TITLE XXXIV
PUBLIC UTILITIES

CHAPTER 362-A
LIMITED ELECTRICAL ENERGY PRODUCERS ACT

Section 362-A:1

362-A:1 Declaration of Purpose. – It is found to be in the public interest to provide for small scale and diversified sources of supplemental electrical power to lessen the state's dependence upon other sources which may, from time to time, be uncertain. It is also found to be in the public interest to encourage and support diversified electrical production that uses indigenous and renewable fuels and has beneficial impacts on the environment and public health. It is also found that these goals should be pursued in a competitive environment pursuant to the restructuring policy principles set forth in RSA 374-F:3. It is further found that net energy metering for eligible customer-generators may be one way to provide a reasonable opportunity for small customers to choose interconnected self generation, encourage private investment in renewable energy resources, stimulate in-state commercialization of innovative and beneficial new technology, enhance the future diversification of the state's energy resource mix, and reduce interconnection and administrative costs.

Source. 1978, 32:1. 1994, 362:2. 1998, 261:1, eff. Aug. 25, 1998. 2010, 143:1, eff. Aug. 13, 2010.

Section 362-A:1-a

362-A:1-a Definitions. – In this chapter:

I. "Bio-oil" means a liquid renewable fuel derived from vegetable oils, animal fats, wood, straw, forestry byproducts, or agricultural byproducts using noncombustion thermal, chemical, or biological processes, including, but not limited to, distillation, gasification, hydrolysis, or pyrolysis, but not including anaerobic digestion, composting, or incineration.

I-a. "Bio synthetic gas" means a gaseous renewable fuel derived from vegetable oils, animal fats, wood, straw, forestry byproducts, or agricultural byproducts using noncombustion thermal, chemical, or biological processes, including, but not limited to, distillation, gasification, hydrolysis, or pyrolysis, but not including anaerobic digestion, composting, or incineration.

I-b. "Biodiesel" means a renewable diesel fuel substitute that is composed of mono-alkyl esters of long chain fatty acids, is derived from vegetable oils or animal fats, and meets the requirements of the American Society for Testing and Materials (ASTM) specification D6751.

I-c. "Cogeneration facility" means a facility which produces electric energy and other forms of useful energy, such as steam or heat, which are used for industrial, commercial, heating, or cooling purposes.

I-d. "Combined heat and power system" means a new system installed after July 1, 2011, that produces heat and electricity from one fuel input using an eligible fuel, without restriction to generating technology, has an electric generating capacity rating of at least one kilowatt and not more than 30 kilowatts and a fuel system efficiency of not less than 80 percent in the production of heat and electricity, or has an electric generating capacity greater than 30 kilowatts and not more than one megawatt and a fuel system efficiency of not less than 65 percent in the production of heat and electricity. Fuel system efficiency shall be measured as usable thermal and electrical output in BTUs divided by fuel input in BTUs.

II. "Commission" means the New Hampshire public utilities commission.

II-a. "Electricity suppliers" has the same meaning as in RSA 374-F:2, II.

II-b. "Eligible customer-generator" or "customer-generator" means an electric utility customer who owns, operates, or purchases power from an electrical generating facility either powered by renewable energy or which employs a heat led combined heat and power system, with a total peak generating capacity of up to and including one megawatt, that is located behind a retail meter on the customer's premises, is interconnected and operates in parallel with the electric grid, and is used to offset the customer's own electricity requirements. Incremental generation added to an existing generation facility, that does not itself qualify for net metering, shall qualify if such incremental generation meets the qualifications of this paragraph and is metered separately from the nonqualifying facility.

II-c. "Eligible fuel" means natural gas, propane, wood pellets, hydrogen, or heating oil when combusted with a burner, including air emission standards for the device using the approved fuel.

II-d. "Heat led" means that the combined heat and power system is operated in a manner to satisfy the heat usage needs of the customer-generator.

III. "Limited producer" or "limited electrical energy producer" means a qualifying small power producer or a qualifying cogenerator, with a total capacity of not more than 5 megawatts.

