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IN THE SUPREME COURT OF NEW HAMPSHIRE

Bright Spot Solar, LLC,

Appellant,

v.

New Hampshire Public Utilities PUC,

Appellee.

NOTICE OF APPEAL

To the Honorable Justices of the New Hampshire Supreme Court:

1. Bright Spot Solar, LLC, a New Hampshire limited liability company, of PO Box 77, Farmington, New Hampshire 03835-0077, hereafter "Bright Spot," by and through its sole member, W. Packy Campbell, pro se, hereby submits this Notice of Appeal from an Order of the New Hampshire Public Utilities PUC (PUC) issued in PUC Docket No. 22-060 (hereafter "the Docket") under the right of appeal granted to it by NH RSA 541:6. The subject order being appealed is Order No. 28,100, dated February 10, 2025. In that Order, the PUC denied Bright Spot's "Petition for Rehearing, Bright Spot Solar, LLC" wherein Bright Spot, an approved Intervenor in the Docket, sought a rehearing of the PUC's Order No. 27,074, issued November 18, 2024. Appellant respectfully requests that this Court vacate Order No. 28,100 and remand the matter to the PUC with instructions to grant a rehearing on Order No. 27,074, pursuant to RSA 541:3 and RSA 541:6.

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2. Bright Spot intervened in the Docket after the PUC had issued Order No. 27,074. The basis of Bright Spot's intervention is that, as a seller of solar equipment, as a developer of solar projects from 20 kWh to just under 1 Megawatt, as a lender on solar projects in the state, and as the owner and operator, with affiliated companies of which W. Packy Campbell is the member, of fourteen (14) solar tracker sites producing a combined total of approximately 1.014 Megawatts DC, generating approximately 1.875 MW of electricity per year, with another affiliated company is about to bring on line a large customer generator project of just under one Megawatt in 2025, it "a person directly affected by" the deliberations of the PUC in the Docket

3. More importantly, it sought to have a rehearing to introduce evidence that the PUC did not consider, or which it rejected when offered by other parties to the Docket, in order to address significant findings made by the PUC in the Order No. 27,074, which findings will have a large impact on the future of Customer Generation in the State.

4. The PUC denied the rehearing, principally on the basis that Bright Spot could have offered the evidence in the Docket had Bright Spot participated therein. Whereas Bright Spot was not a party when subject Order No. 27,074 was issued, as it only intervened after the PUC issued Order No. 27,074, the PUC denied the Petition for Rehearing. Bright Spot avers that it intervened only after the Order 27,074 was issued because it was only upon issuance of said Order that your Appellant learned that the PUC's decisions in Order 27,074 may have a significant impact on distributed energy generation of electricity through net metering in general, and on the business of Bright Spot in particular. Prior to the issuance of Order 27,074, Bright Spot did not consider that the PUC could under law take an action that would undermine essential features of New Hampshire's net metering system. Once your Appellant determined

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that its business interests may be jeopardized by the findings in Order 27,074, it sought to intervene, which motion was granted by the PUC.

5. The appeal seems to be a matter of first impression, as your Appellant is unable to locate a case in New Hampshire where an Intervenor, as a party directly affected by an order and a right to protect as provided by RSA 541:3, sought a rehearing of an order issued by an agency in which the Appellant was not a party *prior to issuance* of said order.

6. In Order No. 28,100, the PUC specifically deferred making a finding as to whether Bright Spot is a "person directly affected" by Order 27.074; it stated that "Because the PUC denies the motion on alternative grounds, it will not address this issue in this order. Accordingly, the PUC makes no conclusion as to whether Bright Spot is eligible to move for rehearing under RSA 541:3." (Order 27,074 at page 2, footnote 2.)

7. The PUC then denied the Petition for Rehearing principally on the grounds that it considered the Petition as a "request to supplement the record," it found that Bright Spot had to show "why the evidence it wishes to present at a rehearing could not have been presented in the original hearing", with citation to the *case of Appeal of Gas. Serv.,* 121 N.H. 797, 801 (1981) and *O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977). Your Appellant asserts that those cases do not apply to it when it was ***not a party*** to the underlying action as was the case in those and other similar cases on this point. The language of 541:3 contemplates those parties, i.e. "any *party to the action or proceeding before the PUC*," but the statute also gives right to a rehearing in the following clause of "…or any person directly affected thereby, …" (RSA 541:3) (Emphasis and italics added.)

8. Instead, your Appellant asserts that, as a "person directly affected" by the Order it is entitled to a rehearing and offer new evidence not considered in the Docket on a strict application

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of RSA 541:3 under the second clause of that statute, i.e. as a "persona directly affected thereby." Once Bright Spot can show it is a directly affected, it has a statutory right to a rehearing. By failing to find that Bright Spot was an affected party, the PUC erred as a matter of law.

9. That error was then compounded by imposing a burden on the Appellant as enunciated in *Appeal of Gas Serv*. that applies to parties who are parties in the docket before the PUC. Bright Spot only became an Intervenor after the Order 27,074 was issued. With respect, by applying case law that deals with parties that are parties to the docket to one, like your Appellant, the PUC ignores or even eviscerates, the rights the statute grants to someone "directly affected." I believe that any reasonable man would find that Bright Spot could not have presented evidence at the hearing it was not a party to, a hearing that your Appellant did not know and could not know would result in a potentially significant risk of harm to its business.

10. This Honorable Court should find that RSA 541:3 benefits two classes of persons to appeal, i.e. to those that are a party to the docket and those that are not a party to the action but are a directly affected person. The standard by which the motion could be granted should be a different standard for a party directly affected that is not a party to the action. The party directly affected has no comments or evidence on the record. The only way a party directly affected can get reasonable comments and evidence on the record is through a rehearing. IF the law is not intended to address this fact why would the law have a specific separate class of person that can apply for rehearing those not a party to the action but directly affected by the action. The PUC seems to take the position that a party directly affected should have known the future or have a time machine to go back and time and put evidence on the record. This cannot be in any free world a standard for reasonable judicial review.

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11. Your Appellant respectfully believes this Honorable Court should make a determination that to properly address a request for a rehearing the PUC should first determine the type of appeal they have before applying the case law on the matter. I would ask the Honorable Court to order that the PUC needs to consider the type of person applying for the appeal, as the person's status as party to the action, or lack thereof, should be consideration and is very different than party to the original action. The language of RSA 541:3 has to govern the Petition for Rehearing, not existing case law like *Appeal of Gas Serv*., for a person directly affected to apply for rehearing.

