



**OFFICE OF THE CONSUMER ADVOCATE**

21 S. Fruit St., Suite 18  
Concord, N.H. 03301-2429

Website:  
[www.oca.nh.gov](http://www.oca.nh.gov)

May 11, 2020

Ms. Debra A. Howland  
Executive Director  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, New Hampshire 03301

Re: Docket No. IR 20-004  
Investigation of Electric Vehicle Rate Design Standards and Time-of-Day Rates  
for Residential and Commercial Customers  
Staff Recommendation of April 3, 2020

Dear Ms. Howland:

Please treat this letter as the response of the Office of the Consumer Advocate (OCA) to the Commission's invitation for written comments on the recommendations issued on April 3, 2020 (Staff Recommendations) by the Commission Staff in the above-referenced docket.

**I. Introduction**

On behalf of the residential ratepayers whose interests the OCA represents, we thank and commend Staff for its robust and thoughtful analysis. It is clear that Staff carefully considered all of the comments previously submitted in this docket, including those of the OCA. In many respects, there appears to be consensus among stakeholders and Staff about the importance and value of electric vehicles to New Hampshire's future, the key role that rate design plays in growing the state's reliance on EVs, and the rate design techniques that should be brought to bear on EV charging. This is reassuring.

Also reassuring is the general acknowledgement that the development of EV-specific rates are an opportunity for New Hampshire to move decisively in the direction of advanced metering and reliance on time-varying rates generally. The OCA has long believed that giving customers access to the capabilities of advanced metering, and providing them with opportunities to respond to price signals as the marginal cost of energy varies across hours and seasons, are crucial if residential utility customers are to benefit, at long last, from the costly restructuring process that began in our state almost a generation (27 years) ago.

## II. Process Concerns: Adjudication

At this point, our main concern is about process. As summarized on pages 2 and 3 of the Staff Recommendations, Staff has proposed fully 13 specific items of “guidance” to be issued by the Commission. Even assuming that most of this guidance is sound public policy and not inconsistent with applicable law, the Commission lacks authority to exercise its regulatory powers in this manner. As we have repeatedly pointed out in the Commission’s investigation into grid modernization (Docket No. IR 15-296), the Commission cannot exercise its authority by fiat in the context of generic investigative proceedings that lack any procedural formality. *See* OCA Letter of February 25, 2019 (Tab 66) at 2-3; OCA Comments of April 8, 2019 (Tab 73) at 2-5; Testimony of Paul J. Alvarez and Dennis Stephens (September 6, 2019, Tab 89) at 8,11, and 15; OCA Comments of November 6, 2019 (Tab 100) at 3.

RSA 236:133, V (as adopted in Chapter 262 of the 2018 New Hampshire Laws, originally introduced as Senate Bill 575) requires the Commission to “consider and determine” potential rate design standards for EVs, including the possibility of time-of-day rates. The statute contains a deadline (two years from the effective date of August 11, 2018) but does not specify how such consideration and determination should proceed. In the opinion of the OCA, the Commission must exercise its RSA 236:133 responsibilities within the general investigative powers long delegated to it by the General Court. *See* RSA 365:19 (authorizing “independent investigation” by Commission “[i]n any case in which the commission may hold a hearing,” provided that facts ascertained via such investigation are “made part of the record” with affected parties given “a reasonable opportunity to be heard with reference thereto”); and RSA 374:7 (authorizing Commission investigation into “methods employed” by public utilities and issuance of orders for “all reasonable and just improvements and extensions in service or methods” but only after “notice and hearing”).

In other words, if the Commission is going to issue guidance to utilities (and others) on questions of EV rate design, it must do so after conducting an adjudicative proceeding in a manner congenial to the Administrative Procedure Act (RSA 541-A) and the Commission’s procedural rules (N.H. Code Admin. Rules, Chapter Puc 200). Although the OCA agrees with nearly all of the guidance proposed by Staff, we cannot assume the commission will ultimately agree with Staff’s recommendations. Thus we reserve the right to seek rehearing pursuant to RSA 541:3 of any rulings made in response to Staff’s recommended guidance, particularly to the extent the Commission does so without recourse to adjudication.<sup>1</sup>

