procedures. The following is a summary description of issues raised by commenters, presented by relevant issue:

1. Customer Definition – New Service. Borrego commented that the definition of “Customer” in the Procedures should be revised to clarify that a special purpose entity requesting new service from a utility may receive a net metering capacity allocation. The utilities maintained that utility tariffs are made available to entities either seeking to initiate electric service in the immediate future or to existing customers wishing to continue to receive service, and the utilities suggested that an allocation might not be available to a prospective customer whose electric service might not begin until a distant future time, if ever.

2. Initial Queue Position for Group Net Metered Projects. Borrego commented that the requirement for Type C projects to have a signed PPA in order to qualify for a net metering allocation is overly burdensome and does not align with the development process for these larger projects. Borrego recommended that this requirement be moved to Milestone 2 or at a minimum to Milestone 1, and be “downgraded” to a signed letter of intent (LOI) or memorandum of understanding (MOU). Borrego maintained that solar project developers cannot “lock in a PPA rate” with a purchaser or group of purchasers without knowing the utility upgrade costs, and

those costs will not be known until the utility interconnection service agreement is returned to the applicant. According to Borrego, even after that time, there may be delays before an LOI, MOU, or PPA is signed, and the document execution process may be more cumbersome and time-intensive based on the approval process for larger entities and municipalities. Borrego asserted that the payments and financial investments required to obtain, and maintain, a net metering queue position should be sufficient to deter speculative projects from holding an allocation, especially if the payments are non-refundable. Borrego suggested that, if the Commission concludes "the bar is not high enough," the financial requirements be raised rather than requiring copies of signed documents "in an order not consistent with the development process for Type C projects."

TASC commented that a PPA or other offtake agreement should be required prior to admission of a Type C project into the queue, in order to ensure that projects granted a net metering allocation are not merely speculative. TASC maintained that, given the larger size of Type C projects, these concerns are more important than for smaller projects, as the failure of a single project could have a much greater impact on the net metering program.

The utilities noted the difference of opinion between Borrego and TASC, representing two segments of the solar installation industry, and asserted this disagreement should be seen as an indication that the Commission "must be cautious about making extensive revisions to the proposed [P]rocedures." Borrego explained that TASC's members are primarily companies focused on residential solar development, while Borrego is engaged in commercial solar development. Borrego suggested that the Commission weigh suggestions for the Procedures based on the experience of the stakeholder making the comments in the area on which they are

commenting, and that its comments regarding large-scale commercial development should bear more weight.

3. Deadline for Project Completion. Borrego commented that the Milestone 5 project completion deadline for Type C projects should be revised to be 485 days rather than 365 days, or should refer to "mechanical completion" of the project within 365 days. Borrego maintained that, at the larger size and in the event the 1,000 kW size gets raised at some point in the future, achieving project "mechanical completion" within one year is "aggressive yet reasonable." According to Borrego, there can be a 3-4 month commissioning or testing period for large projects, and it would be in the best interests of all "to not rush this process and to ensure proper testing of the project in preparation for utility interconnection." Borrego argued that allowance of additional time for large project completion also could limit the number of requested extensions made as a result of the seasonal timing of project construction. Robert Hayden of Standard Power of America, Inc. (Standard Power), offered a similar comment that the 365-day time period to complete a large project "will imperil many projects."

4. Extensions of Milestones and Deadlines. Solar Garden commented that the Procedures should be revised to permit requests for extension of the project completion deadline stated in Milestone 5 if weather is the reason for the delay in completion. Solar Garden asserted that banks will not fund a project if there is no option to extend the construction period based on circumstances out of the developer's control. Borrego asserted it is important the Procedures clearly address requests for extensions, and suggested that the Commission consider the extension request process in effect under the Massachusetts System of Assurance of Net Metering Eligibility (Massachusetts Assurance System). TASC offered a similar comment on this point. Standard Power suggested that if a project receives an approved time extension from

the Commission, then that extension should keep it in the net metering queue for the extended time period.

