STATE OF NEW HAMPSHIRE
before the
DEPARTMENT OF ENERGY

RUL 2024-005 Chapter En 900 Rules Net Metering for Customer-Owned Renewable Energy Generation Resources of 1,000 Kilowatts or Less

Comments of Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty; Public Service Company of New Hampshire d/b/a Eversource Energy; Unitil Energy Systems, Inc.; Clean Energy New Hampshire; ReVision Energy; Agilitas Energy; Kearsarge Energy; New Leaf Energy; and ReWild Renewable on threshold questions of scope of proceeding, jurisdiction issues, and proposed approach to interconnection rules

I. INTRODUCTION

Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource"); Unitil Energy Systems, Inc.; Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty; Clean Energy New Hampshire; Agilitas Energy; ReVision Energy; Kearsarge Energy; New Leaf Energy; ReWild Renewable; (collectively, the "Commenters") would like to thank the Department for inviting this opportunity to file comments on some critical threshold issues regarding the scope of this rulemaking proceeding, the Department's jurisdiction as it pertains to interconnection of distributed energy resources ("DER") to the grid.

II. GENERAL COMMENTS AND PROPOSALS

Rulemaking Scope and Department Jurisdiction

Regarding process and scope for this rulemaking, as expressed by some at the kickoff stakeholder session on October 29, 2024, the Commenters believe that the best course is to keep the interconnection rules separate from the En 900 rules on net metering, whether as two separate proceedings, or simply within this proceeding as two separate tracks. This includes maintaining the separation of the finished products – a set of interconnection rules for DER, and the En 900 rules on net metering. Because while there is certainly issue overlap, interconnecting DER has a full suite of issues distinct from net metering. Interconnection also extends beyond net metering, as not all DER net meters. As discussed more fully below, the Department has jurisdiction of all state-jurisdictional DER, not just DER that avails itself of net metering, and it is the strong belief of the Commenters that the best and most equitable course is to have one set of unified interconnection rules that apply to all state-jurisdictional interconnections, and not solely net metering-eligible interconnections.[1]

[1] The Commenters are assuming the Department intends the rules to apply to all net metering-eligible DER project applications, not just those who intend to actually net meter. As a practical matter, not all projects will know whether they will eventually net meter at the time they begin the application process. There is also an enforceability issue and potential for abuse if the rules only apply to projects that actually net meter. Arguably, a project applicant could claim their intent to net meter or not, depending on whether they want to be subject to the rules for the interconnection process, and simply change their mind once the complete the application process. This seems contrary to the purpose of establishing rules.

If the rules were to apply only to the latter, it would leave the largest and most complex project applications (over 5 MW) without the guidance of the rules. These projects, while relatively few, would benefit substantially from the structure of established rules as it would provide some degree of certainty for the developer community and clarity and assurance to the utilities regarding the role and expectations for administering the interconnection application process. To leave these large projects without such clarity and guidance creates unnecessary uncertainty for all parties and lacks administrative efficiency as it would effectively create two systems: one process for the vast majority of projects, and another that would vary by utility for the most complex projects that are most singularly impactful to the grid. So, for both policy and practical reasons, the Commenters unanimously support one comprehensive set of rules for DER interconnection that falls under state jurisdiction. The Commenters likewise recommend that the interconnection rules be separated from the En 900 rules and that the En 900 rules have all provisions related to interconnection removed, so that the En 900 rules can be dedicated exclusively to net metering, and interconnection issues unrelated to net metering can be properly addressed in the interconnection rules.

As previously mentioned, the Commenters believe the Department has jurisdiction over all interconnections that do not fall under FERC's jurisdiction. The Department's jurisdiction is not limited to only DER that is eligible to net meter, or actually net meters. This was established by the FERC ruling in *ISO New England, Inc.,* 180 FERC ¶ 61,129, at 5, 10 (2022), which modified the ISO-NE tariff so that it requires all new DER "interconnecting to distribution facilities always proceed through the applicable state interconnection process", which FERC found to be just and reasonable.[2] This ruling did away with the previous multi-step analysis for whether connecting DER would be subject to the ISO-NE tariff specifically to provide clarity in this area by making all DER connecting to the distribution system fall under state jurisdiction. Therefore, the interconnection rules for New Hampshire should apply to all interconnections to the distribution system, and not just connections eligible for net metering.

