

**§3209-A. Net energy billing**

The commission may adopt or amend rules governing net energy billing. Rules adopted or amended under this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2019, c. 478, Pt. A, §3 (AMD).]

**1. Definitions.** As used in this section, the following terms have the following meanings.

A. "Customer" means a customer of a transmission and distribution utility in the State. [PL 2019, c. 478, Pt. A, §3 (NEW).]

B. "Distributed generation resource" means an electric generating facility that uses a renewable fuel or technology under section 3210, subsection 2, paragraph B-3 and is located in the service territory of a transmission and distribution utility in the State. [PL 2019, c. 478, Pt. A, §3 (NEW).]

C. "Net energy billing" means a billing and metering practice under which a customer is billed on the basis of the difference between the kilowatt-hours delivered by a transmission and distribution utility to the customer over a billing period and the kilowatt-hours delivered by the customer to the transmission and distribution utility over the billing period, taking into account accumulated unused kilowatt-hour credits from the previous billing period. [PL 2019, c. 478, Pt. A, §3 (NEW).]

D. "Project sponsor" means an entity or its successor or assignee that solicits customers to participate in a net energy billing arrangement based upon a shared financial interest in a distributed generation resource. [PL 2021, c. 107, §1 (NEW).]

[PL 2021, c. 107, §1 (AMD).]

**2. Financial interest required.** The commission shall allow a customer to participate in net energy billing if the customer has a financial interest in a distributed generation resource or in a generation resource that has a net energy billing arrangement on the effective date of this section, including facility ownership, a lease agreement or a power purchase agreement.

[PL 2019, c. 478, Pt. A, §3 (NEW).]

**3. Shared financial interest for investor-owned utility customers; limitation.** Multiple customers of an investor-owned transmission and distribution utility that have distinct billing accounts with that utility may share a financial interest in a distributed generation resource under subsection 2. Any number of customers of an investor-owned transmission and distribution utility with a shared financial interest in a distributed generation resource may participate in net energy billing, except that the number of eligible customers or meters is limited to 10 for a shared financial interest in a distributed generation resource located in the service territory of an investor-owned transmission and distribution utility located in an area administered by the independent system administrator for northern Maine or any successor of the independent system administrator for northern Maine unless the commission determines that the utility's billing system can accommodate more than 10 accounts or meters for the purpose of net energy billing.

[PL 2019, c. 478, Pt. A, §3 (NEW).]

**4. System size.** The nameplate capacity of a distributed generation resource that may be used for net energy billing must be less than 5 megawatts, except that, if a municipality is the customer participating in net energy billing, the nameplate capacity of a distributed generation resource located in that municipality that may be used for the net energy billing may be 5 megawatts or more, as long as less than 5 megawatts of metered electricity from the resource is used for net energy billing.

[PL 2019, c. 478, Pt. A, §3 (NEW).]

**5. Consumer protection.** To protect customers who participate in or are solicited to participate in a net energy billing arrangement based upon a shared financial interest in a distributed generation resource from fraud or unfair and deceptive business practices, a project sponsor:

A. Must obtain a customer's explicit affirmative authorization before serving the customer; [PL 2021, c. 107, §2 (NEW).]

B. Must provide to a residential customer such information as the commission may require by rule or order in a standard disclosure form before entering into an agreement with the residential customer to participate in a net energy billing arrangement based upon a shared financial interest in a distributed generation resource; [PL 2021, c. 107, §2 (NEW).]

C. Must allow a customer to rescind the customer's decision to participate in a net energy billing arrangement based upon a shared financial interest in a distributed generation resource, as long as the customer requests such rescission orally or in writing within 5 days of the customer's receipt of the first bill or invoice under the arrangement that the customer is responsible for paying in full; [PL 2021, c. 107, §2 (NEW).]

D. May not collect or seek to collect unreasonable costs from a customer who is in default; [PL 2021, c. 107, §2 (NEW).]

E. Must comply with any other applicable standards or requirements adopted by the commission by rule or order; [PL 2021, c. 107, §2 (NEW).]

