STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Electric Distribution Utilities

DOCKET NO. DE 22-060

Consideration of Changes to the Current Net Metering Tariff Structure, Including Compensation of Customer-Generators

SETTLING PARTIES INITIAL BRIEF

Public Service Company of New Hampshire d/b/a Eversource Energy; Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty; Unitil Energy Systems, Inc. (together the "Electric Utilities"); the Office of the Consumer Advocate ("OCA"); Clean Energy New Hampshire ("CENH"); Conservation Law Foundation ("CLF"); Granite State Hydropower Association; Standard Power of America; and Walmart Inc. (collectively, the "Settling Parties") hereby submit this initial brief to the New Hampshire Public Utilities Commission (the "Commission") to respond to the following issues raised by the Commission: (1) state all actions the Settling Parties request the Commission take in this docket; (2) explain how these requests are consistent with the Commission's obligations to set just and reasonable rates pursuant to RSA 374:2 and RSA 378:7, and any other legal obligations the Commission must follow; and (3) cite to the evidence in the record supporting the requests and legal arguments. To address these three issues, the Settling Parties will also brief the relevant provisions of RSA 362-A:9, and the issue of whether registration of distributed generation ("DG") assets with ISO-NE and flowing through the ISO-NE revenue received to offset net metering credits is consistent with state and federal law. In support of this brief, the Settling Parties state the following:

Requested Commission Action

First, the Settling Parties reiterate their request from the settlement agreement that the Commission adopt the settlement's terms without alteration as soon as is practicable to send a signal to the distributed generation ("DG") industry and stakeholders that New Hampshire supports a moderate, reasonable, and reliable investment in distributed energy resources. Second, the Settling Parties ask that the Commission reinforce its holding from Order No. 26,450 that it is just and reasonable to register eligible DG assets with ISO-NE and flow the resulting ISO revenues for generation and capacity to the relevant utility or energy service provider (competitive supplier or municipal aggregation) to offset the costs of issuing net metering credits. Finally, the Settling Parties ask the Commission to articulate that this practice should continue in furtherance of minimizing the costs of the net metering program, and that such registration and utilization of resulting revenue is consistent with state and federal law.

Granting the Settling Parties' requests is the only course sufficiently supported by the record as being consistent with the relevant laws, rules and Commission orders at issue in this docket. Specifically, approving the settlement agreement and continuing ISO-NE registration and revenue offsetting will result in just and reasonable rates, and is in the overall public interest. Conversely, rejection of the settlement agreement will impede the steady yet moderate progress being made in distributed energy resource development. Implementation of anything less than the settlement's terms of maintaining the status quo of the existing net metering tariff with a 20-year tariff term to apply for first-time net metering projects ("Legacy Period") will impair the viability of the local, distributed energy resource industry in New Hampshire. This would limit customers' ability to select their own energy generation source, which would run contrary to RSA 378:7-a and RSA 362-A:9, and not serve the public interest.

Approving the Settlement Agreement is in the public interest and will result in just and reasonable rates consistent with RSA 374:2 and RSA 378:7-a, and it will advance the purpose of RSA 362-A:9.

In general, the Commission encourages parties to attempt to reach a settlement of issues through negotiation and compromise, as it is an opportunity for creative problem solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation. Order No. 26,028 at 48 (June 23, 2017); *see* RSA 541-A:31, V(a) ("informal disposition may be made of any contested case ... by stipulation [or] agreed settlement"). The terms of the settlement agreement account for and address all relevant legal standards, including the Commission's obligations under RSA 374:2 and RSA 378:7-a, to set just and reasonable rates and to set rate mechanisms for net metering, respectively. The settlement agreement was also negotiated to uphold and advance the purpose of RSA 362-A:9 and RSA Ch. 362-A generally.[1] The settlement terms are reasonable and were thoroughly discussed and developed with the input of experts in several relevant fields including rate design, energy project development, and net metering theory and policy. The settlement in this docket represents a varied assortment of parties and interests that have come together to recommend the settlement's terms, particularly regarding continuance of the existing tariff with the Legacy Period established at 20 years (which is less than the 23 years allowed in the prior docket).[2]

The legal standards to be applied in this proceeding are the following:

[1] "It is . . . 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." RSA 362-A:1.

[2] The settlement agreement also recommends a data collection effort followed by a stakeholder process and the Electric Utilities submitting a net metering time-of-use rate within two years of the settlement's approval. These terms are not discussed for purposes of this brief, but the Settling Parties unanimously support their approval. The settlement agreement also proposes interconnection application fees for proposed DG projects, and this will further defray total net metering costs and increase net metering net benefits, which will be mentioned later in this brief.

