**65-407 PUBLIC UTILITIES COMMISSION**

**Chapter 313: CUSTOMER NET ENERGY BILLING**

**SUMMARY**: This rule establishes the requirements for net energy billing.

**§ 1 PURPOSE**  4

**§ 2 DEFINITIONS**  4

**§ 3 NET ENERGY BILLING REQUIREMENTS** 7

 A. Customer Qualification 7

 B. Contact Person 7

 1. Single Customer Facilities 7

 2. Shared financial interest customer facilities 8

 3. Timeframes 8

 4. Record Maintenance 8

 C. Shared Financial Interest Provisions 8

1. Transfer…………………………………………………………………………...8
2. Shared financial interest customer classes………………………………………..8
3. Competitive Electricity Provider…………………………………………………8
4. Consumer-owned Utility Exemption……………………………………………..8

 D. Application 9

1. Customer identities……………………………………………………………….9
2. Financial interest………………………………………………………………….9
3. Contact information 9
4. Accounts 9
5. Allocation specification 9
6. Facility 9
7. Affidavit 9

 E. Allocation Methodology 9

 F. Micro Combined Heat and Power Systems 9

 G. Service Territory 9

 H. Number of Accounts 9

 I. Net Energy Billing – Kilowatt-Hour Credits Requirements 10

1. Excess Generation 10
2. Excess Usage 10
3. Unused Credits 10
4. Non-usage Charges 11
5. Billing 11
6. Generation Providers 11
7. Treatment of Facility Output 11

 J. Net Energy Billing-Tariff Rate Requirements 11

1. Bill Credit 12
2. Unused Credits 12
3. Billing 12
4. Establishment of Tariff Rate 12
5. Registration and Treatment of Facility Output 13
6. Renewable Energy Credits 14

K. Additional Meters 14

L. Interconnection Requirements 14

M. Standard Contract and Application 14

N. Dispute Resolution 14

O. Reporting and Commission Review 15

1. Commission Review 15
2. Quarterly Report 15

 P. Determination, Allocation, and Reporting of Costs and Benefits …...………………….15

1. Allocation of Costs and Benefits…………………………………………………….16
2. Reporting of Costs and Benefits…………………………………………………….16

**§ 4 CONSUMER PROTECTIONS**  16

1. Applicability 16
2. Trade Practices 16
3. Registration 16
4. Financial Security 16
5. Standard Disclosures 17
6. Affirmative Authorization 17
7. Letter of authorization 17
8. Third-party verification 18
9. Electronic authorization 18
10. Rescission 18
11. Collections 18
12. Marketing 18
13. Sanctions 18
14. Participation in Net Energy 18
15. Cease and Desist Orders 19
16. Restitution 19
17. Other 19
18. Administrative Penalties 19
19. Waiver 19

**§ 5 WAIVER OR EXEMPTION**…………………………………...……………………………….19

**§ 1 PURPOSE**

 The purpose of this Chapter is to implement the State's policy to encourage electricity generation from renewable resources through the adoption of requirements and standards for customer net energy billing.

**§ 2 DEFINITIONS**

1. **Benefits of Distributed Generation Under Net Energy Billing.** “Benefits of distributed generation under net energy billing” means all benefits determined by the Commission to be attributable to distributed generation projects under 35-A M.R.S. §§ 3209-A and 3209-B, including but not limited to:
2. Avoided energy and capacity costs. In determining avoided energy and capacity costs, the Commission must use reasonable estimates of energy and capacity market prices and account for transmission and distribution line losses. The Commission may determine different avoided costs for different time periods, including but not limited to peak and off-peak periods and summer and winter periods;
3. Avoided transmission and distribution costs. In determining avoided transmission and distribution costs, the Commission must use estimates of the marginal transmission and distribution costs and may determine different avoided costs for different time periods;
4. Avoided fossil fuel costs. The Commission must determine avoided fossil fuel costs based on estimated reductions in oil, gas or other fossil fuel use and estimated market prices for these fuels;
5. Avoided transmission and distribution line losses;
6. Demand reduction induced price effects;
7. Transmission and distribution plant extensions or upgrades funded by net energy billing customers; and
8. Any other benefits identified by the Commission.

B. **Collocated.** “Collocated” means an eligible facility that is located on the same premise, property, or development area of a net energy billing customer facility or facilities that are subscribed to that eligible facility.

C. **Commercial or Institutional Customer. “**Commercial or institutional customer” means a nonresidential customer of an investor-owned transmission and distribution utility in Maine.

D. **Competitive Electricity Provider**. “Competitive electricity provider” means a supplier, marketer, broker, aggregator, or any other entity selling electricity supply that is not standard offer service to the public at retail in Maine.

E. **Consumer-owned Transmission and Distribution Utility**. “Consumer-owned transmission and distribution utility” has the same meaning as specified in Title 35-A, section 3201(6).

F. **Continuous On-site Construction Efforts.** “Continuous on-site construction efforts” means on-site physical work of a significant nature that occurs in every month until mechanical completion, except for delays in construction due to weather and ground conditions that prevent access by construction vehicles or equipment.