12. Another basis for the PUC's denial of the Petition was an assertion that, essentially, other parties to the docket could have represented your Appellant's interests. At Page 6 of the Order 28,100, the PUC found that "the proposal supported by Bright Spot was supported by a number of well-resourced and capable parties where the interests of solar developers were well represented." (Order 28,100 at page 6, lines 7-10). With all due respect, your Appellant disputes that its rights, opinions or evidence can be represented by another person or entity and asserts that the PUC made an error in law in so finding. The PUC assumes that those other parties are aligned with evidence and facts I alone can uniquely present. None of the parties are Bright Spot Solar LLC and cannot be expected to make points at a hearing that BS can make in a rehearing. Although other parties can make similar statements and some BS may agree with, or may disagree with, but none have the exact same experience, knowledge and specific evidence

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that Bright Spot does as to certain issues in the Docket, and more importantly evidence that may have an effect on the findings in Order 27,074.

13. Your Appellant notes that the PUC called information offered by those other parties to the docket anecdotal, unspecified and asked what other reasons might be to explain their difficulties in obtaining financing. The PUC in essence called the information on legacy periods and financing hearsay. The Petition for Rehearing by Bright Spot offered to bring firsthand information on financing and legacy period and to provide at rehearing specific circumstance, specific first hand information. The PUC asks for these details on the record Bright Spot and Single Member W. Packy Campbell can provide that information for the record. (See Page 24, first paragraph of Order No. 27,074). The Appellant can correct the record so a proper decision can be made. This is but one of the compelling good reason for a rehearing. Unlike parties to the docket Bright Spot Solar LLC and W. Packy Campbell is both a lender on specific solar projects and a borrower on specific solar projects and can provide good reasons for considering legacy periods. Bright Spot, as demonstrated in the motion for rehearing, has done significant solar projects both large and small customer generation In addition the PUC failed to address that Bright Spot not only called for a 20 year legacy period and also offered that a 30 year or even life of investment is more appropriate. Showing that BRIGHT SPOT has a different opinion and evidence to offer that none of the other parties offered.

14. Bright Spot LLC Petition for Rehearing offers direct evidence on cost shifting and takes a unique position, one not introduced by any party to the Docket, that not only does negative cost shifting not exists but that Bright Spot and affiliated companies owned by W. Packy Campbell as

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sole member can provide compelling evidence of what the Appellant calls "positive costs shifting", in the form of contribution margin to rate payers at large. The PUC failed to address section 3 of the Petition for Rehearing; the denial is silent on the copious information on cost shifting provided in the motion for rehearing. This is as if the PUC simply denies positive cost shifting can exist. This is a good reason for rehearing, as Bright Spot and member W. Packy Campbell is both a net metering customer selling power to the grid and a non-net metering customer of electricity, and has unique evidence that was offered in the Petition to show the positive benefit that the utilities and rate payers attain from the contribution margin that distributed energy provides to those entities. In fact, the undersigned respectfully believes that financial evidence to be so compelling it may change the course of public policy on the matter of net metering cost sifting. The PUC seems to lack an understanding of the significant differences from Net Metering 1.0 to Net Metering 2.0 ("NEM 2.0").

15. Your Appellant and member W. Packy Campbell can provide firsthand testimony why legacy period are necessary for lending. None of the parties articulated LTV, DTI, or other specific financial ratio's. This, too, is good cause for the rehearing. Bright Spot and member W. Packy Campbell can provide firsthand testimony on Cash flow, financing. Bright Spot sells a unique product and technology that, unlike traditional solar, often produces more solar than the customer consumes behind the meter. This surplus production of electricity, and how it is treated, is specific new information that can be provided at rehearing, all of which is clearly articulated in Section One of the Petition as the reason for standing as a person directly affected.

16. Further no party in the docket was an expert on cash flow vs. pay off periods. As an investor and owner of small business, the undersigned looks at cash flow and return on investments ("ROI"), not how long it takes to recover capital as one party testified to. These

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financial factors are important for financing, and important to the PUC's deliberation regarding the legacy period of net metering in the State. By finding the evidence before it "unspecified, anecdotal reports" demonstrates that the PUC did not have the exact type of first hand evidence that the your Appellant seeks to introduce in the rehearing, and demonstrates good cause for over turning the Order 28,100 and ordering a rehearing.

17. The significance of the need for a rehearing cannot be understated. The PUC by Order No. 27,074 created significant confusion in the solar customer generation market place by implying that they could retroactively change the sunset clause and compensation levels under NEM 2.0. This was done primarily by omitting the word "new" that is included in the enabling statute 392-A:9 (XVI) when the PUC said in the Order 27,074 that it was considering changes to net metering rules. The PUC seems to imply they can change NEM 2.0 compensation levels retroactively and leave these new levels in place until the 2040 legacy period. The PUC seems to assert that they can in Docket 22-060 leave the sunset date of NEM 2.0, which is December 31, 2040, under the enable statute 392-A:9, and can change the compensation mechanism that exists in NEM 2.0. By ignoring the word "new" in the enabling statute, the PUC erred as a matter of law when its Order can be interpreted as allowing it to revise NEM 2.0. Your Appellant asserts that the PUC can come up with a "new" net metering tariff, i.e. "NEM 3.0," under its statutory obligation to review and possible update net metering in the state, but it cannot unilaterally change variables in NEM 2.0 that your Appellant justifiably relied upon when investing millions of dollars in solar energy with the expectation of being paid for the sale of electricity the amount of money that NEM 2.0 says for how long NEM 2.0 says it will be paid for. The PUC itself admits in the denial that they omitted the word new. They admit they will

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follow state law yet the order and their continued actions indicate a flowed understanding of the Law to affect change retroactively. However they issue the same day information contrary to those statements by announcing a new docket to be opened on review of net metering. They stop at admitting they need to clarify the order and deny clarification request along with the request for rehearing. Retroactive changes to the compensation and sunset of NEM 2.0 could literally bankrupt my company. Clarification that the PUC does not under law have the authority to change the economic variable in NEM 2.0 is a paramount clarification needed. Page 15 order 22074 The *first issue is whether the Commission should adjust the existing compensation levels for small and large customer-generators and, if so, what those new compensation levels should be.* The point needed to be clarified in law is that NEW means new as in no one can change the current net metering until 2040 when new law will be followed for what is in place at that time. Between now and 2040 the PUC is free to offer other NEW or Alternative net metering programs they cannot imply modifications or taking away current programs in law.