Solar Garden further commented that the initial start date for the various milestone time periods raises an issue because it states the "first to occur" and, with most utilities, an estimate for utility upgrades could be provided well before the impact study is completed, citing the reluctance of banks to approve a project until an interconnection service agreement (ISA) has been signed as the legal document required for proof of interconnection rights. Solar Garden suggested that the language be revised to read "... shall be calculated from either or the following (i) ... , (ii)." According to Solar Garden, this proposed language change would ensure that a project will "not fall out of the queue because a quote could easily be provided to a developer early on, but the ISA typically is not generated and signed by the Utility until the construction is about to start," thereby putting at risk the project and its financing arrangements.

5. Consequences of Missing a Milestone. Borrego recommended that Type C projects which lose their allocation be placed at the end of the queue line until they have met the applicable milestone, and that the timelines associated with any future applicable milestones be revised to "trigger off of the prior milestone so that the next requirement deadline be clear if re-entry into the queue is made." Under this recommended approach, the milestone clock effectively would be tolled while a project is out of the queue and then reset for any future milestones if and when the project re-enters the queue and with reference to the date of re-entry.

6. System Size and Changes. Borrego suggested that, for Type C projects, the reference to the 1,000 kW size limit be removed and replaced with language referring to the "maximum project size allowed under [RSA 362-A]." According to Borrego, this change would allow the Procedures to remain accurate in the event the 1,000 kW size cap is increased through future

legislation. Borrego also recommended that the project size for all project types should be based on the "generator nameplate rating [or] max AC inverter capacity, whichever is lower," because language used in inverter manufacturer data sheets may be inconsistent and not regularly updated. According to Borrego, its proposed language change would accommodate the various types of specification language used in the industry and meet the intent of the Procedures.

Borrego also suggested that the Procedures address potential changes in project size following initial application, and recommended that the Commission look to the Massachusetts Assurance System for guidance on this issue. TASC offered a similar comment regarding the administrative process applicable to system size changes.

7. Queue Status Tracking and Reporting. Borrego recommended that each utility be required to host a simple online spreadsheet, updated at a minimum weekly, similar to that maintained and posted in connection with the Massachusetts Assurance System. TASC commented that utility net energy metering (NEM) program allocation administrators should provide the following information in a simple online spreadsheet that is updated at least weekly for each project category:

a. Projects installed – (number and MW)
b. Projects interconnected awaiting NEM allocation (NEM Queue) – (number and MW)
c. Projects granted NEM allocation – (number and MW)
d. Number of applications awaiting review – (number and MW)

TASC recommended that residential systems smaller than 10 kW be tracked separately for the purpose of status reporting, because it would "give stakeholders a more granular picture of the types of systems being installed in New Hampshire." TASC further suggested that separate queuing of small-scale residential projects "could be an even more effective solution," as it would "overcome some of the challenges homeowners face when substantial amounts of capacity are taken up by large projects." According to TASC, separate queuing of small

residential projects would mean that "homeowners would not be unnecessarily impeded from moving from the queue into the net metering program by these larger projects."

The utilities acknowledged the general need for transparency and clear communication with customers. The utilities argued, however, that if comprehensive administrative procedures are to be developed based on the example of the Massachusetts Assurance System, then a third party model should also be considered along with potential funding sources for such third party administration. The utilities further questioned the proper timing and process for adopting any such comprehensive administrative provisions, and concluded that, in order to avoid further delays, the Procedures should be implemented as proposed without any major modifications.

8. Utility Notifications to Applicants. The OCA recommended that utilities provide customer applicants that (i) have submitted an interconnection application, (ii) have been allocated an interconnection queue position, and (iii) are now awaiting interconnection application approval, with effective communication of rules and requirements, including, but not limited to, "clear and explicit notice via physical or electronic mail that the [Procedures] have been revised."