G. **Customer**. “Customer” means a person or an entity that takes electricity service through a transmission and distribution utility in Maine.

H. **Discrete Electric Generation Facility.** “Discrete electric generating facility” means a facility that is not sited at the same location or otherwise in geographic proximity to (i) another eligible facility or (ii) a distributed generation resource as defined in Chapter 312 of the Commission's rules in which there is a common financial or other interest that is contrary to the purpose of Title 35-A, sections 3209-A, 3209-B, chapter 34-C.

I. **Effective Transmission and Distribution rate.** “Effective transmission and distribution rate” for a rate class means a rate per kilowatt-hour calculated as the sum of (a) all transmission and distribution revenue collected from customers in the rate class over a given period of time divided by the total kilowatt-hour usage of customers in that rate class over the same period of time.

J. **Eligible Facility**. “Eligible facility” means a discrete electric generating facility that:

1. Has a nameplate of less than 5 megawatts except as provided below;
2. Uses a renewable fuel or technology as specified in Title 35-A, section 3210(2)(B-3), with the additional requirement that a fuel cell must derive its energy from a renewable fuel or technology;
3. Is located in the service territory of a transmission and distribution utility in Maine; and
4. Qualifies as eligible to participate in net energy billing pursuant to Title 35-A M.R.S. section 3209-A or section 3209-B.

**Exceptions.** The following exceptions apply regarding the nameplate capacity of an eligible facility.

1. **Municipal Exception.**  If a municipality is a customer participating in a net energy billing-kilowatt-hour credit arrangement, the nameplate capacity of an eligible facility 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.
2. **Consumer-owned Transmission and Distribution Utility Exception.** An eligible facility located in a service territory of a consumer-owned transmission and distribution utility must have an installed capacity of 100 kilowatts or less unless the consumer-owned transmission and distribution utility elects to allow facilities with an installed capacity less than 5 megawatts.

K. **Financial Interest.** “Financial interest” means, with respect to an eligible facility, facility ownership or shared ownership, a lease agreement, a power purchase agreement, or other arrangements sufficient to represent a financial interest in an eligible facility.

L. **Investor-owned transmission and distribution utility. “**Investor-owned transmission and distribution utility” has the same meaning as in Title 35-A, section 3104, subsection 1, paragraph A.

M. **ISO-NE**. “ISO-NE” means the Independent System Operator of the New England bulk power system.

N. **Mechanical Completion.** “Mechanical completion” means that the eligible facility has been fully physically constructed and is ready for operation.

O. **Micro-Combined Heat and Power System**. “Micro-Combined Heat and Power System” means a system that:

1. Produces heat and electricity from one fuel input, without restriction to specific fuel or generating technology;
2. 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% in the production of heat and electricity or has an electric generating capacity of at least 31 kilowatts and not more than 660 kilowatts and a fuel system efficiency of not less than 65% in the production of heat and electricity;
3. May work in combination with supplemental or parallel conventional heating systems;
4. Is manufactured, installed and operated in accordance with applicable government and industry standards; and

5. Is connected to the electric grid and operated in conjunction with the facilities of a transmission and distribution utility.

P. **Net Energy**. “Net energy” is the difference between the kilowatt-hours consumed by a customer or shared financial interest customers and the kilowatt-hours generated by the customer's or shared financial interest customers’ eligible facility over a billing period.

Q. **Net Energy Billing.** “Net energy billing” means net energy billing arrangements under Title 35-A M.R.S. sections 3209-A or 3209-B.

R. **Net Energy Billing Costs**. “Net energy billing costs” means all legitimate and verifiable costs incurred by a transmission and distribution utility directly attributable to net energy billing. “Net energy billing costs” does not include any costs incurred by a Project Sponsor, a net energy billing customer or any other entity.

S. **Net Energy Billing – Kilowatt-Hour Credit**. “Net energy billing-kilowatt-hour credit" is a billing and metering practice under which a customer or shared financial interest customers are billed on the basis of net energy taking into account unused kilowatt-hour credits from the previous billing period, subject to the provisions of this Chapter.

T. **Net Energy Billing – Tariff Rate**. “Net energy billing-tariff rate” is a billing and metering practice under which a customer or shared financial interest customers receive dollar-valued bill credits calculated and applied in accordance with Section 3(J) of this Chapter.

U. **NMISA**. “NMISA” means the Northern Maine Independent System Administrator of the electricity market in northern Maine.

V. **On-site Physical Work of a Significant Nature.** “On-site physical work of a significant nature” means the installation of apparatus or equipment meant to support generating equipment, such as racking, groundscrews, pilings, ballasts, or grounding systems and the installation of any electricity generating equipment, such as photovoltaic modules or panels, turbines, or boilers.

W. **Project Sponsor. “**Project sponsor” means an entity or its successor or assignee that develops, owns, manages, operates, solicits customers or is otherwise the responsible entity for a shared financial interest eligible facility.

X. **Renewable Energy Credit. “**Renewable energy credit” means a credit or certificate that represents renewable attributes of electric power that may be traded separately from the energy commodity.

