

**BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. DE 16-576

Development of New Alternative Net Metering Tariffs
and/or Other Regulatory Mechanisms and Tariffs for Customer-Generators

**JOINT COMMENTS ON THE
GRANDFATHERING RIGHTS OF NET METERING CUSTOMERS**

Pursuant to Order No. 26,029 (“NEM Order”), the Joint Parties, comprising the various members of the Energy Future Coalition¹ together with the City of Lebanon, appreciate the opportunity to address the Commission’s supplemental questions regarding the parameters of grandfathering rights established in that order. Specifically, the Commission asks parties to address: “(1) whether a subsequent sale or other ownership transfer of the house, building, or property upon which the DG system is installed, or a subsequent sale or other ownership transfer of the DG system itself, would entitle the new owner to continue to be net metered under the grandfathered tariff provisions, and (2) whether subsequent expansions of or modifications to DG systems would be entitled to net metering under the grandfathered tariff provisions.”²

The Joint Parties ask the Commission to make the following supplemental findings to resolve these important questions related to the transferability and nature of grandfathering rights granted to *both* legacy net metering systems and systems governed by the new alternative net metering tariff:

¹ The Energy Future Coalition consists of Acadia Center, The Alliance for Solar Choice, Borrego Solar, Conservation Law Foundation, Energy Freedom Coalition of America, LLC, New Hampshire Sustainable Energy Association, ReVision Energy, Granite State Hydropower Association, Sunraise Investments LLC, Solar Endeavors LLC, and Revolution Energy, LLC.

² Order No. 26,029 at 51.

- Find that it is reasonable and consistent with New Hampshire public policy objectives, national best practices, and common sense to allow grandfathering rights to transfer to subsequent owners (i.e., finding that such rights attach to the property or meter, not to the customer).
- Find that it is reasonable to allow net metering customers the flexibility to modify or upgrade their onsite generation system. We recommend that grandfathering be preserved in full for all system expansions that continue to meet the eligibility requirements, e.g. under 1 MW. However, at a minimum grandfathering should be preserved as long as the modified system continues to satisfy the eligibility requirements under the legacy net metering (“NEM”) program or, as applicable, the new, alternative NEM tariff and the increase does not exceed the greater of 50% of the original system capacity or 110% of the customer’s annual load.

I. It Is Reasonable for the Commission to Recognize the Transferability of Grandfathering Rights to Subsequent Owners.

It is reasonable and broadly accepted in states with NEM grandfathering that the rights of grandfathering should attach to the property or meter and should continue to the benefit of future owners, including those who have the legal right to enjoy the output of the facility at that premises. The Joint Parties believe that it would be arbitrary and contrary to public policy objectives to diminish the value of a grandfathered net metering facility and the underlying property to subsequent owners solely based on the transfer of legal title to the NEM facility and/or the underlying property where the facility is located. The Joint Parties commend the Commission for adopting a grandfathering policy that respects a customer’s reasonable expectations about the value stream the system will create over the system lifetime, consistent with the grandfathering rights established by H.B. 1116. Supplementing this policy to explicitly recognize the transferability of grandfathering rights properly reflects the reality that any property with a grandfathered NEM facility is likely to change hands within the useful life of a solar facility (e.g., 20-30 years), just as a non-solar property has a similar likelihood of sale over that timeframe. The Joint Parties urge the Commission to explicitly recognize the transferability

of grandfathering rights to subsequent owners, in accord with best practices across all jurisdictions that have adopted a similar grandfathering policy for net metering customers.

A. Attaching grandfathering rights to the underlying property or meter, rather than the customer, avoids potential constraints on the marketability of property and furthers the purpose of H.B. 1116 to provide customers reasonable opportunities to invest in distributed generation (“DG”).

A NEM facility represents a significant capital investment that provides long-term value to a property owner. That value is specifically based on the energy savings that the property owner will receive, as determined by the structure of the net metering program at the time the system is installed. A NEM facility is typically transferred or sold as part of a transaction for the purchase or conveyance of the property where it is located, and is not ordinarily dismantled, retained, or removed by the seller of the property. The value of a NEM facility therefore attaches to the property, and represents a marketable value proposition to prospective buyers.³

For these reasons, a customer considering investing in a NEM facility normally will evaluate whether it is likely to enhance their property’s marketability in the future. A NEM facility is an inherent and affixed feature of the property that contributes to the customer’s use and enjoyment of the property by providing a value stream (i.e., bill savings from onsite consumption and net metering credits) and that can serve the same purpose for future property owners.⁴ A customer determines the projected value stream at the time of investment and, as a part of that determination, evaluates the investment’s projected impacts on salability and long-term property value. If the customer has a reasonable right to expect that the value of their investments will not arbitrarily change due to policy shifts, as the Commission and the

³ This is the case regardless of whether the cost of the NEM facility is specifically or fully reflected in the price paid upon transfer of ownership.