Borrego commented that acceptable terms for utility notification of applicants should be established whether through electronic mail, certified mail, or other means, and that the utilities should be required to notify applicants "when their allocation in the net metering queue is awarded, lost and re-established." TASC recommended that utility administrators be required to notify applicants that their applications have been received and whether the applications are complete, to timely inform applicants whether they have received a capacity allocation or been placed on a waitlist, and to update customers as soon as practicable as to the loss of a capacity

allocation or waitlist position. TASC again suggested that the Commission consider the Massachusetts Assurance System as a potential model for these requirements.

The utilities acknowledged the need for customers to be properly informed of their status in the net metering and interconnection queues and to be provided effective communication through electronic mail "and by making dedicated staff available to respond to questions." The utilities did not support the proposal that detailed requirements based on the Massachusetts Assurance System be implemented at this time and through this proceeding.

9. Administrator Duties and Responsibilities. TASC suggested that the proposed Procedures be expanded to address the duties of administrators towards applicants, in particular with respect to treatment of requests for extensions, system size changes and their impact on NEM cap allocation, dispute resolution procedures, and administrator requirements for communication with applicants. TASC recommended that these modifications be guided by similar duties and procedures in effect under the Massachusetts Assurance System, and included with its comments, proposed sections on administrator duties based on the Massachusetts model. According to TASC, looking to the duties and procedures adopted in Massachusetts is reasonable because Eversource is already required to comply with those rules in Massachusetts, so implementation of the same or similar rules in New Hampshire would "not be overburdensome or expand the timeline for adoption since Eversource is already familiar with meeting these requirements."

Borrego commented that TASC had offered a good outline for some basic parameters of administration in its comments, and encouraged the Commission "not to reinvent the wheel and to take as much as [it] can from the [Massachusetts Assurance System]."

As noted above, the utilities argued that if comprehensive administrative procedures are to be developed based on the example of the Massachusetts Assurance System, then a third party model should also be considered along with potential funding sources for such third party administration. The utilities further questioned the proper timing and process for adopting any such comprehensive administrative provisions, and concluded that, to avoid further delays, the Procedures should be implemented as proposed with no significant changes.

10. Dispute Resolution Procedures. The utilities recommended that the Procedures be amended to clarify that any disputes that may arise over the adequacy of evidence submitted by applicants under the Procedures will be decided by the Commission. The utilities referred specifically to the requirement for Type C projects to submit "evidence of site control" and "evidence of sufficient project-specific customer-members to satisfy the requirements to be issued a group host authorization" to obtain an allocation in the NEM capacity queue. According to the utilities, the Commission would provide the most appropriate forum for resolution of any such evidentiary disputes.

TASC commented that the Massachusetts Assurance System lays out a set of dispute resolution procedures that consist of an informal resolution process, with the option for arbitration out of which the applicant or administrator may seek an adjudicatory proceeding. TASC asserted the importance of the Massachusetts provisions stating that, "pending the outcome of the dispute resolution process, an applicant shall not lose a Submission Date, Cap Allocation, or place on the Waiting List." TASC maintained that dispute resolution procedures paralleling those adopted in Massachusetts "can ensure that potential disputes are handled in an orderly, timely and fair manner." Borrego emphasized the short-term need for the Commission

to focus on providing clear procedures and requirements for the utilities to report on the NEM queue and publish rules on dispute resolution relative to the Procedures.

11. Waitlisted Projects and Available Queue Capacity. The utilities indicated their intent to maintain waitlists of net metering project applications once the applicable capacity limit had been exceeded. The utilities requested that the Commission clarify the circumstances under which waitlisted projects would be offered the opportunity to enter the queue according to their waitlist positions, if and when capacity becomes available as a result of new legislation or of higher queued projects dropping out or otherwise losing their capacity allocation.