Y. **Shared financial Interest**. “Shared financial interest” means a financial interest in an eligible facility that is shared among a group of customers.

Z. **Shared Financial Interest Customers**. “Shared financial interest customers” mean customers that have a financial interest in an eligible facility.

AA. **Shared Financial Interest Facility**. “Shared financial interest facility” means an eligible facility in which more than one customer has shared financial interest.

BB. **Standard Offer Provider**. “Standard offer provider” means a provider of standard offer service chosen pursuant to Chapter 301 of the Commission's rules.

CC. **Tariff Rate. “**Tariff rate” means the applicable rate established in accordance with section 3(J).

DD. **Transmission and Distribution Utility**. “Transmission and distribution utility” has the same meaning as specified in Title 35-A, section 102(20-B).

**§ 3 NET ENERGY BILLING REQUIREMENTS**

A. **Customer Qualification**. Any customer of a transmission and distribution utility that has a financial interest or a shared financial interest in an eligible facility may elect net energy billing.

B. **Contact Person**

1. **Single customer facilities.** A single customer participating in net energy billing, or the customer’s designee, must be the contact person responsible for all communications with the transmission and distribution utility regarding the net energy billing arrangement. The contact person will be responsible for requesting, executing, and complying with the provisions of a net energy billing agreement. In the event that the customer designates more than one applicable meter or accounts to receive credits from its eligible facility, the contact person must inform the transmission and distribution utility of the allocation of net energy or bill credits among that customer's meters and accounts subject to net energy billing. The contact person must promptly inform the transmission and distribution utility of any needed changes to the net energy billing agreement, including changes to the allocation of net energy or bill credits among meters or accounts subject to net energy billing.

2. **Shared financial interest customer facilities.** A project sponsor or the project sponsor’s designee must be the contact person responsible for all communications with the transmission and distribution utility regarding the net energy billing agreement. The contact person must be responsible for requesting, executing, and complying with the provisions of a net billing agreement and must inform the transmission and distribution utility of the allocation of net energy or bill credits among the meters and accounts of the participating shared financial interest customers. The contact person must promptly inform the transmission and distribution utility of any changes to the financial interests or arrangements of the shared financial interest customers, including any changes in the meters or accounts of participating customers or the allocation of interest shares among meters or accounts.

3. **Timeframes.** The specific timeframes for the exchange of information between the contact person and the transmission and distributionutility and the effective date of any related changes must be contained in the applicable net energy billing agreement.

4. **Record maintenance.** The transmission and distribution utility and the contact person must maintain all records related to the net energy billing agreement for the term of the agreement.

C. **Shared Financial Interest Provisions**

1. **Transfer.** Any person or entity may transfer or assign a shared financial interest to the associated project sponsor or to any person or entity eligible to participate in the shared financial interest facility. A project sponsor must provide a process for assignment or transfer of shared financial interests among participating customers or entities. A project sponsor may not impose transfer fees on a person or entity that moves to a different location within the same utility service territory.

1. **Shared financial interest customer classes.** A shared financial interest net energy billing – kilowatt-hour credit arrangement may include both residential and non-residential customers. A shared financial interest net energy billing-tariff rate arrangement may only include commercial and institutional customers. A single shared financial interest net energy billing arrangement may not include both net energy billing-kilowatt-hour credit customers and net energy billing-tariff rate customers, unless allowed by the applicable market rules.
2. **Competitive Electricity Provider**. A project sponsor or its representative or agent that participates in a shared financial interest net energy billing arrangement pursuant to this section is not a competitive electricity provider under Title 35-A, chapter 32.
3. **Consumer-owned Utility Exemption**. Consumer-owned transmission and distribution utilities are not required to provide shared financial interest net energy billing arrangements pursuant to this section. Consumer-owned transmission and distribution utilities may elect to provide shared financial interest ownership net energy billing arrangements in accordance with this Section.

D. **Application**. The contact person must submit to the transmission and distribution utility an application for a net energy billing agreement that contains the information specified in this subsection and other information that the transmission and distribution may reasonably require.

1. **Customer identities**. The names, addresses, telephone numbers and account numbers for all participating customers.

2. **Financial interest**. Documentation that the shared financial interest customers have a valid financial interest in the shared financial interest facility as required by this Chapter.

3. **Contact information**. The name, mailing address, telephone number, and e-mail address of the contact person.

4. **Accounts**. A designation of the meters and accounts that will be subject to the net energy billing agreement.

5. **Allocation specification.** A designation of the share of the output of the eligible facility to be allocated between and among meters or accounts. The allocation must be consistent with the provisions of section 3(E) of this Chapter.

6. **Facility**. A description of the eligible facility, including the facility’s location, capacity, and fuel type or generating technology.

7. **Affidavit.** The application required under this subsection must be accompanied by an affidavit attesting to the truth of the information provided.

E. **Allocation Methodology.** Fornet energy billing agreements that include multiple meters or accounts, kilowatt-hours or bill credits may be allocated as follows; 1) a cascading allocation in which kilowatt-hours or bill credits are allocated in the priority order specified in the application; 2) a fixed percentage allocation in which kilowatt-hours or bill credits are allocated on a fixed percentage as specified in the application; or 3) any other allocation methodology that can be reasonably accommodated by the transmission and distribution utility.

