THE STATE OF NEW HAMPSHIRE

BEFORE THE

NEW HAMPSHIRE PUBLIC UTILITES COMMISSION

ELECTRIC DISTRIBUTION UTILITIES

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

Docket No. DE 22-060

NEW HAMPSHIRE DEPARTMENT OF ENERGY INITIAL POST-HEARING BRIEF

The New Hampshire Department of Energy ("DOE" or "Department") files this post-hearing brief pursuant to the Public Utilities Commission's ("Commission" or "PUC") procedural order issued on August 23, 2024, directing parties to the above-captioned docket to submit post-hearing briefing on or before October 4, 2024.

I. INTRODUCTION

On September 20, 2022, the Commission opened the above-captioned docket to consider amendments to the net metering tariffs applicable to customer-generators.[1] On October 31, 2022, the DOE filed into the docket a Value of Distributed Energy Resources Study ("VDER study") performed by Dunsky Energy and Climate Advisors ("Dunsky").[2] The VDER study was conducted pursuant to Commission Order No. 26,029 in Docket No. DE 16-576[3], with a scope developed by stakeholder working groups and approved by the Commission in Order No. 26,316 in that same docket, for the purpose of informing future net metering tariff development.[4]

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[1] Docket No. DE 22-060, Tab 1, Commencement of Adjudicative Proceeding and Notice of Prehearing Conference (September 20, 2022)
[2] Docket No. DE 22-060, Tab 8, New Hampshire Department of Energy Final Report of Dunsky Energy Consulting on the VDER Study (October 31, 2022)
[3] Docket No. DE 16-576, Tab 161, Order No. 26,029 Accepting Settlement Provisions, Resolving Settlement Issues, and Adopting a New Alternative Net Metering Tariff (June 23, 2017)
[4] Docket No. DE 16-576, Tab 283, Order No. 26,316 Approving Value of Distributed Energy Resources Study Scope (December 18, 2019)

Following stakeholder sessions and discovery, Public Service Company of New Hampshire d/b/a Eversource Energy; Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty; and Unitil Energy Systems, Inc. (together the "Joint Utilities") filed joint direct testimony on August 11, 2023.[5] On December 6, 2023, the Office of the Consumer Advocate ("OCA"); Dunsky; Clean Energy New Hampshire ("CENH"); the Department; and the Community Power Coalition of New Hampshire ("CPCNH") filed testimony.[6] This was followed by rebuttal testimony from the Joint Utilities, CENH, Dunsky, and CPCNH.[7]

Extensive settlement discussions followed, resulting in 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 ("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") filing a Settlement Agreement ("Settlement Agreement" or "Settlement") on August 1, 2024.[8] Of the parties presenting testimony in this proceeding, only the Department and CPCNH did not sign on to the Settlement.

The Commission held hearings in this matter on August 20, 2024, and August 22, 2024, in which the Settling Parties, the Department, and CPCNH testified in support of their respective positions. Following the hearings, the Commission issued a procedural order requesting that the parties file briefs which: (1) state all actions they 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

[5] Docket No. DE 22-060, Tab 48, Joint Utilities Direct Testimony
[6] Docket No. DE 22-060, Tabs 59 - 63
[7] Docket No. DE 22-060, Tabs 66 - 69
[8] Docket No. DE 22-060, Tab 103, Joint Parties Settlement Agreement on Net Metering Tariff

Commission must follow; and (3) cite the evidence in the record supporting their requests and legal arguments.[9]

As described further below, the Department recommends that the Commission maintain the current alternative net metering compensation tariff ("NEM 2.0"), approve the application fee proposal submitted by the Settling Parties, and direct the joint utilities to develop a time-of-use rate proposal for net metering customers through a stakeholder and data collection process to commence following the issuance of a final order in this docket.

II. ANALYSIS

A. The Current Alternative Net Metering Tariff ("NEM 2.0") Should be Maintained for Customer Generators Under 5 MW.

1. Costs associated with net metering under the current tariff do not constitute unfair subsidization of net-metered customers by non-net-metered customers.