In particular, the utilities questioned how the waitlist should be administered when the amount of new capacity available is insufficient to accommodate the next waitlisted project (e.g., 25 kW of new program capacity becomes available but the first project on the waitlist is 100 kW in size). According to the utilities, in such a situation they could either "hold" the waitlist until additional projects drop out and a sufficient amount of capacity is available to accommodate the larger project with the higher waitlist position, or they could "skip" the larger project, and others if needed, until a project at or below the available capacity size is found.

Borrego agreed with the utilities that this question warrants clarification by the Commission. Borrego noted that, if the waitlist is based on the date that an applicant has satisfied the initial requirements for its project type, it would seem that the intent is for the project to enter the net metering program in that order, with no "leap frogging" permitted for smaller projects lower on the waitlist. Expanding on this point, Borrego contended that the applicant should have, at its election, the option to revise its project down to a smaller size to utilize any newly available allocation capacity, and it should hold this option and be able to execute the option at any point while it remains first in line on the waitlist. For example, if

75 kW of new capacity becomes available, a 100 kW project next on the waitlist should have the option to downsize to 75 kW in order to proceed with development earlier than if it waited until a full 100 kW in new capacity becomes available.

12. Transition Compliance Period. The OCA recommended that utilities provide customer applicants that have submitted an interconnection application, been assigned an interconnection queue position, and are now awaiting interconnection application approval, with 60 days rather than 30 days to achieve full compliance with the Procedures. The OCA asserted it is important that customer applicants be afforded proper notice and adequate time to comply, so that such applicants are not financially or economically disadvantaged by the implementation of the Procedures.

## IV. COMMISSION ANALYSIS

We note at the outset that, under RSA 362-A:9, I, utility net metering tariffs are required to be made available

> on a first-come, first-served basis within each electric utility service area under the jurisdiction of the commission until such time as the total rated generating capacity owned or operated by eligible customer-generators totals a number equal to 50 megawatts multiplied by each such utility's percentage share of the total 2010 annual coincident peak energy demand distributed by all such utilities as determined by the commission.

The net metering rules, at N.H. Code Admin. Rules Puc 903.02(b), reiterate those provisions and state the specific program capacity allocation for each of the electric distribution companies in the State. Three of the four companies have now exceeded the applicable capacity allocation amount,[1] and two of those three are currently maintaining waitlists for project applicants.

We agree with Staff and stakeholders that there should be orderly, fair, and efficient procedures for the utilities to maintain net metering program application queues and waitlists,

[1] New Hampshire Electric Cooperative, Inc., a rural electric cooperative not generally subject to our regulation, has continued offering net metering on a voluntary basis for projects in excess of its share of the statutory 50 MW limit.

and that the procedures should be uniform and consistently applied. We have reviewed the proposed Procedures and the comments submitted by the utilities, renewable energy system installers, and other interested stakeholders. We find that the proposed Procedures, with the modifications described below, represent a just and reasonable means of achieving these goals.

We now address the issues raised by public commenters, as summarized in Section III above:

1. Customer Definition – New Service. We agree with Borrego that the Procedures should be clarified to specifically state that project applicants who have requested or will request new service from the interconnecting utility will come within the definition of "Customer" under the Procedures. The concerns raised by the utilities regarding speculative projects and service to be provided in a distant future will be addressed through the applicable milestones and deadlines. The Procedures therefore shall be modified to include a sentence reading as follows: "The term 'Customer' includes any person or entity who or which has requested or intends to request electric service from the Company as a retail customer."

2. Initial Queue Position for Group Net Metered Projects. We find that the proposed initial requirements for Type C projects to obtain a net metering capacity allocation generally are reasonable and appropriate. We acknowledge Borrego's comment that the requirement for certain Type C projects to have a signed PPA in order to qualify for an allocation may not align well with the development process for larger projects in some cases. We are concerned, however, that permitting an LOI or MOU to be submitted in lieu of a PPA and extending the time for such submission may have the unintended consequence of allowing more speculative projects to hold a capacity allocation to the exclusion of more mature projects. We therefore decline to make the revision proposed by Borrego with respect to PPAs.