F. **Micro Combined Heat and Power Systems.** Micro combined heat and power systems that have a net energy arrangement on the effective date of this Chapter may continue net energy billing under that agreement for a period of twenty years.

G. **Service Territory**. The eligible facility and the customer accounts subject to net energy billing must be located within a service territory of a single transmission and distribution utility.

H. **Number of Accounts.** Customers or shared financial customers of an investor-owned transmission and distribution utility may designate any number of accounts or meters to participate in net energy billing, except that the number of accounts or meters is limited to 10 for customers or shared financial interest customers located in a service territory administered by the Northern Maine System Administrator or any successor of the independent system administrator for northern Maine unless the Commission determines through an Order that the investor-owned transmission and distribution utility's billing system can accommodate more than 10 accounts or meters for the purpose of net energy billing. Consumer-owned utilities may limit the number of accounts or meters to ten.

I. **Net Energy** **Billing – Kilowatt-Hour Credits Requirements**. A customer or shared financial interest customers qualifying under this section must be billed by transmission and distribution utilities on a net energy basis as follows:

1. **Excess Generation**. If the electricity generated during the billing period by the eligible facility plus any kilowatt-hour credits from prior billing periods exceed the customer's or the shared financial interest customers’ kilowatt-hour usage during the billing period, the excess must be applied to the customer's bill or the shared financial interest customers’ bills for the following billing period as a reduction in the customer's kilowatt-hour usage.
2. **Excess Usage**. If the customer's or the shared financial interest customers’ kilowatt-hour usage exceeds the electricity generated by the eligible facility during the billing period plus any kilowatt-hour credits pursuant to subparagraph 1, the customer or the shared financial interest customers must be billed for the excess kilowatt-hour usage at the applicable retail rate for electricity service.
3. **Unused Credits**. A customer or shared financial interest customers may accumulate unused kilowatt-hour credits and apply them against kilowatt-hour usage over a 12-month rolling period. At the end of each 12-month rolling period, any accumulated unused kilowatt-hour credits may not be applied against any future kilowatt-hour usage. The customer or the shared financial interest customers will receive no compensation for unused kilowatt-hour credits. Beginning on January 1, 2024 and on every January thereafter, transmission and distribution utilities must determine the monetary value of unused and expired kilowatt-hour credits during the prior calendar year using the method described in the following paragraph and remit this value to the Commission for the benefit of customers participating in a program to assist low income households pursuant to Title 35-A, section 3214(2). The utilities will remit the monetized value of these credits to a specially designated fund at the Commission. The Commission will transfer the contents of this fund to the Maine State Housing Authority, which administers the low-income assistance programs in coordination with the Commission. The Commission delegates to the Administrative Director the authority to make the necessary financial transactions to transfer the funds to the Maine State Housing Authority.

To calculate the monetary value of the expired credits, the transmission and distribution utilities must use the following methodology:

For expired credits for residential customers, the transmission and distribution utilities must multiply the transmission and distribution rate as well as the standard offer rate in effect as of December 31 of the calendar year for residential customers and multiply that rate times the total kilowatt hour credits that expired during that calendar year.

For expired credits for commercial and industrial customers who are participating in the kilowatt hour program, the transmission and distribution utilities must multiply the transmission and distribution rate in effect as of December 31 of the calendar year for such customers, as well as the average standard offer rate in effect during the calendar year, and multiply that rate times the total kilowatt hour credits that expired during the calendar year.

4. **Non-usage Charges**. Net energy billing-kilowatt-hour credits only applies to kilowatt-hour usage charges. Net energy billing customers or the shared ownership customers are responsible for all other charges applicable to the customer's rate class and recovered either through fixed amounts or over units other than kilowatt-hours.

5. **Billing**. The transmission and distribution utility may place net energy billing accounts on the same billing cycle. The transmission and distribution utility must allocate the generation output during the billing period and any kilowatt-hour credits from prior billing periods between and among the net energy billing accounts based on the allocation methodology specified pursuant to Section 3(D)(5) of this Chapter.

6. **Generation Providers.** Customers or the shared financial interest customers that elect net energy billing-kilowatt-hour credits may obtain generation service from any competitive electricity provider that agrees to provide service on a net energy basis. If the customer or the shared financial interest customers receives standard offer service, the standard offer provider must provide service on a net energy basis

1. **Treatment of Facility Output.** The transmission and distribution utility must apply the facility output of the eligible facility against supplier load obligations or, as applicable, to otherwise maximize the value of the output. Each transmission and distribution utility must, at least monthly, provide the project sponsor a report showing the generation from their facility. The transmission and distribution utility and project sponsor are jointly responsible for identifying errors. For project sponsors with generators participating in the kilowatt-hour program, the project sponsor must review the total generation in the billing cycle and report any suspected meter data errors to the transmission and distribution utility within 10 business days of the invoice. Once the transmission and distribution utility receives an email from the project sponsor regarding a potential meter data error, the transmission and distribution utility will investigate and communicate findings to the project sponsor. Errors that are identified and brought to the transmission and distribution utility’s attention as described in this paragraph will be corrected within the time period set forth in the ISO-NE tariff or market rules. Meter data errors that are discovered after the 10-day period will only be corrected if the utility is able to correct within the ISO-NE resettlement deadline. The respective obligations of the transmission and distribution utilities, project sponsors and NEB customers must be contained in the standard net energy billing agreement.