18. In summary, this appeal raises issues of significant import, including matters of first impression, and your Appellant prays that this Honorable Court hear this Appeal on the following points of law:

1. **Standing as a "Person Directly Affected": Bright Spot was not a party to Docket DE 22-060 but is a "person directly affected" under RSA 541:3. The PUC erred by denying the rehearing motion without first determining Appellant's status, instead relying on case law, such as *Appeal of Gas Serv.* and *O'Loughlin v. N.H. Personnel Comm'n*, applicable to parties, not non-parties. This misapplication overlooks RSA 541:3's provision for two distinct classes of appellants: parties and directly affected non-parties.

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2. **Standard for "Good Reason":** The PUC failed to apply an appropriate standard for "good reason" under RSA 541:3 for a non-party. As a non-party, Appellant could not present evidence at the original hearing, a fact self-evident to any reasonable person. The PUC's assertion that other parties could represent Appellant's interests is baseless; Appellant's unique evidence—on financing, legacy periods, and cost-shifting, matters of law —cannot be substituted by others, akin to denying an individual their own defense in court.

3. **Unique Evidence and Rehearing Justification:** Appellant offers firsthand testimony from W. Packy Campbell, a lender and borrower in solar projects, on the necessity of legacy periods (20, 30 years, or asset life) and positive cost-shifting benefits to ratepayers, unaddressed by the PUC in Order No. 28,100 despite Order No. 27,074's call for such specifics (Page 24). This evidence corrects the record and provides compelling good reason for rehearing.

4. **Retroactive Net Metering Changes:** Order No. 27,074's omission of "new" from RSA 362-A:9, XVI the PUC orders they can retroactively alter NEM 2.0 compensation levels through 2040, creating market instability and threatening Appellant's investments. This ambiguity, unclarified in Order No. 28,100, risks bankruptcy for Bright Spot Solar, LLC, which relied on the 2040 grandfathering date—a constitutional violation under federal and state law prohibiting retroactive impairments. The PUC violates the law by stating they could do a violation even if they have not yet done that violation. The PUC should say per the RSA we leave net metering 2.0 intact, in that same manner the PUC stated in the order customer generation is up to 1 MW per the RSA. Consistency matters.

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5. **Neglect of Non-Economic Benefits:** The PUC improperly inserted "economic" before "costs and benefits" in RSA 362-A:9, XVI, assigning zero value to public health benefits (e.g., clean air, Appellant's asthma struggles), contrary to legislative intent. This legal error warrants rehearing to assess these societal values.

6. **Specific Matters of Law** The PUC seeks to avoid clear limits in the Dockets to just be able to adjust and review NEW net metering options. This continued policy of affirming, renewing, and evaluating current net meter set in law increasing the scope and authority of the PUC warrants rehearing to the assess PUC authority. All other stakeholders failed to point out that the PUC cannot change the current net metering which is enshrined in state law to a date certain. Compelling Good Cause for Rehearing.

19. Appellant asserts that the PUC's denial infringes upon Bright Spot's rights, misinterprets RSA 541:3, and jeopardizes the solar industry's stability in New Hampshire. A rehearing is essential to address these errors and ensure that the evidence offered by the Appellant may inform future orders of the PUC.

20. Your Appellant notes that the PUC has formally closed the docket in Docket 22-060, by order of Friday, March 7, 2025. Although the docket has been closed, your Appellant avers that the issues raised herein, should still be heard in order to undo the harms that the Orders in Docket 22-060 has caused. Such Orders in that docket remain in place even though the docket itself is closed. Accordingly, this Honorable Court should not find this Appeal moot; it should

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order the PUC to rehear the issues in Order 27,074 to correct the errors therein. Additional new information does not exist at time of appeal. The PUC in order 28110 continues to misapply law by stating *pursuit to the Commission's ongoing obligation to review and develop alternative net metering tariffs under RSA 362-A:9, XVI(a) and our investigative authority under RSA 365:5 and RSA 374:4.* Once again no reference to NEW net metering in the order. Furthermore, the PUC refences law related to utility tariffs and investigation as power to change net metering. Net metering is a specific statutory scheme the only new modification can be offered Under RSA 362 A 9 XVI. (a).*The commission, through an adjudicative proceeding, shall continue to develop and periodically review new alternative net metering tariffs…*, . Net metering is not a tariff for utility charges or a matter of investigation. RSA **365:5 Independent Inquiry. –** *The commission, on its own motion or upon petition of a public utility, and the department of energy may investigate or make inquiry in a manner to be determined by it as to any rate charged or proposed or as to any act or thing having been done, or having been omitted or proposed by any public utility; and shall make such inquiry in regard to any rate charged or proposed or to any act or thing having been done or having been omitted or proposed by any such utility in violation of any provision of law or order of the commission or the department*. Net metering is a compensation offered in law to stimulate private investment in Customer Generation clean energy. Net metering is not something omitted or proposed by any Utility and the PUC errors in law to assert powers under this section to review and change net metering.

Supervisory Power of Department of Energy and Public Utilities Commission

Section 374:4

374:4 Duty to Keep Informed. *– The commission and the department of energy shall have power, and it shall be their duty, to keep informed as to all public utilities in the state, their*

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capitalization, franchises and the manner in which the lines and property controlled or operated by them are managed and operated, not only with respect to the safety, adequacy and accommodation offered by their service, but also with respect to their compliance with all provisions of law, orders of the commission and charter requirements. RSA 374 :4 is not giving the PUC and DOE the right to review net metering or open a docket to do so. The docket could be open under RSA 374: 4 to see if Utilities are in compliance with Net Metering laws not to review and change net metering law. The PUC acts in a state of confusion not recognizing the law gives rights to Customer Generators for net metering and those rights are grandfathered until 2040. 362-A:9 XV. *Standard tariffs that are available to eligible customer-generators under this section shall terminate on December 31, 2040 and such customer-generators shall transition to tariffs that are in effect at that time.* The court should clarify the scope of PUC authority and issue rehearing under such legal clarification of this important matter of law. The continued messaging PUC through Docket are going to consider changing everything for net metering is upending the Customer Generation market and it would be reasonable for the Court to clarify this matter of law. Such legal clarification would allow for a more appropriate rehearing and final order from such rehearing. A small business such as Bright Spot Solar LLC should not be pressured to constantly watch PUC dockets and orders that could dramatically change the solar customer generation market retroactively. The most essential component of the net metering laws to be effective is to be able to count on the stability of the law.

21. Note 1: Pursuant to Supreme Court Rule 20, the information required therein shall be attached to this Notice of Appeal in Exhibit A attached hereto. This is partly necessary as the

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PUC Docket 22-060 has an extensive list of parties of record, as well as an extensive service list of interested people whether formal parties or not.

