STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

ELECTRIC DISTRIBUTION UTILITIES

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

Docket No. DE 22-060

JOINT MOTION FOR CLARIFICATION AND RECONSIDERATION OF ORDER NO. 27,074

Pursuant to New Hampshire Code of Administrative Rules Puc 203.07 and RSA 541:3, Granite State Hydropower Association; Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty; Public Service Company of New Hampshire d/b/a Eversource Energy; Unitil Energy Systems, Inc. (collectively, the "NH Utilities"); Clean Energy New Hampshire; and Conservation Law Foundation (altogether, the "Moving Parties"), respectfully request clarification and reconsideration of Order No. 27,074 (November 18, 2024) (the "Order") and Supplemental Order of Notice ("Notice") issued by the Public Utilities Commission ("Commission") in the instant docket. As mentioned in a motion to stay filed by the Moving Parties and the Department of Energy, the Order directed that compensation for net-metered customers stay at current levels for the time being and approved application fees for interconnection applications, but did not approve or reject the settlement agreement that addressed each of the applicable noticed issues in this proceeding and was signed by all but two parties to this docket. Instead the Order and Notice established three new phases of this proceeding just shortly after the completion of final merits hearings. Some of the issues in the new phases contain issues that have already been noticed and litigated in this docket; others have not been litigated but were newly noticed by the Commission in the Notice. Several issues seem

to be squarely in the purview of the Puc 900 rules, which are the jurisdiction of the Department of Energy ("Department" or "DOE").[1] But none of the issues require continued adjudication in this docket, where the parties have gone through final merits hearings, built a complete record, and sought Commission relief based on the record.

This motion requests that the Commission reconsider the issues in the Order and Notice which have been litigated by the parties to the docket and render a decision on each one, rather than initiating further docket phases, and to likewise issue a decision on the settlement agreement as a whole, as the parties to the settlement agreement requested of the Commission. Additionally, the motion seeks reconsideration on three issues that seem to be the purview of the Puc 900 rules and the jurisdiction of the DOE. Should the Commission decline to issue a final decision in this docket on those issues that have been litigated or withdraw inquiry into the issues within the jurisdiction of the DOE, the Moving Parties alternatively seek clarification as to the jurisdictional issue. Specifically, the Moving Parties seek to understand what the practical implications would be of an adjudication of issues covered by the Puc 900 rules, and what the expectations of and ramifications to the Moving Parties would be given their participation in the docket. Additionally, should the Commission decline to decide the litigated issues and not withdraw the issues addressed by the Puc 900 rules, the Moving parties respectfully request that the Commission reconsider the current schedule of the three new phases, which cover a considerable number of issues of substantial complexity, to address each phase in succession rather than on concurrent tracks, and over a longer period of time. Or, if the Commission does not wish to address the phases in succession, to combine all three phases into one comprehensive phase, as this would be more administratively efficient than navigating multiple, concurrent

[1] The Puc 900 rules are currently undergoing an update by the DOE through a rulemaking. Among the updates is changing the title of the rules from Puc 900 to En 900, as these rules were moved to the DOE's jurisdiction with the bifurcation of the agencies in 2021. Details of what the Puc 900 rules cover are provided later in this motion.

tracks in the same docket. If the Commission does elect to combine the three phases into one single phase, the Moving Parties would request that this phase too be given considerably more time to adjudicate, so that all parties to the docket have sufficient opportunity to avail themselves of due process and put a well-considered case before the Commission.

Due process warrants that the parties to this proceeding obtain finality on all matters in this docket, which includes a ruling on the settlement agreement and resolution of the noticed issues, which were triggered by legislative mandates. Any further adjudication of the net metering tariffs, which the Moving Parties readily admit the law explicitly grants the Commission the opportunity to "continue to develop and *periodically* review" and to do so through adjudication,[2] would be better addressed in a new proceeding. Or if the Commission wishes to explore issues beyond those directed by the legislature to adjudicate, those would be the proper subject matter of a Commission investigation, where no rights, duties or obligations of parties are at stake. And in the case of new ideas that were proposed by parties during the course of this docket, the proper course is a petition containing proposals of sufficient granularity and with specific requests for relief so that the Commission and other parties may evaluate whether the proposals are just and reasonable,[3] and where the petitioning party has the burden of proof to demonstrate the proposals are just, reasonable and in the public interest if they are to be supported by ratepayer funds. Together, the Order and the Notice (as well as the information requests issued pursuant to the Notice) circumvent this course and in so doing raise critical questions of scope, jurisdiction and due process on which the Moving Parties seek greater clarification from the Commission, or respectfully request that the Commission reconsider the

[2] RSA 362-A:9, XVI(a).
[3] See Puc 202.01(a) ("any person seeking action of the Commission shall do so by submitting a petition pursuant to Puc 203."); Puc 203.05(a) (setting forth the required substantive components of a petition).

Order and Notice, as previously summarized and as described in detail in the pages that follow. In support of this motion, the Moving Parties state the following:

I. BACKGROUND AND PROCEDURAL HISTORY

The Commission commenced this docket on September 20, 2022, citing to two pieces of legislation (SB 261 and HB 1599) and the anticipated Value of Distributed Energy Resources ("VDER") report to be issued by the DOE as sufficient for the consideration of amendments to the utility net metering tariffs. The Commission made the NH Utilities mandatory parties to the docket. Although there was no petitioner triggering the commencement of the docket and upon whom the burden of proof would confer, the NH Utilities were the only compulsory parties, and it was the NH Utilities' tariffs that were the focus on the original order of notice and scope of this docket. The Commission noticed the following issues:

> whether the Commission should implement new alternative net metering tariffs, which may include other regulatory mechanisms and tariffs for customer-generators, and whether and to what extent such tariffs should be limited in their availability within each electric distribution utility's service territory . . . alternative rate structures, including time-based tariffs; 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 . . . whether new net metering tariffs should be adopted that apply to newly constructed customer-generators with a total peak generating capacity of greater than one megawatt; what changes, if any, should be made to the net metering tariff structure approved in Order No. 26,029 (June 23, 2017); whether the cost of compliance with the electric renewable portfolio standard in RSA chapter 362-F, inclusive of prior period reconciliations, should be excluded from the monetary credit for exports to the grid; whether 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; and what conditions should apply to a customer-generator's election of compensation under RSA 362-A:9, V(b).

