NHPUC 15MAY'15AM11:08

STATE OF NEW HAMPSHIRE

Intra-Department Communication

DATE: May 14, 2015
AT (OFFICE): NHPUC

FROM: Elizabeth R. Nixon, Energy Analyst

SUBJECT: DE 10-212 Commercial and Industrial Solar Rebate Program Clarification Request Regarding Incentive Amount Limitation Based on 40% of PUC and Other Sources of Project Funding

TO: Martin P. Honigberg, Chairman
Robert R. Scott, Commissioner
Debra A. Howland, Executive Director and Secretary
Karen Cramton, Director, Sustainable Energy Division

CC: David K. Wiesner, Staff Attorney

The Public Utilities Commission (Commission) approved a commercial and industrial (C&I) solar rebate program (Program), pursuant to RSA 362-F:10, VIII, by Order No. 25,151 issued on October 1, 2010 (Initiation Order). The Program was recently expanded and modified pursuant to Order No. 25,764 issued on February 20, 2015 (Modification Order). The expanded and modified Program was implemented beginning on April 17, 2015.

Recently, a representative[1] of several Program applicants requested that the Commission review and reverse the Program administrative policy that results in inclusion of federal grants, including the U.S. Department of Agriculture (USDA) Rural Energy for America Program (REAP) grant, in the funding sources that are counted, together with the Program incentive requested, toward the applicable cap based on 40% of total project costs. The applicant representative objects to this inclusion on both procedural grounds and policy grounds.

Applicant Representative's Objections and Context

According to the applicant representative, when the Program was initiated, the 40% all-source funding limitation applied only to *state and utility* rebates and incentives, and there was no reduction in the incentive calculation based on receipt of any federal grants

[1] This representative is an installer for several projects where the rebate applicant has also applied for a USDA REAP grant. An e-mail dated March 24, 2015 from the applicant representative was the first written request from this representative seeking such clarification, even though he has been informed repeatedly that all formal inquiries related to Program administration should be submitted in writing to the Commission.

or rebates. The initial Program application form contained language stating that: "An individual project shall not receive rebates or incentives from the state and utility in any combination that exceeds 40% of the total project cost."

At some subsequent time, the applicant representative notes, this sentence in the application form was revised to state that: "An individual project shall not receive rebates or incentives from the PUC and other sources in any combination that exceeds 40% of the total project cost." Later still, the applicant representative notes, the incentive calculation section of the application form was modified to include new paragraphs 5 and 6 as follows:

INCENTIVE CALCULATION

1. Total Facility Cost (less any self-installer labor costs and used equipment costs): _____
2. System PV Capacity (in watt (D/C)) or Thermal System Modeled or Calculated Output (in kBtu/yr): _____
3. PV: System Capacity (D/C) X $0.80/Watt = _____ ($0.50/Watt for system expansions)
4. Thermal: System Output X $0.07(or $0.12)/kBtu/year = _____ ($0.04/kBtu/year for system expansions)
5. a. Other incentives received (from whom and amount in $ or % of total cost): 0
   b. Rebate with Other Incentives: Total Cost ($_____) x 0.40 - Other incentives received ($_____) = _____
6. Total Requested Incentive: _____

For Line 6 enter 25% of line 1 *or* 100 % of line 3 or 4 *or* line 5b *or* $50,000, whichever is less ($50,000 max).

The applicant representative asserts that these changes in the application forms and Commission Staff's corresponding calculations of eligible incentive amounts were significant changes to the Program terms and conditions that should not have been implemented without prior notice and hearing. Because these changes were implemented with no formal request for stakeholder input and no public meeting to receive such input, the applicant representative maintains that the changes are procedurally defective and therefore should be reversed by the Commission.

The applicant representative also objects to the inclusion of federal grants and rebates in applying the 40% all-source funding limitation on what seems to be policy grounds. The applicant representative argues that federal government grant programs, like the USDA REAP grant, and federal tax benefits, such as the current 30% investment tax credit (ITC) and accelerated tax depreciation (MACRS), are outside the Commission's purview and jurisdiction and therefore should not be the basis for any reduction in the state-funded solar rebate amount. The representative also asserts that it is arbitrary to count certain federal government benefits, such as the USDA REAP grant, without also counting the federal income tax ITC and MACRS depreciation benefits.