22. Note 2: This Notice of Appeal was prepared with the assistance of a New Hampshire attorney pursuant to New Hampshire Rules of Professional Conduct 1.2 (g).

Dated: March 10, 2025

Respectfully submitted,

W. Packy Campbell
dotloop verified
03/11/25 9:49 AM EDT
71DO-GRH4-JBYT-MPE3

W. Packy Campbell, Sole Member
Bright Spot Solar, LLC
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Certificate of Service:

I certify that on March 10, 2025, a copy of this Notice of Appeal was sent via electronic mail to the New Hampshire Public Utilities PUC at ClerksOffice@puc.nh.gov and to all parties on the service list for Docket DE 22-060, as recorded in Order No. 28,100 as of this date.

Dated: 03/11/2025

W. Packy Campbell
dotloop verified
03/11/25 9:49 AM EDT
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W. Packy Campbell, Sole Member
Bright Spot Solar, LLC

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 22-060

ELECTRIC DISTRIBUTION UTILITIES

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

Order on Net Metering

O R D E R N O. 27,074

November 18, 2024

On September 20, 2022, the Commission convened this docket to consider changes to net metering in New Hampshire as part of its obligation to "continue to develop and periodically review new alternative net metering tariffs," RSA 362-A:9, XVI, including whether any changes were merited by a study on the value provided by net-metering projects completed pursuant to Order No. 26,029 (June 23, 2017) in Docket No. DE 16-576.

As explained more fully below, the Commission will take the following actions:

- Retain the existing compensation levels for all net-metered customer-generators in the Alternative Net Energy Metering Tariff approved in Order No. 26,029 (NEM 2.0);

- Retain the exclusion of customer-generators with peak generating capacity greater than 1 MW, except for municipal hosts as required by statute;

- Authorize the implementation of application fees for individuals to interconnect as net-metered customers as laid out in this order;

- Retain the existing "legacy period" termination date of December 31, 2040 for all newly installed net-metered customers; and

- Establish further process to consider additional changes to the net-metering tariff as part of the Commission's ongoing obligation to develop and improve net-metering tariffs in New Hampshire.

I. BACKGROUND – NET METERING AND EXISTING TARIFFS

Net-metering is a system for compensating customers of electric distribution utilities who export energy onto the grid with small-scale power generation. *See* RSA 362-A:1-a, II-b, RSA 362-A:1-a, III-a. Because these customers both produce and consume electricity, they are called customer-generators. RSA 362-A:1-a, II-b. Distributed energy resources include entities that generate electricity through solar photovoltaic cells, wind, hydropower, and other methods. Order No. 26,029.

In 2017, pursuant to RSA 362-A:9, XVI(a), the Commission approved a new net-metering tariff, referred to as NEM 2.0, which replaced the then-operative "Standard Tariff" or NEM 1.0. *See* Order No. 26,029 (June 23, 2017); *see also* RSA 362-A:9, XVI(a) (requiring the Commission to continue to develop and periodically review new alternative net metering tariffs); RSA 362-A:9, I (authorizing the creation of the standard net-metering tariff). The terms of NEM 1.0 remained available for those customer-generators that had signed up for net-metering prior to the 2017 effective date of Order No. 26,029, with a termination date of December 31, 2040 (under RSA 362-A:9). The terms of NEM 2.0 govern the relations between customer-generators and the three investor-owned electric utilities in New Hampshire for all non-NEM 1.0 customers.

Under NEM 2.0, customer-generators do not receive compensation at a fixed price for the electricity they generate. Rather, the compensation they receive is based on the three primary rate components that New Hampshire's three electric utilities[1] charge their ratepayers for electric service. In order to understand how the

[1] The electric utilities are: Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource), Unitil Energy Systems, Inc. (UES), and Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (Liberty).

compensation mechanism works, a basic understanding of the relevant rate components is necessary. These rate components consist of:

(1) The distribution charge, the mechanism through which the utilities recover the costs for maintaining their intrastate distribution systems, which includes lines, transformers, and poles used to distribute electricity to ratepayers;

(2) The transmission charge, the mechanism through which the electric utilities recover the costs for their share of the maintenance expenses for New England's regional transmission system, which carries electricity across state lines (where it is then distributed through a utility's distribution system); and

(3) The default service charge, the mechanism through which the electric utilities recover the cost of purchasing and supplying electricity. In addition to the actual cost of electricity, the default service charge includes the costs for complying with the Renewable Portfolio Standards (RPS) legislation, Independent System Operator-New England (ISO-NE) capacity and ancillary charges, and the "risk premium" that utilities pay to procure electricity in the current auction process.

These three charges are all "volumetric charges," which means that the Commission sets a rate per kilowatt hour (kWh) and ratepayers are billed based on their actual electricity usage. Significantly, because these rates are adjusted by the Commission on a regular basis to reflect the utilities' revenue requirements, the actual compensation per kWh that customer-generators receive under the net-metering tariffs also fluctuates. In addition to these volumetric charges, which constitute the majority of customers' electric bills, ratepayers pay non-bypassable volumetric charges (including "system benefits," "stranded," and "storm" costs) and a fixed "customer charge."

With respect to the compensation received for net-metering, NEM 2.0 referenced three separate categories of customer-generators. *See generally* Order No. 26,029. The first category was "small customers," which included all customers with a total peak generating capacity of less than 100 kW. *Id.*

Table 1 – Small Customers - Monthly Netting and Monthly Exports

Bill Component	Compensation for ***"Monthly Netting"*** (when monthly production is less than or equal to consumption)	Compensation for *excess* energy ***"Monthly Exports"*** to the grid (when monthly production is greater than consumption)
Default Service (Energy)	100% Credit	100% Credit
Distribution	100% Credit	25% Credit
Transmission	100% Credit	100% Credit
Non-Bypassable	No Credit	No Credit

This category was created for customers with smaller individual effects on grid infrastructure, including residential solar customers. Under NEM 2.0, small customers' imports from the grid and exports to the grid are measured on a two-way meter and netted on a monthly basis resulting in "*monthly netting*" where customers are credited 100% for all default service (energy), distribution, and transmission costs when their production is less than or equal to consumption. *See id.* at 51–53. If small customers export *more* electricity than they import, they are credited for their *"monthly exports,"* and receive compensation for each exported kWh of electricity at a rate of 100 percent of the default service (energy) charge, 100 percent of the transmission charge, and 25 percent of the distribution charge. *Id.* at 1–2.