J. **Net Energy Billing-Tariff Rate Requirements.** A commercial or institutional customer or commercial or institutional shared financial interest customers qualifying under this section must receive a bill credit as follows:

1. **Bill Credit.** Commercial or institutional customers must receive a bill credit equal to the applicable tariff rate multiplied by the customer’s share of the facility output during the applicable period. The bill credit must apply against the total amount of the bill issued to the customer by the transmission and distribution utility. The bill credit may not result in a negative customer bill.

**2. Unused Credits.** Commercial or institutional customers may accumulate unused bill credits and apply them against their bill over a 12-month rolling period. At the end of each 12-month rolling period, any accumulated unused bill credits must be eliminated and may not be applied against any future bill. The customer will receive no compensation for unused bill credits.

3. **Billing**. The transmission and distribution utility may place net energy billing-tariff rate accounts on the same billing cycle. The transmission and distribution utility must allocate the generation output during the billing period and any bill credits from prior billing periods between and among net energy billing accounts based on the allocation methodology specified by customers pursuant to and as required by Section 3(E) of this Chapter.

4. **Establishment of Tariff Rate.** The Commission must establish the initial tariff rates by December 1, 2019 and subsequent tariff rates prior to January 1 of each year. The Commission delegates to the Director of Electric and Gas Industries the authority to establish the tariff rates in accordance with the provisions of this rule.

* 1. For eligible facilities that comply with the requirements of this paragraph, the tariff rate must equal the standard offer service rate established under Title 35-A, section 3212 that is applicable to the net energy billing-tariff rate customer receiving the bill credit plus 75% of the effective transmission and distribution rate for the rate class that includes the smallest commercial customers of the customer's investor-owned transmission and distribution utility.
	2. The effective transmission and distribution rate must be established for a 12-month period. In the event that the applicable standard offer rate varies by month, the standard offer rate for purposes of the tariff rate will be a single rate based on the average over the twelve-month period. In the event that the applicable standard offer rate is set based on an index or otherwise unknown, the standard offer rate for purposes of the tariff rate will be a single rate based on the average rate over the prior twelve-month period.
	3. The tariff rate established in accordance with subparagraph (a) of this section applies to:

i. eligible facilities with a nameplate capacity of 1 megawatt or less;

ii. eligible facilities that are greater than 1 megawatt if the eligible facility has (a) achieved mechanical completion prior to September 1, 2022 or (b) before September 1, 2022, the project sponsor has commenced on-site physical work of a significant nature on the eligible facility and, since then, the project sponsor has made continuous on-site construction efforts. Eligible facilities that achieve mechanical operation by September 1, 2023 will be considered to have engaged in continuous on-site construction efforts. Project sponsors of eligible facilities that have not achieved mechanical completion by September 1, 2023 may submit a petition to the Commission for determination of whether the continuous on-site construction efforts regarding the eligible facility has occurred.

iii. eligible facilities that are collocated with the facility or facilities of a net energy billing customer or customers that are subscribed to at least 50% of the facility’s output.

* 1. To demonstrate eligibility for the tariff rate established in accordance with section 3(J)(4)(a), an eligible facility with nameplate capacity of greater than 1 MW that has not achieved mechanical completion prior to September 1, 2022 must provide (i) a sworn affidavit and supporting documentation by October 31, 2022, signed by a duly authorized officer or other legally authorized representative of the eligible facility certifying that on-site physical work of a significant nature commenced prior to September 1, 2022 and (ii) a sworn affidavit and supporting documentation after mechanical completion. The affidavit and supporting documentation must be consistent with an affidavit form and content approved by the Commission. The Commission delegates to the Director of Electric and Gas Industries the authority to approve the affidavit form and content.
	2. For eligible facilities that do not satisfy the requirements of Section 3(J)(4)(a)(b)(c) and (d), the tariff rate for credits received in 2022 must be the applicable tariff rate that was established by the Commission for NEB credits received during calendar year 2020. Beginning on January 1, 2023 and for each subsequent year, the tariff rate must be that rate increased by 2.25% each year.