F. May not release to any other entity, other than for purposes of debt collection or credit reporting pursuant to state and federal law or to law enforcement agencies pursuant to lawful process, any personal information regarding a customer, including name, address, telephone number and usage and historical payment information, without the explicit affirmative consent of the customer; [PL 2021, c. 107, §2 (NEW).]

G. Must comply with the Maine Unfair Trade Practices Act; [PL 2021, c. 107, §2 (NEW).]

H. Must comply with all applicable provisions of the federal Equal Credit Opportunity Act, 15 United States Code, Sections 1691 to 1691f; and [PL 2021, c. 107, §2 (NEW).]

I. Must comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation of telemarketing. [PL 2021, c. 107, §2 (NEW).]

[PL 2021, c. 107, §2 (NEW).]

**REVISOR'S NOTE:** (Subsection 5 as enacted by PL 2021, c. 370, §1 is REALLOCATED TO TITLE 35-A, SECTION 3209-A, SUBSECTION 7)

**6. Enforcement.** The commission, through its own counsel or through the Attorney General, may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the commission pursuant to subsection 5, paragraphs A to E, and the court may issue any preliminary or final order that the court determines proper. The commission may impose administrative penalties under chapter 15 upon a project sponsor and may order restitution for any party injured by a violation for which a penalty may be assessed pursuant to chapter 15. If the commission has reason to believe a project sponsor has violated subsection 5, paragraphs F to I, the commission shall report this information to the Attorney General for appropriate action. A violation of subsection 5 is a violation of the Maine Unfair Trade Practices Act.

[PL 2021, c. 107, §3 (NEW).]

**7. Applicability.** A distributed generation resource with a nameplate capacity of greater than 2 megawatts and not more than 5 megawatts may be used for net energy billing under this section only if the requirements of paragraph A, B or C are met and all the requirements of paragraphs D and E are met.

A. In order for a distributed generation resource to be used for net energy billing, one of the following must have been met on or before December 31, 2020:

(1) There is a signed interconnection agreement between the entity proposing the development of the distributed generation resource and a transmission and distribution utility governing the

connection of the resource to the utility's system and the ongoing operation of the resource after it is connected to the system; or

(2) There is a net energy billing agreement between the entity proposing the development of the distributed generation resource and the transmission and distribution utility.

An amendment, revision or reissuance of an agreement under this paragraph that occurs after December 31, 2020 may not be interpreted to affect the date on which the initial agreement was signed. [PL 2021, c. 390, §1 (NEW).]

B. In order for a distributed generation resource to be used for net energy billing, one of the following must have been met on or before April 30, 2021:

(1) A complete application for a customer net energy billing agreement has been submitted for the distributed generation resource and a customer has or customers have financial interest in 90% or more of the capacity of that distributed generation resource; or

(2) There is a fully executed net energy billing agreement between a customer or sponsor of the distributed generation resource and the transmission and distribution utility for the distributed generation resource and a customer has or customers have financial interest in 90% or more of the capacity of that distributed generation resource. [PL 2021, c. 390, §1 (NEW).]

C. In order for a distributed generation resource to be used for net energy billing, the following must have been met on or before June 1, 2021:

(1) The interconnection study process has commenced for a distributed generation resource located in those portions of the service territory of an investor-owned transmission and distribution utility that are not connected to the ISO-NE region as defined in section 1902, subsection 3. [PL 2021, c. 390, §1 (NEW).]

D. In order for a distributed generation resource to be used for net energy billing, all of the following must be met on or before December 31, 2021:

(1) There is a fully executed interconnection agreement between the entity proposing the development of the distributed generation resource and the transmission and distribution utility;

(2) The entity proposing the development of the distributed generation resource certifies to the commission that the entity has submitted all applicable permit applications to the Department of Environmental Protection and the department has accepted those applications for processing; and

(3) The entity proposing the development of the distributed generation resource certifies to the commission that the entity has received all necessary local, nonministerial permits. For purposes of this subparagraph, "nonministerial permit" means a permit for which one or more officials consider various factors and exercise discretion in deciding whether to issue or deny the permit.

