

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2022-00185

September 14, 2022

MAINE PUBLIC UTILITIES COMMISSION  
Amendments to Net Energy Billing Rule  
(Chapter 313)

ORDER ADOPTING RULE  
AND STATEMENT OF  
FACTUAL AND POLICY  
BASIS

BARTLETT, Chairman; DAVIS and SCULLY, Commissioners

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## I. SUMMARY

Through this Order, the Commission adopts amendments to its Net Energy Billing (NEB) rule (Chapter 313) as required to implement recently enacted legislation.

## II. BACKGROUND

### A. NEB Act

During its 2019 session, the Legislature enacted An Act To Promote Solar Energy Projects and Distributed Generation Resources in Maine, P. L. 2019, Chapter 478 (NEB Act). Part A of the NEB Act directed certain changes to Maine's NEB program. Among these changes was a requirement for a "commercial and institutional" (C&I) NEB program pursuant to which participating C&I customers would receive a bill credit equal to the standard offer service rate applicable to the customer plus 75% of the currently effective T&D rate for the rate class that includes the smallest commercial customers of the investor-owned transmission and distribution (T&D) utility.

On November 29, 2019, the Commission adopted rules to implement the requirements of the NEB Act (Docket No. 2019-00197). The rule refers to the C&I NEB program as the "tariff rate program." The adopted rule provided further specificity regarding how the tariff rate would be determined and delegated to the Director of Electric and Gas Industries the authority to establish the tariff rate each year.

### B. Tariff Rate Act

During its 2022 session, the Legislature enacted An Act To Reduce Volatility in the Net Energy Billing Program and To Define "Competitive Electricity Provider." P.L. 2021, ch. 659 (Tariff Rate Act). Section 19 of the Tariff Rate Act contains provisions that limit the availability of the tariff rate as it would be set pursuant to the original NEB Act to certain facilities and established a new definition of the tariff rate for all other facilities.

Specifically, the Tariff Rate Act maintains the existing tariff rate-setting methodology for three categories of distributed generation projects. Specifically, the

existing methodology continues to apply to projects with nameplate capacity of 1 MW or less and to projects that are “collocated with a net energy billing customer that is or net energy billing customers that are subscribed to at least 50% of the facility’s output.” 35-A M.R.S. § 3209-B(5)(A).

In addition, the Act provides that the existing tariff rate-setting methodology is applicable to distributed generation resources of greater than 1 MW if the entity developing the resource:

certifies by affidavit with accompanying documentation to the commission that the entity, before September 1, 2022, commenced on-site physical work of a significant nature on the distributed generation resource and the entity has made and will continue to make continuous on-site construction efforts to advance toward completion of the distributed generation resource. For the purpose of this paragraph, continuous on-site construction efforts include, but are not limited to, in the context of a solar facility, the continuous installation of racks or other structures to affix photovoltaic panels, collectors or solar cells to a site.

35-A M.R.S. § 3209-B(5)(1)(A).<sup>1</sup>

In addition, because the statute requires that a developer provide certain certifications and representations through affidavit, the amended rule includes provisions that describes these requirements.

For projects that are not eligible for the existing tariff rate-setting methodology, the legislation specifies that the tariff rate must:

- 1) In 2022, equal the standard-offer service rate established pursuant to section 3212 that was applicable to the rate class of the customer receiving the credit on December 31, 2020 plus 75% of the effective transmission and distribution rate that was in effect on December 31, 2020 for the rate class that includes the smallest commercial customers of the investor-owned transmission and distribution utility;
- and
- 2) Increase by 2.25% on January 1st of each subsequent year, beginning January 1, 2023.

35-A M.R.S. § 3209-B(5)(1)(A-1).

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<sup>1</sup> In its Notice of Rulemaking in this proceeding (page 2), the Commission noted its understanding that similar requirements and terms exist within the codes of the of the Internal Revenue Service (IRS) with respect to the Investment Tax Credit (ITC), and the proposed rule referred to and made use of those terms.