RSA 362-A:9, XVI(a) dictates factors for the Commission to consider when developing new net metering tariffs. These include, in part, "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", "an avoidance of *unjust and unreasonable* cost shifting," and, "rate effects on all customers." [emphasis added]

By including the qualifier of "unjust and unreasonable" cost shifting, as opposed to simply leaving it at any cost shifting, the legislature appears to have acknowledged the existence of cost shifting related to net metering; and to have allowed cost shifting as long as it is not unjust and unreasonable. Cost shifting is not an unheard-of concept in utility rates – indeed,

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[9] Docket No. DE 22-060, Tab 113, Procedural Order re: Post-Hearing Briefing

utilities incur costs for various projects and activities that are not distributed equally among ratepayers for recovery nor do all customers receive equal benefit.[10]

The VDER study included an analysis of the rate and bill impacts ("RBI") of the current alternative net metering tariff, which showed minimal cost shifting.[11] The original study was submitted into this docket in October 2022, and addendums with study updates were filed on June 8, 2023, and February 22, 2024.[12] The addendums included updated results based on updated study values since the time the original study was filed in October 2022.[13] These results did not change the VDER study's conclusion.[14]

At the August 20, 2024, and August 22, 2024, hearings in this matter, multiple witnesses; including from Eversource, CENH, the OCA, and the Department; testified as to the lack of significant cost shifting under the current tariff.[15] Importantly, it was also acknowledged that, should the situation change and a significant amount of cost-shifting is experienced, the Commission has the ability to open a new docket and consider a new net metering tariff.[16] Additionally, there is general agreement among the parties that there should be further review and data collection following the close of this docket, including development of a TOU rate

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[10] Docket No. DE 22-060, Tab 62, Direct Testimony of Elizabeth Nixon, Mark Toscano, and Deandra Perruccio at Bates 16

[11] See Docket No. DE 22-060, Tab 8, New Hampshire Department of Energy Final Report of Dunsky Energy Consulting on the VDER Study pp. 45-56 and p. 60 (October 31, 2022). See also Docket No. DE 22-060, Tab 60, Direct Testimony of Alex Hill and Anirudh Kshemendranath at Bates 17-18; and Tab 62, Direct Testimony of Elizabeth Nixon, Mark Toscano, and Deandra Perruccio at Bates 15-16

[12] See Docket No. DE 22-060, Tab 8, New Hampshire Department of Energy Final Report of Dunsky Energy Consulting on the VDER Study (October 31, 2022); Tab 42, New Hampshire Department of Energy Addendum to VDER Study Report (June 8, 2023); and Tab 75, New Hampshire Department of Energy Addendum to VDER Study Report (February 22, 2024)

[13] Docket No. DE 22-060, Tab 42, New Hampshire Department of Energy Addendum to VDER Study Report (June 8, 2023) at 3

[14] Docket No. DE 22-060, Tab 114, Transcript of Hearing Held 08/20/24, pp. 34-38 and pp. 40-42

[15] Docket No. DE 22-060, Tab 114, Transcript of Hearing Held 08/20/24, pp. 130, 134, 216-217, and 226-227; and Tab 115, Transcript of Hearing Held 08/22/24 at 26

[16] Docket No. DE 22-060, Tab 114, Transcript of Hearing Held 08/20/24, at 217

proposal, and the opportunity to continue to review rate and bill impacts and costs as net metering adoption grows.[17]

Finally, the "costs" of net metering should be considered in the context of the overall picture of net metering. Depending on how such cost data is presented, it may not take into account the benefits associated with net metering, which is the other half of the statutory cost shifting consideration - "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."[18] [emphasis added] Examples of such benefits were discussed in the VDER study, in pre-filed testimony, and in testimony at hearing.[19]

2. <u>The current net metering tariff applicable to large customer-generators should be extended to include statutorily eligible customer-generators between 1-5 MW.</u>

Per RSA 362-A:9, XXIII, the Commission is required to include in this proceeding, "consideration 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, 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."