The credits that small customers receive – for both netted default service (energy) and excess default service (energy) exported to the grid under NEM 2.0 – are typically much greater than what a non-net-metered generator would receive if it sold electricity on the market, which would be limited to the actual cost of energy and not the full cost of default service (which, as noted above, includes the cost of energy, capacity and ancillary charges, renewable energy portfolio credits, and a default service procurement "risk premium"). Additionally, while the transmission and

distribution infrastructure stays fully in place to support small customers, their contribution towards the transmission and distribution costs may be significantly reduced, or in the case of "*monthly exports*" quite possibly go negative, thus shifting these costs from net metered to non-net-metered utility customers.

The second category is customers with total peak generating capacity between 100 kW and 1 MW. *See generally id.* These customers were referred to in Order No. 26,029 as "large customers."

Table 2 – Large Customers - Monthly Netting and Monthly Exports

Bill Component	Compensation for "***Monthly Netting***"	Compensation for "***Monthly Exports***"
Default Service (Energy)	100% Credit	100% Credit
Distribution	No Credit	No Credit
Transmission	No Credit	No Credit
Non-Bypassable	No Credit	No Credit

Unlike small customers, large customers' imports and exports to the grid are *not netted* on a monthly basis. Large customers pay the full price (inclusive of default service (energy), distribution, transmission, and the non-bypassable charges) on all electricity that they import from the grid and are compensated for their exports at the value of the kWh utility default service rate. Under this scheme, the compensation mechanism for large customers is significantly less generous than the mechanism for small customers since they are solely compensated for exports at the value of the default service price. That said, the default service (energy) price is still more than what a non-metered generator would generally receive for selling just energy in the market because, as noted above, default service includes other costs like capacity and ancillary charges, RPS, and the default service procurement "risk premium."

Finally, the third category is customers with total peak generating capacity between 1 MW and 5 MW, which the Commission will refer to as "large customers greater than 1 MW" for the purposes of this order. Customers within this range are generally ineligible for participation in net-metering. The only exception are entities that qualify as "municipal hosts" per RSA 362-A:1-a, II-c. Under the statute, a municipal host is defined as a "customer generator with a total peak generating capacity of greater than one megawatt and less than 5 megawatts used to offset electricity requirements of a group consisting exclusively of one or more customers who are political subdivisions, provided that all customers are located within the same utility franchise service territory." *Id.* Pursuant to statute, municipal hosts are compensated at the same rate as large customers. *Id.* Notably, in approving NEM 2.0, the Commission acknowledged that the legislature had mandated that municipal hosts be eligible for net-metering.

As is relevant to the parties' recommendations in this docket, Order No. 26,029 also provided a guaranteed time period during which these compensation levels would remain in place, stating that any net-metering installation "installed or queued during the period [that NEM 2.0] is in effect [shall] have their net metering rate structure 'grandfathered' until December 31, 2040." Order No. 26,029 at 72. Likewise, customer-generators who first enrolled in NEM 1.0 can remain on that tariff until December 31, 2040, at which point, by operation of statute, those NEM 1.0 Tariffs "shall terminate," and "such customer-generators shall transition to tariffs that are in effect at that time." RSA 362-A:9, XV.

In approving NEM 2.0, particularly as it applied to small customers, the Commission relied on the assumption that were net benefits of distributed generation to the utility distribution system that would justify compensation above the cost of

energy that could be procured on the market. *Id.* at 54–55. This was important because utilities recover their costs for compensating customer-generators from their ratepayers at large. In other words, if the electric utilities are going to pay more for electricity from net-metered customers than from other energy suppliers, and thus charge higher rates to all ratepayers, there must be some benefit net-metering provides general ratepayers to justify this higher expense. In Order No. 26,029, the primary identified benefit that net-metered customers provide ratepayers was in the form of "avoided costs" — or the costs that electric distribution utilities would have incurred had they purchased energy from non-metered customers. *Id.* In this sense, the rationale for net-metering compensation mechanisms is that they are essentially an investment by ratepayers to facilitate the development of distributed energy resources in the state, thus allowing all ratepayers to reap the benefits of avoided costs over the long term.

However, in Order No. 26,029, the Commission noted that there was insufficient evidence in the record to definitively conclude to what extent distributed energy resources would benefit ratepayers in the form of avoided costs. *Id.* at 54. For example, in ruling that the compensation rate for small customers for excess generation should include twenty-five percent of the distribution charge, the Commission noted that, "[b]ased on the limited evidence in the record, it appears that the actual net benefits of [distributed generation] to the utility distribution system *may* be less than 100 percent of the utility distribution rate component, but greater than zero." *Id.* at 54 (approving the twenty-five percent compensation on the grounds that it was "rough justice") (emphasis added).

To provide more concrete evidence on this important issue, the Commission directed its staff (now the DOE) to commission a Value of Distributed Energy

Resources (VDER) study to "provide more definitive information regarding the actual net costs and benefits of [distributed generation] system deployments." *Id.* at 54–55; *see also id.* at (59–62) (laying out the scope of the VDER study). The Commission stated that, after the completion of the VDER study, it would reevaluate net-metering compensation mechanisms based on the actual benefits of distributed generation resources to the New Hampshire distribution system.

As noted above, the Commission convened this docket in September 2022 to consider changes to NEM 2.0 pursuant to RSA 362-A:9 and Order No. 26,029. In October 2022, the DOE filed a VDER Study from Dunsky Energy Consulting that outlined its findings on the benefits of distributed energy resources in New Hampshire, which was amended twice with updated information.

On August 20 and 22, 2024, the Commission held a two-day evidentiary hearing in which it considered proposals from the numerous parties participating in this docket about appropriate changes to the net-metering program. The Commission directed that all parties seeking Commission action in this docket file pre-hearing statements outlining what actions they request the Commission to take, as well as post-hearing briefings reiterating their requests and citing the record evidence that supports them. The Commission received three alternative proposals from the parties. Both the New Hampshire Department of Energy (DOE) and Community Power Coalition of New Hampshire (CPCNH) filed their own position statements. The third proposal was in the form of an agreement between a coalition, which the Commission will refer to as the Joint Parties, which includes the Office of the Consumer Advocate (OCA), the Conservation Law Foundation, Clean Energy New Hampshire, Walmart, Inc., Standard Power of America, and Granite State Hydropower Association, and the electric utilities.

Because the evidence relevant to each recommendation is distinct, the Commission will address the evidence cited by the parties and make actual findings in its discussion of each proposal below.