⁴ The right to enjoy the NEM facility runs with the land.

legislature have both recognized through grandfathering, then it is necessary that reasonable expectations of marketable value also be preserved from future policy shifts. Moreover, it is important that the Commission not establish a policy that could create different value propositions for a prospective seller and a prospective buyer based on what net metering program is applicable to each. This could create confusion within the real estate market in New Hampshire regarding the benefits of a NEM facility.

In light of the reality that a residential property tends to change hands at least once, if not more, within a 20-30 year timespan, it is reasonable for the Commission to infer that a long-lived NEM facility will be used by more than the original, installing customer. If grandfathering rights do not extend to a subsequent owner, the character of the value created by the NEM facility is diminished and the protective effect of grandfathering is frustrated. Allowing grandfathering rights to transfer to subsequent owners of a facility (or to those with legal rights to enjoy the output of those facilities) fully preserves the expected economic benefit of the NEM facility and protects the economic marketability of properties to which these investments are attached.

B. Transferability of grandfathering rights is consistent with H.B. 1116 and the NEM Order.

Specifying that grandfathering includes the subsequent transfer in ownership of the underlying property or the DG system is consistent with the Commission's recognition that one of the purposes of H.B. 1116 is to provide for the "continuance of reasonable opportunities for electric customers to invest in and interconnect customer-generator facilities..."⁵ As the Commission observed in the NEM Order, "the grandfathering provisions serve to preserve the value of the investments they have made in DG systems."⁶ Because the value of the investment

⁵ Order of Notice at 2 (May 19, 2016).

⁶ NEM Order at 69.

does not terminate with a transfer of ownership, and can reasonably be expected to affect the marketability of a property, reasonable opportunities to invest are best preserved by protecting both the value stream and the salability of that value stream through grandfathering that attaches to the property or the meter, rather than to the initial capital investor.

For NEM facilities that are owned by a third-party, the question of who holds legal title to the solar panels and components should be irrelevant to grandfathering rights. What is important in the context of the grandfathering policy is that the customer that is eligible to participate in net metering with the interconnected utility has a legal right to the output of the NEM facility. Grandfathering rights should attach to the NEM facility at the time it is installed and those rights should flow through to whomever has the legal right to the output of the NEM facility and, in most cases, the use and enjoyment of the property where the NEM facility is located.

C. Transferability of grandfathering rights is a national best practice, as all jurisdictions that have created grandfathering rights for net metering customers have provided that those rights attach to the premises and are transferable to subsequent owners.

Every jurisdiction that has established grandfathering for net metering customers has provided that grandfathering rights run with the net metering facility and the premises where it is installed.

State	Decision/Docket	Policy on Transferability of Grandfathering Rights
AR	16-027-R	Grandfathering rights tied to the facility, not the originally grandfathered customer
AZ	Decision No. 75859	Grandfathering rights apply to the system/location, not the customer
CA	D. 14-03-041	Grandfathering rights apply to the system/location
HI	Order No. 33258	Grandfathering rights apply to the system/location
NV	16-07028, 16-07029	Grandfathering applies to the system/location
SC	2014-246-E	Grandfathering rights assignable (per Settlement Agreement)

These jurisdictions adopting a grandfathering policy have avoided the negative public policy implications of limiting the enjoyment of grandfathering rights. The Joint Parties urge the Commission to join these other jurisdictions in promoting policies that encourage and respect investment in net metering facilities without constraining the marketability of properties by allowing grandfathering rights to arbitrarily terminate upon the occurrence of an entirely foreseeable occurrence: the transfer or sale of the underlying property within the useful lifetime of the net metering facility.

The Joint Parties strongly recommend, however, that the Commission specify that grandfathered customers shall have the option of voluntarily moving to another tariff or program in the future, as options such as time-of-use pricing may be made available through future proceedings. We also strongly urge the Commission to include flexibility in this specification that allows new technology offerings, such as energy storage, to become available and widely implemented.

II. Grandfathering Rights Should Be Durable and Flexible to Allow for Reasonable System Modifications or Expansions.

The Joint Parties urge the Commission to specify that grandfathering will not be revoked as a result of either the routine maintenance and replacement of component parts or the reasonable expansion of the original net metering system, as long as the system continues to meet the definition of a net metered facility. As customers previously were able to expand and modify their systems within the confines of the legacy net metering tariff, customers should be able to make similar modifications or additions without forfeiting grandfathering rights.

As an initial matter, the Commission's grandfathering policy should recognize that simple routine system maintenance often results in increased system output. Under many

warranties for solar equipment, defective panels or inverters can be replaced over time with equipment of equal or greater capacity, at the manufacturer's option. As older, lower capacity panels and inverters cease to be available, future warranty repairs may result in both capacity increases and efficiency gains as newer equipment trends in that direction. It would be illogical and unjust to punish customers for exercising warranty repair rights by forcing them to forfeit their grandfathering rights due to marginal increases in capacity or system efficiency resulting from routine and expected equipment replacements.