This approach is echoed in SB 391, which directed the commencement of this rulemaking and states "the department of energy shall open a proceeding to examine and assess draft rules to be adopted for the purposes of setting uniform procedures for distributed energy resources that are proposed for interconnection to the electrical infrastructure of New Hampshire's investor-owned utilities and are not subject to Federal Energy Regulatory Commission jurisdiction." The statute sets no limitation for the rulemaking to only extend to those projects that net meter. The Commenters do not believe that the reference in the statute to "customer-generators" creates such a limitation either, as the first sentence in the statute is simply a statement of intent that the rulemaking is to provide clarity and assistance to customer-generators. That purpose is not at odds with applying the rules to projects that do not net meter, particularly since those projects, so long as they are connecting to the distribution system, are squarely within state jurisdiction. The

[2] "We also find that permitting DERs in ISO-NE to interconnect through the state interconnection process advances the objectives of Order Nos. 2003 and 2006 by increasing energy supply and lowering wholesale prices for customers by increasing the number and variety of new generation that will compete in the wholesale electricity market, while ensuring processes are in place to preserve reliability." (*Id* at 10, paragraph 20.)

Commenters see no barrier to the Department applying the rulemaking to all state-jurisdictional DER.

Timing

The Commenters respectfully ask the Department to revisit the preliminary procedural timeline as originally published in the Stakeholder Session 1 Agenda. The schedule notes that the Department must have its draft rule ready to file with the Joint Legislative Committee on Administrative Rules (JLCAR) on October 1, 2025, and indicates that the JLCAR process will then follow state administrative law, and therefore, the rulemaking is anticipated to be complete in April 2026.

It appears the Department is applying state administrative law— RSA 541-A— to the JLCAR process rather than its own rulemaking. RSA 541-A governs state agencies in their rulemaking proceedings. The only provisions of RSA 541-A that governs the JLCAR process are RSA 541-A:2 and RSA 541-A:13, and therefore the Department's references to other sections of the law guiding the JLCAR process appears mistaken.

Ultimately, the statute per SB 391 says that the Department must submit its final rule to JLCAR within fifteen months of the effective date. Given the effective date was July 26, 2024, the Department must submit its final rule, in accordance with 541-A, to JLCAR by October 26, 2025. From there, JLCAR, per RSA 541-A:13, has 60 days from the filing to issue approval, conditional approval, or objection to the rule. If JLCAR does not issue anything within 60 days, the rule is deemed approved. Therefore, the JLCAR process is most likely to take 60 days, which means that final rule adoption would subsequently occur by December 26, 2025. The Commenters, therefore, request that the Department revisit the procedural schedule and publish a new proposed schedule in accordance with the statute's parameters by the end of this year.

Initial Proposal

Turning to the substance of the rulemaking, the Commenters have a proposal for a base document to use as a starting point. Rather than use the IREC model rules, the Commenters recommend using the set of rules that have been adopted and utilized in Massachusetts for over a decade but tailored to fit the unique characteristics of New Hampshire. These rules are consistent with the language of SB 391 that the draft rules be "aligned with national best practices" including IREC, as the Massachusetts rules are indeed in line with national best practices. Using this document as a starting-off point has the added benefit of two of the three New Hampshire electric utilities having familiarity with them since they do business in Massachusetts, as do many of the developers that would be affected by the New Hampshire rules. This approach would also be more efficient for drafting purposes, due to a significant amount of consensus already built around this document, as there are many areas of agreement and alignment among utility and developer stakeholders. Moreover, using the Massachusetts rules eliminates the need to cull the IREC rules to eliminate provisions that are inapplicable or inappropriate for New Hampshire. As a neighboring New England state, Massachusetts' rules

are naturally aligned in many ways that would require no alteration for adoption in New Hampshire, making it a more efficient and effective place to begin. Since there are some critical issues that will likely require considerable discussion among the stakeholders, starting from the most efficient baseline allows for more time to be dedicated to the issues requiring further analysis and stakeholder engagement to resolve. The Commenters see this approach as an opportunity to facilitate and possible accelerate arriving at a full New Hampshire rule proposal and would welcome the opportunity to put forward a redlined version of the Massachusetts rules, tailored for New Hampshire policy priorities, legal constraints and practical considerations, to use as a starting point for developing the initial rule proposal.

III. CONCLUSION

The Commenters reiterate their appreciation for the opportunity to provide comments to contribute to a most productive rule making for all involved and affected by the rules.