II. LEGAL AUTHORITY AND STANDARD OF REVIEW

The legislature authorized the creation of a net metering program for eligible customer-generators in New Hampshire. *See generally* RSA 362-A:9. The legislature also stated that:

> The commission, through an adjudicative proceeding, shall continue to develop and periodically review new alternative net metering tariffs, which may include other regulatory mechanisms and tariffs for customer-generators, and determine whether and to what extend such tariffs should be limited in their availability . . . .

RSA 362-A:9, XVI. The statute further states that:

> In developing such alternative tariffs and any limitations in their availability, the commission shall consider:
>
> 1. 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;
> 2. the costs and benefits of customer-generator facilities;
> 3. an avoidance of unjust and unreasonable cost shifting;
> 4. rate effects on all customers;
> 5. alternative rate structures, including time-based tariffs . . . .;
> 6. whether there should be a limitation on the amount of generating capacity eligible for such tariffs;
> 7. the size of facilities eligible to receive net metering tariffs;
> 8. timely recovery of lost revenue by the utility using an automatic rate adjustment mechanism; and
> 9. electric distribution utilities' administrative processes required to implement such tariffs and related regulatory mechanisms.

RSA 362-A:9, XVI(a) (numbering added for clarity).[2]

Significantly, while net-metering is primarily associated with the compensation mechanism for customer-generators, setting net-metering compensation levels implicates the Commission's general ratemaking authority because utilities recover the cost of compensating customer-generators from their ratepayers through their rates. For this reason, the Commission's general obligation to ensure that all rates and fares charged by public utilities are just, reasonable, and in the public interest pursuant to RSA 374:2 and RSA 378:7 is applicable to establishing net-metering compensation schemes. Likewise, any party proposing a rate mechanism that would result in higher rates for ratepayers bears the burden of proving the proposal is just and reasonable. RSA 378:8.

In the Commission's view, the first factor in RSA 362-A:9, XVI lays out the overarching concern in establishing net-metering compensation levels, namely, how can the net-metering compensation mechanism maximize any net benefits of distributed energy resources, while minimizing cost-shifting onto general ratepayers? *See* RSA 362-A:9, XVI(a). This standard implicates two sub-questions. First, what are the benefits that distributed energy resources provide to New Hampshire ratepayers? Second, assuming there are benefits, what additional costs over the market price, if any, must ratepayers pay to receive the benefits of distributed energy resources? In this sense, the avoided costs distributed energy resources provide are relevant in two parts of the analysis because: (1) their long-term benefits may justify the initial

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[2] CPCNH expends a significant portion of its post-hearing brief arguing that the standards espoused in RSA 362-A:9, XVI impose limitations on the Commission's discretion in this docket. But what CPCNH essentially argues is that this statute requires the Commission to consider certain factors in evaluating the proposed changes to the net-metering tariff and that the Commission cannot abuse its discretion by ruling arbitrarily or against the weight of the evidence. The Commission agrees with this interpretation of the statute, but that is the general standard for administrative agencies and not a higher standard as suggested by CPCNH. The Commission will comply with that standard in this order.

investment; and (2) more immediate savings generated by avoided costs may offset the cost of the initial investment. This overarching consideration must then be balanced against the remaining factors.

In reaching this conclusion, the Commission disagrees with the Conservation Law Foundation's argument that the Commission must consider the "public interest benefits," such as environmental and economic benefits, produced by distributed energy resources *even* if they do not impact rates. *See* Conservation Law Foundation Brief at 1–5. Specifically, the Conservation Law Foundation argues that the Commission's decision on net-metering compensation levels must be "informed" by the declaration of purpose in RSA chapter 362-A, which states that it is "in the public interest to provide for small scale and diversified sources of supplemental electric power to lessen the state's dependence upon other sources" and 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 Conservation Law Foundation further cites that statute's assertion 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, enhance the future of diversification of the state's energy resource mix, and reduce interconnection and administrative costs.

Id. (emphasis added).

The Conservation Law Foundation acknowledges that RSA 362-A:9, XVI, quoted above, sets the standard for the Commission's review of alternative net-metering tariffs and does not expressly mention the environmental and social benefits produced by distributed energy resources. However, the Conservation Law Foundation argues that the requirement that the Commission consider the

"net benefits" of net-metering incorporates the statement of purpose's references to their environmental, social, and economic benefits. *See also* Conservation Law Foundation Brief at 2 (quoting portions of the legislative history of RSA 362-A:9, XVI in which legislators reaffirmed their support for distributed energy).

The Conservation Law Foundation's arguments require the Commission to interpret the statute. When interpreting a statute, the Commission looks first to the "the language of the statute itself, and, if possible, construe[s] that language according to its plain and ordinary meaning." *Polonsky v. Town of Bedford,* 173 N.H. 226, 229 (2020). "We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include." *Id.* "We construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result." *Id.* "Moreover, we do not consider words and phrases in isolation, but rather within the context of the statute as a whole." *Id.* "This construction enables us to better discern the legislature's intent and to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme." *Id.*

Based on these principles of statutory interpretation, the Commission disagrees with the Conservation Law Foundation's interpretation that the "net benefits" that the Commission must consider implicate potential benefits that do not financially benefit ratepayers. As an initial matter, RSA 362-A:1 is a statement of purpose and not a substantive provision of the law. On its face, this language states that the reason for authorizing limited electric distribution pilot programs is because the state is trying to realize the benefits of distributed

energy resources and net-metering *may* be one way to realize them. Put another way, the statement of purpose indicates that the legislature believes there are ancillary benefits to distributed energy resources that may be realized from an effective net-metering program. But that itself is not a substantive standard for the Commission to consider in reviewing net-metering compensation levels.

This is important because the legislature did codify eight factors for the Commission to consider in reviewing net-metering tariffs in RSA 362-A:9, XVI. Significantly, none of these factors reference the environmental, social, and economic benefits *unrelated* to financial benefits. The legislature could have easily told the Commission to consider these benefits in setting compensation levels. It did not do so. On the other hand, it did state that the Commission must consider the costs of the program as balanced against the benefits multiple times. In fact, all eight factors listed relate, in some way, to assessing the cost of compensating customer-generators and balancing the benefits they provide with their costs to avoid "undue and unjust cost-shifting" between net-metered and general customers.

