

April 2, 2025

MAINE PUBLIC UTILITIES COMMISSION
Investigation into Indian Township Tribal
Government and Eastern Maine Electric
Cooperative Pertaining to Net Energy Billing

EMEC STATEMENT OF THE CASE¹

Eastern Maine Electric Cooperative, Inc. (“EMEC”) has the obligation to assure that the rates of its customers are just and reasonable and no higher than necessary. EMEC just recently went through a rate increase process in which it was guided by that principle and nevertheless had to increase its rates. Neither EMEC nor its customers wish to unnecessarily incur any costs or revenue losses which will contribute to further rate increases in this era of high and growing energy costs. If the solar facilities in question qualify for net energy billing (“NEB”) treatment, EMEC believes that it will incur substantial loss of revenue which would need to be recovered from its customers in their rates for transmission and distribution service. In reviewing the limited information which is currently available, EMEC has not seen any sufficient factual basis to conclude that each of the 206 solar facilities proposed is a “Discrete Electric Generating Facility” (“DEGF”) that qualifies for NEB under Chapter 313 and under the Commission precedent, and at the same time EMEC has seen the adverse impact on customers of EMEC which would result from such qualification.

The Petitioner appears to suggest that the determination of whether the Projects are DEGFs turns only on whether the existence of a common funding source negates discreteness.²

¹ The purpose of this filing is to provide EMEC’s recitation of the facts as EMEC sees it (Tr. 03/11/25, p. 7, l. 15-18) and to state its positions and concerns as they stand at this time which includes EMEC’s concerns with the present lack of necessary information to establish the relevant facts (*Id.*, p. 7, l. 25-p. 8, l. 5).

² See *Indian Twp. Tribal Gov’t*, Request for Advisory Ruling or General Counsel Opinion Regarding Ch. 313 Pertaining to Indian Township Tribal Government, No. 2024-00373, Request for Advisory Ruling or Opinion of

That is an oversimplification of the legal question. As the Commission is aware and as Petitioner elsewhere recognizes,³ the determination of discreteness is determined by applying a nine-factor analysis (some with subfactors) which has been carefully crafted by the Commission over time in a series of highly fact-dependent cases.⁴ The nine factors are as follows:

1. Were the projects at any point in time the subject of unified ownership, management, or supervision?
2. Will the projects now or have they ever shared common equipment or labor?
3. Is there common financing of the projects?
4. Are the projects that are co-located or in geographic proximity under common ownership or have a shared financial interest?
5. Are the projects being developed at or about the same time?
6. Are the projects being managed or developed by the same entity or entities?
7. Do the projects otherwise exhibit characteristics of a unified or common approach?
8. Are there likely to be economies of scale with respect to the development of the projects that would make their development and costs more favorable compared to a stand-alone project of less than 5 MW?
9. Are the projects capable of being interconnected at the same location? If not, what are the reasons for separate interconnection locations?

General Counsel Regarding Ch. 313, §III(A) (Me. P.U.C. Dec. 20, 2024) [hereinafter *Petition*]; *Me. Pub. Utils. Comm'n*, Investigation into Indian Township and Eastern Maine Electric Cooperative Pertaining to Net Energy Billing, No. 2025-00050, Letter Regarding Proposed Schedule (Me. P.U.C. Mar. 7, 2025).

³ See *Petition*, *supra* note 1, at 8-9, 11.

⁴ See *Solar Co. A*, Request for Advisory Ruling Regarding Chapters 312 & 313 Interpretation of Discrete Electric Generating Facility, No. 2020-00006, Advisory Ruling at 10 (Me. P.U.C. Mar. 23, 2020).

As is apparent, the determination of whether projects are discrete is a complex analysis of a substantial amount of facts and information, and all “facilities located within a mile of each other *must* meet the nine-factor test.”⁵ In fact, there have been over 50 Advisory Rulings concerning expansive iteration of NEB post-2019, the vast majority of which have concerned “discreteness.”