(Original Order of Notice at 3-4).

The DOE filed the VDER report produced by Dunsky Energy Consulting to the docket on October 31, 2022. Clean Energy New Hampshire, Standard Power of America, Conservation Law Foundation, Granite State Hydropower, Walmart, Inc., the Community Power Coalition of New Hampshire ("CPCNH" or the "Coalition"), Colonial Power Group, IBEW Local 490, and the Consumer Energy Alliance all filed timely petitions to intervene, and the Office of the Consumer Advocate ("OCA") filed a letter of participation. A prehearing conference was held on January 5, 2023. On January 19, 2023 Liberty filed a consensus procedural schedule with the Commission which proposed a three-month stakeholder process to examine the issues prior to commencement of the docket in earnest, and in which the NH Utilities were designated to commence the docket by filing testimony with proposed changes to their net metering tariffs. The Commission issued a prehearing order approving the procedural schedule on February 1, 2023. That same prehearing order scheduled a status conference for March 16, 2023 "to discuss with the parties potential approaches to designing net metering tariffs ***based on guidance found in the VDER report***." (February 1 Prehearing Order at 3, emphasis added).

Stakeholder sessions were held for a total of 12 hours, at which many of the issues in the Original Order of Notice and various positions of the stakeholders on those issues were discussed. All stakeholders were given ample opportunity to discuss any of the noticed issued in this docket. Additionally, the DOE made Dunsky available for a presentation on the VDER report and limited updates to that report, as well as a follow up presentation in response to stakeholder questions at the first presentation. At the conclusion of the stakeholder process, stakeholders were offered the opportunity for additional sessions, of which no stakeholder availed themselves. (*See* Eversource Energy Stakeholder report, Docket No. DE 22-060, Tab 40).

The procedural schedule commenced on August 11, 2023, with the NH Utilities filing testimony containing proposals regarding the net metering tariffs. Four rounds of discovery and four technical sessions were held. The DOE, OCA and intervening parties submitted testimony, and all parties were afforded the opportunity to file rebuttal testimony. Settlement negotiations commenced at the end of February 2024. On February 29, 2024, Eversource filed a joint request of all parties except the Consumer Energy Alliance, who could not be reached, requesting that the hearings be rescheduled to accommodate the ongoing settlement discussions because the discussions seemed likely to yield a settlement agreement. (*See* March 6, 2023 Procedural Order at 1). The Commission canceled the March 12 hearing but, instead of rescheduling, first ordered a prehearing conference to be held April 11, 2024. After the prehearing conference, the Commission issued a prehearing order on April 24, 2024, issuing various "record" requests directed at the remaining parties to the settlement negotiations, which included the NH Utilities, the OCA, Clean Energy New Hampshire, Granite State Hydropower Association, Conservation Law Foundation, Standard Power of America, and Walmart, Inc. A joint motion for rehearing was filed by Conservation Law Foundation, Clean Energy New Hampshire, CPCNH, and Granite State Hydropower Association on the April 24 prehearing order on the grounds that the information requests could disrupt ongoing settlement negotiations and were not permitted by the Puc 200 rules. The Commission issued Order No. 27,018 on June 14, 2024, granting rehearing and modifying the prehearing order so that only the mandatory NH Utility parties were required to answer the record requests. Also on June 14, 2024, the NH Utilities provided joint responses with Clean Energy New Hampshire, Granite State Hydropower Association and Standard Power of America, as responses to the information requests had already been developed by the time Order No. 27,018 was issued. Meanwhile, on May 15, 2024, all actively participating parties to

the docket filed recommended hearing dates with the Commission of August 20 and 22, 2024, which the Commission granted in a procedural order dated June 14, 2024.

On August 1, 2024, the NH Utilities, the Office of the Consumer Advocate, Granite State Hydropower Association, Clean Energy New Hampshire, Conservation Law Foundation, Standard Power of America, and Walmart Inc. (the "Settling Parties") submitted a Settlement Agreement for consideration and approval by the Commission. The DOE and CPCNH did not join the Settlement Agreement. The Settling Parties recommended the following: 1) that the net metering tariff structure currently in place shall stay in effect following approval of this settlement agreement by the Commission ("NEM 2.1"); 2) following approval of this settlement agreement by the Commission, any project newly enrolled in net metering ("NEM") while NEM 2.1 is in effect shall have the option to lock into NEM 2.1 for a 20-year term from the time of enrolling in net metering ("Legacy Period"); 3) implementation of reasonable distributed generation ("DG") application fees; 4) that the NH Utilities shall, two years from approval of this settlement agreement, file an NEM time-of-use ("TOU") rate with the Commission, along with a petition to open a new docket for consideration of the same; and 5) that *upon approval of the settlement agreement*, the Electric Utilities will undertake a data collection effort to support development of the NEM TOU rate proposal prior to the Electric Utilities' filing their NEM TOU rate proposal with the Commission.

Hearings were held in this docket on August 20 and 22, 2024. During those hearings, the parties to the docket addressed all noticed issues in the proceeding. All parties had full due process on those issues, with the opportunity to provide direct examination, cross-examination, and closing statements provided through post-hearing briefs. CPCNH raised the additional issue of utility load settlement reporting to ISO New England, which was not noticed in this

proceeding. CPCNH also put forth positions on the noticed issues in this docket. However, despite requests by the parties to the settlement agreement for more detailed proposals about those positions during the docketed procedural schedule, CPCNH did not develop proposals of sufficient granularity that could be subject to due process by the other parties in the docket. Instead, CPCNH's positions remained largely conceptual in nature, but CPCNH recommended Commission action on their ideas regarding the noticed issues of this docket and the overhaul of the utility load settlement process nonetheless, including the recommendation of an additional phase to this docket. The parties submitted post-hearing initial briefs on October 4, and reply briefs on October 18, 2024. In briefing, the parties to the settlement agreement rigorously opposed CPCNH's ideas on both the noticed issues in the docket and the suggested overhaul of the load settlement process, providing testimony and briefs on the fact that the Coalition's ideas were: (1) not just, reasonable and in the public interest, to the extent they were known, and (2) that CPCNH failed to meet their burden of proof in this docket to support Commission action on CPCNH's suggestions, (Joint Parties Brief at 9-10; Joint Parties Reply Brief at 12-15) and that the record in this docket supported approval of the settlement agreement in its entirety. (Joint Parties Brief at 1-10, 13). The parties to the settlement reiterated in their briefs their request that the Commission approve the settlement agreement without modification, providing record support for why doing so would be just, reasonable, and in the public interest. (*Id*.)