Significantly, unless the Commission is evaluating the financial costs and benefits to ratepayers, it is not clear how the Commission would evaluate cost-shifting between customer categories because neither category benefits from the external benefits as a member of that rate class. Moreover, the Commission does not know how it would factor benefits unrelated to reductions in rates into the cost-shifting analysis. For example, the Conservation Law Foundation argues that the Commission must consider reductions in pollution and increases in job opportunities resulting from distributed energy resources in its analysis. However, RSA 362-A:9 does not state how much pollution the Commission should seek to reduce or how many jobs the Commission should seek to create. In addition, there is no clear standard for the

Commission to apply to balance these benefits against higher electric rates. Notably, while balancing the financial costs and benefits of a program is within the Commission's traditional ratemaking role, evaluating the non-financial, ancillary benefits of distributed energy resources is not. *See generally* RSA 374:2, RSA 378:7, RSA 378:28 (enumerating the standard of setting "just and reasonable" rates based on the utility's actual expenses and its ability to make a return on its actual capital expenditures balanced against the ratepayers' interest in paying no higher rates than is necessary).

For these reasons, the Commission finds that the Conservation Law Foundation's interpretation is both contrary to the express language of the text and an unreasonable reading of the statute. Therefore, the Commission does not agree that it must consider the external benefits of net-metering that do impact implicate the costs and benefits to ratepayers in determining net-metering compensation levels.

III. ISSUES AND ANALYSIS

Having laid out the background and the standard for review, the Commission will turn to the actual proposals, submitted by the Joint Parties, the DOE, and CPCNH, with recommendations on how to retain or change the current net-metering tariff. In reviewing these proposals, the Commission will rely on the arguments and facts cited in the post-hearing briefs submitted by these parties, as well as a supplemental brief submitted by the Conservation Law Foundation in support of the Joint Parties' recommendations. For the ease of review, the Commission will analyze each proposal raised in the parties' positions statements separately, explain each party's position and the evidence cited in support of their positions, and the Commission's relevant factual findings and conclusions. Because some of the

recommendations the parties made overlap, the Commission will consider those together.

A. Compensation Rates for Small and Large Customers

The first issue is whether the Commission should adjust the existing compensation levels for small and large customer-generators and, if so, what those new compensation levels should be. All of the parties maintain that the Commission should retain the current compensation levels for small and large customer-generators. *See supra.* The parties, relying on the Dunsky Report and the testimony of their witnesses, maintain that these compensation levels are appropriate because distributed energy resources create significant benefits for all ratepayers in the form of avoided costs.

Having reviewed the record, including the Dunsky Report and the witness testimony, the Commission is not convinced that the parties have sufficiently demonstrated that distributed energy resources have provided significant benefits to *all* New Hampshire ratepayers that would justify compensation above the cost of energy that net-metered customers receive. *See* RSA 362-A:9, XVI (stating that net-metering compensation levels should not result in undue cost-shifting between customers). Specifically, while the parties primarily rely on the Dunsky Report's findings to support their position that the current net-metering tariff compensation levels are consistent with RSA 362-A:9, XVI, the Commission has concerns about several of the assumptions underlying the Dunsky Report's analysis and conclusions.

The Commission finds that the Dunsky Report's evaluation of cost-shifting did not adequately distinguish between the benefits of distributed energy resources accruing solely to net-metered customers as opposed to solely non-net-metered customers. The Commission finds this distinction important because to determine

that the net-metering program provides benefits to all customers by avoiding unreasonable cost-shifting onto non-net-metered customers, it is necessary to look at net-metered and non-net-metered customers separately.

In addition, the Dunsky Report attributed significant savings to the transmission charge and capacity charge components, which represented about 39.9 percent of total savings in 2021 and about 45.6 percent in 2035, which is the latest date the report forecasted savings. *See* Exh. 8, Appendix Table 7; Exh. 9, Appendix Tables 7–8. Notably, when estimating capacity cost avoidance, these savings assume a constant system-wide peak period for the system's load of between 3 and 4 p.m. in the estimation of future savings. *Id.* However, there is no explanation in the Dunsky Report as to why it assumed the peak period was between 3 and 4 p.m. and the parties did not introduce any evidence to support this assumption. In addition, there is no explanation as to why the Dunsky Report assumed that the peak period would remain constant between 2021 and 2035. In the Commission's view, how increased solar generation shifts the New England system wide peak or monthly coincidental peak requires proper attention in informing future capacity and transmission costs avoidance analysis. Given the absence of such support, the Commission has reservations regarding the reasonableness of Dunsky Report's estimation of forecasted savings. In light of the Commission's concerns with the Dunsky Report, the Commission cannot sufficiently rely on it to find that the net-metering compensation levels are definitively consistent with RSA 362-A:9, XVI. At the same time, there is insufficient evidence in the record that any alternative compensation level would be more consistent with RSA 362-A:9, XVI than the existing compensation levels. Accordingly, we will retain the existing compensation levels pending further process.

B. Eligibility for Participation by Large Customers Greater than 1MW[3]

The next issue is whether the Commission should expand eligibility for net-metering to allow large customers greater than 1MW to participate in the program. Because municipal hosts are already eligible to participate in net-metering, this expansion of eligibility would only apply to large customers greater than 1MW who are not municipal hosts. All of the parties recommended that the Commission make no changes to the net-metering tariff with respect to these customers.[4] To support this position, the Joint Parties cited witness testimony that a significant number of large customers greater than 1MW were willing to interconnect and sell energy into the grid at market prices.

The Commission agrees that the evidence does not support expanding eligibility for net-metering to allow all large customers to participate. There was no evidence presented that customer-generators in this category required compensation above the market rate to interconnect with the distribution grid at a level that would provide benefits to New Hampshire ratepayers. Accordingly, the Commission finds that it is appropriate to continue excluding large customers greater than 1MW from eligibility in net-metering (except municipal hosts) and thus accepts the parties' recommendation.

C. Legacy Period

The next issue is whether the Commission should approve the Joint Parties' recommendation to establish a new "legacy period" for newly installed customer-

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[3] The legislature directed the Commission to consider this issue in this docket. *See* RSA 362-A:9, XXIII. The Commission views this section as complying with its statutory obligations. The Commission will continue to consider and review alternative net-metering tariffs, included as applied to large customers, pursuant to RSA 362-A:9, XVI.