Thus, the key to resolving the issues in this case requires acquisition and careful consideration of information and data related to all of the factors affecting a determination of discreteness. At the present time, there is very minimal information and data regarding the factor of “common financing” (Factor 3), and what little information presently exists supports a finding of common financing. With regard to the other factors, there is almost a complete absence of relevant information and data.

In addition to the enumerated nine factors, as also noted in Petitioner’s filing, an overall underlying question in cases of this nature is whether the generation facilities benefit from attributes of “economics of scale.”⁶ Accordingly, the analysis required in this case cannot be conducted solely on consideration of the single factor of common financing, although it is an important factor. All factors and attributes must be considered to determine if a finding of discreteness is satisfied.

Moreover, the need for a careful analysis based on all relevant facts and information is confirmed by the Commission’s decision to modify this case from a simple request for advisory ruling to an adjudicatory proceeding, which allows for the creation of a full record on which to

⁵ *ARE Berwick Solar 1, LLC*, Request for Opinion of General Counsel or Advisory Ruling – Chapter 313 Discrete Electric Generating Facility, Advisory Ruling at 5 (Me. P.U.C. Jan 14, 2025) (emphasis added).

⁶ *Id.* at 7.

base a decision. Accordingly, it appears that the legal rights and duties of the parties are to be determined in this case as a legal, not advisory, matter. In such a case, EMEC has the right to discover, present and confront evidence in the spirit of ensuring its rates remain just and reasonable for its ratepayers. Obtaining the facts necessary to apply the nine-factor test is the only way to comply with Chapter 313 and assure that EMEC can fulfill its duty to serve at just and reasonable rates.

1. The Threshold Question

Before the Commission and the Parties expend time and resources exploring the fact-dependent and careful analysis of the factors and attributes determinative of discreteness, it is prudent to first determine whether it is necessary to do so. The record in this case to date contains precious little information on the status and timing of the grant funding relied upon by the Petitioner. Recent developments, actions and litigation arising out of the new Administration in Washington, D.C., give rise to questions regarding whether, when, and in what amount the funding will occur and whether there are or will be any terms and conditions which bear on the amount and timing of the funding.

At this point all we appear to have is a brief reference in the Petitioner's March 7, 2025, letter to "its recently unfrozen grant funding."⁷ There is no information regarding what is meant by "recently unfrozen grand funding," nor information regarding the specific status, timeline and access to the grant funding, as well as the continued vulnerability to future delays and freezing. Before parties are required to brief this case, the Commission should require that the Petitioner provide specifics on the status of the grant, including copies of any communication and

⁷ Letter Regarding Proposed Schedule, *supra* note 1.

documentation from the Environmental Protection Agency (“EPA”) and any other entity, including lending entities and fund managers, involved in the federal Climate Pollution Reduction Grant. Prior to this case proceeding, it should be determined whether there are actual projects for which to have a formal investigation.

2. The Need for Information to Determine Discreteness

A review of the Commission’s many DEGF decisions confirms the need for consideration of all factors and related information to minimize the potential adverse impacts, under a similar lens and framework as the DEP’s statute on site location and development.⁸ The purpose of this nine-factor test is to ensure that “such developments will be located in a manner that will have a minimal adverse impact.”⁹ “The determination of whether a facility is ‘discrete’ will frequently be fact specific,” and “can be difficult to identify if not examined on a case-by-case basis.”¹⁰ “In determining the eligibility of these projects for the incentives provided by Chapters 312 and 313, the Commission must view these project-specific facts in the context of the statutory purpose of providing financial incentive for the development of net energy billing and distributed generation projects that are small in scale and not able to capitalize on the same economies of scale as larger projects.”¹¹

⁸ See *Solar Co. A*, *supra* note 3, at 9; 38 M.R.S. § 481.

⁹ *Solar Co. A*, *supra* note 3, at 9.

¹⁰ *Id.* at 8.

¹¹ *Id.* at 11.