The Commission issued the Order on November 18, 2024, finding that compensation for net-metered customer-generators should remain constant for the time being, approving utility application fees for "DG" applications to cover incremental administrative resources needed to process those applications, and rejecting a 20-year legacy period for customers beginning to net meter during this new net metering tariff phase. As for all remaining issues pending before the

Commission, the Order did not decide those issues, but instead stated simply that "[t]he Commission favors a competitive environment because that ultimately benefits ratepayers at large, whether they are served by the utilities, competitive energy suppliers, or community power aggregators" and that "[t]he Commission agrees that CPCNH's proposals merit further consideration." (Order at 32.) The Commission did not analyze, approve, or reject the settlement agreement. The Order in fact did not refer to the settlement agreement, only to "Parties' recommendations". (*See* Order at 6 and 14).

Shortly after the Order was issued, the Commission issued the Notice, which stated that the Commission would "consider additional changes to the net metering tariff in this docket pursuant to RSA 362-A:9, XVI, RSA 374:2, and RSA 378:7." (Notice at 1). Phase 1 identifies four issues to be addressed in the next three months, starting immediately: (1) the definition of "customer-generator"; (2) small vs. large customer-generator categorization; (3) modification of compensation levels; and (4) net metering hardware and processing. The Notice lays out a procedural schedule consisting of Commission-issued "record requests" to be served upon the NH Utilities, party-issued data requests to be served upon the NH Utilities, the NH Utilities filing a recommendation in addition to answering the various requests served upon them, and a hearing to be held on February 13, 2025. The procedural schedule provides no opportunity for the filing of testimony by the NH Utilities or any other party.

Phase 2 as described in the Notice outlines six issues already raised by CPCNH at the August 20 and 22, 2024 hearings, and directs CPCNH to file a procedural schedule for this phase by December 16th with a hearing to be held in April 2025. Finally, Phase 3 is comprised of a data collection effort similar to that provided for in the settlement agreement filed in this docket. However, the Notice seemingly cuts the timeline for the data collection in half. The parties are

directed to submit a broadened proposal with an expedited timeline "for further action on net metering compensation levels by the end of 2025." (Notice at 6). This contrasts with the scope and timing of the data collection effort articulated in the settlement agreement—an effort the NH Utilities agreed to undertake only upon full approval of the settlement agreement—under which the NH Utilities would specifically propose an NEM TOU rate two years after the commencement of the data collection effort. In addition to the abbreviated timeline and seemingly expanded scope, the Notice adds periodic reporting requirements of the NH Utilities to the Commission throughout the data collection effort. (*Id.*) On November 25, 2024, seven days after the Order was issued, the Commission issued its record requests for Phase 1: twelve for the NH Utilities and four for CPCNH. Responses are due December 20, two days after the close of the period for filing motions for rehearing or reconsideration of the Order and Notice.

II. LEGAL STANDARD

Pursuant to RSA 541:3 and 541:4, a party may move for rehearing of a Commission order within 30 days of the order by specifying every ground upon which it is claimed that the order is unlawful or unreasonable. The Commission may grant rehearing or reconsideration where a party states good reason for such relief. *Public Service Company of New Hampshire*, Order No. 25,361 (May 11, 2012) at 4. Good reason may be shown by identifying specific matters that were overlooked or mistakenly conceived by the deciding tribunal, or by identifying new evidence that could not have been presented in the underlying proceeding. *Id*. at 4-5. Within 30 days of the filing of a motion for rehearing, the Commission must grant, deny, or suspend the order or decision complained of pending further consideration, and the suspension may be upon such terms and conditions as the Commission may prescribe. RSA 365:21.

III. REQUEST FOR RECONSIDERATION

The Order Violates RSA 363:17-b and RSA 541-A:35 by Failing to Decide Upon the Settlement Agreement

The Commission as a decision-making regulatory authority has the authority and responsibility to decide the matters that come before it, and either grant or deny the relief sought by the parties that appear before it, as the parties have no other recourse to receive such relief. RSA 363:17-b states "[t]he commission shall issue a final order on all matters presented to it" and that "[a] final order shall include, but not be limited to . . . [a] decision on each issue including the reasoning behind the decision." The Order fails to do this. Specifically, the Order makes no decision on the settlement agreement and in fact makes almost no reference to it, despite being a matter specifically submitted to the Commission for a decision. Nor does the Order address the Parties' explicit request to approve the settlement, a request that was supported by CPCNH and the DOE almost in its entirety.

The Order analyzes the elements of the settlement as individual issues as if they were being pitted individually against those positions of CPCNH and the DOE, but this is not what the parties to the settlement agreement proposed. To the extent that CPCNH and DOE asserted positions on and litigated individual issues, their asserted positions on those issues do merit examination on an individual basis. But the settlement agreement must be evaluated as the negotiated whole that it is, which requires more than individual analyses of its component parts. Parties to a settlement agreement are proposing a comprehensive answer to all issues in a docket that the parties assert, when taken as a whole, have a just and reasonable result that is in the public interest. The parties to the settlement in this docket did not only agree to the continuation of current NEM compensation, the addition of DG application fees, and some sort of data

collection effort in isolation. Each of the five elements of the settlement were agreed to as a condition of all parties agreeing to all terms, with each term being contingent upon the approval of all others.