Through our review of the proposed Procedures, we have identified potential ambiguities in the language of condition (f) on pages 2-3 with regard to the respective roles of the utility and the Commission and the standard of review to be applied under this condition. In order to resolve these potential ambiguities, the Procedures shall be modified so that this condition (f) reads as follows:

> (f) For planned group net metering projects, the Applicant shall have submitted to the Company evidence of project-specific group members sufficient for the Company to determine that the total historic annual load of the group members together with the customer-generator exceeds the projected annual output of the customer-generator's facility, which evidence may consist of, but is not limited to, executed power purchase agreements (PPAs), other binding agreements between the customer-generator and specific group members, issuance of a group host authorization number by the Public Utilities Commission (but not a provisional host approval issued by the Public Utilities Commission), and/or a description of how the project is being developed in response to a completed request for proposals (RFP) or other completed bid solicitation process through which a municipality seeks to benefit a set of pre-defined utility accounts owned by the municipality.

3. Deadline for Project Completion. We conclude that the concerns expressed by Borrego regarding the longer development and construction periods that may be necessary for the largest projects are well-founded. The Procedures therefore shall be modified to provide that, for Type C projects with a capacity size greater than 500 kW, the Milestone 5 project completion deadline shall be 485 days rather than 365 days, the Milestone 3 deadline shall be 300 days rather than 180 days, and the Milestone 4 deadline shall be 390 days rather than 270 days. For all other Type C projects, the milestone deadlines shall be as proposed.

4. Extensions of Milestones and Deadlines. Solar Garden, Borrego, TASC, and Standard Power all commented that deadline extensions should be granted pursuant to well-defined procedures. Solar Garden believes weather conditions should be an appropriate ground for extension. Borrego and TASC urge us to adopt procedures similar to those used under the

Massachusetts Assurance System. We acknowledge there may be appropriate circumstances in which strict enforcement of the specified deadlines might lead to a harsh result. We also believe, however, that only such circumstances as are truly beyond the control of the applicant should be deemed grounds for an extension. The Procedures therefore shall be modified to include, at the end of the section captioned "Additional Requirements to Retain Allocation," a new "force majeure" extension provision reading as follows:

> The date specified above by which any action or obligation must have been performed or otherwise occurred shall be extended for a reasonable period of time upon written request by the Applicant for such extension, if the failure or inability to meet such deadline is caused by Force Majeure, and provided that no extension shall be granted if the action or obligation involves only the payment of money. The Applicant shall submit a written request for extension not less than three (3) business days prior to the applicable deadline, if possible under the circumstances. "Force Majeure" means an act of God, labor disturbance, act of the public enemy or terrorists, war, invasion, insurrection, riot, fire, flood, extreme weather event, explosion, breakage or accident to machinery or equipment, any curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond the control of the Applicant and its contractors and agents.

Subject to this modification and the modifications approved in paragraphs IV.2 and IV.3 above, we find that the remaining provisions of this section regarding milestone dates and timing are reasonable and appropriate. We decline to direct that the Procedures be modified as suggested by Solar Garden with respect to the initial start date for the various milestone time periods. We also conclude it would be premature at this time to adopt procedures similar to those used under the Massachusetts Assurance System, as proposed by Borrego and TASC.

5. Consequences of Missing a Milestone. We agree with Borrego that the Procedures should clearly set forth the consequences of missing an applicable milestone. The current language provides that projects that miss a milestone will lose their net metering allocations and not be granted new allocations until they have met any milestones missed, provided that

sufficient program capacity is available at that time. This language should be revised to clarify that, once a project has been granted a new allocation and re-entered the active net metering queue, any future applicable milestone deadlines will "trigger off" of the occurrence of the last milestone met, such that the remaining milestones effectively would be reset with reference to that date. The Procedures therefore shall be modified by revising the second sentence of the first paragraph of the section captioned "Additional Requirements to Retain Allocation" to read as follows:

> The project shall be granted a new allocation only when it has demonstrated full satisfaction of all necessary conditions, provided that sufficient program capacity is still available at the time of such demonstration, and at that time the deadlines for any future milestones shall be reset with reference to the date of occurrence of the last milestone met, such that the number of days elapsing between such date and each future milestone deadline is equal to the number of days that would have elapsed between the original sequential milestone deadlines.