As can be seen, the question of discreteness is not a question determined solely by the nature of the “funding” of the facilities. The question must be determined by a review of the entire relationship between the facilities.¹²

In analyzing the nine-factors—“[t]he legislature made a determination that these small-scale projects, which do not have the economies of scale of larger projects, are subject to special procurement and development advantages to encourage their development.”¹³ If projects share common financing which allows for the creation of economies of scale, the development of collocated projects would run contrary to the statute’s stated purpose. In addition, “[t]here is nothing in the statute or rule that requires the question of whether these projects are discrete be determined only after the projects are in the hands of the ultimate owner. To do so would ignore the very decision to develop the individual projects, which is at the heart of the question of whether the projects will ever qualify as discrete facilities.”¹⁴

The question cannot be decided solely on the basis of whether the two facilities happen to share the same funding source, such as utilizing the same bank for financing. The correct question is: how did it come about that they have a common bank and what other aspects of the facilities and their interrelationships indicate their discreteness (lack of discreteness).

Even if one were to follow the narrow view of focusing on only the question of a common source of funding, there is a need for much more information than has been presented here. It is necessary to know who all the parties are and what they have said and done that led to

¹² Chapter 313 notes that a discrete electric generating facility is one that is not in geographic proximity to a discrete generation resource “in which there is a common financial or other interest that is contrary to the purpose of [the statute.]” *Solar Co. A*, supra note 3, at 2 (citing Chapter 313).

¹³ *Id.* at 7.

¹⁴ *Borrego Solar Systems, Inc.*, Request for Advisory Ruling Pertaining to Borrego Solar Systems, Inc, No. 2020-00187, 2020-00188, Advisory Rulings at 15 (Me. P.U.C. Sept. 24, 2020).

the common funding source. That inquiry requires access to and review of all communications, including applications and funding documentation. Nothing of that sort has been presented to date.

In converting the request for advisory ruling into a formal investigation, the Commission correctly perceived that the issues in this case are much more than the superficial description of the facts contained in the Petitioner's request for opinion (let alone the scantier suggested question).

There is much information, which if not presented directly by the Petitioner, or required by the Commission to be provided, will require discovery before EMEC and others can be reasonably expected to present their positions. Such information includes details about the grant that are probative of discreteness, including the grant's specific purpose and terms and conditions, as well as who was involved in identifying the opportunity and submitting the application. For example, were individual homeowners involved in or knowledgeable about the grant process or did a single entity organize individual homeowners and act on their collective behalf or on behalf of the grant recipient?

Additionally, information about "the project(s)" is equally probative, including understanding the identities and roles of, and interrelationships between, the owner(s), developer(s), marketer(s) and contractor(s) of the project(s). For example, are individual homeowners involved in negotiating and right-sizing solar arrays to their unique needs, or is a single entity engaged in marketing and subscription management for purposes of meeting certain grant conditions, such as aggregate solar capacity or cost? Are individual homeowners being

offered a “take-it-or-leave-it” deal, or are they negotiating their financial interest, including their property rights in solar arrays and/or share of the value of NEB credits?

Furthermore, information about interconnection will be valuable in assessing discreteness. Are hundreds of individuals filing their own interconnection applications with awareness of their cost responsibility for individual upgrades (*e.g.*, increasing from 100-amp service to 200-amp service), as well as potential distribution and transmission system upgrades caused by a cluster of interconnection requests occurring at the same time in the same area? Or is a single entity acting on behalf of individual homeowners or on behalf of the grant recipient to organize and pursue interconnection applications, and has that entity assumed any of the interconnection cost risk?

The above topics are just a few examples of information that is needed to conduct a proper analysis and determination of discreteness. A more fulsome list is provided as Attachment A. These questions go to the heart of the matter by exploring, for example, whether there was unified ownership, management, or supervision, whether there is common labor and equipment, and there are characteristics of a unified or common approach, and whether there are other economies of scale (in addition to having a common financing through the grant).

Accordingly, the next step in the process cannot be briefing, and must be discovery, as EMEC and other parties have almost none of the facts necessary to inform their legal positions.