III-a. "Net energy metering" means measuring the difference between the electricity supplied over the electric distribution system and the electricity generated by an eligible customer-generator which is fed back into the electric distribution system over a billing period.

IV. "Person" means any individual, partnership, association, corporation, governmental unit or agency or any combination thereof.

V. "Primary energy source" means the fuel or fuels used for the generation of electric energy, except that such term does not include the minimum amounts of fuel required for ignition, startup, testing, flame stabilization, or control uses or the minimum amounts of fuel required to alleviate or prevent unanticipated equipment outages or emergencies directly affecting the public health, safety or welfare which would result from electric power outages.

VI. "Qualifying cogeneration facility" means a cogeneration facility which the commission determines meets such requirements, including requirements respecting minimum size, fuel use and fuel efficiency, as the commission may prescribe and which is owned by a person not primarily engaged in the generation or sale of electric power, other than electric power solely from cogeneration facilities or small power production facilities.

VII. "Qualifying cogenerator" means the owner or operator of a qualifying cogeneration facility.

VII-a. "Qualifying facility" means either or both of a qualifying small power production facility or qualifying cogeneration facility.

VIII. "Qualifying small power producer" means the owner or operator of a qualifying small power production facility.

IX. "Qualifying small power production facility" means a small power production facility which the commission determines meets such requirements, including requirements respecting fuel use, fuel efficiency and reliability, as the commission may prescribe and which is owned by a person not primarily engaged in the generation or sale of electric power, other than electric power solely from cogeneration facilities or small power production facilities.

X. "Small power production facility" means a facility which produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, bio-oil, bio synthetic gas, biodiesel, or any combination thereof and which has a power production capacity which, together with any other facility located at the same site, as determined by the commission, is not greater than 30 megawatts.

Source. 1983, 395:1. 1989, 211:1. 1998, 261:2-4. 2006, 294:1, 2. 2007, 174:1, eff. Aug. 17, 2007. 2010, 143:2, eff. Aug. 13, 2010. 2011, 168:1, 2, eff. July 1, 2011. 2013, 266:1, eff. July 24, 2013. 2014, 130:2, eff. Aug. 15, 2014.

Section 362-A:2

362-A:2 Exemptions. – Qualifying small power producers and qualifying cogenerators shall be exempt from all rules and statutes relative to electric utility rates or relative to the financial or organizational regulation of electric utilities.

Source. 1978, 32:1. 1983, 395:2, eff. Aug. 21, 1983.

Section 362-A:2-a

362-A:2-a Purchase of Output by Private Sector. –

I. A limited producer of electrical energy shall have the authority to sell its produced electrical energy to not more than 3 purchasers other than the franchise electric utility, unless additional authority to sell is otherwise allowed by statute or commission order. Such purchaser may be any individual, partnership, corporation, or association. The commission may authorize a limited producer, including eligible customer-generators, to sell electricity at retail, either directly or indirectly through an electricity supplier, within a limited geographic area where the purchasers of electricity from the limited producer shall not be charged a transmission tariff or rate for such sales if transmission facilities or capacity under federal jurisdiction are not used or needed for the transaction. The public utilities commission shall review and approve all contracts concerning a retail sale of electricity pursuant to this section. The public utilities commission shall not set the terms of such contracts but may disapprove any contract which in its judgment:

(a) Fails to protect both parties against excessive liability or undue risk, or

(b) Entails substantial cost or risk to the electric utility in whose franchise area the sale takes place, or

(c) Is inconsistent with the public good.

II. Upon request of a limited producer, any franchised electrical public utility in the transmission area shall transmit electrical energy from the producer's facility to the purchaser's facility in accordance with the provisions of this section. The producer shall compensate the transmitter for all costs incurred in wheeling and delivering the current to the purchaser. The public utilities commission must approve all such agreements for the wheeling of power and retains the right to order such wheeling and to set such terms for a wheeling agreement including price that it deems necessary. The public utilities commission or any party involved in a wheeling transaction may demand a full hearing before the commission for the review of any and all of the terms of a wheeling agreement.