5. **Registration and Treatment of Facility Output.** The commercial or institutional customer, or project sponsor, or a representative or agent must, if required by the market rules, register the eligible facility in the ISO-NE or NMISA market, as applicable, and provide for and pay the costs of required meters and associated equipment. The project sponsor, or the transmission and distribution utility, as designated by the net energy billing agreement, must use commercially reasonable efforts to monetize the value of the energy, capacity, and all other market products relating to the facility output in a manner that maximizes the value of the output of the resource to ratepayers. Each transmission and distribution utility must, at least monthly, provide the project sponsor a report showing the generation from their facility. The transmission and distribution utility and project sponsor are jointly responsible for identifying errors. The transmission and distribution utility will email the hourly readings to the project sponsor within one business day of reporting the generation to the ISO-NE. Project sponsors must review the readings and report any suspected meter errors to the transmission and distribution utility within 7 business days of receipt. Once the transmission and distribution utility receives an email from the project sponsor regarding a potential meter data error, the transmission and distribution utility will investigate and communicate findings to the project sponsor. Errors that are identified and brought to the transmission and distribution utility’s attention as described in this paragraph will be corrected within the time period set forth in the ISO-NE tariff or market rules. Meter data errors that are discovered after the 7-day period will only be corrected if the transmission and distribution utility is able to correct within the ISO-NE resettlement deadline. The respective obligations of the project sponsor and transmission and distribution utility in this regard must be established by the net energy billing agreement.

6. **Renewable Energy Credits.** Renewable energy credits may not be transferred to the transmission and distribution utility.

K. **Additional Meters**. Nothing in this section prohibits a utility from installing additional meters to record purchases and sales separately, provided, however, that unless requested by the customer or shared financial interest customers or required by the allocation methodology contained in Section 3(E) of this Chapter, no customer or the shared financial interest customers may be charged for the cost of the additional meters or other necessary equipment. A customer or shared financial interest customer may request that additional meters be installed if required by the allocation methodology designated by the customer or shared ownership customers. The transmission and distribution utility must maintain Terms and Conditions that set forth the requirements and charges associated with this metering.

L. **Interconnection Requirements**. A customer or project sponsor that elects net energy billing must comply with all interconnection, safety and reliability requirements of the transmission and distribution utility applicable to the eligible facility.

M. **Standard Contract and Application**. Each investor-owned transmission and distribution utility must develop a separate standard contract and application form for both net energy billing-kilowatt-hour credits and net energy billing-tariff rate consistent with the provisions of this Chapter. The standard contracts must allow project sponsors or individual customers to choose a contract with a term length of up to twenty years. The standard contract must include a provision that obligates the parties to negotiate in good faith to revise the contract terms if there is a change in statute or rule that materially alters any right or obligation of a contracting party. Each investor-owned transmission and distribution utility must submit draft standard contracts and application forms for Commission approval. The submission of the draft standard contracts and application forms must occur by December 15, 2019. Additional submissions of draft standard contracts and application forms must be made within 30 days of the effective date of any rule amendments that require the documents to be modified. The Commission may approve deviations from the standard contracts. The Commission delegates to the Director of Electric and Gas Industries the authority to approve the standard contracts and application forms, and any deviation from the standard contracts or application forms.

N. **Dispute Resolution.** A transmission and distribution utility, a customer, or a project sponsor may dispute any matter governed by this Chapter by filing a Notice of Dispute with the Commission. If a transmission and distribution utility is disputing any aspect of an application for a net energy billing agreement, it must file a Notice of Dispute within 21 days of the submission of the application. A transmission and distribution utility, a customer or a project sponsor must engage in good faith efforts to resolve the dispute before a Notice of Dispute is filed. The Commission or the Consumer Assistance and Safety Division will resolve disputes filed pursuant to this provision.

O. **Reporting and Commission Review**

1. **Commission Review.** A transmission and distribution utility must notify the Commission if the cumulative capacity of generating facilities subject to the provisions of this Chapter reaches ten percent of its peak demand. Upon such notification or by September 19, 2022, the Commission will initiate a review of this Chapter to consider the effectiveness of net energy billing in achieving State policy goals and providing benefits to ratepayers. Upon the conclusion of the review, the Commission must submit a report to the Legislature.
2. **Quarterly Report**. On the 15th day following each calendar quarter, or otherwise upon request from the Commission, investor-owned transmission and distribution utilities must file with the Commission a net energy billing report. The net energy billing report must at a minimum, include: (1) a list of all net energy billing agreements in the transmission and distribution utility’s service territory; (2) the capacity, energy output and fuel type or generating technology of each eligible facility; (3) the number of accounts or meters associated with each net energy billing arrangement; (4) an estimate of (i) the actual revenue loss from net energy billing-kilowatt-hour credit arrangements and (ii) the cost of bill credit amounts from net energy billing-tariff rate arrangements; and other costs incurred to implement the requirements of this Chapter including, but not limited to, billing system upgrades and administrative costs.

P. **Determination, Allocation, and Reporting of Costs and Benefits of Net Energy Billing.** The Commission must determine the benefits of distributed generation under net energy billing and the net energy billing costs for the previous year on an annual basis and must allocate such costs and benefits as follows:

**Determination of costs and benefits**

When determining benefits of net energy billing, the Commission must use available regional avoided energy supply cost studies that are applicable to the determination and have been developed through a transparent process with input from state agencies, ratepayer or consumer public advocates, utilities, or energy efficiency administrators from at least three other New England states. When relevant information specific to Maine is not provided in such regional study, the Commission may use the regional information in the regional study or information from other sources supported by evidence, as determined by the Commission.