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<sup>1</sup> Notably, though Staff proposes 13 separate issuances of guidance from the Commission, it also proposes an adjudicative proceeding in which each utility would propose specific time-of-use rates for both “separately-metered residential and small commercial customer applications” and “separately metered high demand draw commercial customer applications that may incorporate direct current fast charging or clustered level 2 chargers.” Staff Recommendations at 3 and 17. This is appropriate but not adequate to address the OCA’s procedural concerns, given that the directive to the utilities would involve the utilities filing rate proposals “consistent with the guidance” Staff recommends the Commission adopt without recourse to adjudication. *Id.*

### **III. Marginal Cost Principles, Declining Block Rates, Appropriateness of Time-of-Use Rates, Incremental Costs, Seasonal Rates, and Interruptible Rates**

Turning to the merits of the Staff Recommendations, the OCA agrees with Staff’s proposed guidance on the reliance of marginal cost principles, on prohibiting the use of declining block rates, on the appropriateness of time-of-use rates, on requiring utilities seeking approval of time-of-use rates to provide an assessment of incremental costs associated with billing as well as metering and marketing, on the desirability of seasonally differentiated rates in the EV context (despite our previously expressed concerns on this topic), and on the inappropriateness of interruptible rates. Staff’s analysis of these issues is cogent and persuasive.

### **IV. Whole-House/Whole-Facility Rates**

On the question of whether time-of-use rates should be available on a whole-house (or, for small commercial customers, a whole-facility basis) rather than requiring a separately metered service for EV charging only, the OCA suggested a flexible approach. Staff’s analysis makes a case for avoiding the whole-house or whole-facility approach, grounded in the RSA 378:10 prohibition of “undue or unreasonable preference” in utility service. We agree with Staff that, at the very least, any TOU rate plan offer an “*option* for customers to enroll in a separate rate class specific to their charging end use.” Staff Recommendations at 6 (emphasis added). To the extent this leaves open the possibility of whole-house or whole-facility TOU rates, we believe this is appropriate – subject, of course, to justification in light of the principles and policy imperatives Staff has capably described. In our view, while it is not *essential* that time-of-use rates be made available on a whole-premises basis for EV users interested in such service, we hope the Commission will remain open to this technique as a potentially useful way to expand the reach of time-of-use opportunities and save them money (by eliminating the need to pay costs associated with multiple meters). The statutory prohibition against undue discrimination in rates is, in some respects, a historical artifact; such limitations arose out of the railroad era in which robber barons openly dangled discounts to certain customers (notably, politicians and policymakers) as a means of blunting efforts to curb their exercise of monopoly power. As adopted, RSA 378:10 does not ban all discrimination, only that which is “undue or unreasonable.” This neither requires nor rules out a whole-premises approach to EV-related time-of-use rates; it simply requires care in rate design.

### **V. Non-Utility-Owned Meters: It’s Time**

We enthusiastically commend staff for recommending a directive to Eversource, Liberty, and Unitil to submit an assessment of the feasibility of EV-related TOU rates that relies on the interval metering capabilities of devices other than utility-owned meters. The Commission should clarify that it expects each utility to provide its own assessment, inasmuch as the capabilities of each company’s meter inventory varies considerably. The OCA is indebted to ChargePoint for bringing to the Commission’s attention the embedded metering capability of certain EV supply equipment. Utility intransigence notwithstanding, the unvarnished truth is that meters are no longer a natural monopoly. To the extent that EV deployment can lead the way to widespread reform of the currently applicable metering parameters that would not have been unfamiliar to Harry S Truman, residential utility customers will be well-served.

## **VI. Time-Varying Default Service Rates: Time for That Too**

Similarly, we hope that the advent of EV-enabling rate design opens the door to needed reform of default service procurement. We heartily agree with Staff that time-varying rates for EV charging should include the costs not just of transmission and distribution but energy as well. We lack the analytical expertise at the OCA to form a knowledgeable opinion as to whether the collection of data regarding the average annual load shape of 500 EV customers is the right threshold for triggering a utility's obligation to solicit a separate tranche for full-requirements, load-following default service for EV customers. So we defer to Staff's expert opinion on that subject while endorsing the general concept of time-varying default service charges for EV customers. Addressing this issue in the context of EVs should in no way preclude or prevent the Commission from undertaking a more general review of default service procurement now that all three distribution utilities have been fully restructured for two years.