3. Assessing the Harm to EMEC’s Customers

In addition to the need for information regarding the determination of the nature of the facilities and their discreteness, so as to qualify for NEB status, information is required in order

to assess the financial impact which would be caused to EMEC and its customers if the solar facilities were accorded NEB status.

The Commission has recognized that “the relatively small size of COUs could create a substantial burden both in terms of revenue loss and administration” and that COUs are permitted several exemptions, including shared ownership NEB agreements.¹⁵ Accordingly, by Commission rule, the installed capacity of a DEGF in a COU’s territory is limited to “100 kW or less unless the consumer-owned transmission and distribution utility elects to allow facilities with an installed capacity less than 5 megawatts.”¹⁶ EMEC has not elected to allow facilities larger than 100 kW in its service territory. The cost of NEB projects to EMEC and its customers is of critical concern to EMEC.

EMEC has sought information needed to assess the economic impact of the solar projects from SolarLogix as early as May, 2024 and as recently as November 2024, just prior to the filing for an Advisory Ruling by the Petitioner. EMEC has not yet obtained the information of the detail required to conduct an accurate analysis. Based on the limited data included with the maps of the Petitioner’s filing, EMEC has been able to make a reasonable preliminary estimate. EMEC’s analysis, based on assumptions due to the lack of complete information, presently shows that EMEC would experience an annual delivery revenue loss of \$225,000 to \$330,000.

¹⁵ *E. Me. Elec. Co-op, Inc.*, Request for Advisory Ruling Regarding Net Energy Billing, No. 2017-00188 Advisory Ruling, 1 n.1 (Me. P.U.C. Oct. 10, 2017); Me. Pub. Utils. Comm’n., Commission Rulemaking Amendments to Net Energy Billing Chapter 313, No. 2008-410, Order Adopting Provisional Rule and Statement of Factual and Policy Basis at 7 (Me. P.U.C. Jan. 8, 2009).

¹⁶ 65-407 Chapter 313 (j) Exceptions (2); *Houlton Water Co.*, Request for Advisory Ruling Related to Net Energy Billing Standards and Application of Safe Harbor Standards, No. 2023-00041, Advisory Ruling (Me. P.U.C. Mar. 16, 2023).

The Commission has had longstanding concern regarding a substantial percentage of a COU's peak capacity being related to NEB facilities. Originally, Chapter 313 had a section that indicated that a transmission and distribution utility shall notify the Commission if the cumulative capacity of generating facilities subject to Chapter 313 reaches 0.5% of its peak capacity. This level was increased to 1.0% in 2009 and increased to 3.0% in 2016. Subsequently it was increased to 10% as the Net Energy Billing program was expanded to include the Net Energy Tariff Billing.

The Commission has included Section 3(O) in Chapter 313 as follows:

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.

Accordingly, EMEC hereby notifies the Commission pursuant to Section 3(O) that if Project 1-206 is implemented, the cumulative capacity of generating facilities subject to the provisions of Chapter 313 will reach and exceed 10% of EMEC's peak demand. If Project 1-206 is to be implemented, EMEC requests that the Commission investigate the impact and the merits of imposing the resulting burden on EMEC and its customers and report the results to the Legislature.

Again, based on the lack of complete information, EMEC believes this project being proposed will result in the distributed generation exceeding 10% of EMEC peak system demand. The EMEC firm peak system demand for 2024 was 20,548 kW. EMEC currently has 39

operational distributed generation projects with a capacity of 366 kW. There are another 6 projects pending with a capacity of 119 kW.

This project being proposed has an estimated capacity of 2,509 kW which represents 12.2% of EMEC's peak load. This project plus the existing and pending projects will represent 14.6% of EMEC's peak load.

In order to confirm and refine its analysis to support the effort to assess and report on the potential impact on EMEC and its customers, EMEC will require additional and specific information, including regarding the design and configuration of the solar facilities and the usage characteristics of the occupants of the building. EMEC is prepared to conduct discovery now for the needed information, or to await a subsequent phase of activity, in the event the Commission were to decide that the solar facilities qualify as Eligible Facilities for NEB process.