The applicant representative did not submit any formal inquiries in writing to the Commission until March 24, 2015 in the form of an e-mail regarding this Program term, which has been in effect since Program inception with the language clarifications noted in 2012. The representative did not provide any comments related to this issue at any recent hearings or in writing during any public comment periods, including the proceedings regarding the recent Program expansion and modification in which this limitation with reference to federal as well as state funding sources was included and approved by the Commission.

A rebate reduced as a result of the 40% cap was paid to an applicant for which the representative was involved, on December 23, 2014, and neither the representative nor the applicant submitted anything in writing regarding this rebate until three months after the award. Another applicant, for which the representative was also involved, was paid a rebate reduced as a result of the 40% cap on February 24, 2015. Both of these applicants signed the Step 1 pre-approval application agreeing to the terms and conditions of the Program, which included the language "other sources" to be included under the 40% cap. These applicants, that already have been paid, signed the Step 1 applications under notary witness on April 28, 2014 and May 19, 2014, and made no complaint until 10-11 months after agreeing to the provision.

During review of the Step 1 application, Staff specifically asked both applicants whether they planned to apply or had applied for the USDA REAP grant or other grants or rebates. Staff also asked both applicants during the Step 2 process whether they had been paid or approved for a USDA REAP grant or other grant or rebate. Other applicants, that have applied for a USDA REAP grant and for which a Step 2 application has not been processed and for which this representative was involved, also signed the Step 1 application with notary witness and agreed to the terms and conditions of the Step 1 application. Other applicants, for which this representative was not involved, have been paid rebates reduced by the 40% cap, and no complaints have been received regarding these paid rebates.

Program Implementation Background

The Program was developed after a technical session, a public hearing, and a public comment period. The Initiation Order directed Staff to develop the application forms which would contain the program terms, conditions, and technical requirements. The Initiation Order does not specifically mention the 40% all-source funding limitation; however, the Initiation Order does reference a Staff memorandum dated August 26, 2010 that sets forth revised recommendations for Program design in response to comments received at a stakeholder technical session. A section of this memorandum covering rebate levels contains the following recommendation: "An individual project shall not receive rebates from the state and utility in combination that exceed 40% of the total project cost." In the Initiation Order, the Commission accepted Staff's recommendations in the August 26, 2010 memorandum, with certain specified clarifications, and directed Staff to complete work within 30 days on the Program application forms.

Following the Commission's adoption of the Program in the Initiation Order, Staff prepared an application form containing a condition based on this quoted language. During 2012, as noted by the applicant representative, the application form was revised to reference "rebates or incentives from the PUC and other sources" rather than "rebates or incentives from the state and utility." This change to further clarify the program's intent was prompted by a rebate applicant which received funding from a community action agency, using funds available under the American Recovery and Reinvestment Act of 2009 (ARRA), for the full cost of its project. This applicant was denied the rebate

because the other funding source exceeded the 40% cap. The purpose of the Program rebate is to provide targeted incentives for project development, not to provide excessive rebates using public dollars and certainly not to provide a windfall profit for solar energy system installation as would have occurred in that particular case. During 2013, the application form was further revised to include the incentive calculation section excerpted above to provide additional clarification for applicants and to ensure that the applicants included such additional funding information.

Program applicants have been aware of these terms and conditions stated in the incentive application since inception and of the clarification since 2012. In fact, Staff is aware of another potential applicant that did not move forward with a project because they could not afford the project with a rebate reduced by the inclusion of federal grants in the 40% cap. Note that each applicant submits and signs the application for a Program incentive with a notary witness declaring under the penalties of perjury that it "has read and understands the terms and conditions set forth in this application with attachments and has agreed to abide by those requirements." As noted above, during the review of Step 1, Staff asks the applicant if it has applied or plans to apply for a USDA REAP grant or other grants or rebates. Again, during Step 2 review, Staff asks the applicant if they have applied for, been approved for, or been paid for a USDA REAP grant or other grant or rebate. As evidenced by the program implementation, each applicant is aware of the 40% cap program condition and funding sources included.

In 2013, Staff also posted a revision to the "frequently asked questions" page on the Commission's website; the current version of these FAQs (revised March 26, 2013) contains the following paragraph (emphasis added):

> An applicant for a C&I rebate must take into consideration other rebates and incentives to determine the maximum rebate allowed from the PUC. The Step 1 application states that the maximum rebate and incentives allowed from the PUC and other sources cannot exceed 40% of the total project cost. *The rebates and incentives to consider include grants provided by a utility, the federal government or other entity. The applicant should* ***not*** *include any federal tax incentives, federal tax depreciation, or loans.* Also note that the rebate must be less than 25 percent of the total project cost and cannot exceed $50,000.