## **VII. Avoiding Foolish Consistency**

The OCA agrees with Staff's perspective on the question of consistency among utilities. Generally, we believe that public policy discussions around electric industry restructuring in New Hampshire since the mid-1990s have placed too much emphasis on statewide uniformity, particularly with respect to ratepayer-funded energy efficiency programs. Although discrepancies among what is available in each utility's service territory can lead to confusion, allowing at least some degree of variability among utilities can also lead to helpful innovation and the development of insight into best practices. The obvious analogy is to running a nation as a collection of 50 sovereign states – a framework that has created its share of difficulties over the years but has also had many notable successes. We have no reason to disagree with the general framework laid out by Staff at page 9 of its report for separately metered residential electric vehicle charging rates, but we urge the Commission not to rule out flexibility and variability within applications of those general guidelines.

## **VIII. Load Management Pilots**

We would like to take this opportunity to highlight the OCA's ongoing concerns about uses and potential uses of system benefits charge revenues described in footnote 39 at page 12 of the Staff Recommendations. The footnote alludes to Staff's "recent support for load management *pilots* funded by the system benefits charge (SBC) and delivered in tandem with the companies' energy efficiency offerings." Staff Recommendations at 12 n. 39 (emphasis in original). The Commission must conform to the General Court's directives with respect to the SBC, which are found in section 3 of the Electric Industry Restructuring Act, RSA 374-F:3, VI.<sup>2</sup>

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<sup>2</sup> The implementation section of the Restructuring Act, RSA 374-F:4, also contains language germane to the SBC in this context. Specifically, RSA 374-F:4, VIII(e) both encourages, and sets limits on, the use of SBC funding for "[t]argeted conservation, energy efficiency, and load management programs and incentives that are part of a strategy to minimize distribution costs." This provision states that such targeted initiatives may be funded either by the SBC or distribution rates. The approach we recommend is consistent with this statutory language to the extent load management pilots are deemed "targeted" programs.

Section 3, which recites the policy principles that guide the restructuring of New Hampshire’s electric industry, explicitly provides for a “nonbypassable and competitively neutral system benefits charge” whose purpose is to “fund public benefits related to the provision of electricity,” including but explicitly not limited to energy efficiency. However, and unfortunately, the General Court has via recent amendments to section 3 imposed certain limitations on the Commission’s authority to increase the SBC and, therefore, the Commission should be very cautious about adding new initiatives to the list of public benefits paid for via the SBC. The risk of doing so is perpetuating New Hampshire’s perennial status as last in the northeast (with the exception of Delaware) when it comes to energy efficiency, at least according to the authoritative annual scorecard of the American Council for an Energy Efficient Economy (ACEEE).

Thus, the OCA has no philosophical or legal concerns about using SBC funding to finance pilot programs for load management. Our concerns are practical; we are serious about the objective of the Commission-approved Energy Efficiency Resource Standard (EERS) and its stated objective of “all cost-effective energy efficiency” and therefore we resist any scenario in which the EERS must compete with other public policy initiatives for limited SBC funding.

A related concern has to do with least-cost integrated resource planning as required by sections 37 through 40 of RSA 378. We are concerned about the habit utilities have developed of essentially acting as if they have “checked the box” for required consideration of demand-side measures by noting their participation, as program administrators, in SBC-funded initiatives. In reality, each utility must consider the potential costs of all available demand-side initiatives, whether or not SBC-funded, and assess whether they are least-cost in relation to traditional supply-side investments. It is especially important that utilities be held to their least-cost integrated resource planning obligations as the state moves toward increased electrification of the transportation sector.

## **IX. Demand Charges**

Finally, we emphasize our agreement with Staff that demand charges “are not likely warranted for most residential charging applications.” Staff Recommendations at 15. We thank Staff for drawing attention to our position on this question and our reliance on the experts at the highly respected Regulatory Assistance Project. *See id.* at 14. The Staff Recommendations document does a laudable job of laying out the advantages and disadvantages of avoiding demand charges for DC fast charging stations, a question distinct from the total undesirability of residential demand charges in the EV context or any other. Overall, we concur with Staff’s recommendation on this topic.

## **X. Conclusion**

In conclusion, we thank the Commission for this opportunity to comment on the thoughtful recommendations of your Staff. We urge the Commission to address the public policy challenges this docket presents via its adjudicative processes – and we urge doing so now, on a generic basis, as opposed to awaiting utility-specific proceedings. We are confident that the Commission is on the right track when it comes to New Hampshire moving confidently and energetically into the era of transportation electrification, and we look forward to working with

the utilities and other stakeholders to forge effective and innovative approaches to EV rate design.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Maurice Kreis". The signature is fluid and cursive, with a long horizontal stroke at the end.

D. Maurice Kreis  
Consumer Advocate

cc: Service list, via e-mail