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[17] Docket No. DE 22-060, Tab 103, Joint Parties Settlement Agreement on Net Metering Tariff at Bates 1-3; Tab 62, Direct Testimony of Elizabeth Nixon, Mark Toscano, and Deandra Perruccio at Bates 16
[18] RSA 362-A:9, XVI(a)
[19] See, e.g., Docket No. DE 22-060, Tab 8, New Hampshire Department of Energy Final Report of Dunsky Energy Consulting on the VDER Study pp. 58-60; Tab 61, Testimony of R. Thomas Beach at p. 17; Tab 114, Transcript of Hearing Held 08/20/24, at pp. 49-52, 130, 244-245, and 267-277

The Department recommends that the Commission extend the current net metering tariff (NEM 2.0) to customer-generators between 1-5 MW, and that such customer-generators be treated as large customer-generators (greater than 100 kW) under NEM 2.0.[20]

The Department notes that, to be eligible to participate in net metering, a customer-generator between 1-5 MW must qualify and register as a municipal group host as defined by RSA 362-A:1-a, II-c. Any such customer-generator must create a group exclusively composed of "political subdivisions" – namely, "the state of New Hampshire or any city, town, county, school district, chartered public school, village district, school administrative unit, or any district or entity created for a special purpose administered or funded by any of the above-named governmental units."[21] The municipal host statute was only signed into law in August 2021,[22] and given time-consuming requirements to register as a municipal group host – including gathering group members and submitting an application for review by the Department and the host's utility – there is limited data on the impacts of adding 1-5 MW facilities to net metering. Thus, the Department recommends that such facilities be compensated consistent with other large customer generators under the current alternative net metering tariff, with the opportunity for further review when developing new net metering tariffs in the future.

3. **<u>Renewable Portfolio Standard ("RPS") compliance costs and prior period reconciliations should be included in the net metering compensation rate, which is consistent with the current compensation rate for 100% energy supply.</u>**

The cost of RPS compliance is specific to customer-generators with a total peak generating capacity of greater than 1 MW. As the Department recommends compensating

[20] Under NEM 2.0, customer-generators greater than 100 kW, or "large" customer-generators, are compensated for 100% of the energy service (default service) rate for any surplus generation.
[21] RSA 362-A:1-a, II-c
[22] HB 315 (signed August 26, 2021)

facilities between 1- 5 MW for 100% of energy supply consistent with other large customer generators under NEM 2.0, and that proposed compensation rate would include the RPS compliance costs and prior period reconciliations, the Department recommends that these RPS costs be included in the net metering compensation rate.[23]

4. The legacy period for net-metered customers should not extend past the current end date of 2040.

Under both the existing alternative net metering structure and the former net metering tariff ("standard net metering tariff" or "NEM 1.0"), customer generators are allowed to continue receiving compensation under their current tariff structure until 2040.[24] The Settling Parties have proposed that, should the Commission approve their proposal for a "NEM 2.1," any project newly enrolled in net metering while NEM 2.1 is in place will have the option to lock in to receiving that net metering compensation structure for 20 years from the date of their net metering enrollment ("Legacy Period").[25]

The Department recommends that the Commission maintain the current legacy period end date of 2040 for any newly enrolled facilities until changed in a future proceeding. The Department agrees with the Settling Parties' proposal to revisit the net metering tariff again through a data collection effort and the utilities' submission of a net metering TOU rate proposal in two years for the Commission's consideration. If the Commission adopts this recommendation and the utilities develop a TOU net metering compensation structure, that would likely be a substantial change from the current net metering tariff structure. The Department is not confident that allowing new net metering customers to lock into the current compensation structure for 20

[23] Docket No. DE 22-060, Tab 62, Direct Testimony of Elizabeth Nixon, Mark Toscano, and Deandra Perruccio at Bates 13-15
[24] Docket No. DE 16-576, Tab 161, Order No. 26,029 Accepting Settlement Provisions, Resolving Settlement Issues, and Adopting a New Alternative Net Metering Tariff
[25] Docket No. DE 22-060, Tab 103, Joint Parties Settlement Agreement on Net Metering Tariff at Bates 1

years, with the anticipation that a new proceeding with a substantially different tariff structure proposal would open only two years from now, would fairly balance the interests of customer generators with non-net metered customers.[26]

The Settling Parties presented six illustrative financing scenarios, all for projects 1 MW or larger, provided by a developer based on different project types and net metering "cliff" dates.[27] In the Department's view, these scenarios contained several unrealistic assumptions and therefore the Department suggests the Commission not rely on these scenarios. Two of the scenarios envisioned projects that would begin net metering in 2031 and cease collecting compensation in 2040. Such a scenario assumes that the current net metering tariff compensation rate (NEM 2.0) would still be in effect in 2031, despite the Settling Parties' recommendation, shared by the DOE, that a new TOU-based net metering compensation structure be developed and considered in the next two years – several years before 2031. Four of the six scenarios appear to assume not only a complete end to net metering in the year 2040 – which none of the parties to this docket are recommending - but an end to the facilities earning any revenue whatsoever, despite other compensation opportunities for power produced.[28]