NEM compensation levels, DG application fees, and the data collection effort (as it was proposed in the settlement) were interdependent upon the approval of the Legacy Period and the NH Utilities filing an NEM TOU proposal two years from the approval of the settlement agreement. That is the bargain that the nine parties to the settlement struck, which is why the settlement in this docket contained the following language:

> This settlement agreement is expressly conditioned upon the Commission's acceptance of all of its provisions without change or condition. All terms are interdependent, and each Settling Party's agreement to each individual term is dependent upon all Settling Parties' agreement with all terms. ***If such complete acceptance is not granted by the Commission***, or if acceptance is conditioned in any way, each of the Settling ***Parties shall have the opportunity to amend or terminate this settlement agreement or to seek reconsideration of the Commission's decision or condition***.

(Settlement agreement at 5-6, emphasis added).

The Commission must rule decisively on the entirety of the settlement agreement, and not simply analyze the issues raised within it as if the settlement agreement itself is not a matter for the Commission to decide.

By supporting the settlement agreement as a whole, the nine parties to the settlement agreement forwent the opportunity to assert individual positions on each issue at hearing. Thus, by declining to address the settlement agreement, the Commission has deprived the settling parties of a decision on the settlement as a whole and, by only providing analysis of individual issues, the Commission has deprived the settling parties of adequate due process because in supporting the settlement agreement the settling parties were unable to put forth individual

positions on those issues.[4] Arguably, the Order is an "order adverse to" the parties to the settlement agreement as envisioned by RSA 541-A:35, as the request for relief of approval of the settlement was not granted. However, the Order lacks the findings of fact and conclusions of law required by RSA 541-A:35 regarding the settlement agreement because the Order fails to acknowledge the existence of the settlement agreement, instead referring to "Parties' recommendations" on an individual basis. This fails to capture the critical characteristic of a settlement agreement: that it is a negotiated product of parties to the docket to settle all issues in a contested case, in lieu of adjudicating those issues individually and separately. Leaving the settling parties without a decision on the settlement frustrates the statutory purpose of RSA 363:17-b and 541-A:35 regarding final orders. The Moving Parties respectfully request that the Commission reconsider the Order to evaluate, analyze, and decide the settlement agreement as a whole.

The Order Violates RSA 363-17-b and RSA 541-A:35 and is Contrary to Due Process by Commencing New Phases of the Docket on Issues That Have Been Litigated and on Which the Commission Has a Complete Record

All parties to this docket have received adequate due process not only on the issues originally noticed in this docket—except to the extent described above regarding the settlement agreement—but also on all issues that were raised and fully litigated at the August hearings. All parties had the opportunity to file initial and rebuttal testimony, serve discovery, conduct direct and cross examination, answer Commissioner questions, and file post-hearing briefs regarding the noticed issues; the parties have been heard. [5] The settlement agreement specifically and

[4] The parties to the settlement agreement addressed some of the issues in the Order through cross examination by and of CPCNH, but they were not afforded an opportunity to put on their own individual cases for the issues decided in the Order.

[5] CPCNH also presented opinions and information on numerous issues that were not noticed.

explicitly addressed each of the noticed issues and proposed a resolution on them so that the Commission could issue a final order in this proceeding. CPCNH and DOE had an opportunity to address or rebut the provisions of the settlement agreement, as well as put forward their own cases, which for CPCNH included a host of issues both noticed and unnoticed. The record was complete on all issues presented by the time hearings concluded and the parties' post-hearing briefs were received. To deem a record incomplete at the end of a fully adjudicated docket only to restart the docket with new phases on many of the same and some new issues is antithetical to the Administrative Procedure Act. The matter to be decided is whether the various parties met their burdens of proof for each issue placed in front of the Commission for decision.

The issues that were fully litigated and therefore warrant a final decision are: Phase I.C[6] and all Phase II issues for which the Notice relies exclusively on the CPCNH brief, despite other parties' positions on the record on the same issues.[7] Indeed, four of the six issues listed in the Phase II section of the Notice directly cite to the CPCNH brief. As a general matter, the Order and the Notice rely almost exclusively on one party—CPCNH—to justify the decision to perpetuate this docket with three new phases without regard to the rest of the record. The sole explanation for the new phases in the Order is on page 32 stating "[t]he Commission favors a

[6] Phase 1.C is titled "Changes to Compensation" but pertains specifically to whether customers should receive compensation for RPS compliance in the net metering credit, which only CPCNH proposed, with all other parties supporting RPS compliance remaining in the rate. (Tr. Day 1 at 133:9-134:19; Tr. Day 2 at 26:12-19, and 216:11-218:15).

[7] Phase 2 includes: "Whether or not exports to the grid by customer-generators taking default service should be accounted for as reduction to what would otherwise be the wholesale load obligation of the load serving entity providing default service such exports to the grid." RSA 362-A:9, XXI(a) • Whether to implement a compensation mechanism to ensure that customer generators are fully credited for their contributions to the regional transmission load reduction, such as by reducing line losses; • Whether large customer-generators should be compensated for their actual avoided Regional Network Service transmission charges. See CPCNH Brief at 11–16. • Whether customer-generators who are customers of suppliers other than one of the electric distribution utilities can receive credit for actual avoided ISO-NE Forward Capacity Market charges by reducing the capacity load obligation. See CPCNH Brief at 18–19. • Whether the net metering tariff should be amended to permit distributed storage to interconnect and be compensated for net metering. See CPCNH Brief at 19. • Whether customer-generators should be prohibited from simultaneously participating in both New Hampshire's net metering program and the ISO-NE wholesale markets. See CPCNH Brief at 20. (Notice at 5-6).

competitive environment because that ultimately benefits ratepayers at large, whether they are served by the utilities, competitive energy suppliers, or community power aggregators. The Commission agrees that CPCNH's proposals merit further consideration." But parties to the docket put considerable evidence on the record to the contrary. The record evidence does not support the proposition that any of CPCNH's suggestions would result in a competitive environment. However, there is record evidence stating clearly that most, if not all, CPCNH's suggestions have attendant costs, some of them quite significant, which will necessarily increase the costs of net metering for all customers whether they net meter or not. (NH Utility Rebuttal Testimony, Exhibit 3 at Bates Page 17, 20-23, 25-26; Tr. Day 1 at 131:10-22). These issues have a sufficient record to support a decision, and the Moving Parties request that the Commission reconsider its Order and render a final decision on these matters, based on all relevant evidence in the record, as summarized below.

