

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 16-384

UNITIL ENERGY SYSTEMS, INC.

Request for Change in Rates

**Order Suspending Investigation of Schedule DDER
and Addressing Petitions to Intervene**

ORDER NO. 25,906

June 9, 2016

This Order suspends the investigation of, and stays any litigation regarding, Unitil's proposed tariff schedule for Domestic Distributed Energy Resources (Schedule DDER). Schedule DDER sets forth rates to be charged to certain residential customers with renewable distributed generation systems installed behind the retail meter. This suspension and stay will be in effect until completion of Docket DE 16-576, which involves the development of new alternative net metering tariffs and/or other regulatory mechanisms and tariffs for customer-generators. We also defer decision on the petitions to intervene while this suspension and stay are in effect.

I. PROCEDURAL BACKGROUND

On April 29, 2016, Unitil Energy Systems, Inc. (Unitil), filed a petition for authority to, among other things, implement new permanent delivery rates for distribution service, beginning June 1, 2016. Unitil included a new tariff, Schedule DDER, applicable to certain residential customers with renewable distributed generation systems installed behind the retail meter.¹

¹ Distributed generation installed "behind the meter" permits a utility customer to offset some or all of its electricity consumption with power generated on-site without drawing electricity from the utility distribution system. Power generated by behind-the-meter distributed generation resources in excess of the customer's consumption is exported back into the utility distribution system.

Consistent with the requirements of RSA 378:8, and N.H. Code of Admin. Rule Puc Chapter 1600, Unitil filed direct testimony and exhibits in support of the new permanent rate tariff. By Order No. 25,900 (May 12, 2016), the Commission suspended Unitil's tariff for a permanent rate increase pending further investigation and scheduled a prehearing conference (PHC) for June 1, 2016. The Commission scheduled a hearing on temporary rates for June 20, 2016.

On May 2, 2016, Governor Hassan signed House Bill 1116, which became effective on that same date. *See* Laws of 2016, Chapter 31 (HB 1116). HB 1116 amended several provisions of RSA 362-A:9, the net energy metering section of the Limited Electrical Energy Producers Act, RSA ch. 362-A. New paragraph XVI of RSA 362-A:9 requires the Commission, within a ten month period, to initiate and conclude a proceeding to develop new alternative net metering tariffs, which may include other regulatory mechanisms and tariffs, taking into consideration a number of specified factors deemed relevant to such development. By Order of Notice issued on May 19, 2016, the Commission opened Docket DE 16-576 in response to HB 1116.

Petitions to intervene were timely filed by New Hampshire Sustainable Energy Association (NHSEA), ReVision Energy, LLC (ReVision), Acadia Center (Acadia), The Energy Freedom Coalition of America (EFCA), and The Alliance for Solar Choice (TASC). In its intervention petition, NHSEA stated its belief that Commission consideration of Schedule DDER in this proceeding is inappropriate and requested that the Commission remove consideration of Schedule DDER from this docket. NHSEA asked the Commission to instead consider it in the context of DE 16-576.

At the PHC, Unitil indicated it did not object to the petitions to intervene, provided that participation would be limited to issues relevant to customers with distributed generation resources and that interveners would coordinate their efforts and consolidate their participation in

the rate proceeding. NHSEA, ReVision, EFCA, and Acadia all asserted that Commission review and consideration of Schedule DDER should be undertaken in Docket DE 16-576 rather than in Unutil's rate proceeding. Unutil objected to removing Schedule DDER from consideration in this docket and maintained it should be considered in the general rate proceeding.²

II. POSITIONS OF PROSPECTIVE INTERVENERS AND UNITIL

A. Prospective Interveners

Prospective interveners have claimed that consideration of Schedule DDER here would be inconsistent with the legislature's intent as expressed in HB 1116. They argued that such an approach would be inefficient and would impose an inappropriate burden on their resources as well as Commission Staff's. For example, in its petition for intervention, NHSEA asserted that

Commission consideration of the Unutil proposal specific to its Domestic Distributed Energy Resources ("DDER") tariff is inappropriate under this rate proceeding, and would be more appropriately considered under the Commission docket DE 16-576, *Development of New Alternative Net Metering Tariffs and/or Other Regulatory Mechanisms and Tariffs for Customer-Generators*. Accordingly, NHSEA requests that the Commission remove consideration of the DDER tariff from DE 16-384 and consider it in the context of DE 16-576.

NHSEA Petition for Intervention at 2.

Similar arguments were articulated by ReVision, EFCA, and Acadia during the PHC. Counsel for the Office of Consumer Advocate also noted the potential for duplication in different dockets, the possibility of different and inconsistent results in separate proceedings, and the burden on interveners forced to participate in two separate dockets addressing the same subject matter.

² On June 6, 2016, NHSEA filed a *Motion to Remove Unutil's Domestic Distributed Energy Resource Tariff from Consideration in 16-384 and Consolidate into DE 16-576* (NHSEA Motion). For the reasons discussed below, we have found it unnecessary to address the assertions and arguments contained in the NHSEA Motion and therefore have not done so herein.

B. Unitil

During the PHC, Unitil addressed the arguments made by the prospective interveners and maintained that Schedule DDER should remain a part of and be considered in conjunction with its general rate case. Unitil argued that Schedule DDER does not affect the net metering tariff, but only addresses fixed demand charges assessed to customers. Unitil noted that different statutory timeframes are applicable to a rate proceeding (12 months) as opposed to the net metering alternative tariff proceeding (10 months). Unitil asserted that each utility's alternative net metering tariff necessarily must be based on its specific costs. Unitil also argued that the Commission lacks authority to remove a portion of a utility's rate filing to a separate proceeding, as such an action would implicate the utility's due process rights.