 The Commission will determine the annual costs of net energy billing as part of the annual proceedings conducted pursuant to Title 35-A, section 3208 to determine and allocate stranded costs.

1. **Allocation of costs and benefits.** The Commission must allocate to each investor-owned transmission and distribution utility its pro rata share of net energy billing costs. If the Commission finds that a benefit of distributed generation under net energy billing provides a monetized net financial benefit to an investor-owned transmission and distribution utility that the Commission does not otherwise account for when setting rates for the utility, the net financial benefit must be applied to offset the net energy billing costs allocated under this section. The allocation must be based on each utility's total retail kilowatt-hour energy sales to ratepayers that pay net energy billing costs. The commission may determine the means to be used for the allocation required under this subsection, and those means may include the direct transfer of funds between transmission and distribution utilities.
2. **Reporting of costs and benefits.** The Commission will submit an annual report to the joint standing committee of the Legislature having jurisdiction over utility matters by March 31 of every year describing the net energy billing costs and benefits. The report must include but is not limited to costs authorized to be collected by the utilities in rate proceedings or benefits directly received by ratepayers. The report will distinguish costs and benefits that are monetized from costs and benefits that are not monetized. To the extent costs or benefits are monetized, the report must specify the entities, including but not limited to utilities, ratepayers, and generators, that will experience the costs and benefits.

**§ 4 CONSUMER PROTECTIONS**

1. **Applicability.** A project sponsor, or a representative or agent of the project sponsor and any entity that markets a shared financial interest to residential or small commercial customers must comply with provisions of this section. Project sponsors are responsible for violations of the provisions of this section by representatives or agents acting on their behalf.
2. **Trade Practices.** Individuals or entities subject to this section must comply with the provisions of the Maine Unfair Trade Practices Act, Title 5, chapter 10 and related consumer protection statutes. Any finding by an entity of competent jurisdiction that an individual or entity violated either the Maine or Federal Unfair Trade Practices Act is deemed to be a violation of this section.

 C. **Registration.** Individuals or entities subject to this section must register with the Commission. The Commission will adopt standard registration forms and specific filing requirements and delegates this task to the Director of Electric and Gas Industries.

D. **Financial Security.** The Commission may establish a financial security requirement for individuals or entities subject to this section. Any such financial security must be held by the transmission and distribution in whose service territory the eligible facility is located. Upon a finding that an individual or entity has violated provisions of this section, the Commission may direct that amounts from the financial security be distributed to (1) customers for a refund of security deposits or advanced payments; (2) to customers for restitution of amounts paid in error or charges assessed in violation of this Chapter; and (3) to the Commission for payment of administrative penalties or any other sanction pursuant to this Chapter or applicable statutes. Prior to establishing financial security requirements pursuant to this provision, the Commission will provide an opportunity for interested persons to comment on whether a financial security requirement should be established, the amount of any such financial security requirement, and the type of security that should be allowed.

E. **Standard Disclosures.** Prior to the sale, resale or lease of a financial interest in the output of an eligible facility, individuals or entities subject to this section must provide a disclosure that, at a minimum, contains the following:

1. A good faith estimate of the annual kilowatt-hours to be received by the shared eligible generation resource based on the size of the subscriber's shared financial interest;
2. A plain language explanation of the terms under which the kilowatt-hour or bill credit will be calculated;
3. A plain language explanation of requirements relating to the disposition or transfer of a shared financial interest;
4. A plain language explanation of the costs and benefits to the potential shared financial interest customer, based on the customer’s current usage for the term of the term of the shared financial interest; and
5. A plain language explanation of renewable attributes represented by renewable energy credits and the effect of selling the renewable attributes.

The Commission will adopt by order standard disclosure forms to be used by individuals or entities subject to this section when marketing a shared financial interest in an eligible facility to customers. The Commission may approve modifications to the standard disclosure forms. The Commission delegates to the Director of Electric and Gas Industries the authority to adopt standard disclosure forms and modifications to the standard disclosure forms.

F. **Affirmative Authorization.** Individuals or entities subject to this section must obtain affirmative authorization from a potential customer prior to the sale or transfer of a financial interest in the output of an eligible facility that would result in a commitment by the customer in the enrollment or participation of the customer. For the purposes of this subsection, the customer's affirmative choice may be evidenced by a customer-signed letter of authorization, third-party verification, or through electronic authorization. Individuals or entities subject to this section must maintain a record of the affirmative authorization for a twelve-month period and provide such records to the Commission upon request.

1. **Letter of authorization**. For the purposes of this provision, the term "letter of authorization" means an easily separable document whose sole purpose is to authorize individuals or entities subject to this section to initiate the sale or transfer of a financial interest in the output of an eligible facility. The letter of authorization must be signed and dated by the customer and must not be combined with a check, prize or other document which intends to confer any benefit on the customer as a result of the customer’s sale or transfer of a financial interest in the output of an eligible facility. The document may be transmitted electronically by the customer to the provider if the provider maintains a security system sufficient to identify the customer and prevent fraudulent use of the letter of authorization by any person.