- **RSA 374:2**: requiring that "[a]ll charges made or demanded by any public utility for any service rendered by it or to be rendered in connection therewith, shall be just and reasonable and not more than is allowed by law or by order of the public utilities commission."
- **RSA 378:7-a**: giving the Commission and Department of Energy the authority to "establish requirements, standards, and rate mechanisms for net metering . . . in a manner not inconsistent with section 111 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Chapter 46) as amended by the Energy Policy Act of 2005 and 16 U.S.C. section 2621 (20) and (21)."
- **RSA 362-A:9, XXIII:** which requires that the Commission, upon completion of the Department of Energy's Value of Distributed Energy Generation ("VDER") study "include[] consideration [in the instant docket] of the adoption of net metering tariffs that apply to newly-constructed customer-generators with a total peak generating capacity of greater than one megawatt, [and that] ***the commission shall consider whether and when further changes should be made to the net metering tariff structure approved in order no. 26,029 issued on June 23, 2017, applicable to such newly-constructed customer-generators***. Such consideration of net metering tariffs that apply to newly-constructed customer-generators with ***a total peak generating capacity of greater than one megawatt*** shall include but not be limited to whether or not the cost of compliance with the electric renewable portfolio standard, RSA 362-F, inclusive of prior period reconciliations, should be excluded from the monetary credit for exports to the grid, as well as whether or not the monetary credit should include compensation for services and value currently not compensated such as avoided transmission, distribution, and capacity costs and other grid services." (Emphasis added).
- **RSA 362-A:9, XVI:** which states "[t]he commission, through an adjudicative proceeding, shall continue to develop and periodically review new alternative net metering tariffs, which may include other regulatory mechanisms and tariffs for customer-generators, and determine whether and to what extent such tariffs should be limited in their availability within each electric distribution utility's service territory. In developing such alternative tariffs and any limitations in their availability, the commission shall consider: balancing the interests of customer-generators with those of electric utility ratepayers by ***maximizing any net benefits while minimizing any negative cost shifts*** from customer-generators to other customers and from other customers to customer-generators; the costs and benefits of customer-generator facilities; an avoidance of ***unjust and unreasonable cost shifting***; rate effects on all customers; alternative rate structures, including time-based tariffs pursuant to paragraph VIII; whether there should be a limitation on the amount of generating capacity eligible for such tariffs; the size of facilities eligible to receive net metering tariffs: timely recovery of lost revenue by the utility using an automatic rate adjustment mechanism; and electric distribution utilities' administrative processes required to implement such tariffs and related regulatory mechanisms."

The settlement before the Commission in this docket maintains fidelity to all of the above listed standards, and approval of the settlement would be consistent with the law, and just, reasonable and in the public interest. As described by witness David Littell, the settlement is a "bare bones"

continuation of net metering, sufficient to prevent a setback to the distributed energy generation industry and customers' options for electing their own source of generation, and able to sustain the reasoned and continued DG activity statewide. The Commission has already found the existing tariff to be just and reasonable and in the public interest in Order No. 26,029. In this docket, there is nothing in the record suggesting anything greater than a possible *de minimis* cost shift, which certainly does not rise to the level of being unjust or unreasonable. And there is substantial support, as detailed below, that non-DG customers may monetarily benefit from DG. That is to say, there is record evidence for a negative cost shift provided by the current net metering tariff, which places downward pressure on rates so that they are lower than they would have been without the net metering tariff. The record is unequivocal that the current compensation structure creates no unjust or unreasonable cost shifting, consistent with the standard of RSA 362-A:9, XVI. In fact, the record is nearly devoid of evidence to the contrary.[3] And so it follows that the settlement recommending continuation of that structure must be in the public interest, and result in just and reasonable rates as required by RSA 374:2, allowing the Commission to fix net metering compensation at current levels as authorized by RSA 378:7-a.