Taking the above-mentioned issues in order, Phase I.C, "Modification of Compensation Levels" is based upon the "CPCNH recommend[ation] that the Commission alter the compensation that customer-generators receive so that they only receive the "Base Energy Service Rate," which CPCNH defines as the default service rate minus RPS compliance, A&G, and working capital costs, and any amounts attributable to the reconciliation of previous over- or under-collections." (Notice at 4, citing the CPCNH Brief at 16-18). The Notice goes on to state that "[t]he Commission believes it is appropriate to review whether the compensation for customer-generators should be adjusted so that, rather than receive the full default service rate, they receive the "Base Energy Service Rate," as defined above." (Notice at 4). But this overlooks the fact that this issue was addressed in prefiled testimony of the parties, reviewed thoroughly at the August hearings in this docket and addressed in post-hearing briefings. The

NH Utilities addressed why this suggestion was without merit in their rebuttal testimony (Rebuttal testimony of NH Utilities, Exhibit 3 at Bates pages 16-18) and the parties to the settlement agreement addressed it both during direct examination of the settlement witness panel (Tr. Day 1 at 133:9-134:19) and again with the NH Utility rebuttal witness panel (Tr. Day 2 at 216:11-218:15). The DOE likewise placed on the record that RPS compliance costs should be included in compensation. (Tr. Day 2 26:12-19). CPCNH, the NH Utilities, and the parties to the settlement all had the opportunity to place their positions on the record about this issue. Had there been sufficient record evidence to adopt the "Basic Energy Service Rate", the Commission could have included it in the Order. But the evidence in the record supports a conclusion that this idea is not worth further consideration. NH Utility witness Brian Rice testified that NEM customers already express that they have difficulty with understanding their bills, and that creating a different credit rate for NEM exports from the energy that NEM customers purchase from their utility would create increased confusion about their bills (Tr. Day 1 at 133:9-134:19) for a relatively insignificant reduction in compensation for utility net metered customers. (Rebuttal testimony of NH Utilities, Exhibit 3, Bates pages 16-18).

It is contrary to due process to grant the benefit of a second chance upon the party that failed to meet their burden and deny relief to the parties that did meet their burden by subjecting them to subsequent process where the Commission itself has already indicated a preference by saying that certain proposals "merit further consideration" despite record evidence to the contrary. For this reason, Phase I.C should be reconsidered, so that the Commission can issue a final decision on the matter consistent with the record. If the Commission believes that the proposals of CPCNH are not supported on the record in this docket but nevertheless merit further consideration, the Commission may invite CPCNH to submit a petition, or the Commission may

open an investigation pursuant to its authority under RSA 365:5, 365:6, 365:15, 365:19, 374:4, and 374:7.[8]

Similarly, the Commission's decision to launch Phase II through the Notice ignores substantial record evidence that these ideas do not merit further consideration within this proceeding. The first of the Phase II issues, "whether or not exports to the grid by customer-generators taking default service should be accounted for as reduction to what would otherwise be the wholesale load obligation of the load serving entity providing default service such exports to the grid," though it was not noticed in this proceeding, was nonetheless litigated by the parties to this docket. CPCNH included this issue in both testimony (Testimony of Clifton C. Below at 13-19) and addressed it at length at hearing through both direct and cross examination, and in briefing. (*See*, e.g., Tr. Day 2 at 120:12 – 122:10, 164, 187, 256-260; CPCNH Brief at 7-11; CPCNH Reply Brief at 5-6, 12-15). Likewise, in response to CPCNH, the NH Utilities in rebuttal testimony and at hearing addressed in detail why altering how load is currently settled is consistent with how load is settled throughout the ISO-NE region and that modifying this process in the manner that CPCNH proposes would be nothing but a shifting of costs among retail suppliers, not result in any net savings, and would likely cost millions of dollars that would be borne by all customers and therefore increase the cost of net metering for all utility customers without any net benefit. (Joint Rebuttal Testimony of the NH Utilities, Exhibit 3 at 23 - 27; Tr. Day 2 at 209, 230:20-238:14).

[8] If the inquiry into Phase I.C continues, the Moving Parties ask that the Commission move it to be considered with the Phase II issues in the same phase, as CPCNH intended for those issues to be considered together. CPCNH acknowledged that the default energy service credit alone is undercompensating large customer-generators for their actual value of exported energy, stating "for over 100 KW today, it's not a net cost shift, because of the lack of compensation for avoided transmission cost.· So just getting the full default service rate is still undercompensating compared to the value produced." (Tr. Day 2 at 133:17-22). The premise is that reducing the energy credit would only be fair if a new transmission credit is created for large customer-generators which would result in a net increase in the value of the net metering credit for large customer-generators, but would not be reasonable otherwise. For this reason, adjustments to the default service rate credit should not be considered in isolation, but together with consideration of an added transmission credit.

Because the record does not support further consideration in this docket, if the Commission is interested in hearing more about this issue, the Commission could indicate that CPCNH should (1) more fully develop its proposal for the overhaul of utility load settlement, ideally addressing the facts already on the record in this docket that demonstrate such a proposal will be costly to all customers and not in the public interest, and once it has done so, (2) to file a fully-developed proposal, including new facts that have not already been decided (and any supporting testimony and materials), in a petition requesting that the Commission newly consider this issue.[9] Alternatively, the Commission could open an investigation pursuant to its statutory authority. As it is CPCNH's proposal that load settlement be changed, CPCNH is the party that should have the burden to demonstrate such a change is in the public interest. However, for the purposes of *this* docket, which has been fully adjudicated, the record supports a decision that load settlement should not be changed,[10] without foreclosing CPCNH's ability to bring a sufficient pleading to open a new docket for consideration of load settlement revision, and the Moving Parties ask that the Commission reconsider this issue accordingly.

The second Phase II issue, "[w]hether to implement a compensation mechanism to ensure that customer generators are fully credited for their contributions to the regional transmission load reduction, such as by reducing line losses" was also thoroughly addressed in this docket. Again, CPCNH addressed transmission compensation in both testimony and rebuttal, brought it up extensively at hearing, and included it in both opportunities to brief. (Testimony of C. Below,

[9] Any reference to a petition in this motion includes the premise that a petition must be legally sufficient: meaning, that it must state the laws and rules the request for relief relies upon and provide facts sufficient to comprise a prima facie claim for relief.