Dated at Augusta, Maine, this 2nd day of April, 2025.

Respectfully submitted,



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R. Benjamin Borowski
Counsel for Eastern Maine Electric
Cooperative, Inc.

Preti Flaherty Beliveau & Pachios, LLP
PO Box 1058, 45 Memorial Circle
Augusta, ME 04332

Attachment A: Example of Detailed List of Information Required to Determine Discreteness

Attachment B: Affidavit of Scott M. Hallowell

ATTACHMENT A

Grant Information

1. The grant application and all communications related to the application.
2. Documentation granting the award, including all terms and conditions.
3. Communications regarding the status of the grant in light of federal efforts to constrict or terminate clean energy programs.
4. Identification of the parties (including individual ratepayers, if applicable) involved in obtaining the grant, their roles, and their relationships to one another.
5. The current expected use for the grant money as it relates to development of the solar arrays, including marketing, interconnection, construction, operations, maintenance, and any other applicable cost center.
6. Whether grant monies will fully fund rooftop solar arrays or whether capital from other sources is necessary.

Project Information

1. Identification of the roles and responsibilities of, and interrelationships between, the people and entities involved in developing, marketing, owning, constructing, interconnecting, operating, managing, and maintaining the solar arrays.
2. Description of the role of the Indian Township Tribal Government.
3. Description of the role of SolarLogix LLC.
4. Description of the role of individuals who will have solar arrays constructed on their rooftops ("Individuals").
5. Description of how solar arrays were sized and configured relative to the usage and roof characteristics of Individuals.

Individual Information

1. Communications to and agreements with Individuals.
2. Description of the marketing strategy used and the steps taken to identify and secure Individual participation.
3. Explanation of how that marketing strategy was executed.
4. Description of whether bill/energy/emission savings were calculated. By whom? On what basis? For what purpose?
5. Description of whether Individuals were able to negotiate and actually engaged in negotiations regarding terms and conditions, including regarding size, configuration, interconnection, term, payment structure, and property rights in solar arrays.

Interconnection Information

1. Description of who is applying for interconnection, including whether there is a common organizer for Individuals.
2. Identification of anyone from Indian Township Tribal Government, SolarLogix LLC, or any other involved entity that is advising Individuals on interconnection issues.

3. Description of whether Individuals are informed about the costs associated with in-home electrical work (e.g., metering or new electrical panel), individual interconnection facilities, potential distribution system upgrades, and potential transmission system upgrades.
4. Description of who is responsible for the various types of costs in question 3 above. If the risks are allocated among different parties, who are they and what is the allocation?

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2025-00050

April 2, 2025

MAINE PUBLIC UTILITIES COMMISSION
Investigation into Indian Township Tribal
Government and Eastern Maine Electric
Cooperative Pertaining to Net Energy Billing

**AFFIDAVIT IN SUPPORT OF
EMEC STATEMENT OF CASE**

I, Scott M. Hallowell, in my capacity as the Chief Executive Officer of Eastern Maine Electric Cooperative, Inc. ("EMEC"), being first duly sworn, hereby state that the factual information set forth in the EMEC Statement of Case, dated April 2, 2025, is true and correct to the best of my personal knowledge, information and belief and is adopted as testimony of EMEC in this proceeding.

Dated this 2nd day of April, 2025.

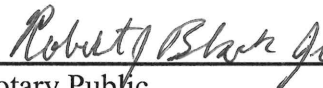


Scott M. Hallowell, Chief Executive Officer
Eastern Maine Electric Cooperative, Inc.

STATE OF MAINE
WASHINGTON, SS.

April 2, 2025

Personally appeared the above-named Scott M. Hallowell, Chief Executive Officer of Eastern Maine Electric Cooperative, Inc., and made oath and swore to the truth of the statements contained in the above Affidavit by him signed.



Notary Public
Printed Name:

My Commission expires

ROBERT J. BLACK JR.,
Notary Public, Maine
My Commission Expires 01-12-2027