

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2019-00076

July 31, 2019

MAINE PUBLIC UTILITIES COMMISSION
Amendments to Chapter 313 of the
Commission's Rules – Net Energy Billing

ORDER AMENDING RULE
AND STATEMENT OF
FACTUAL AND POLICY BASIS

BARTLETT, Chairman; WILLIAMSON and DAVIS, Commissioners

I. SUMMARY

By this Order, the Commission amends Chapter 313 – Net Energy Billing (NEB) of the Commission's Rules. The amendments are intended to make the NEB rules substantively equivalent to the rules in effect on January 1, 2017, pursuant to An Act To Eliminate Gross Metering, P.L. 2019, ch. 16. The Commission is also making other, non-substantive amendments to the Rule.

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 the amount of "nettable energy"¹ that could be used to offset a customer's transmission and distribution (T&D) bill. The amended rule required that the total, or "gross" production of the NEB facility be measured; thus, a second meter was required for this purpose. This approach differed from the prior approach in which the net of the energy produced by the facility and energy used by the customers 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 directed 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 to all NEB customers that entered into a NEB arrangement between March 29, 2017 and the effective date of the rules adopted pursuant to the Act.

On April 9, 2019, the Commission adopted an emergency rule pursuant to 5 M.R.S. § 8054 and amended Chapter 313 to reinstate the Rule as it existed on January 1, 2017. Order Adopting Emergency Rule in *Maine Public Utilities Commission, Emergency Rulemaking to Amend Chapter 313 – Net Energy Billing*, Docket No. 2019-

¹ Nettable energy was defined as the energy in kWh generated by a NEB eligible facility that may be netted against a customer's kWh consumption. The amount of nettable energy applicable to the supply portion of a customer's bill remained at 100%.

00075. Pursuant to 5 M.R.S § 8054, the emergency rule remains in effect until the Commission amends Chapter 313 in accordance with 5 M.R.S §§ 8052 & 8053.

On April 22, 2019, the Commission commenced the current rulemaking to replace the emergency rule adopted in Docket No. 2019-00075 and to consider amendments to Chapter 313 pursuant to the Act. On May 1, 2019, the Commission issued a Request for Comments, identifying numerous issues which the Commission invited interested parties to address in their comments. Among these issues were: (1) retroactive application of the NEB rule change; (2) what should be done with the gross meters that have been installed, and how any associated costs will be treated; and (3) the treatment of renewable energy credits (REC) for customers enrolled in the voluntary REC program.

Comments were filed by Central Maine Power Company (CMP), Emera Maine (Emera), the Natural Resources Council of Maine (NRCM), and Sundog Solar (Sundog).

A. CMP's Comments

CMP was generally supportive of the changes made to Chapter 313 but did contribute some additional suggested changes. Among these changes was CMP's suggestion of adding the definitions of "facility account" and "secondary account" to the rule to allow for the billing treatment of shared ownership facilities to be described with clarity. CMP additionally requested the removal of the provision requiring transmission and distribution (T&D) utilities to report on the estimated cost per watt(dc) for eligible facilities. CMP also recommended additional amendments regarding dispute resolution and billing cycle requirements.

CMP stated that it did not believe that retroactive application of the NEB rule required T&D utilities to provide NEB customers with kWh credits that would have been earned but for the nettable energy stepdown provision in the prior rule. CMP also stated that T&D utilities should be allowed to remove any gross meters that had been installed and reuse them and provided its opinions regarding the associated costs of removing these meters. Finally, CMP supported elimination of the voluntary REC aggregation program for both existing and potential new enrollees.

B. Emera Maine's Comments

Emera Maine focused its comments on the topics raised in the Commission's Request for Comments. With respect to retroactive application of the NEB rule change, Emera generally agreed with CMP that T&D utilities should not be required to provide NEB customers with kWh credits that would have been earned but for the nettable energy stepdowns. Emera Maine provided its opinions on what should be done with the gross meters that were installed under the prior rule. Emera Maine took no position on the question of gross meter removal from a cost-benefit standpoint but stated that it posed a safety risk because gross meter removal requires replacement with a meter

socket jumper and cover, something that Emera Maine does not own. Leaving the meter socket jumper uncovered leaves the potential for anyone to open the mechanism door and injure themselves by making contact with the energized parts inside. Finally, Emera Maine also supported the elimination of the REC aggregation program.

C. NRCM's Comments

NRCM commented that peak demand reporting and the trigger for review of the rule should be eliminated and replaced by a periodic review of the NEB rule. NRCM also opined that the gross meters that have already been installed should be reused, when possible. NRCM opposed making customers pay for the removal of gross meters or electrical wiring changes.

D. Sundog's Comments

In its comments, Sundog asked the Commission to review two customer-specific cases in which the customers would benefit from continued utilization of their gross meter.

A public hearing on the rulemaking was held on May 24, 2019. Representatives from CMP and Emera Maine were the only persons to appear and testify at the hearing.

III. **RULE PROVISIONS**

As stated above, the intent of this rulemaking is to make the NEB rules substantively equivalent to the rules in effect on January 1, 2017, pursuant to An Act To Eliminate Gross Metering, P.L. 2019, ch. 16. To that end, the Commission has amended Chapter 313 to define net energy as the difference between the energy produced by the NEB facility and energy used by the customer or shared ownership customers and provide that customers would be billed on this basis. The Commission added certain definitions and provisions based on parties' comments, and the Commission also provided a mechanism for dispute resolution between T&D utilities and NEB customers going forward. The Commission has also amended certain reporting requirements of the T&D utilities and set the trigger for review of the rule as when the capacity of NEB facilities in the utility's service territory reaches 10 percent of its peak demand. In addition, the Commission has made certain non-substantive and editorial changes to the Rule.