III. Before ordering an electric utility to wheel power from a limited electric producer or before approving any agreement for the wheeling of power, the public utilities commission must find that such an order or agreement:

(a) Is not likely to result in a reasonably ascertainable uncompensated loss for any party affected by the wheeling transaction.

(b) Will not place an undue burden on any party affected by the wheeling transaction.

(c) Will not unreasonably impair the reliability of the electric utility wheeling the power.

(d) Will not impair the ability of the franchised electric utility wheeling the power to render adequate service to its customers.

Source. 1979, 411:1. 1998, 261:5, eff. Aug. 25, 1998.

Section 362-A:3

362-A:3 Purchase of Output of Limited Electrical Energy Producers by Public Utilities. –

I. The entire output of electric energy of such limited electrical energy producers, if offered for sale to the electric utility, shall be purchased by the electric public utility which serves the franchise area in which the installations of such producers are located.

II. No purchases and related transactions involving qualifying facilities shall take place under RSA 362-A:3 or RSA 362-A:4 in any location where retail electric competition is certified to exist pursuant to RSA 38:36, unless such purchase or related transaction is pursuant to:

(a) Commission orders or agreements providing for qualifying facility power sales existing prior to such certification;

(b) Negotiated qualifying facility power purchase contracts existing prior to such certification; or

(c) Commission orders or agreements resulting from the renegotiation of orders, agreements, or contracts referenced in subparagraphs (a) and (b).

Source. 1978, 32:1. 1979, 411:2. 1983, 395:3. 1998, 261:6, eff. Aug. 25, 1998.

Section 362-A:4

362-A:4 Payment by Public Utilities for Purchase of Output. – Public utilities purchasing electrical energy in accordance with the provisions of this chapter shall pay rates per kilowatt hour to be set from time to time by the commission. Such rates shall be based on the purchasing utility's avoided costs. The commission may set long term rates which shall, at the option of the qualifying small power producer or qualifying cogenerator, be based on the purchasing utility's avoided costs either calculated for the time of delivery or calculated for a specified term at the time the qualifying small power producer or qualifying cogenerator agrees to be obligated to deliver for the specified term. Nothing in this section shall limit the authority of any electric utility or any qualifying small power producer or qualifying cogenerator to agree to a rate for any purchase which differs from the rate or terms or conditions which would otherwise be required by the commission. No payments or rates shall be required by this section in locations where retail electric competition is certified to exist pursuant to RSA 38:36, unless such payments or rates are pursuant to an arrangement authorized by RSA 362-A:3.

Source. 1978, 32:1. 1983, 395:4. 1998, 261:7, eff. Aug. 25, 1998.

Section 362-A:4-a

362-A:4-a Additions to Capacity of Small Power Production Facilities. – Any qualifying small power production facility already subject to rates established by order of the commission may increase its capacity and energy or energy, provided it continues to be a small power production facility. Any capacity additions and the associated energy additions or the energy additions to such qualifying small power production facility shall be purchased in accordance with applicable law and may be purchased under a contract. Such capacity addition and associated energy additions or energy additions shall not be purchased under the rates established by existing orders of the commission. Such rates and orders shall otherwise remain applicable to the qualifying small power production facility.

Source. 1989, 211:2, eff. July 21, 1989.

Section 362-A:4-b

362-A:4-b Buyout of Existing Rate Orders. – [Repealed 1998, 261:15, eff. Aug. 25, 1998.]

Section 362-A:4-c

362-A:4-c Consideration by the Commission. –

I. The commission shall independently and expeditiously consider any mutually acceptable agreement for the buydown, buyout, or renegotiation of any existing commission order providing for qualifying

facility power sales or power purchase agreement regardless of the status of any other such pending renegotiations.

II. The commission shall not approve any buyout of a listed facility prior to July 1, 2000. The commission shall not approve any buyout of a listed facility until competition is certified to exist in at least 70 percent of the state pursuant to RSA 38:36.