### C. Rulemaking

On July 14, 2022, the Commission issued a Notice of Ratemaking (NOR) that included a redline of the proposed amendments to Chapter 313. The Commission provided an opportunity to submit comments on the proposed amendments and convened a public hearing on August 17, 2022. The Commission received comments from Maine Renewable Energy Association and Coalition for Community Solar Access (MREA/CCSA), Industrial Energy Consumer Group (IECG), Central Maine Power Company (CMP), Versant Power (Versant), and Revision Energy (Revision).

## III. **RULE AMENDMENTS**

The amendments to the rule are described below.

### A. Definitions (Section 2)

#### 1. On-Site Construction (Sections 2(E) and (R))

As noted above, the proposed rule added new definitions for On-site Physical Work of a Significant Nature and Continuous On-site Construction Efforts that defined these terms by reference to the IRS Code. There was general agreement among the commenters that the rule should not rely on reference to the IRS code and guidance, and that it would be preferable, for purposes of clarity and certainty, that the Commission develop its own plain and definitive language for these definitions. The Commission agrees and has removed references to the IRS Code in the amended rule.

MREA/CCSA and IECG provided suggested language to be used for the definitions for On-site Physical Work of a Significant Nature and Continuous On-site Construction Efforts. The MREA/CCSA proposed language is relatively expansive, while the IECG provides more limited and strict definitions. The Commission finds these suggestions in considering proper definitions of these terms to be very helpful. However, the amended rule contains modifications to the suggested definitions to maximize clarity through the adoption of bright line language.

Specifically, On-Site Physical Work of a Significant Nature is defined as “the installation of apparatus or equipment meant to support generating equipment, such as racking, groundscrews, pilings, ballasts, or grounding systems and the installation of any electricity generating equipment, such as photovoltaic modules or panels, turbines, or boilers” and Continuous On-site Construction Efforts is defined as “on-site physical work of a significant nature that occurs in every month until mechanical completion, except for delays in construction due to weather and ground conditions that prevent access by construction vehicles or equipment.”

#### 2. Mechanical Completion (Section 2(L))

Based on the comments, the Commission has added to the amended rule a definition of “mechanical completion.” The definition as used in section 2(L) of the rule, clarifies that that completion is based on the facility’s ability to operate, rather than being connected to the grid and producing electricity.

3. Collocated (Section 2(A))

The proposed rule added a definition of “collocated” as meaning “an eligible facility that is located on the same premise, property, or development area of a net energy billing customer facility or facilities that are subscribed to that eligible facility.”

Revision commented that the proposed definition of “collocated” as being on the same premise, property or development area should also include contiguous or adjacent properties or properties or that are otherwise in geographic proximity of the eligible facility. Alternatively, the definition of a discrete facility should be modified to match the definition of a qualified facility “co-located” with load.

The Commission disagrees with Revision’s proposals for defining “collocated” for purposes of implementing the NEB Act. A definition of collocated is included in the rule to implement the NEB Act’s eligibility for facilities “that are collocated with the facility or facilities of a net energy billing customer or customers that are subscribed to at least 50% of the facility’s output.” As an eligibility criterion for maintaining the existing tariff rate methodology, a narrow definition as contained in the proposed rule is appropriate.

4. Discrete Electric Generating Facility (Section 2(F))

The proposed rule contained a modification to the definition “discrete electric generating facility” that removes the term “collocated” to avoid any confusion that may result from the addition of the new definition of “collocated.” This modification is included in the amended rule.

5. Tariff Rate (Section 2(Y))

The proposed rule included a modification of the definition of “tariff rate” to simply refer to the applicable rate set in accordance with the rule. This modification is included in the amended rule.

B. Tariff Rate Requirements (Section 3(K))

The amended rule modifies the tariff rate requirement provisions to comply with the Tariff Rate Act.