[10] Joint Rebuttal Testimony of the NH Utilities, Exhibit 3 at 23 - 27; Tr. Day 2 at 209, 230:20-238:14). Mr. Swift's and Mr. Pentz's testimony should be highly persuasive as to the costs compared to the zero net benefit of these changes. Both witnesses deal with load settlement in their professional capacities (Tr. Day 2 at 209-210) and as such have firsthand knowledge of the implications of CPCNH's proposed changes. In contrast, CPCNH witness Below testified he had not sought out any information on cost or level of effort required to implement his suggested changes. (Tr. Day 2 at 169-171).

Exhibit 13 at 19-23; Rebuttal Testimony of C. Below, Exhibt 14 at 4-5, 9-10; Tr. Day 2 at 125-131. In turn, the NH Utilities in rebuttal testimony and in a rebuttal witness panel to CPCNH's claims duly addressed why expansions to transmission credit in the way CPCNH proposes is not sound or supported. (NH Utility Rebuttal Testimony, Exhibit 3 at Bates Pages 20-22; Tr. Day 2 at 221-225, 227:19-230:6).

As already mentioned in this motion it is true that RSA 362-A:9, XVI directs the Commission to "continue to develop and periodically review new alternative net metering tariffs," but that does not mean that parties should be subjected to continuous further process after the conclusion of a complete adjudication without a final decision on the merits of the matters put before the Commission by the parties, and certainly not if such further process is unsupported by the record already in front of the Commission. The record in this docket has two complete positions on this issue—CPCNH's proposals, and the opposition to those proposals—that require at this time a final disposition by the Commission. By noticing CPCNH's ideas in a new phase of this docket, rather than requiring CPCNH to put them forward in the form of a request for relief in a petition that contains the necessary factual support, the Commission inappropriately relieves CPCNH of its burden of proof and subjects all other parties, particularly the mandatory parties, to further process not supported or justified by the record. The Moving Parties request the Commission reconsider the Order's decision for further process and the Notice's inclusion of this issue.

The Notice relies on pages 11-16 of the CPCNH brief to put forward the third of the Phase II issues: "[w]hether large customer-generators should be compensated for their actual avoided Regional Network Service transmission charges." This issue too was litigated and warrants a final decision. CPCNH's position, put forth in both sets of its testimony and at

hearing, is that customers-generators with interval metering be compensated for actual avoided Regional Network Service ("RNS") charges and an "appropriate portion" of avoided Local Network Service ("LNS") charges. The NH Utilities explicitly refuted the merits of this claim, including challenging the premises on which it relies. (NH Utility Rebuttal Testimony, Exhibit 3 at Bates Pages 21-22; Tr. Day 2 at 221-223). In addition to the record not supporting a decision that RNS and LNS charges are in fact avoided in the manner that CPCNH alleges, it is clear that, to the extent CPCNH's proposal for a bespoke transmission credit is understood given the lack of detail presented, the record evidence demonstrates that the proposal would necessarily increase the cost of net metering administration and place a burden on the NH Utilities to the extent it could disrupt the ordinary course of utility operations. (Tr. Day 2 at 227:19-230:6). CPCNH did nothing to refute this except to say, without any basis whatsoever, that it would be "relatively simple" for the NH Utilities to implement. (CPCNH Testimony, Exhibit 13 at 30-31). CPCNH Chair and chief witness Clifton Below acknowledged that he had not consulted with the utilities to see what effort and cost would be required to effectuate such a change. (Tr. Day 2 at 169-171). There is substantial evidence in the record[11] supporting a decision to not compensate large customer-generators for "actual avoided Regional Network Service transmission charges" since both the underlying premises of the claim and the proposal for a credit based on those premises were rigorously disputed.

The fourth Phase II issue, "Whether customer-generators who are customers of suppliers other than one of the electric distribution utilities can receive credit for actual avoided ISO-NE Forward Capacity Market charges by reducing the capacity load obligation" was raised by CPCNH first in its testimony (Exhibit 13 at 22-23) and CPCNH reiterated support for this in its brief (CPCNH Brief at 18-19). The parties to the settlement agreement explicitly addressed this

[11] NH Utility Rebuttal Testimony, Exhibit 3 at Bates Pages 21-22; Tr. Day 2 at 221-223.

issue in their reply brief (Settling Parties Reply Brief at 10-12), but this position was wholly disregarded and not mentioned anywhere in the Order or the Notice.

The settling parties raised a critical issue of jurisdiction: whether the Commission has plenary rates authority over non-utility entities to create a credit rate that applies only to non-utility customers. (*Id.*) As a matter of law, the answer to this question is "no." RSA 53-E:4, I states that municipal aggregations "shall not be considered a public utility under RSA 362:2 and shall not be considered a municipal utility under RSA 38." RSA 378:1 and 378:3 give the Commission plenary rate authority over public utilities only. The credit discussed in the notice would apply only to customers that do not get their energy supply from a utility, but instead from a competitive supplier or municipal aggregator. It is undisputed that the Commission does not have plenary authority to set rates for those entities. A credit is a rate just as a charge is a rate, so it does not appear that the Commission can create credit rates exclusively for the customers of entities other than the regulated NH Utilities such as unregulated competitive suppliers and municipal aggregations.[12] In testimony and at hearing, witnesses explained that the utility default service rate was inclusive of capacity and so crediting at that rate properly compensated customers. (NH Utility Testimony, Exhibit 2 at 13-14). The Moving Parties acknowledge this does not likewise compensate customers who get supply from non-utility entities, but as noted in the settling party reply brief, CPCNH's proposal would be an impermissible expansion of net metering. As unregulated suppliers, competitive suppliers and municipal aggregators have the freedom to set their rates, as well as any credits they wish to offer customers.[13] However, there is nothing that entitles these entities to ratepayer-funded credits, and the law indicates that such a

[12] With the exception of the limited regulation of the Puc 2000 rules that apply to competitive suppliers and the Puc 2200 rules that apply to municipal aggregations.
[13] Suppliers and aggregators issuing credits presents a pragmatic billing concern, but that issue is not germane to this motion.

credit would be outside Commission jurisdiction. The Moving Parties request that this issue in the Notice be reconsidered.