6. System Size and Changes. We decline to make the modification suggested by Borrego that, for Type C projects, the reference to the 1,000 kW size limit be removed and replaced with language referring to the "maximum project size allowed under [RSA 362-A]." If and when a legislative increase in the maximum net metering project size is enacted, the utilities may make conforming changes to the Procedures. We also believe it would be premature at this time to adopt procedures regarding system size changes similar to those used under the Massachusetts Assurance System.

We do find, however, that the issue of system size changes warrants clarification, and that the Procedures should provide that decreases in project size will be permitted with notice to the utility, but increases in project size will not be permitted. The Procedures therefore shall be modified to add the following sentence to the fourth paragraph on page 1: "Project size may be

decreased following submission of the application with written notice of such decrease provided to the Company."

7. Queue Status Tracking and Reporting. We agree with Borrego and TASC that it is important for the utilities to make publicly available basic aggregated information regarding the status of the net metering capacity allocation queue. We do not, however, believe that the time is appropriate for adoption of specific procedures based on the Massachusetts Assurance System. The Procedures therefore shall be modified to require that each utility maintain and post on a public website a simple spreadsheet, to be updated at least once each week, that provides the following aggregated information for each project category:

(a) NEM projects installed and interconnected (number and kW);

(b) NEM projects granted a capacity allocation (NEM Queue) (number and kW); and

(c) Proposed NEM projects that would be granted a capacity allocation if and when sufficient program capacity becomes available (NEM Waitlist) (number and kW).

With respect to TASC's recommendation that small residential systems be separately tracked and reported and even separately queued, we do not find that the proposed modifications are reasonable or appropriate. We note the likelihood that most Type A projects will be residential systems, while most Type B, C, and D projects are likely to be commercial and not residential systems. Separate queuing of residential projects would be inconsistent with the statutory limits on utility net metering programs, which are not differentiated by project type or size. *See* RSA 362-A:9, I. Under the statute, every kW of project capacity counts equally toward the statutory limit, and therefore separate tracking and queuing of residential projects is neither necessary nor appropriate.

8. Utility Notifications to Applicants. We agree with the OCA, Borrego, and TASC that timely and effective communication from utilities to applicants is important and should be provided for in the Procedures. This required communication should cover the material steps in the application and approval process, including the initial transition from the current queuing processes to the new Procedures. The Procedures therefore shall be modified to include the following new section:

> Communication to Applicants.
>
> The Company shall provide notice to the Applicant, and to any designated contact representative, by electronic mail or U.S. mail, of any material changes in the status of an application or the related allocation, including, but not limited to, the following matters:
>
> (1) Receipt of the application by the Company;
>
> (2) Completeness of the application or the need for further information to complete it;
>
> (3) Approval of a capacity allocation for the Applicant;
>
> (4) Placement of the application on the program waitlist;
>
> (5) Availability of an amount of queue capacity for a waitlisted application;
>
> (6) Loss of a capacity allocation due to failure to meet an applicable milestone; and
>
> (7) Adoption and initial implementation of these procedures, and of any subsequent amendment or modification of these procedures, and the time within which the Applicant must achieve full compliance with the requirements of these procedures or any such subsequent amendments or modifications.

9. Administrator Duties and Responsibilities. TASC and Borrego recommended that the proposed Procedures be expanded to address the duties of utility administrators towards applicants, including with regard to extension requests, system size changes, dispute resolution procedures, and communication with applicants, and that these changes be based on the

Massachusetts Assurance System. We have addressed the specific issues listed above in this Order, and directed that modifications to the Procedures be implemented. We decline, however, to adopt other procedures generally based on those used under the Massachusetts Assurance System, because we are concerned that such adoption might involve unforeseen costs and result in unintended consequences.