The record is replete with evidence supporting continuation of the current alternative net metering tariff, inclusive of the addition of the Legacy Period. In the procedural order on post-hearing briefing issued on August 23, 2024, the Commission stated on page 2 that it is "particularly

[3] The only allegation made in this docket that current compensation could be creating an unjust cost shift was that which the Community Power Coalition of New Hampshire ("CPCNH") made in testimony and at hearing that the inclusion of RPS compliance in the net metering credit could create an unreasonable cost shift. (Exhibit 13 at 23-25; Transcript of Hearing on August 22, 2024 at page 162). But the Electric Utilities noted in joint rebuttal testimony that CPCNH's calculations were about four times higher than they should have been, as they did not account for the DOE's offsetting RPS adder credit, comprising three quarters of the figure CPCNH used for its calculation. CPCNH also failed to account for the annual reduction in Class III REC compliance obligation, which looks to continue for the foreseeable future and further erodes CPCNH's calculations. When taken in concert with the added complexity that removing RPS compliance from compensation would create and the customer confusion that would ensue, there is no justification for altering the current credit structure. (*See* Exhibit 3, *Rebuttal Testimony of the Joint Utilities* at Bates pages 17-18; Transcript of Hearing on August 22, 2024 at page 216, line 11 – page 218, line 15).

interested in why rates that result in cost shifting between Eversource's net-metered and non-net-metered customers are just and reasonable." This statement confuses "rates" and "costs." The ultimate conclusion of the VDER Study conducted by Dunsky and entered as Exhibits 8, 9, and 12 is that there is essentially no cost shift, because "[d]espite the forecasted electricity rate increases, average monthly bills across all utilities and rate classes are expected to decline over the study period. This is because the average reduction in consumption compensates for the rate increases, resulting in bill decreases overall." (Exhibit 12, Bates Page 17). As the various parties have said previously in this docket, "[n]o rate structure recovers from each individual customer the exact cost to serve that customer—cross subsidies are always present." (Exhibit 1, Bates Page 13). But the evidence in this record shows that the *total net cost* of the current net metering tariff—meaning the costs *net of the benefits of net metering*—is effectively zero or even a negative number, which means a cost reduction to all ratepayers.[4]

Dunsky's equation for calculating the costs of net metering, which can be found in Exhibit 12, Bates Page 9, describes the rate impacts for non-DG customers. The equation calculates all costs *and benefits* directly resulting from net metering—this is the true cost of the net metering program. The "twelve-month cost for the Eversource program" cited to by the Commission at hearing refers to only one input to the larger equation, solely on the cost side and ignoring any benefits. Taken out of context, this Eversource cost does not provide any insight into the "total cost" of the net metering program in New Hampshire. (Transcript of Hearing on August 20, 2024 at page 267, lines 18-20). Recovery of net metering costs by the Electric Utilities must be weighed against the benefits that the net metering program provides, which Dunsky quantified by

[4] See Exhibit 5, Testimony of R. Thomas Beach on behalf of Clean Energy New Hampshire, at page 429, line 21 to page 431, line 18: "On average statewide, across all three utilities, net metered DG installations will provide a small net benefit to customers, including to customers who do not install solar" (p. 431).

calculating the costs never incurred (i.e. the "avoided costs") as a direct result of those credits, because those avoided costs resulted in rates for all customers—DG and non-DG customers alike—that are lower than they would have been if there were no net metering. In sum, to determine what net metering is costing non-DG customers, the monetary benefits to those customers must also be accounted for.

Avoided costs accumulate over time, and not contemporaneously with when net metering credits are issued, and the Dunsky equation was developed using statewide rather than utility-specific data. However, to be responsive to the Commission's concern with how the $36 million in Eversource credits translates to possible cost shifts to non-DG customers, the Settling Parties have analyzed, using the Dunsky equation, what the cost of net metering would be for non-DG Eversource customers using the $36 million figure, included as Attachment A to this brief. Attachment A uses Dunsky's avoided cost value for solar PV systems[5] for the benefit "rate" of net metering. And to calculate the cost "rate" of the net metering program, Attachment A relies on ISO-NE's Final 2024 Photovoltaic Forecast,[6] which provides the capacity for solar systems in Eversource's service territory and the capacity factor for solar in New Hampshire, which the ISO uses for planning and system purposes. Using this data, the Settling Parties extrapolated how many kWhs were generated by the solar in Eversource service territory – 225 million kWh per year.