In addition, the Commission's grandfathering policy should not discourage or penalize incremental beneficial electrification. As New Hampshire continues to encourage the beneficial electrification of household and other functions—such as fuel-switching for space and water heating, from heating oil to electricity, as well as electric vehicle adoption—through initiatives including Commission-approved statewide energy efficiency programs, the Commission should avoid undercutting those initiatives and the benefits they offer.⁷ This is in line with current efforts and supports long-established statewide renewable energy policies and goals, including the Renewable Portfolio Standard (RPS). At the same time, it is essential not to discourage reasonable NEM system upgrades and expansions that keep electrical load from skyrocketing as fuel-switching continues to take place in homes and businesses, and in the manufacturing and transportation sectors.

The Commission's grandfathering rule also must recognize that system expansions in the future will increasingly incorporate on-site storage. A system expansion that includes on-site storage of electricity will impact the electric system differently than a system expansion without on-site storage, and may reduce the number of net metering credits received by the customer in

⁷ Such initiatives represent substantial financial investments on the part of the state.

comparison to the number of credits receive prior to system expansion. Solar plus storage options are another means to keep demand from skyrocketing during the beneficial electrification process, and reasonable expansions should not be discouraged or penalized by changes to the customer's original investment expectations.

Finally, a reasonable grandfathering policy should also account for normal changes in lifestyle and economic activity, as well as variations in energy use that are consistent with the original intent of a NEM facility. A family that expands from two adults, to two adults and two children, should be permitted to retain grandfathering when they upgrade to meet expanded needs. Similarly, a school, library, or business that adds another room or manufacturing function should not be discouraged from meeting that additional load through reasonable NEM facility upgrades or expansion, as long as it continues to qualify under applicable standards.

The Joint Parties generally hold the position that grandfathering should be preserved for all system expansions, as long as the expanded facility continues to meet the eligibility requirements of the applicable NEM program (e.g. total system size limits). This is a simple, straightforward approach that is easy for utilities to administer and for homeowners and others to understand.⁸

In the alternative, the Joint Parties would recommend that the Commission establish a bright-line rule for capacity additions for grandfathered systems. Under this standard, the Joint Parties propose that all grandfathered systems should be able to increase system size, as long as the new system size does not exceed the greater of 50% of the nameplate capacity of the NEM system at the time that grandfathering rights attached or 110% of the customer's annual electrical usage. Changes to NEM facilities that enable up to 50% incremental expansion of clean, on-site,

⁸ This type of approach has been adopted in Arkansas.

load-reducing generation, or up to 110% of total annual onsite load—whichever is greater—should be considered incremental in nature, within the spirit of the initial investment, and strategically beneficial as a matter of state policy.

By providing for up to 50% incremental capacity expansion without revoking grandfathering, the Commission would allow grandfathered customers to make incremental forward-looking upgrades that are not limited by documented historic load levels. The reason it is necessary to provide for some incremental expansions not tied to current load is that, as with any energy investment, NEM investments are lumpy in nature. This standard provides headroom for grandfathered customers to make modifications to meet both current and foreseeable changes in energy usage—such as an expected expansion of family size, the future purchase of an electric vehicle, or the planned addition of a manufacturing function—while establishing a reasonable upward limit that does not encourage oversizing. It also avoids penalizing step-by-step electrification of strategic home and transportation functions.

By providing for upgrades and expansions up to 110% of current annual load, the Commission would ensure that customers can meet proven on-site load levels without voiding the previously applicable net metering rules. Because load subject to this standard has already been established through recent electricity bills, expansion should be permitted to meet the entirety of that load, with a small 10% buffer for variation due to year-on-year usage and weather patterns. The current annual load could be the customer's choice of any 12 consecutive month period ending within the previous two years, in effect the highest annual load for an annual period ending within the previous two years. This would allow a customer to account for some degree of unusually low load (such as due to weather) or for a recent increase (a year earlier) in their load from beneficial new electrification. Current load can refer either to individual load or

to group load, in the case of group net metering. This approach allows customers the flexibility needed to maintain their existing systems and to adjust the systems, as appropriate, to documented increases in onsite energy usage. As with any grandfathered system, systems subject to this standard would still need to meet the applicable definition of a net metered facility in order to qualify (e.g. they would have to be sized under 100 kW for under 100 kW terms).

In sum, the Joint Parties recommend the Commission adopt a simple standard permitting continued grandfathering for all system expansions that meet applicable eligibility requirements. However, in the event the Commission prefers a more nuanced grandfathering standard, it should at a minimum permit grandfathering of all system expansions up to 50% of original system size or 110% of load, whichever is greater.

III. Conclusion

The Joint Parties appreciate the opportunity to provide supplemental comments on grandfathering and encourage the Commission to make clear that grandfathering rights are not forfeited when there is a change in ownership in the DG system or the underlying property, or when a grandfathered system undergoes reasonable incremental updates, modifications, or additions.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplemental Joint Comments has on this 24th day of July 2017 been sent by email to the service list in Docket No. DE 16-576.

A handwritten signature in blue ink, appearing to read "M.E. Birchard", written over a horizontal line.

Melissa E. Birchard
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