Staff understands that the purpose of the 40% total cost incentive cap was to limit the state renewable energy funds made available to projects that may have a lesser need for a rebate as a result of their receipt of project funding from other sources. The rebate funding level was set at such a level to incent project development. If project applicants are receiving other grants or aid from other funding sources, especially utility or public dollars, then the need for additional funding through the Program may be decreased or eliminated. Administration of the Program to account for federal and other funding sources as well as state and utility funding sources was a logical extension of this underlying policy objective. Staff also believes it is appropriate to include other grants, rebates and incentives, including federal grants, in the Program incentive calculation, while excluding federal tax benefits such as the ITC and MACRS depreciation, because

grants, rebates and incentives are typically received as lump sum cash disbursements, while tax benefits may be realized over time and may be limited or even unusable depending on the project owner's individual tax circumstances.

Staff therefore believes that important policy considerations supported the changes made to the application forms and incentive calculations subsequent to the initial implementation of the Program, regardless of the process through which these changes were adopted. Staff did not seek clarification from the Commission or go through a public process because these changes served merely to further explain the original intent of the provisions approved by the Commission. By contrast, if Staff had proposed to change the actual amount of the cap, say from 40% to 30%, then Staff would have sought involvement of the Commission. The Staff memorandum outlining the initial Program terms included the original intent of limiting rebates, especially given limited available incentive funding. At the time of the Staff memorandum, the primary funding sources available for renewable energy were utility and state grants. Once Staff became aware of other funding sources, the language was clarified, since all such funding sources were intended to be included under the 40% cap.

The Commission recently reaffirmed these policy considerations in the Modification Order by endorsing a more detailed description of this Program term and condition:

> Maximum incentive in combination with other incentives received. Rebate in combination with other rebates or grants received from the utility or other programs, including other state, local or federal programs, shall not exceed 40% of the total cost of the system. (Does not include federal tax credits)

See Modification Order at 16, 18, and 20. In the Modification Order and the preceding Staff memorandum dated November 7, 2014, this provision was not noted as a change because Staff did not consider it a change in Program terms and conditions. The Modification Order was issued after public notice, public comment, and public hearing, and no commenter objected to or even specifically addressed the 40% all-source funding limitation or Staff's administration of this limitation. The incentive limitation as quoted above continues to be a fully effective condition of the Program, including under the expanded and modified Program approved in the Modification Order.

The Program has included the 40% total funding limitation since its inception, and Staff has been implementing this condition consistently since its inception, excluding federal and other source grants and incentives when known. The Program with this funding limitation makes good use of public funds without providing rebates in excess of necessary levels.

Staff Recommendation

To preserve the integrity of the Program and of Program implementation, and to provide the proper incentives without overpaying applicants, Staff recommends that the Commission continue to implement the Program as it has been since inception, limiting

the rebate paid to 40% of total project costs taking into consideration federal and all other rebate and grant funding sources, for the reasons noted above. Denial of the applicant's representative's clarification request would serve these objectives.

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

Executive.Director@puc.nh.gov
allen.desbiens@nu.com
amanda.noonan@puc.nh.gov
barbara.bernstein@puc.nh.gov
Christina.Martin@oca.nh.gov
christopher.goulding@nu.com
david.wiesner@puc.nh.gov
debski@unitil.com
denise.mckeen@puc.nh.gov
elizabeth.nixon@puc.nh.gov
epler@unitil.com
grant.siwinski@puc.nh.gov
james.brennan@oca.nh.gov
jill.fitzpatrick@libertyutilities.com
jon.osgood@puc.nh.gov
kaminski@nhec.com
karen.cramton@puc.nh.gov
lemayg@nhec.com
manypennyh@nhec.com
matthew.fossum@eversource.com
mdean@mdeanlaw.net
michael.sheehan@puc.nh.gov
michael.sisto@puc.nh.gov
ocalitigation@oca.nh.gov
palma@unitil.com
richard.labrecque@eversource.com
Stephen.Eckberg@puc.nh.gov
Stephen.Hall@libertyutilities.com
susan.chamberlin@oca.nh.gov
tom.frantz@puc.nh.gov

Docket #: 10-212-1 Printed: May 14, 2015

FILING INSTRUCTIONS:

a) **Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:** DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429

b) **Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**

c) **Serve a written copy on each person on the service list not able to receive electronic mail.**