An amendment, revision or reissuance of an agreement under this paragraph that occurs after December 31, 2021 may not be interpreted to affect the date on which the agreement was initially executed. [PL 2021, c. 390, §1 (NEW).]

E. In order for a distributed generation resource to be used for net energy billing, the following must be met on or before December 31, 2024:

(1) The proposed distributed generation resource must reach commercial operation by the date specified in the net energy billing agreement or by the date specified with an allowable modification to that agreement. [PL 2021, c. 390, §1 (NEW).]

An entity proposing the development of a distributed generation resource that does not meet one or more of the requirements of this subsection may petition the commission for a good-cause exemption

due to external delays outside of the entity's control, which the commission may grant if it finds that, without the external delays, the entity could reasonably have been expected to meet the requirements.

The goal for development of commercially operational distributed generation resources under this subsection and section 3209-B, subsection 7 is 750 total megawatts.

[PL 2021, c. 659, §17 (AMD).]

**REVISOR'S NOTE:** (Subsection 7 as enacted by PL 2021, c. 370, §1 and reallocated by RR 2021, c. 1, Pt. A, §37 is REALLOCATED TO TITLE 35-A, SECTION 3209-A, SUBSECTION 8)

**8. (REALLOCATED FROM TITLE 35-A, SECTION 3209-A, SUBSECTION 7) Unused kilowatt-hour credits; rules.** To the extent rules adopted under this section provide for the periodic expiration of unused kilowatt-hour credits accumulated by a customer participating in a net energy billing arrangement, the commission shall require by rule that each transmission and distribution utility with a net energy billing arrangement shall account for and, on or before January 1st of each year, remit the value of all unused kilowatt-hour credits that were accumulated and that expired during the prior calendar year to the commission for the benefit of individuals receiving low-income assistance in accordance with section 3214, subsection 2. The rules adopted by the commission pursuant to this subsection must:

A. Establish the manner by which a transmission and distribution utility must account for unused kilowatt-hour credits that were accumulated by all customers of the utility with net energy billing arrangements during the prior calendar year and that expired during the prior calendar year; and [PL 2021, c. 370, §1 (NEW); RR 2021, c. 1, Pt. A, §37 (RAL); PL 2021, c. 659, §18 (RAL); PL 2021, c. 705, §13 (RAL).]

B. Establish the manner by which a transmission and distribution utility must remit the value of the unused and expired kilowatt-hour credits. [PL 2023, c. 230, §1 (AMD).]

Notwithstanding any provision of this section to the contrary, rules adopted by the commission pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2023, c. 230, §1 (AMD).]

**9. Applicability to projects between one megawatt and 2 megawatts.** A distributed generation resource with a nameplate capacity of at least one megawatt and not more than 2 megawatts may be used for net energy billing under this section only if the requirements of paragraph A are met.

A. On or before December 31, 2024, the proposed distributed generation resource must reach commercial operation by the date specified in the net energy billing agreement or by the date specified with an allowable modification to that agreement. [PL 2023, c. 411, §2 (NEW).]

An entity proposing the development of a distributed generation resource that does not meet the requirement of this subsection may petition the commission for a good-cause exemption due to external delays outside of the entity's control, which the commission may grant if it finds that without the external delays the entity could reasonably have been expected to meet the requirement.

[PL 2023, c. 411, §2 (NEW).]

#### SECTION HISTORY

PL 2011, c. 262, §1 (NEW). RR 2017, c. 1, §32 (COR). PL 2019, c. 16, §1 (AMD). PL 2019, c. 478, Pt. A, §3 (AMD). PL 2021, c. 107, §§1-3 (AMD). PL 2021, c. 370, §1 (AMD). PL 2021, c. 390, §1 (AMD). RR 2021, c. 1, Pt. A, §37 (COR). PL 2021, c. 659, §§17, 18 (AMD). PL 2021, c. 705, §13 (AMD). PL 2023, c. 230, §1 (AMD). PL 2023, c. 411, §2 (AMD).

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