III. The commission shall not approve any renegotiation which places restrictions on selling the output of the qualifying facility in a competitive generation market pursuant to RSA 374-F.

IV. The commission shall not approve any renegotiation of a commission order providing for power sales from a listed facility if, for any calendar year prior to 2006, that renegotiation would reduce the total number of kilowatt hours being purchased annually at predetermined prices from all listed facilities to less than 80 percent of the base listed-facility kilowatt hours for that calendar year.

V. In this section:

(a) "Base listed-facility kilowatt hours for that calendar year" means the total number of kilowatt hours which would have been purchased during the calendar year from all listed facilities if the renegotiated rate orders for all such listed facilities pending before the commission as of January 1, 1998 had been approved.

(b) "Buyout" means any modification of any existing commission order providing for power sales from a listed facility that (i) changes the termination date of that order to an earlier date, unless the modified termination date is not earlier than the termination date in the renegotiated buydown for that listed facility which was pending before the commission as of January 1, 1998, or (ii) eliminates predetermined prices for any of the output of the facility covered by the rate order.

(c) "Listed facility" means any of the 5 wood-fired qualifying facilities having rate orders which, as of January 1, 1998, provide the right to sell at least 10 megawatts of capacity and associated energy to Public Service Company of New Hampshire.

Source. 1994, 362:13. 1998, 261:8, eff. Aug. 25, 1998.

Section 362-A:4-d

362-A:4-d Retention of Savings by Electric Utility. – An electric utility that is party to an approved renegotiation of a commission order under RSA 362-A:4-c shall be entitled to retain 20 percent of the savings resulting from such renegotiation.

Source. 2000, 249:1. 2001, 29:8, eff. May 22, 2001.

Section 362-A:5

362-A:5 Settlement of Disputes. – Any dispute arising under the provisions of this chapter may be referred by any party to the commission for adjudication.

Source. 1978, 32:1. 1983, 395:4, eff. Aug. 21, 1983.

Section 362-A:6

362-A:6 Tax Exemption for Qualifying Small Power Production Facilities and Qualifying Cogeneration Facilities. – [Repealed 1997, 294:3, eff. March 1, 1997.]

Section 362-A:6-a

362-A:6-a Payment in Lieu of Tax Agreements for Renewable Generation Facilities. – The

owner, or a lessee responsible for payment of taxes, of a renewable generation facility and the municipality in which the facility is located may enter into a voluntary agreement to make a payment in lieu of taxes, pursuant to RSA 72:74.

Source. 2006, 294:7, eff. April 1, 2006.

Section 362-A:7

362-A:7 Hydroelectric Fund Authorized. – Any town or city may establish a hydroelectric fund to hold a portion of the revenue received from its hydroelectric plant. The hydroelectric fund may be established by a majority vote at an annual or special town meeting or majority vote of the city council. If established, the town or city treasurer shall have custody of the hydroelectric fund, and shall pay out the same upon orders of the selectmen or city council, after the specified sum to be withdrawn has been authorized by a majority vote at an annual or special town meeting or majority vote of the city council. Money from this fund may be used for any purpose for which the town or city may appropriate money.

Source. 1985, 145:1, eff. May 20, 1985.

Section 362-A:8

362-A:8 Payment Obligations; Public Utilities. –

I. The purpose of this section is to codify existing law on regulatory obligations of public utilities for the purchase, pursuant to applicable federal and state law and commission orders, of energy or energy and capacity from qualifying small power producers and qualifying cogenerators.

II. (a) Energy or energy and capacity provided by qualifying small power producers and qualifying cogenerators under commission orders or negotiated power purchase contracts are part of the energy mix relied on by the commission to serve the present and future energy needs of the state. The rates established in orders by the commission for the purchase of energy or energy and capacity from qualifying small power producers and qualifying cogenerators under this chapter or under applicable federal law exist under the legislative and regulatory authority of the state and shall be deemed a state approved legally enforceable obligation.