A. Section 1: Purpose

The Commission is not amending Section 1 of the Rule.

B. Section 2: Definitions

As explained above, the Commission is amending Section 2 of the Rule by adding and deleting certain definitions. The Commission is also making, non-substantive editorial changes to Section 2.

1. Section 2(A)

Section 2(A) is amended to clarify the definition of “Competitive Electricity Provider.”

2. Section 2(E)

Section 2(E) is added, pursuant to CMP’s suggestion, to provide a definition of “Facility Account” to facilitate the administration of the Rule.

3. Section 2(H)

Section 2(H) is amended to provide a definition of “Net Energy Billing” that substantively matches the definition in effect on January 1, 2017, as directed by the Act.

4. Sections 2(J) and 2(K)

The definitions of “Secondary Account” and “Shared Ownership Allocation” is added in sections 2(J) and 2(K), respectively, to clarify and facilitate the administration of the Rule.

C. Section 3: Annualized Customer Net Energy Billing

In addition to the changes described below, the Commission is also making other, non-substantive editorial amendments to Section 3.

1. Section 3(B):

The Commission is changing section 3(B)(1) to reflect the fact that shared ownership customers no longer must have joint rights to the benefits of the output of a shared ownership facility in proportion to their cost responsibilities.

Section 3(B)(4)(d) was amended to reflect that shared ownership customers may have Facility Accounts as well as Secondary Accounts that are subject to the shared ownership net energy billing arrangement. Section 3(B)(4)(e) was added to provide a set of methodologies for how the output of a shared ownership facility could be allocated between and among Facility Accounts and Secondary Accounts. Section 3(B)(5) was removed because dispute resolution is addressed elsewhere in the Rule.

2. Section 3(E):

Section 3(E)(5) simplifies the billing process by allowing the utility to place Facility Accounts and associated Secondary Accounts on the same billing cycle and

provides that the generation output during the billing period and any kWh credits from prior billing periods shall be allocated among shared ownership accounts based on the allocation methodology chosen by the customer.

3. Section 3(G):

Section 3(G) provides that customers or shared ownership customers may request the installation of additional meters to record purchases and sales separately, at their cost. Customers may request the installation of additional meters if it is required by the Allocation Methodology chosen by the customer.

4. Section 3(J):

Section 3(J) provides for a dispute resolution mechanism regarding any aspect of the Rule.

5. Section 3(K):

Section 3(K)(1) increases the review trigger of the cumulative capacity of generating facilities subject to Chapter 313 from 1% of peak demand to 10% of peak demand. In its comments, CMP indicated that it was already close to the 3% threshold originally proposed by the Commission, which would trigger an automatic review of Chapter 313 in a short amount of time. The Commission disagrees with NRCM's position that there should be no review trigger. A review trigger has traditionally been included in the NEB rules so that the Commission can monitor the operation of the rule and its benefits and costs to ratepayers. Thus, the final rule increases the review trigger to 10% to allow more time to pass before another review of Chapter 313 occurs.

Section 3(K)(2) provides for a biannual report instead of an annual report and does away with the requirement that utilities report the estimated installed costs per watt for eligible facilities because this information is publicly available and requiring the utilities to report this information would be unduly burdensome.

D. Section 4: Waiver or Exemption

Section 4 of the Rule replaces "Director of Technical Analysis" with "Director of Electric and Gas Utility Industries." The Commission no longer has a Director of Technical Analysis position; the duties of that position have been assumed by the Director of Electric and Gas Utility Industries and the Director of Telephone and Water Utility Industries, as applicable.

E. Other Issues

As stated above, the NOR asked interested person to comment on 1) what should be done with the gross meters that have been installed, and how any associated

costs will be treated; and 2) the treatment of RECs for customers enrolled in the voluntary REC aggregation program.

1. Gross Meters

Both CMP and Emera Maine commented on possible approaches regarding existing gross meters and future requests for the installation of a gross meter. Because differing approaches may be appropriate for the two utilities, CMP and Emera Maine are directed to submit terms and conditions regarding this matter. The submitted terms and conditions should remove the existing gross metering provisions related to the previous rule.

2. REC Aggregation

On June 20, 2019, CMP filed comments indicating that its broker was unable to find a buyer for the minimal number of RECs that were accumulated under the REC aggregation provision of the prior rule. Accordingly, CMP need not take any further action in this regard. CMP should file terms and conditions that remove the REC aggregation provisions.

Because of a lack of interest from customers in Emera Maine's service territory and the costs of implementation, the Commission, in 2018, waived the REC aggregation requirement for Emera Maine. *Emera Maine Request for Waiver of Chapter 313 Section 4 REC Aggregation Requirements*, Docket No. 2018-00248, Order Granting Waiver (Oct. 4, 2018). Accordingly, Emera Maine need not take any further action in this regard.

IV. ORDERING PARAGRAPHS

In light of the foregoing, the Commission

ORDERS

1. That Chapter 313 – Net Energy Billing is hereby amended as described in the body of this Order and as set forth in the amended Rule attached to this Order;
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 Maine;
 - b. All persons that filed comments in this proceeding;

- c. All persons who have filed with the Commission a written request for notifications regarding Notices of Rulemaking within the past year; and
 - d. The Office of the Public Advocate; and
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, 04333-0015.
 5. That Central Maine Power Company and Emera Maine shall file terms and conditions as directed in this Order.

Dated at Hallowell, Maine, this 31st Day of July, 2019

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear

Administrative Director

COMMISSIONERS VOTING FOR: Bartlett
 Williamson
 Davis

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.