2. **Third-party verification**. For the purposes of this provision, the term "third-party verification" means an appropriately qualified and independent third party operating in a location physically separate from the marketing representative who has obtained the customer's oral authorization for the sale or transfer of a financial interest in the output of an eligible facility. The authorization must include appropriate verification data, such as the customer's date of birth or other voluntarily submitted information; provided, however, any such information or data in the possession of the third party verifier or the marketing company may not be used, in any instance, for commercial or other marketing purposes, and may not be sold, delivered, or shared with any other party for such purposes.

3. **Electronic authorization.** For purposes of this provision, the term “electronic authorization” refers to a verification of agreement through electronic means. Individuals or entities subject to this section must acknowledge receipt and confirmation of the sale or transfer of a financial interest in the output of an eligible facility within one business day. The confirmation may be provided to the customer by e-mail.

G. **Rescission.** Individuals or entities subject to this section must allow a customer to rescind its authorization in the event such recission is requested orally or in writing within five days of the customer’s receipt of its first bill or invoice. The first bill or invoice must contain a notice that the customer may rescind its authorization and information stating how to proceed to rescind its authorization. The customer is responsible for payment in full of the first bill or invoice. The customer may not be charged any fees if the customer rescinds it authorization pursuant to this provision.

H. **Collections.** Individuals or entities subject to this section may not collect or seek to collect unreasonable costs from a customer who is in default of its financial interest contract or arrangement. For purposes of this provision, unreasonable costs are those in excess of actual out-of-pocket expenses incurred by the project sponsor, including reasonable attorney fees and actual court costs.

I. **Marketing.** In any marketing or promotional activities, individuals or entities subject to this section may not in any manner state, suggest or imply that the product that is being marketed is provided or endorsed by a transmission and distribution utility.

J**. Sanctions.** Individuals or entities that violate the provisions of this section are subject to sanctions. Sanctions may be imposed following a hearing before the Commission in conformance Title 5 M.R.S., Chapter 375, subchapter IV (*Maine Administrative Procedure Act*) and Chapter 110 of the Commission's rules.

1. **Participation in Net Energy Billing.** The Commission may prohibit individuals or entities subject to this section from participating in net energy billing under this Chapter.

2. **Cease and Desist Orders.** The Commission may issue a cease and desist order, if the Commission finds that any individuals or entity subject to this section has engaged or is engaging in any act or practice in violation of any law or rule administered or enforced by the Commission or any lawful order issued by the Commission. A cease and desist order is effective when issued unless the order specifies a later effective date or is stayed pursuant to Title 5, section 11004.

 3. **Restitution.** The Commission may order restitution for any party injured by a violation for which a penalty may be assessed pursuant to this subsection.

 4. **Other.** The Commission may impose any other sanction authorized by law that it determines appropriate taking into account the facts and circumstances that resulted in the violation.

 5. **Administrative Penalties.** The Commission may impose administrative penalties pursuant to Title 35-A, Chapter 15 that it determines appropriate taking into account the facts and circumstances that resulted in the violation.

1. **Waiver.** The Commission may waive the imposition of sanctions upon a showing that the violation was immaterial, unintentional, or that the individual or entity acted in good faith to comply with all applicable statutory and regulatory requirements.

**§ 5 WAIVER OR EXEMPTION**

 **Upon the request** of any person subject to this Chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director Electric and Gas Utility Industries, or the Presiding Officer assigned to a proceeding related to this Chapter may grant the waiver.

STATUTORY AUTHORITY:

35-A M.R.S. §§ 104, 111, 1301, 3209-A, 3209-B.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on December 15, 1998. It was filed with the Secretary of State on December 15, 1998 and became effective on December 20, 1998.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on June 10, 2009. It was filed with the Secretary of State on June 15, 2009 as filing 2009-249, and became effective on July 15, 2009.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on January 20, 2012. It was filed with the Secretary of State on January 24, 2012 as filing 2012-7, and became effective on January 29, 2012.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on March 22, 2017. It was filed with the Secretary of State on March 24, 2017 as filing 2017-051, and became effective on March 29, 2017.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on April 22, 2019. It was filed with the Secretary of State on April 22, 2019 as filing 2019-066 (Emergency), and became effective on April 22, 2019.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on August 7, 2019. It was filed with the Secretary of State on August 7, 2019, and became effective on August 12, 2019 (filing 2019-145).

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on December 7, 2019. It was filed with the Secretary of State on December 2, 2019 and became effective on December 7, 2019 (filing 2019-217).

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on December 9, 2021. It was filed with the Secretary of State on December 9, 2021 and became effective on December 14, 2021 (filing 2021-245).

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on October 11, 2022. It was filed with the Secretary of State on October 17, 2022 and became effective on October 17, 2022 (filing 2022‑207).

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on July 3, 2024 It was filed with the Secretary of State on July 3, 2024 and became effective on July 8, 2024 (filing 2024-143).

NONSUBSTANTIVE CORRECTIONS (cross-references) made to filing 2024-143 – September 30, 2024