Section 3(K)(4)(c) specifies that the pre-existing methodology for the calculation of the tariff rate now applies only to certain categories of projects consistent with the requirements of the Tariff Rate Act. This provision essentially creates a “safe-harbor,”

whereby eligible facilities that commenced on-site physical work of a significant nature prior to September 1, 2022 and reach mechanical completion by September 1, 2023 qualify for the pre-existing methodology.

The Commission notes, that in their Final Comments (page 4), MREA/CCSA stated a typical distributed generation-scale solar project of 2-5 MW should be mechanically complete within 4-7 months after start of construction, without accounting for weather delays or force majeure-type disruptions. Based on these comments, the Commission concludes that a safe harbor of one year is reasonable. The amended rule does allow a facility that does not achieve mechanical completion prior to September 1, 2023 to petition the Commission for determination of whether the continuous on-site construction efforts regarding the eligible facility has occurred.

Section 3(K)(4)(d) contains the process regarding the submission of sworn affidavits and supporting documents. The amended rule requires that there be two sets of submissions of affidavits and supporting documentation. First, the amended rule specifies that, by October 31, 2022, project sponsors who seek to qualify their projects for the pre-existing methodology of calculating the tariff rate for their project must file an affidavit certifying that on-site physical work of a significant nature commenced prior to September 1, 2022. Second, project sponsors must file an affidavit and supporting documentation after mechanical completion.

A form affidavit and the requirements for the provision of supporting documentation will be adopted through a separate order. In addition, the separate order will contain the process for the submission of the affidavits and documentation. As long as the affidavit submission complies with requirements, the Commission does not anticipate a review of the facts contained in the affidavit and supporting documentation. Moreover, the Commission anticipates that the information provided in the affidavits will be public; however, information in supporting documents may be protected upon a showing of commercial sensitivity. The amended rule delegates the authority to approve the affidavit form and content to the Commission's Director of Electric and Gas Industries

Finally, section 3(K)(4)(e) contains the methodology for calculation of the tariff rate applicable to facilities that do not qualify for the section 3(K)(4)(a) tariff rate. For these facilities, as required by the Act, the amended rule sets the applicable tariff rate for 2022 as the tariff rate that was established by the Commission for calendar year 2020 and, beginning on January 1, 2023 and for each subsequent year, the tariff rate will increase by 2.25%.

### C. Standard Contract (Section 3(N))

Section 3(N) of the NEB rules requires investor-owned T&D utilities to develop a separate standard contract and application form for both net energy billing-kilowatt-hour credits and net energy billing-tariff rate consistent with the provisions of the Chapter. The amended rule adds language stating that utilities submit a modified standard

contract and application form within 30 days of the effective date of rule changes that require the documents to be modified.

The Commission directs CMP and Versant to file an amended tariff rate contract that complies with the amendments adopted in this proceeding.

Accordingly, the Commission

### O R D E R S

1. That the amendments to Chapter 313, Customer Net Energy Billing, as described in the body of this Order and as set forth in the attached amended rule are hereby adopted;
2. That the Administrative Director shall file the amended rule with the Secretary of State;
3. That the Administrative Director shall notify the following of this rulemaking proceeding:
  - a. All transmission and distribution utilities in the State;
  - b. All persons that filed comments or are on the notification list for this proceeding;
4. That the Administrative Director shall send a copy of the amended rule to the Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115.

Dated at Hallowell, Maine, this 14<sup>th</sup> day of September, 2022.

BY ORDER OF THE COMMISSION

*/s/ Harry Lanphear*

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Harry Lanphear  
Administrative Director

COMMISSIONERS VOTING FOR: Bartlett  
Davis  
Scully

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party at the conclusion of an adjudicatory proceeding written notice of the party's rights to seek review of or to appeal the Commission's decision. The methods of review or appeal of Commission decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Pursuant to 5 M.R.S. § 8058 and 35-A M.R.S. § 1320(6), review of Commission Rules is subject to the jurisdiction of the Superior Court.

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.