The fifth Phase II issue of "[w]hether the net metering tariff should be amended to permit distributed storage to interconnect and be compensated for net metering" is an important policy question worthy of examination. However, this issue is well outside the scope of this docket as initially noticed. Furthermore, the Notice relies solely on the CPCNH brief at page 19, and CPCNH's brief cites only to their own testimony when it states that there is "considerable evidence" for adding storage to net metering eligibility. (*See* CPCNH Brief at 19). RSA 374-H:2 directs the Commission to adopt rules or approve tariffs related to battery storage, but the list of things the Commission is to consider is substantial and complex, and none of those enumerated considerations from the statute were addressed at hearings in this docket. Moreover, the NH Utility rebuttal panel witness Ed Davis (Tr. Day 2 at 226:21-227:18) also spoke to this issue and noted that it was a matter of significant policy and pragmatic complexity, to the extent of warranting a dedicated docket. To include it as one of many Phase II issues to be decided in a four-month period[14] is insufficient for a matter of such scope, complexity, and significance, and the Moving Parties request that the Commission reconsider this part of the Notice to instead contemplate a new investigatory docket dedicated to the issue of battery storage eligibility for net metering in New Hampshire, to be initiated at a later date.

The final Phase II issue is "[w]hether customer-generators should be prohibited from simultaneously participating in both New Hampshire's net metering program and the ISO-NE wholesale markets." This issue was fully litigated in this docket through party testimony and at the August hearings. CPCNH advocated for the Commission suspending ISO-NE registration of any facility participating in net metering, making various legal arguments claiming it is illegal to

[14] The Moving Parties address the timing of the new phases later in this request for reconsideration.

allow such registration. The parties to the settlement agreement refuted this in their brief, noting that FERC is well-aware that this practice occurs and has taken no action. (Joint Party Brief at 9). The Order, through the Notice, acknowledges only the CPCNH position to justify another adjudicative process, rather than deciding the issue based on all record evidence. The Moving Parties request that the Commission reconsider the Order to render a decision on this matter.

If CPCNH had met its burden of proof, the Commission would have been able to act on the Coalition's suggestions. That the Commission felt it necessary to continue the inquiry into these issues is decisive evidence that CPCNH's burden was not met. But, as mentioned above, the fact that CPCNH did not meet its burden does not foreclose the possibility of CPCNH bringing a more detailed proposal before the Commission in the future. The Commission could find that CPCNH failed to meet its burden in this docket on various issues but encourage the Coalition to further develop its ideas and indicate that the Commission would consider fully developed, granular proposals containing new facts submitted along with a petition with a request for relief that cites to the relevant laws and rules and provides facts that support a prima facie claim under those authorities. This approach would properly assign the burden of proof to the party seeking the relief, *i.e.*, the Coalition. In contrast it is inconsistent with the Administrative Procedure Act and subverts due process to confer an undue advantage on a party that has failed to meet its burden with a second bite at the apple by giving them an opportunity to continue to build the record in an existing proceeding without the appropriate burden of proof following multiple days of evidentiary hearings and a full briefing opportunity. The parties litigated these issues and are entitled to a final disposition through a final order, consistent with RSA 363:17-b and RSA 541-A:35. The Moving Parties thus ask that the Commission reconsider the portion of the Order and the Notice that executes the Order's directive to continue the

consideration of these issues in this docket and instead render a final order on the merits of these issues, which the record, fully-developed by the parties, supports.

Certain Issues of Phase I Are the Purview of the NH Department of Energy and the Puc 900 Rules

There are certain issues of Phase I that do not pertain to the legislative directives that gave rise to this docket, and instead appear to be squarely in the purview of the Puc 900 rules in the jurisdiction of the Department of Energy. The issues in Phase I that do not pertain to the original directives that started this docket are: (1) customer-generator definition; (2) small v. large customer-generator categorization; and (3) net metering hardware and processing (Phase 1A, 1B, and 1D). The customer-generator definition is contained in statute, RSA 362-A:1-a, II-b, and it would take an act of the legislature to modify that definition. Small customer-generator is defined in Puc 902.26 as anything with capacity not more than 100kW, and Puc 902.20 defines a large customer-generator as anything over 100kW up to and including one megawatt.[15] Utility metering and hardware is addressed to varying degrees by the Puc 900 and En 300 rules. These three phases pose two related concerns: (1) they seem to fall squarely within the jurisdiction of the Department, and (2) RSA 362-A:9 does not include these topics as those that the legislature instructed the Commission to consider when contemplating modifications to net metering tariffs. The Commission has broad investigative powers under the RSA 374:4 Duty to Keep Informed, but this docket is not an investigation, it is an adjudication which means the rights, duties and obligations of parties are implicated, but with the jurisdictional issue raised here, the ramifications to those rights, duties and obligations are unclear.

[15] The Notice on page 3 relies on testimony of CPCNH witness Below, but that testimony is referring to the utility customer rate class assigned to the renewable energy facility and not the determination as to whether a facility is small or large for the purpose of net metering tariff eligibility. The latter determination is made by the Puc 900 rules and not the NH Utilities.

RSA 541-A:31, I states "[a]n agency shall commence an adjudicative proceeding if a matter has reached a stage at which it is considered a contested case or, if the matter is one for which a provision of law requires a hearing only upon the request of a party, upon the request of a party." RSA 541-A:1, IV defines contested case as "a proceeding in which the legal rights, duties, or privileges of a party ***are required by law*** to be determined by an agency after notice and an opportunity for hearing." The Phase I issues described above do not comprise a contested case, because the statutory mandates that gave rise to this docket do not apply, and there is no provision in RSA 362-A:9 that requires their consideration. Further, since these issues are explicitly covered by the Puc 900 rules in the DOE's jurisdiction, and RSA 362-A:9 does not require their consideration or determination by the Commission as it did with the originally noticed issues in this docket, an adjudication seems inappropriate as it is not clear whose rights, duties and obligations would be at stake since the Commission cannot supersede the Puc 900 rules or override the DOE's jurisdiction as an independent sister agency. Since these issues cannot be the proper subject of an adjudication, the Moving Parties request the Commission reconsider the decision to continue this adjudication in this docket on these issues.

