

**BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DOCKET DE 22-060

ELECTRIC DISTRIBUTION UTILITIES

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

Supplemental Brief of Conservation Law Foundation

NOW COMES the Conservation Law Foundation (“CLF”), an intervenor in this docket, and submits the following initial brief pursuant to the Commission’s August 23, 2024 order on post-hearing briefing. Although CLF is a party to the August 1, 2024 settlement agreement filed in this docket and joins and concurs with the joint initial brief of the settling parties, CLF separately files this brief as a supplement to the principal brief.

I. The Legal Standard for the Commission’s Review Must Include Consideration of the Policy Objectives and Net Metering Benefits Identified by the Legislature, which Provide Further Support for Approval of the Settlement Agreement.

Throughout this proceeding the Commission has almost entirely focused on the cost implications of net metering and whether cost shifting is occurring between net metering customers and non-net metering customers. These cost considerations are undoubtedly relevant; however, when deciding this matter, the Commission cannot ignore the public policy objectives that are embodied in the net metering law and the public interest benefits that result from the net metering program. The record evidence of these benefits demonstrates that the settlement agreement is in the public interest and provides additional support for approving the settlement agreement.

Pursuant to RSA 362-A:1, the legislature has declared that it is in the “public interest to provide for small scale and diversified sources of supplemental electrical power to lessen the

state's dependence upon other sources which may, from time to time, be uncertain" and that it is in the "public interest to encourage and support diversified electrical production that uses indigenous and renewable fuels and has beneficial impacts on the environment and public health." RSA 362-A:1. The legislature has also established that:

[N]et 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, [and] enhance the future diversification of the state's energy resource mix

Id.

Although RSA 362-A:9, XVI contains the specific statutory test that the Commission must employ to analyze the net metering tariffs contained in the settlement agreement, the objectives and values embodied in RSA 362-A:1 must inform the Commission's application of the test. Indeed, HB 1116 (2016), which amended the net metering law to add sub-section XVI to RSA 362-A:9, exhibits the legislature's intent for the Commission to consider the public interest objectives of RSA 362-A:1 by reaffirming that to promote energy independence and local renewable energy sources, it is in the "public interest to continue to provide reasonable opportunities for electric customers to invest in and interconnect customer-generator facilities and receive fair compensation for such locally produced power." HB 1116 (2016) also declared that the legislature "continues to promote a balanced energy policy that supports economic growth and promotes energy diversity, independence, reliability, efficiency, regulatory predictability, environmental benefits, a fair allocation of costs and benefits, and a modern and flexible electric grid that provides benefits for all ratepayers." *Id.*

Thus, pursuant to RSA 362-A:9, XVI when the Commission considers “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,” and the “costs and benefits of customer generator facilities,” the Commission must consider the extent to which the tariff included in the settlement agreement will advance the many enumerated public interest benefits established under RSA 362-A:1, and reemphasized in the legislation that enacted RSA 362-A:9, XVI.

The record contains overwhelming evidence of the public interest benefits that net metered distributed energy resources (“DER”) provide to New Hampshire and which must be considered by the Commission. First, the Value of DER (“VDER”) Study demonstrates that environmental benefits, reflected as the avoided cost value of air pollutants, add \$0.03-0.05 per kWh to the average value of DER and, on average, increase the benefits of DER by 20 to 45 percent.¹ David Littell’s testimony on behalf of Clean Energy NH also provides evidence of the environmental benefits of net metered DER, with Mr. Littell testifying that net metering benefits New Hampshire’s environment and public health by reducing air pollutant emissions.²

Second, there is evidence in the record regarding the energy diversity, economic investment, and indigenous fuel benefits that net metered DER provides and which the net metering law is intended to encourage. Mr. Littell testified that net metering DER provides

¹ Ex. 8, VDER Study, at Bates 10-11, 71 (DE 22-060); Hearing Transcript, Aug. 20, 2024, at 51-52 (DE 22-060). The VDER Study specifically conducted an environmental externalities sensitivity, which the Commission required be included in the study in Order No. 26,316, at 30 (N.H. PUC Docket No. DE 16-576, Dec. 18, 2019). In an earlier order in which the Commission approved alternative net metering tariffs, the Commission explained that the VDER Study could include “consideration of demonstrable and quantifiable net benefits associated with relevant externalities (such as environmental or public health benefits),” therefore indicating that it considered environmental and public health benefits to be net benefits of net metering when quantifiable. Order No. 26,029, at 60 (N.H. PUC Docket No. DE 16-576, June 23, 2017).

² Ex. 5, Pre-Filed Testimony of David Littell on behalf of Clean Energy NH, at Bates 33-34 (DE 22-060).

significant economic benefits, by generating jobs and investments in New Hampshire, as well as reliability and resiliency benefits.³ The VDER Study also provides detailed evidence of the avoided cost benefits that DER provides with respect to energy, capacity, ancillary services, transmission charges, transmission and distribution capacity, line losses, and wholesale price suppression, which to varying degrees help quantify the energy diversity and indigenous fuel benefits that the net metering program provides to the state.