III. COMMISSION ANALYSIS

In connection with our consideration of the petitions to intervene, we find it is necessary to address the status of Schedule DDER in this general rate proceeding. It is apparent that the primary interest of the prospective interveners in this docket is to evaluate and potentially contest the provisions of Schedule DDER. For the reasons set forth below, we agree with the prospective interveners that it would be inconsistent with the intent of HB 1116 and would represent an inefficient allocation of limited Staff, stakeholder, and Unitil ratepayer resources to address rate design proposals directly affecting net-metered customer-generators in this proceeding as well as in Docket DE 16-576. We therefore suspend the investigation of and stay any litigation regarding Schedule DDER in this proceeding until the completion of Docket DE 16-576.

HB 1116 amends RSA 362-A:9 to add a new paragraph XVI, which provides, in part, that the Commission shall "initiate *a proceeding* to develop new alternative net metering tariffs,

which may include other regulatory mechanisms and tariffs for customer-generators, and determine whether and to what extent such tariffs should be limited in their availability within each electric distribution utility's service territory" (emphasis added). HB 1116 also adds a new paragraph XVII, which provides that the Commission "shall issue *an order* initially approving or adopting such alternative tariffs, which may be subject to change or adjustment from time to time, within 10 months of the effective date of this paragraph" (emphasis added).

It is clear from the statutory language quoted above that the legislature intended for the Commission to conduct a proceeding involving all regulated electric distribution utilities to develop new alternative net metering tariffs, which may include other regulatory mechanisms. We initiated Docket DE 16-576 for that purpose. We find that it is consistent with the legislative intent of HB 1116 to consider new alternative net metering tariffs in the proceeding expressly called for under the statutory amendments, while holding in abeyance consideration of utility-specific net metering designs filed in other proceedings.

We are also persuaded that the interests of administrative efficiency, limited resource allocation, and "judicial economy" support a determination that Schedule DDER should not be separately reviewed, evaluated, and litigated in this docket while other prospective net metering rate design proposals are under consideration in Docket DE 16-576. At a minimum, this bifurcation would impose additional burdens on the limited resources of Staff and the consultant it intends to engage, as well as on those of other parties and stakeholders. It also could result in conflicting schedules, redundant discovery, and potentially inconsistent results in the separate proceedings. These potential negative effects will be avoided if Until's new alternative net metering tariff and related rate design issues are considered at the same time and in the same docket as those of the other utilities.

This decision should not be prejudicial to Unitil's rate case, as Schedule DDER appears to represent a prospective rate design proposal that is not intended to recover its historical test year revenue requirement. We note in particular that Schedule DDER as filed expressly states that service thereunder is available to residential customers having renewable energy distributed generation resources of 100 kW or less that are "connected behind the retail meter and which are not eligible for Net Energy Metering under RSA 362-A:9 and the PUC 900 rules due to the maximum capacity for the Net Energy Metering eligibility having been reached." This service availability statement appears to have contemplated that a statutory limit on required net metering was in effect and that future net metering in excess of this limit would be provided on a voluntary basis rather than as a requirement under RSA 362-A:9.

Under the HB 1116 amendments to RSA 362-A:9, however, net metering will continue indefinitely and without limit, unless and until otherwise determined by the Commission in the proceeding we have opened as Docket DE 16-576. HB 1116 adds a new paragraph XVIII, which provides that

[i]f any utility reaches any cap for net metering under paragraph I before alternative tariffs are approved or adopted pursuant to paragraph XVII, eligible customer-generators may continue to interconnect under temporary net metering tariffs under the same terms and conditions as net metering under the 100 megawatt cap, except that such customer-generators shall transition to alternative tariffs once they are approved or adopted for their utility pursuant to paragraph XVII.

In effect, customer-generators will continue to participate in net metering under RSA 362-A:9 even in excess of the 100 megawatt "cap," but those above this statutory limit ultimately will be subject to the new alternative net metering tariffs approved by the Commission in Docket

DE 16-576. It therefore is unclear when and to whom Schedule DDER as filed would ever be applicable. This lack of clarity militates against a conclusion that Schedule DDER is an integral and essential component of Unitil's general rate filing.

We also are unpersuaded by the argument that Schedule DDER is not a net metering tariff. Schedule DDER would apply to residential customers who have installed renewable energy generation behind the retail meter. Schedule DDER specifies that these customers' metering would be the "the net metering method," and their metered kWh usage for billing and crediting purposes generally would be determined on a net-metered basis. Such customers would be subject to a demand charge not imposed on other residential customers. These are the types of net metering rate design issues that may be considered in Docket DE 16-576. Schedule DDER effectively is a proposed new alternative net metering tariff of the sort that should be evaluated in that proceeding and not in this one.

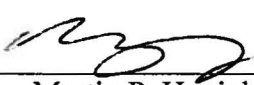
Because we suspend the investigation of and stay any litigation regarding Schedule DDER in this proceeding, we also defer any decision on the petitions to intervene. If there remain relevant issues regarding Schedule DDER following completion of Docket DE 16-576, we will address intervention requests at that time.

Finally, because we have effectively reached the same result sought by the NHSEA Motion but based on the record developed through and as of the date of the PHC, we consider the NHSEA Motion to be moot and will not address the assertions and arguments contained therein.

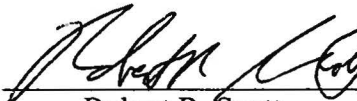
Based upon the foregoing, it is hereby

ORDERED, that investigation of the proposed tariff Schedule DDER shall be suspended and any litigation regarding Schedule DDER shall be stayed, until completion of Docket DE 16-576.


By order of the Public Utilities Commission of New Hampshire this ninth day of June, 2016.



Martin P. Honigberg
Chairman



Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director