

April 12, 2019

MAINE PUBLIC UTILITIES COMMISSION
Emergency Rulemaking to Amend Chapter
313 - Net Energy Billing

ORDER ADOPTING
EMERGENCY RULE

I. SUMMARY

Through this Order, the Commission amends its net energy billing (NEB) rules (Chapter 313) pursuant to emergency rulemaking procedures set forth in 5 M.R.S. § 8054. Specifically, consistent with An Act To Eliminate Gross Metering, P.L. 2019, ch. 16, the Commission amends the Rule's provisions to be substantively equivalent to those in effect on January 1, 2017. Emergency rules may be effective for up to 90 days. Accordingly, the Commission will initiate a rulemaking process regarding Chapter 313 in the near future.

II. BACKGROUND

On March 1, 2017, the Commission approved amendments to the NEB Rule (Chapter 313). *Public Utilities Commission, Amendments to Net Energy Billing Rule (Chapter 313)*, Docket No. 2016-00222, Order Adopting Rule and Statement of Factual and Policy Basis (Mar. 1, 2017). The amended rule provided for gradual reductions (*i.e.*, 10 percent per year) to "nettable energy," which was defined as the energy in kWh generated by a NEB eligible facility that may be netted against a customer's kWh consumption. The amended rule required two meters: one meter to measure the total energy produced by the NEB facility; and a second meter to measure total energy consumed by the customer during a billing period. This approach differed from the prior rule in which both energy produced and energy used were generally measured by a single meter.

On April 2, 2019, the Governor signed into law P.L. 2019, ch. 16, "An Act To Eliminate Gross Metering" (Act). The Act directs the Commission to amend its NEB rules to be substantively equivalent to the rules in effect on January 1, 2017, and, further, that the amended rules must apply retroactively to all NEB customers that entered into a net energy billing arrangement between March 29, 2017 and the effective date of the rules adopted pursuant to the Act.

III. EMERGENCY RULE REQUIREMENTS

The Act will not become effective until 90 days after the end of the current legislative session. However, because the reductions in nettable energy pursuant to the rule were to be phased-in gradually over time, in the initial few years of the phase-in period, the costs to ratepayers for the second meter would be likely to exceed the cost reduction benefits ratepayers would realize through the reductions in nettable energy.

Thus, as a result of the enactment of the Act, the Commission finds that maintaining the NEB rule in its current form would result in costs to ratepayers that would not be offset by benefits and, thus, it would not be in the public interest for Chapter 313 to remain effective in its current form.

Accordingly, the Commission finds that the continued operation of Chapter 313 in its current form creates an immediate threat to the general welfare that allows the Commission to proceed pursuant to the emergency rulemaking provisions of the Administrative Procedures Act, 5 M.R.S. § 8054. Under these provisions, the Commission may modify the rulemaking procedures to the minimum extent necessary to meet the threat caused by the emergency situation. In this instance, the Commission finds that the minimum extent necessary to address the threat to ratepayers is the immediate reinstatement of Chapter 313 as it existed on January 1, 2017. Further, as required by 5 M.R.S. § 8054, this emergency rule shall be in effect only until such time as the Commission amends Chapter 313 in accordance with 5 M.R.S. §§ 8052 & 8053, but in no event shall this emergency rule remain in effect for longer than 90 days from the date of this Order.

IV. RULEMAKING ISSUES

A. Renewable Energy Credit Aggregation

The Rule adopted by the Commission on March 31, 2017 contained a new provision that required T&D utilities to aggregate renewable energy credits (RECs), sell the RECs into the regional market, and provide any proceeds to the NEB customers. The emergency rule does not include this provision because it requires that the gross output of the NEB facility be metered. Without metering the gross output of the NEB facility, this provision is no longer workable. In addition, retaining this provision may be considered a "substantive change" to the Rule as it existed on January 1, 2017, which would contravene Section 2 of the Act.

Given the removal of the REC aggregation provisions, there should be no new REC aggregation customers. The Commission is aware, however, that some customers have opted to participate in REC aggregation under the current rule. Thus, the Commission finds that T&D utilities should continue to aggregate RECs for existing REC aggregation customers under existing terms and conditions until the conclusion of the rulemaking proceeding that will promulgate permanent amendments to Chapter 313.

B. Existing Gross Meters

The Commission takes no explicit action in this emergency rulemaking with regard to the future status of currently existing gross meters (e.g., if the meters should remain installed). The Commission intends to address this issue in the forthcoming rulemaking proceeding that will promulgate address amendments to Chapter 313.

V. ORDERING PARAGRAPHS

Accordingly, the Commission

O R D E R S

1. That the attached Chapter 313, Customer Net Energy Billing, is hereby adopted pursuant to the emergency rulemaking provisions in the Administrative Procedures Act, 5 M.R.S. § 8054;
2. That the emergency amendments to Chapter 313 apply to all NEB customers that entered into a net energy billing arrangement between March 29, 2017 and the effective date of this emergency amendment to the Rule;
3. That the Administrative Director shall file the adopted rule and related materials with the Secretary of State;
4. That the Administrative Director shall notify the following of the adoption of the amended rules:
 - a. all transmission and distribution utilities in the State;
 - b. all persons who filed comments in the rulemaking, *Maine Public Utilities Commission, Amendments to Net Energy Billing Rules (Chapter 313)*, Docket No. 2016-00222;
 - c. all persons who have filed with the Commission within the past year a written request for notice of rulemakings; and
5. That the Administrative Director shall send copies of this Order and attached amended rule to the Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115.

Dated at Hallowell, Maine, this 12th day of April, 2019

/s/ Harry Lanphear

Administrative Director

COMMISSIONERS VOTING FOR: Williamson
Davis

COMMISSIONER ABSENT: Vannoy

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC 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. 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).

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.