(b) The commission shall, in all decisions affecting qualifying small power producers and qualifying cogenerators, consider the following factors in its decisions:

(1) The economic impact upon the state, including, but not limited to, job loss or creation through the utilization of indigenous fuels for electric generation.

(2) The community impact including, but not limited to, property tax payments and job creation.

(3) Enhanced energy security by utilizing mixed energy sources, including indigenous and renewable electrical energy production.

(4) Potential environmental and health-related impacts.

(5) The impact on electric rates.

III. The invalidity of any part of this section shall not destroy the section as a whole if its general purpose can be accomplished, notwithstanding any such invalidity.

Source. 1988, 174:1. 1994, 362:3. 1998, 261:9, eff. Aug. 25, 1998.

Section 362-A:9

362-A:9 Net Energy Metering. –

I. Standard tariffs providing for net energy metering shall be made available to eligible customer-generators by each electric distribution utility in conformance with net metering rules adopted and

orders issued by the commission. Each net energy metering tariff shall be identical, with respect to rates, rate structure, and charges, to the tariff under which a customer-generator would otherwise take default generation supply service from the distribution utility. Such tariffs shall be available on a first-come, first-served basis within each electric utility service area under the jurisdiction of the commission until such time as the total rated generating capacity owned or operated by eligible customer-generators totals a number equal to 50 megawatts multiplied by each such utility's percentage share of the total 2010 annual coincident peak energy demand distributed by all such utilities as determined by the commission. No more than 4 megawatts of such total rated generating capacity shall be from a combined heat and power system as defined in RSA 362-A:1-a, I-d.

II. Competitive electricity suppliers registered under RSA 374-F:7 may determine the terms, conditions, and prices under which they agree to provide generation supply to and purchase net generation output from eligible customer-generators.

III. Metering shall be done in accordance with normal metering practices. A single net meter that shows the customer's net energy usage by measuring both the inflow and outflow of electricity internally shall be the extent of metering that is required at facilities with a total peak generating capacity of not more than 100 kilowatts. A bi-directional metering system that records the total amount of electricity that flows in each direction from the customer premises, either instantaneously or over intervals of an hour or less, shall be required at facilities with a total peak generating capacity of more than 100 kilowatts. Customer-generators shall not be required to pay for the installation of net meters, but shall pay for the installation of all bi-directional metering systems as outlined in utility interconnection tariffs or rules.

IV. (a) For facilities with a total peak generating capacity of not more than 100 kilowatts, when billing a customer-generator under a net energy metering tariff that is not time-based, the utility shall apply the customer's net energy usage when calculating all charges that are based on kilowatt hour usage. Customer net energy usage shall equal the kilowatt hours supplied to the customer over the electric distribution system minus the kilowatt hours generated by the customer-generator and fed into the electric distribution system over a billing period.

(b) For facilities with a total peak generating capacity of more than 100 kilowatts, the customer-generator shall pay all applicable charges on all kilowatt hours supplied to the customer over the electric distribution system, less a credit on default service charges equal to the metered energy generated by the customer-generator and fed into the electric distribution system over a billing period.

V. When a customer-generator's net energy usage is negative (more electricity is fed into the distribution system than is received) over a billing period, such surplus shall either:

(a) Be credited to the customer-generator's account on an equivalent basis for use in subsequent billing cycles as a credit against the customer's net energy usage or bill in a manner consistent with either subparagraph IV(a) or IV(b), as applicable; or

(b) Except as provided in paragraph VI, the customer-generator may elect to be paid or credited by the electric distribution utility for its excess generation at rates that are equal to the utility's avoided costs for energy and capacity to provide default service as determined by the commission consistent with the requirements of the Public Utilities Regulatory Policy Act of 1978 (PURPA). The commission shall determine reasonable conditions for such an election, including the frequency of payment and how often a customer-generator may choose this option versus the option in subparagraph (a).

VI. Instead of the option in subparagraph V(b), an electric distribution utility providing default service to customer-generators may voluntarily elect, annually, on a generic basis, by notification to the commission, to purchase or credit such excess generation from customer-generators at a rate that is equal to the generation supply component of the applicable default service rate, provided that payment is issued at least as often as whenever the value of such credit, in excess of amounts owed by the customer-generator, is greater than $50.