There are also significant statutory developments in the past couple of years that impact the net metering ecosystem, such as the development of community power aggregation and the expansion of net metering eligibility to 1-5 MW facilities as municipal hosts. These changes have the potential to significantly impact net metering in New Hampshire, but due to their recency we have yet to experience a full understanding of their impacts. The Settling Parties'

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[26] Docket No. DE 22-060, Tab 115, Transcript of Hearing Held 08/22/24 at pp. 28-30
[27] Docket No. DE 22-060, Tab 103, Joint Parties Settlement Agreement on Net Metering Tariff Attachment B at Bates 28-29; and Tab 114, Transcript of Hearing Held 08/20/24, pp. 155-160
[28] Docket No. DE 22-060, Tab 114, Transcript of Hearing Held 08/20/24, pp. 158-160 and pp. 287-300; and Tab 115, Transcript of Hearing Held 08/22/24 pp. 30-33

legacy period proposal would lock facilities into a guaranteed compensation structure for 20 years before we have a better picture of the effects of these new developments related to net metering and energy supply. Non-net metered customers would largely bear the risk if these developments lead to a situation where net metering compensation under the current tariff structure is too high relative to the benefits provided, while the NEM 2.1 facilities would continue to enjoy the benefits of that compensation structure for the rest of their 20 year legacy period. Keeping the current legacy period end date of 2040, while having the opportunity to observe and collect data over the next couple of years as the New Hampshire DG landscape evolves, would allow flexibility to continue offering net metering compensation to facilities that come online and/or enroll over the next couple of years while revisiting the legacy period in a future proceeding with a rate proposal informed by further data collection and experience.

Finally, RSA 362-A:9, XVI (a) requires the Commission to consider "electric distribution utilities' administrative processes required to implement such tariffs and related regulatory mechanisms" when reviewing new alternative net metering tariffs. The Settling Parties' proposal would require the utilities to track the 20-year term for each facility that begins net metering while NEM 2.1 is in place and figure out an administrative process for removing each facility from the NEM 2.1 compensation structure at the end of each facility's 20-year legacy period.[29] It is difficult to forecast what administrative processes and applicable costs may be required from the utilities in 2045 and beyond, when these 20-year reviews would begin to happen. It is also unknown what the initial administrative costs would be to set something in place to begin tracking the 20-year legacy periods and set up an administrative process to trigger these reviews 20 years in the future. Keeping the current 2040 NEM 1.0 and 2.0 end date in place would avoid

[29] Docket No. DE 22-060, Tab 103, Joint Parties Settlement Agreement on Net Metering Tariff at Bates 3; and Tab 114, Transcript of Hearing Held 08/20/24 pp. 163-174

the need for utilities to create and implement these administrative processes for a tariff that will potentially be in place for only a short time.

5. **<u>The Department recommends the following transition process if tariff changes are approved in this proceeding.</u>**

In the event changes to the existing tariff are made as part of this proceeding, the Department recommends that the Commission also address a timeline for transition to the new tariff. The Department supports continuing past practice where new facilities were required to be in the interconnection queue as of a certain future date (such as 3 months following the issuance of a decision) to be considered on the existing tariff. All facilities entering the interconnection queue following such date were considered on the new tariff. For example, Order 26,029 issued in June 2017 set the new alternative tariff effective date for September 1, 2017. Customers entering the interconnection queue after that date were considered on the new tariff. The Department also recommends the Commission address a matching timeline for existing facilities 1-5 MW which may now pursue net metering as Municipal Group Hosts and recommends such facilities be required to have submitted an application for group net metering prior to the deadline for transition to any new tariff being implemented.