The Notice Does Not Provide Sufficient Time for the New Phases

The Notice sets out an aggressive timeline to cover a sizeable number of complicated issues. The Notice does not indicate that there is any time sensitivity to any of the issues being considered. However, to address this number of issues, which vary in degrees of complexity, significantly more time is needed so that all parties receive satisfactory due process and can put a well-considered case before the Commission for consideration. Notwithstanding the fact that many issues have already been litigated, both Phase I and Phase II cover enough subject matter to constitute the entirety of a stand-alone docket. Adjudications typically take around a year or a

bit more, depending on the number of noticed issues. To expect a similar and perhaps greater quantity of material than that originally noticed to be covered in a fraction of the time (two-plus months and four months for Phases I and II, respectively) will not give these issues the consideration they are due by the parties, will not present the Commission with a sufficiently meaningful exploration of those issues, and will not give the parties adequate due process on those issues. The Moving Parties strenuously recommend substantially more process over a longer period of time if the Commission chooses to pursue these new phases.

Phase I also has limited process: there is no testimony allowed by any party. Phase I is comprised of data requests from the Commission and the parties served on the NH Utilities; an initial recommendation from the NH Utilities on each of the noticed issues; the opportunity for parties to reply to the recommendation; and a hearing. Without knowing more about the topics, it is difficult to say from the Notice what aspects are to be examined within each of these issues, but it could be the case that the discovery served by the Commission and the parties overlooks salient aspects that merit consideration. Without an opportunity for testimony, the NH Utilities and other parties do not currently have an option to address all necessary factors that should be reviewed by the Commission in its consideration of the issues. It is also not clear that, after one round of discovery each from the Commission and the parties, the NH Utilities will have anything close to sufficient information to make a recommendation on each or any of the issues noticed in Phase I, and for other parties to reply to such recommendations. To address these concerns, the Moving Parties request that if the Commission proceeds Phase I, then the Commission begin with a prehearing conference to address issues of scope at which the parties may ask questions, after which the parties may confer and develop a procedural schedule.

IV. REQUEST FOR CLARIFICATION

Clarify Scope of Inquiry for the Issues Covered by DOE's Puc 900 rules

If the Commission is to decline to reconsider any of the above issues, the Moving Parties seek additional clarity on the scope of the new phases, particularly regarding the issues of the phases that appear to be within the Department's jurisdiction under the Puc 900 rules. Since the Commission and the Department are independent sister agencies which cannot overrule one another, it is unclear how the Commission would proceed on issues that are explicitly covered by the Puc 900 rules. As discussed above, those issues are: customer-generator definition; small v. large customer-generator categorization; and net metering hardware and processing (Phases 1A, 1B, and 1D).

Further Clarity is Needed on What Phase III Entails

Phase III commences with the Commission directing the NH Utilities to "file a proposed outline of: (1) the data they seek to collect information relevant to benefits of distributed energy resources in New Hampshire and the implementation of TOU net metering rates; (2) a description of how they will collect this information, such as, for example, whether they will commission an expert analysis, etc.; and (3) a proposed timeframe for collecting this information. The Commission also directs that this proposal include a schedule for periodic updates to the Commission of the progress in the data collection efforts" and the filing should be jointly filed with other parties if possible and, if not, then parties must file responses by January 31. (Notice at 7). Aside from those two actions, it is not clear what else comprises Phase III. This docket is an adjudication, but there appears to be nothing adjudicatory about Phase 3. The Commission states that it "will address the issues in Phase III of this docket, including the potential implementation of future changes to the net metering compensation mechanism and the

imposition of TOU rates, pursuant to RSA 362-A:9, XVI, RSA 374:2, and RSA 378:7" but it is not clear what the issues of Phase III are or how the Commission intends to address them. The Moving Parties suggest that, at a minimum, a prehearing conference on this phase be held before any party files anything, so that all parties may obtain better clarity on what this Phase is to entail.

V. CONCLUSION

The Moving Parties appreciate the exceptional qualities of this docket: it is an adjudication without petitioner, created by legislative mandate that directs "periodic review" of the NH Utility net metering tariffs. Moreover, NEM is a continuously evolving area of policy and technology, adding to the considerations at hand and the charge to the Commission to address ongoing developments. These considerations, however, must be balanced against the needs of the parties whose rights, duties and obligations are implicated to receive due process, which includes a final decision on the merits of each matter and request for relief placed in front of the Commission for consideration. The Commission is well within its authority to commence a new adjudication in the future for another "periodic review" of the NEM tariffs, or to commence an investigation of any number of NEM issues at any time. But the record in this docket is complete, and as such the Moving Parties respectfully ask that the Commission reconsider the Order and Notice and render a decision in a final order consistent with RSA 363-17-b and RSA 541-A:35 on each issue based on the record before it. The Moving Parties thank the Commission for its consideration of this motion.

WHEREFORE, the Moving Parties respectfully request that the Commission:

A. Reconsider the issues described in Section III to remedy errors in law;

B. In the alternative, should the Commission decline to reconsider the above-mentioned issues, clarify the issue of jurisdiction; and

C. Grant any such other or further relief as may be just and reasonable.

Respectfully submitted,

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

Date: December 18, 2024

GRANITE STATE HYDROPOWER ASSOCIATION

By: _

Madeleine Mineau
Board Member

LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP. D/B/A LIBERTY UTILITIES

By:____/s/ Michael Sheehan_____
Michael Sheehan, Esq.
Senior Counsel

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY

By: _____
Jessica A. Chiavara
Senior Counsel

UNITIL ENERGY SYSTEMS, INC.

By:__ _
Patrick H. Taylor, Esq.
Senior Counsel

CONSERVATION LAW FOUNDATION

By:___/s/ Nicholas Krakoff_____
Nicholas Krakoff, Esq.
Staff Attorney

CLEAN ENERGY NEW HAMPSHIRE

By:___ ___
Samuel Evans-Brown
Executive Director

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.

Dated: December 18, 2024 ___ _
Madeleine Mineau