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March 24, 2017

Via Electronic Mail and Overnight Delivery

Ms. Debra A. Howland
Executive Director
NH Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301-2429

Re: DE 16-576, Electric Utilities Development of New Alternative Net Metering Tariffs . . .
City of Lebanon Response to “Motion to Focus the Issues at Hearing” and OCA’s “Motion *in Limine* for Admission of Certain Exhibits.”

Dear Ms. Howland,

I write to respond to the pleading filed today by certain parties captioned “Motion to Focus the Issues at Hearing” and the OCA’s “Motion *in Limine* for Admission of Certain Exhibits.”

The City of Lebanon is generally supportive of the motion and believes that all anticipated cross examination and direct and “live rebuttal” testimony by the City fits within the proposed scope of relevant issues and appreciates the parties for bringing their motion forth. There may be a few grey areas where some parties may think, on first impression, that the City’s cross examination or testimony is not within the relevant scope, so in the interest of transparency and expediency I will provide some detail on those so that the Commission may condition or clarify the proposed scope to the extent that it deems appropriate.

The City is in a somewhat unique position as being the one party in this proceeding that has pre-filed direct and rebuttal testimony, but that is not a party to either partial settlement. (Staff is also not a settlement party and their witness pre-filed rebuttal testimony only.) The reason for this is not for lack of desire to support a settlement but rather the City’s conclusion that it could not fully support either partial settlement as proposed as being in the public interest. At this point the City’s

position is that some conditioning or modification of either settlement is appropriate to fully support the applicable legislative purposes and the Commission's necessary findings that certain waivers or modifications of certain terms and conditions of service for net metering as referenced in RSA 362-A:9, XVI are just and reasonable. The City, as a subdivision of the State of New Hampshire, represents a broad spectrum of public interest, albeit a subset of the State as a whole, including residential, business, institutional and governmental interests living or operating within our City. The City's interest is in a balanced and durable resolution of this proceeding that is fair to all customers and the utilities, with the hope of avoiding a rehearing request by any party. To that end the City intends to offer constructive critiques and recommendations regarding both settlements.

With regard to how certain issues that the City desires to address at hearing may fit within the proposed scope of relevant issues I offer the following:

1. I believe that all of the City's issues are relevant to proposed issue (o) "Consistency of the Settlements with applicable statutory criteria and legislative purposes."
2. The City concurs with the Office of Consumer Advocate that the topic of "community net metering for low- and moderate-income consumers" be added to the list of issues deemed relevant for consideration at hearing. Arguably this also could fit under proposed issue (k) "Pilot programs number, type, design, and timing as described in the Settlements" as the utility coalition partial settlement references under § 13.a. regarding pilots: "An initiative that uses monetary bill credits to make the benefits of solar available to non-host low and moderate income customers whose circumstances would otherwise not allow them to participate in a net metered project." This provision alludes to group net metering through the term "non-host" but the concept and possibilities for various forms of community solar or community net metering extend well beyond the statutory limitations of the group host scheme specifically provided for in statute. The City is interested in the possibility of addressing such possibilities for low- and moderate-income customers through its proposed pilot.
3. The City is the only party in this proceeding that proposed to sponsor a pilot in its pre-filed direct testimony, which proposed pilot is to be time-based and sized limited, using real time pricing and municipal aggregation pursuant to RSA 53-E. Neither partial settlement makes reference or particular accommodation for the City's proposed pilot so it is not one of the

“[p]ilot programs ... as described in the Settlements.” This is understandable as the City was not a party to either partial settlement. However, the City requests that consideration of how the City’s proposed pilot may fit (or not fit) with pilot program numbers, type, design and timing as described in the Settlements should be allowed as a relevant issue at hearing.

4. The other substantive issues that the City desires to raise at hearing that may be of some controversy concern proposed relevant issues (c) “[c]ommodity credit value and purchases from competitive suppliers;” (f) “[i]nstantaneous netting or monthly netting of kWh for monetary bill credit calculation;” and (i) “[b]idirectional and production meter installation, ownership, and cost provisions.” The City’s concerns are not limited to the differences between the two proposed settlements regarding these issues as suggested in the proposed scope. The City’s concerns extend to how the commodity credit and netting, or lack thereof, and metering are characterized, structured, accounted for, and implemented, including details not expressed in the settlements, and how those issues and details, including compliance filings, may affect determinations of public interest and reasonableness in the resolution of issues in this proceeding.
5. The City’s concerns pertain specifically to how the settlements and resulting new tariffs may or may not: a) comport with PURPA definitions of net metering services versus QF sales to a utility and the legal consequences thereof, b) be consistent with meeting “the objectives of electric industry restructuring pursuant to RSA 374-F, including the overall goal of developing competitive markets and customer choice to reduce costs for all customers,” [from Chapter 31:1, NH Laws of 2016]; and c) increase the risk of possible and unintended adverse income tax consequences to residential customers. The later issue is not one that was addressed in pre-filed testimony of any party to my recollection. It has only emerged as a significant concern to the City as I have contemplated the details of the proposed settlements and how they may be characterized and implemented.
6. To help inform my live rebuttal testimony on this last point, I am offering two documents to be pre-marked for identification as exhibits: a publicly available set of slides from tax attorney Jennifer Ray, dated November 3, 2015 and entitled “Tax implications of net metering, RECs, and rebates” and a law review article by Kayci G. Hines, J.D., entitled “Solar Shift: An Analysis of the Federal Income Tax Issues Associated with the Residential Value of Solar Tariff” and published in the Arizona Journal of Environmental Law & Policy

[Vol. 5:388, 2015]. Some parties may object to these exhibits and my related testimony as to relevancy and my competency as a witness to raise them, but I hope that at the time any such objections may be raised at hearing, I may be given the opportunity to provide a specific response. Responses from other witnesses during cross may affect the degree of the City's concerns and the time spent on this point.

In the interest of transparency and expediency I am attaching copies of these two proposed exhibits that I may seek to have admitted in support of recommendations that I may have as to how to minimize the potential for unintended adverse tax consequences with regard to how new tariffs and net metering terms and conditions may be characterized, structured, accounted for, and implemented as an outcome of this proceeding, consistent with the legislative purposes and required findings for justness and reasonableness and other statutory criteria for consideration.

Having just read the Consumer Advocates Motion in *Limine* for Admission of Certain Exhibits, I can state that the City has no objection to admission of the OCA witnesses' prefiled testimony and supports the motion.

If you have any questions please don't hesitate to contact me.

Yours truly,

A handwritten signature in black ink that reads "Clifton Below". The signature is written in a cursive, slightly slanted style.

Clifton Below, City Councilor, duly authorized as
Advocate and Witness for the City of Lebanon, NH in DE 16-576.

Enc.

Electronic Copies made to the full service list and Office of Consumer Advocate.