Ultimately, the total avoided cost value of 225 million kWh generated results in an approximate $34-$43 million in benefits to offset the $36 million in costs. While this figure is for all customers, it shows that there is likely no cost shift to any customers including non-DG customers, as the benefits are at least equivalent to the costs and probably are greater. Put another

[5] Exhibit 8, Bates Pages 91-98.
[6] www.iso-ne.com/static-assets/documents/100010/2024_pv_forecast_final_updated.pdf

way, even non-DG customers receive a monetary benefit as a result of net metering because their rates are sufficiently lower than they would have been without net metering. Non-DG customers are saving the amount they would have otherwise paid if the utilities had to incur the costs that are avoided due to net metering. CENH's consultant and witness, Tom Beach, conducted an analysis similar to Dunsky's that resulted in an even greater monetary benefit to non-DG customers. (*See* FN 3). Neither Dunsky's nor Mr. Beach's analyses have been contested in this docket, and there is nothing otherwise in the record that supports the existence of unjust or unreasonable cost shifting with the current net metering tariff, and in fact there may be modest benefits to non-participating ratepayers. And as an additional cost shift mitigation measure, the proposed DG application fees serve to assign incremental administrative resources that the Electric Utilities may need to process applications solely to the DG project applicants, who benefit most directly from those projects. Therefore, the settlement agreement recommends continuing the existing tariff conditions, with the restoration of a slightly shorter legacy period compared with the last net metering docket, and the Settling Parties believe that the Commission should approve the agreement without modification.

The settlement agreement is also consistent with the purpose of RSA 362-A:1 and :9 to make distributed generation resources available in New Hampshire. Altering or rejecting the settlement based on the purported existence of *any* cost shifting is not only unsupported in the record, but also inconsistent with RSA Ch. 362-A to the extent that the result would be damaging to the development and availability of DG options. Generally, a statutory construction or interpretation that renders a provision meaningless is disfavored. RSA 362-A:9, XVI, as described above, requires the avoidance of *unjust and unreasonable* cost shifts, not any cost shift whatsoever,

and this interpretation was reinforced by the Commission's decision in Order No. 26,029.[7] To reject the settlement based on the existence of any cost shifting instead would ignore RSA 362-A:9, XVI, as well as the most recent Commission ruling on this issue, and be contrary to the overall purpose of RSA 362-A:9 to foster balanced DG development.

The Commission can and should continue to allow distributed generation assets to register with ISO-NE to offset the costs of net metering.

CPCNH has asserted that not only is the registration of assets with ISO-NE contrary to state and federal law, but that suspension of asset registration is a necessary component to allow CPCNH to offer its own net metering credits for the energy supply exported to the grid by their customers. From January 2020 through November 2023, Eversource alone has collected over 12 million dollars in revenue from registration of eligible DG resources that directly offsets net metering costs.[8] There is no statutory or case law that prohibits this registration, so long as the net metered customers are not being double compensated. Additionally, other New England states have a regular practice of registering net metered assets, and as a practical matter, the FERC and ISO-NE are both well aware of this practice and have issued no order or taken any action to deter it. In absence of a prohibition on ISO-NE asset registration, the Settling Parties see no reason for the Commission to deviate from the currently approved practice of utilizing ISO-NE generation and capacity revenues to continue to reduce the costs of net metering in New Hampshire.

CPCNH also asserts Electric Utilities must change how they settle load with ISO-NE for CPCNH to provide net metering credits to its customers.. The Commission should not entertain this suggestion in this docket. The issue of the load settlement process was not noticed in this

[7] Order No. 26,029 at 68.
[8] Total was calculated using actual revenue collected, which is reported in the Eversource SCRC dockets: Docket No. DE 21-117, Exhibit 1, Red Bates Page 56, Line 3; Docket No. DE 22-039 Exhibit 1, Bates Page 57; Docket No. DE 23-091 Exhibit 2, pages 74 and 76.

docket and is outside the scope of the noticed issues. Further, CPCNH has not provided sufficient information for the Electric Utilities to understand what is being asked of them. CPCNH has not proposed anything that the Electric Utilities could analyze to determine what operations and business functions would be impacted, assess the feasibility of the proposed changes, or produce a cost estimate for making the requested changes. There is information about the operations of load settlement that only the Electric Utilities would be privy to as the administrators of the process, and no one is expecting CPCNH to present such information in a proposal. Nonetheless, the pragmatic implications of this proposal by CPCNH, if and when it is put forth, must be articulated and reviewed before a determination can be made on whether to modify the load settlement process, and the record is devoid of any information on this issue.

Simply put, the record is insufficient to understand what CPCNH wants to implement, or to know what effort would be required, what changing the load settlement process would cost, and what utility operational impacts would result. These logistical considerations would have a direct impact on the rights, duties, and obligations of the Electric Utilities, and the cost of changing the load settlement process has public interest implications. For these reasons, the Commission should decline to alter the load settlement process in the final order of this docket.