RSA 362-A:1 and HB 1116 (2016) require the Commission to consider the record evidence demonstrating public interest benefits, discussed in the preceding two paragraphs, when balancing the costs and benefits of net metering under RSA 362-A:9, XVI. The significant evidence of these benefits provides further support for approval of the settlement agreement.

II. The 20-Year Legacy Period is Also Necessary to Advance the Objectives of the Net Metering Law.

At the hearing, David Littell, Bob Hayden, and Tim Woolf provided unrefuted testimony that the 20-year legacy period included in the settlement agreement is necessary for DER project viability. They testified that without this legacy period, (1) larger DER projects may be unable to receive financing for projects; and (2) consumers may be unwilling to invest in small behind-the-meter rooftop solar projects because of uncertainty regarding project payback periods.⁴ They also noted that the current legacy period, which sunsets in 2040 and is not based on a fixed time period, creates significant unpredictability for developers, which must plan for a legacy period that is continually decreasing and solely based on the year when a project interconnects.⁵

³ *Id.* At 34-36.

⁴ Hearing Transcript, Aug. 20, 2024, at 135-37, 140-42, 288-94 (DE 22-060).

⁵ *Id.* at 140-41, 290-92. Although the Department of Energy (“DOE”) testified that it did not agree with the evidence on legacy periods provided by the settling parties, neither DOE nor any other party introduced evidence to refute Mr. Littell, Mr. Hayden, and Mr. Woolf’s testimony. *See* Hearing Transcript, Aug. 22, 2024, at 30-32 (DE 22-060).

As discussed in Section I, “support[ing] diversified electrical production” is one of the objectives of the net metering law, and the legislature has established 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, [and] enhance the future diversification of the state’s energy resource mix.” RSA 362-A:1. Further, under HB 1116, which amended RSA 362-A:9 to include the statutory test governing this matter, the legislature established that it is in the “public interest to *continue to provide* reasonable opportunities for electric customers to invest in and interconnect customer-generator facilities and receive fair compensation for such locally produced power.” *Id.* (emphasis added). The undisputed record evidence demonstrates that because the 20-year legacy period is the minimum period necessary to maintain DER project viability, these public policy objectives would be severely undermined if the Commission approves a legacy period less than the 20-year period included in the settlement agreement. Accordingly, pursuant to RSA 362-A:1 and RSA 362-A:9, XVI, the Commission must approve the 20-year legacy period.

III. The VDER Study Provides Sufficient Evidence that Cost Shifting is Negligible.

As explained in the principal brief, there is no evidence in the record of unjust or unreasonable cost shifting, with the VDER Study demonstrating, at most, negligible cost shifting to non-net metering customers, and Thomas Beach’s testimony on behalf of CENH actually demonstrating that net metering results in *cost decreases* for non-net metering customers. However, at the hearing, the Commission appeared to question whether the VDER Study provides sufficient evidence that cost shifting is negligible and whether the study provides a

DOE did agree that the continually decreasing legacy period, which exists under the current NEM tariff, creates uncertainty for developers. *Id.* at 62.

sufficient basis to approve the settlement agreement. The Commission also repeatedly questioned why the VDER Study did not analyze certain data that the Commission appears to believe is necessary to decide this matter. Yet the Commission itself approved the scope of the VDER Study in Order No. 26,316 (Dec. 18, 2019), and previously stated that the VDER Study “will inform the development of the next version of net metering or another regulatory mechanism,” Order No. 26,029, at 72 (Jun. 23, 2017) (approving the existing net metering tariff), and that “the purpose of the study . . . is to build a record to inform future net metering tariff development.” Order No. 26,316, at 24 (approving the scope of the VDER Study). When it approved the scope of the VDER Study, the Commission could have expanded the study’s scope to include analysis on additional matters it deemed important. But, after approving the scope of the VDER Study and stating that it would be used to inform the development of alternative net metering tariffs, the Commission is acting inconsistently in suggesting that the VDER Study is insufficient because it did not analyze certain data that the Commission has *now* deemed may be necessary for it to render a decision.

IV. Conclusion

For the foregoing reasons, the Commission should approve the settlement agreement.

Respectfully submitted,

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Certification of Service

I hereby certify that on this date a copy of this brief was filed electronically with the Commission, and a copy was sent electronically to the service list in Docket No. DE 22-060 consistent with the September 20, 2022 Commencement of Adjudicative Proceeding and Notice of a Prehearing Conference and the secretarial letter of March 17, 2020.

CONSERVATION LAW FOUNDATION

10/04/2024

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Date

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