B. The Commission Should Approve the Application Fee Proposal set Forth in the Settling Parties' Settlement Agreement.

The Department recommends that the Commission approve the application fee proposal presented by the Settling Parties.[30] The Department agrees with the Settling Parties that collecting application fees as described will help reduce cost-shifting to non-net metered customers by requiring net metering applicants to contribute to the administrative costs

[30] Docket No. DE 22-060, Tab 103, Joint Parties Settlement Agreement on Net Metering Tariff at Bates 4

associated with processing their applications.[31] The Department agrees with the Settling Parties that it makes sense for net metering applicants to contribute toward those costs, as they are the ones receiving the most direct benefits. The Department also supports the utilities' proposal to use existing annual reconciling mechanisms to credit any fee revenue in excess of actual costs to all customers.[32]

C. Time-Of-Use ("TOU") Rates Applicable to Net Metering Should be Studied and Developed.

RSA 362-A:9, XVI (a) also requires the Commission to consider, when reviewing new alternative net metering tariffs, "alternative rate structures, including time-based tariffs pursuant to paragraph VIII." RSA 362-A:9, VIII explains that "[n]otwithstanding other provisions of this section, the commission may establish, on a utility-specific or generic basis, a methodology by which customer-generators may be provided service under time-based, net energy metering tariffs. The methodology shall specify how a customer's energy usage and generation shall be metered, how net energy usage shall be calculated, and any applicable charges applied, and how excess generation shall be credited, consistent with size limits and the terms and conditions and intent of this section and other requirements of state and federal law."

The Department supports the development of net metered TOU rates, consistent with the Settling Parties' proposal.[33] The Department believes that the Settling Parties' proposed process to implement TOU rates – by filing a petition with the Commission once TOU rate proposals have been developed – is consistent with RSA 362-A:9, XVI (a) and RSA 362-A:9, VIII quoted above, which require the Commission to consider time-based tariffs when reviewing new net

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[31] Id.; see also Attachment C at Bates pp. 30-32

[32] Docket No. DE 22-060, Tab 103, Joint Parties Settlement Agreement on Net Metering Tariff at Bates 4; and Tab 115, Transcript of Hearing Held 08/22/24 pp. 33-35

[33] Docket No. DE 22-060, Tab 103, Joint Parties Settlement Agreement on Net Metering Tariff; and Tab 115, Transcript of Hearing Held 08/22/24 p. 26

metering tariffs and grant the Commission the authority to establish such tariffs. To the extent that the utilities currently have any TOU rates applicable and appropriate for net metered customers, the Department recommends that net metered customers have the option to be placed on such rates.[34]

D. There should be a stakeholder data collection effort to develop appropriate TOU rates.

The Department supports the Settling Parties' proposal to undertake a data collection effort to develop a net metering TOU proposal following this proceeding.[35] There are potential benefits to the distribution and transmission system that could be realized with compensation rates based on TOU rates, and the Department recommends that such rates be explored and implemented through a stakeholder process consistent with the Department's testimony and the Settling Parties' proposal.[36]

III. CONCLUSION

WHEREFORE, for the reasons set forth above, the Department of Energy respectfully recommends that the Public Utilities Commission take the following actions in this docket:

1) Maintain the currently effective alternative net metering tariff for all DG systems less than 5 MW;

2) Maintain the current legacy period end date of 2040;

3) Direct utilities and stakeholders to work to develop appropriate net metering time-of-use rates;

4) Allow net metering customers to be placed on currently available time-of-use rates, applicable and appropriate;

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[34] Docket No. DE 22-060, Tab 115, Transcript of Hearing Held 08/22/24 pp. 35-36
[35] Docket No. DE 22-060, Tab 103, Joint Parties Settlement Agreement on Net Metering Tariff at Bates 5; and Tab 115, Transcript of Hearing Held 08/22/24 pp. 36-37
[36] Docket No. DE 22-060, Tab 62, Direct Testimony of Elizabeth Nixon, Mark Toscano, and Deandra Perruccio at Bates 12-13; and Tab 103, Joint Parties Settlement Agreement on Net Metering Tariff at Bates 5

5) Approve the application fee proposal presented in the Settlement Agreement submitted by the Settling Parties; and

6) Grant such further relief as is just and required.

Dated: October 4, 2024

Respectfully submitted,

New Hampshire Department of Energy
By its Attorneys,

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Certificate of Service

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included in the Commission's service list for this docket on this date, October 4, 2024.

/s/ Paul B. Dexter
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