Additional changes to the current net metering tariff structure are not adequately supported by the record and require further information and development.

At the hearing in this matter, CPCNH stated:"[j]ust because we don't have enough information right now to do everything, that doesn't mean that nothing should be done in this docket," and that "technology in place today" is good enough" to make net metering "smarter and more accurate."[9] Certainly with net metering, complete or perfect information may not be

[9] Transcript of Hearing on August 20, 2024 at page 16, lines 10-17.

necessary, or even possible, to move forward with changes to net metering, but the Electric Utilities testified that there is far less than perfect information in this docket's record, such that further process is necessary before any action should be taken on any such changes. CPCNH has not produced sufficient information, analysis, or detail for the Electric Utilities to be able to assess the feasibility or estimate the costs related to CPCNH's proposals in this docket. This lack of detail and analysis provided by CPCNH means that there is no evidence in the record indicating whether these concepts are operationally sound or implementable, or to what extent implementation of any of these ideas would increase net metering complexity and costs and possibly disrupt other core utility functions or operations. Most importantly, CPCNH has not demonstrated that its recommendations would avoid unjust and unreasonable cost shifts. The Commission can reasonably assume that these ideas will all incur implementation costs, which have the potential to be significant.[10] Since by law all costs necessary to implement and administer these proposals will be recovered from all customers, CPCNH's ideas will impact the overall cost/benefit analysis of net metering.

Specifically, in addition to altering the load settlement process discussed above, CPCNH recommended that RPS compliance be removed from the net metering credit, and that a transmission credit be added that is custom tailored to each individual customer. As for removing RPS compliance from the credit, the Electric Utilities discussed in pre-filed testimony, and the Settling Parties discussed at hearing, that removing the value of RPS compliance would be a *de minimis* change to the credit.[11] However, making this nominal change would require a significant change to the Electric Utility billing systems, because there would be two rates for supply for net

[10] *See e.g.* Transcript of Hearing on August 22, 2024 at pages 231, lines 5-23; 234, lines 9-16; 236, lines 3-8.
[11] *See* Exhibit 3 at Bates Pages 17-18.

metered customers: one for energy used by customers and another for energy exported to the grid by customers. This change would incur some cost, which would offset any possible benefit of making this change, however the utilities have not generated any cost estimates to date. More importantly, having two rates for supply for net metered customers risks causing substantial customer confusion and frustration when it comes to understanding their bill. Data shows that net metering customers already have a difficult time understanding their bill, and that this confusion is a significant concern for them.[12] The Settling Parties strongly oppose adding to this confusion for a rather insignificant change to compensation.

Turning to the addition of a bespoke transmission credit calculated on an individual basis, the record does not support the Commission approving this change. First, the Electric Utilities, in testimony and with its rebuttal witness panel at the hearings disputed the premises of the CPCNH transmission credit proposal.[13] Moreover, similar to the proposed change to the load settlement process, developing a complex method of generating a new transmission credit has a significant logistical component that could affect the public interest determination of such a credit, and which has not been examined at all in this docket. The practical implications of the CPCNH transmission credit could entail impairment of utility billing and other operations, and an increase to the overall cost of net metering—not just for implementation costs, but for any ongoing incremental costs to administer an individually-calculated customer credit on a monthly basis. Because CPCNH has presented insufficient evidence for the Electric Utilities to have any basis on which to estimate the cost and effort required to add this credit, the Commission cannot approve CPCNH's transmission

[12] *See* Exhibit 31.
[13] *See* Exhibit 3 at Bates Pages 21-22; Transcript of Hearing on August 22, 2024 at page 221, line 14 – page 223, line 17.

credit proposal, as it is not known whether such a credit would be in the public interest based on the relevant legal standards at issue in this docket.

Conclusion

The Settling Parties maintain that there is ample support to approve the settlement agreement as proposed, and that such action is the only supportable outcome for this docket and will result in just and reasonable rates. The Settling Parties appreciate this opportunity to provide this brief to the Commission, and hope it provides valuable insight and aids the Commission in rendering a final decision in this docket.

Respectfully submitted,

Public Service Company of New Hampshire d/b/a Eversource Energy; Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty; Unitil Energy Systems, Inc.; the Office of the Consumer Advocate; Clean Energy New Hampshire; Conservation Law Foundation; Granite State Hydropower Association; Standard Power of America; and Walmart Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

____10/04/2024_____ ___ ___

Date Jessica A. Chiavara