10. Dispute Resolution Procedures. A number of commenters urged us to adopt specific provisions for resolution of disputes between utilities and net metering project applicants, and the utilities specifically anticipated potential disputes over the sufficiency of evidence submitted for certain Type C allocation threshold requirements. We agree that a process for resolution of such disputes should be provided for in the Procedures. We conclude that the Commission may be the appropriate forum for dispute resolution if informal efforts to resolve a dispute prove unsuccessful. The Procedures therefore shall be modified to include the following new section:

> Dispute Resolution.
>
> In the event that a good faith dispute arises regarding the interpretation or application of these Procedures, the Company and the Applicant shall first attempt to resolve such dispute through direct communications and informal procedures. If the dispute cannot be resolved through such means, then either the Company or the Applicant may file a complaint with the Commission pursuant to the provisions of N.H. Code Admin. Rules Puc 204.

As noted above, we decline at this time to adopt more specific procedures regarding dispute resolution that are based on the Massachusetts Assurance System.

11. Waitlisted Projects and Available Queue Capacity. The utilities and Borrego addressed the question of how new available net metering program capacity should be allocated when the next project on the waitlist is larger than the amount of such new capacity. We agree this issue merits clarification, and we share Borrego's view that waitlist "leap-frogging" should not be permitted. We also agree with Borrego that the waitlisted applicant should have the

option either to downsize its project to take immediate advantage of the newly available capacity or to wait until the full amount of capacity necessary for its project becomes available. The Procedures therefore shall be modified to include at the end of the "Project Wait List" section the following new paragraph:

> If the amount of newly available net metering program capacity is less than the project size for the next waitlisted application, the Applicant that submitted such application shall have the option, at its sole election, either (i) to decrease the size of its project to match the amount of available capacity and enter the queue at such decreased capacity amount, or (ii) to wait until the amount of available capacity is equal to or greater than the project size described in its application and enter the queue at such original capacity amount. No project with a lower waitlist position shall be offered any portion of such newly available capacity while the Applicant retains the options described above.

12. Transition Compliance Period. The proposed Procedures would require currently queued projects to achieve full compliance with the Procedures within 30 days following their adoption and implementation by the utilities. For example, a Type C project that has been in the net metering queue for 8 months and was tendered an Interconnection Service Agreement by the utility 7 months ago would have to meet the first three Milestones within 30 days of the effective date of the Procedures, including the payment of the sums required under Milestones 1 and 2 and the submission of a statement attesting that all non-ministerial project permits and approvals had been obtained, in final and non-appealable form, as required under Milestone 3.

The OCA recommended that applicants be given a period of 60 days rather than 30 days to achieve such full compliance with the Procedures following their adoption and implementation by the utilities. We are not convinced that this additional time is necessary for projects to achieve full compliance, in particular given the public notice of these proposed changes that net metering applicants, project developers, and system installers have had for a

significant period of time as a result of this proceeding. We therefore decline to modify the Procedures to extend this transition compliance time period.

The utilities shall provide notice through electronic mail of their adoption and implementation of the Procedures to all current capacity allocation queued and waitlisted projects, no later than the effective date of the Procedures. This notice must include a clear statement that all applicants in the active net metering program queue shall have 30 days following such effective date to demonstrate compliance with all applicable milestones and other requirements otherwise required by the Procedures.

**Based upon the foregoing, it is hereby**

**ORDERED**, that the proposed Net Metering Program Capacity Allocation Procedures, modified as described in the body of this Order, shall be adopted and implemented by each of Eversource Energy, Liberty Utilities, and Unitil Energy Systems, within 30 days of the date of this Order.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of March, 2016.

Martin P. Honigberg
Chairman

Robert R. Scott
Commissioner

Kathryn M. Bailey
Commissioner

Attested by:

Debra A. Howland
Executive Director