VII. A distribution utility may perform an annual calculation to determine the net effect this section had on its default service and distribution revenues and expenses in the prior calendar year. The method of performing the calculation and applying the results, as well as a reconciliation mechanism to collect

or credit any such net effects with appropriate carrying charges and credits applied, shall be determined by the commission.

VIII. Notwithstanding other provisions of this section, the commission may establish, on a utility-specific or generic basis, a methodology by which customer-generators may be provided service under time-based, net energy metering tariffs. The methodology shall specify how a customer's energy usage and generation shall be metered, how net energy usage shall be calculated and any applicable charges applied, and how excess generation shall be credited, consistent with size limits and the terms and conditions and intent of this section and other requirements of state and federal law.

IX. Renewable energy credits shall remain the property of the customer-generator until such credits are sold or transferred. If an electric distribution utility acquires renewable energy credits from a customer-generator in conjunction with purchasing excess generation, it may apply such generation and credits to its renewable energy source default service option under RSA 374-F:3, V(f).

X. The commission shall adopt rules, pursuant to RSA 541-A, to:

(a) Establish reasonable interconnection requirements for safety, reliability, and power quality as it determines the public interest requires. Such rules shall not exceed applicable test standards of the American National Standards Institute (ANSI) or Underwriters Laboratory (UL); and

(b) Implement the provisions of this section.

XI. The commission may by order, after notice and hearing:

(a) Waive any of the limitations set forth in this chapter for targeted net energy metering arrangements that are part of a utility strategy to minimize distribution or other costs; and

(b) Implement any utility-specific provisions authorized under this section.

XII. Once the commission has established standards for equipment used by eligible customer-generators, electric distribution utilities shall not require any additional standards or testing for transmission equipment as a condition of net energy metering.

XIII. Customer-generators shall be responsible for all costs associated with interconnection with the distribution system.

XIV. (a) A customer-generator may elect to become a group host for the purpose of reducing or otherwise controlling the energy costs of a group of customers who are not customer-generators. The group of customers shall be default service customers of the same electric distribution utility as the host. The host shall provide a list of the group members to the commission and the electric distribution utility and shall certify that all members of the group have executed an agreement with the host regarding the utilization of kilowatt hours produced by the eligible facility and that the total historic annual load of the group members together with the host exceeds the projected annual output of the host's facility. The commission shall verify that these group requirements have been met and shall register the group host. The commission shall establish the process for registering hosts, including periodic re-registration, and the process by which changes in membership are allowed and administered.

(b) Except as provided in subparagraph (c), the provisions of this section shall apply to a group host as a customer-generator.

(c) Notwithstanding paragraph V, a group host shall be paid for its surplus generation at the end of each billing cycle at rates consistent with the credit the group host receives relative to its own net metering under either subparagraph IV(a) or (b). On an annual basis, the electric distribution utility shall calculate a payment adjustment if the host's surplus generation for which it was paid is greater than the group's total electricity usage during the same time period. The adjustment shall be such that the resulting compensation to the host for the amount that exceeded the group's total usage shall be at the utility's avoided cost or its default service rate in accordance with subparagraph V(b) or paragraph VI. The utility shall pay or bill the host accordingly.

(d) Group hosts shall be responsible for any costs necessary to upgrade a utility's information systems in order to implement this paragraph, as determined by the commission.

(e) The commission is authorized to assess fines against, revoke the registration of, and prohibit from doing business in the state, any group host which violates the requirements of this paragraph and rules adopted pursuant to this paragraph.

Source. 1998, 261:10. 2000, 148:1, 2. 2007, 174:2-4, eff. Aug. 17, 2007. 2010, 143:3, eff. Aug. 13, 2010. 2011, 168:3, eff. July 1, 2011. 2012, 59:1, eff. July 13, 2012. 2013, 266:2, eff. July 24, 2013.