[4] The DOE argues that the Commission should extend the eligibility for participation in net-metering to large customer-generators if they qualify as municipal hosts pursuant to RSA 362-A:1-a, II-c. But, as the Commission understands, these customer-generators are already eligible for participation in net-metering pursuant to that statute, and thus the DOE does not appear to be recommending any changes to the law. Of course, the electric utilities may need to update their net-metering tariffs to reflect the eligibility of large customers who qualify as municipal hosts.

generators that would allow them to receive the compensation levels approved in this order for twenty years from the date they interconnect from the electric utilities. This is a change from the existing “legacy period” — referred to as a “grandfathering” clause incorporated into the Commission's Order No. 26,029, which established the parameters for NEM 2.0 — for customers who enrolled under NEM 2.0, which is a hard date of December 31, 2040, regardless of when the customer-generator interconnected to the system. This requirement of Order No. 26,029 and NEM 2.0 is mirrored by a statutory termination point for the "standard" NEM 1.0 Tariff structure, which is also fixed by RSA 362-A:9, XV as December 31, 2040. Both the Joint Parties and CPCNH support this recommendation on the grounds that the extended legacy period is necessary to encourage investment in net-metering by providing reassurance to homeowners and third-party financiers that they will be able to recover their investments. For its part, the DOE objects to the recommendation on the grounds that there is already a legacy period in place until the end of 2040, the parties have already committed to revisiting compensation levels in the next two years, and that creating a new legacy period that would only apply to customers within a narrow two-to-three year window could both create market distortions and administrative burdens for the electric utilities.

The Commission will first discuss the arguments and evidence presented by the proponents of this proposal. Because the Joint Parties (and CPCNH) offered different rationales and evidence in support of their proposal with respect to residential customers (who mostly fall within the small customer category) and commercial customers (who mostly fall within the large customer category), the Commission will discuss these categories separately.

With respect to commercial installations, the Joint Parties cited the testimony of David Littell and R. Thomas Beach of Clean Energy New Hampshire, which is a non-profit organization that educates and advocates for sustainable energy in New Hampshire and represents more than 500 members with interests in net-metering, including residential, municipal, and commercial interests. *See* Clean Energy New Hampshire Petition to Intervene. The Joint Parties also cited the testimony of Robert Hayden of Standard Power of America, which is a "full-service energy broker and consultant for the New England Area," which has provided "third-party electricity, solar development and installation" and "administers twenty-seven hydroelectric plants." *See* Standard Power of America Petition to Intervene. In addition, they cited a table (included as Attachment B to Exhibit 1) produced by Clean Energy New Hampshire that purports to show the profitability of large commercial solar installations under different net-metering compensation scenarios.

In essence, Mr. Littell and Mr. Hayden both testified that legacy periods for net-metering compensation levels were necessary to stabilize the distributed energy resource market because larger projects require third-party financing and third-party financiers will not provide financial investment without a guarantee of compensation levels. Mr. Hayden testified that some type of guarantee about net-metering compensation levels was necessary because it was "very rare" for distributed energy projects to be profitable without the higher compensation levels net-metering provides. Trans. (Day 1) at 141. For his part, Mr. Littell testified that the primary rationale for the legacy period is the ability to obtain financing from third parties, and not necessarily the actual profitably of the commercial installation. *See id.* at 300 (Mr. Littell testifying that, "it's a matter of the ability to finance. It's not that there might be

additional revenue out there beyond what's here. The folks that are providing the financing won't say that's sufficient and put the money forward.").

As to why the specific proposed twenty-year legacy period was appropriate, the witnesses offered several reasons. First, Mr. Hayden testified that for larger projects there is a "traditional finance period of 20 years," so the proposed guarantee was "a normal range of time that investors consider for solar projects." *Id.* at 295. Second, and relatedly, Mr. Littell testified that third-party financiers would not provide funding with only a 10-year guarantee of compensation levels. He testified that for this reason, the membership of Clean Energy New Hampshire had informed him that they were having difficultly financing their projects under the existing legacy period of 2040. Likewise, Mr. Hayden testified that the proposed legacy period was necessary because the "frugal" nature of the existing net-metering program already created "a tight budget." *Id.* Moreover, according to Mr. Hayden, the slow nature of interconnection meant that projects were already experiencing difficulty because under the effective fifteen-to-sixteen-year guarantee currently in place, the "projects won't work." *Id.* Mr. Hayden based this opinion off "examples of projects that won't complete if there's only fifteen or sixteen years of net metering benefits." *Id.*

Third, both witnesses referenced Attachment B as demonstrating that commercial solar installations required the twenty-year legacy period to be profitable. According to Mr. Littell, the numbers in Attachment B were "provided by a specific New Hampshire member who does a lot of work in New Hampshire" and that the scenarios discussed in that attachment are "median assumptions for financing projects." *Id.* While neither witness walked through Attachment B on direct examination, the DOE questioned them about several of the assumptions in Attachment B on cross-examination. On cross, Mr. Littell testified that Attachment B

provides six scenarios demonstrating the profitably of large net-metered projects under different investment environments. According to Mr. Littell, the first four scenarios assume that the Commission does not extend the legacy period past 2040 and show that distributed energy projects will not generate a profit under these circumstances. *See id.* at 159–60. Mr. Littell further testified that, in addition to the lack of existing compensation levels, these scenarios also assume both that there will be no net-metering program in place in 2040 and that customers will be unable to generate *any* revenue from their projects after that year. *See id.* at 160. However, despite this assumption in the attachment, Mr. Littell testified that, even if there was no net-metering program past 2040, these projects would likely continue to sell power through bilateral contracts. He testified, however, that the reduced amount they would likely receive—based on current market prices—would not be sufficient to attract investment. *Id.* at 160–61.

With respect to small customers, the OCA's witness, Timothy Woolf, the Vice-President of a consulting firm specializing in electricity and gas industry regulation, planning, and analysis, testified that there is "a different calculus for homeowners than for the larger . . . customers." Id. at 290. According to Mr. Woolf, while the issue with commercial customers is securing third-party financing, the issue with residential customers is providing a guarantee to homeowners that they will recoup the expenses they incur in entering into rooftop solar contracts with third-party developers, which is the prevailing model for rooftop solar. Specifically, he testified that third-party developers primarily market their product to homeowners by advertising the savings they will earn through lower electric bills. According to Mr. Woolf, these vendors will "often" say "we can give you a payback period of seven, ten, whatever years." *Id.* According to Mr. Woolf, "if they were to come along and say, oh,

we can't tell you what's going to happen in year five, because we're not grandfathered, and everything up to year five could be totally different," they would "lose a lot of customers." *Id.* at 290–91. According to Mr. Woolf, that is the reason for grandfathering, "to give certainty to residential customers as to what they get when they put their money down." *Id.* at 291.

Likewise, Mr. Littell testified that "residentials need [the certainty] of a payback." *Id.* at 293. As an example, he testified that, in "Maine, for a short time period, we had the Commission adopt a form of net metering that just really didn't work. And even the residential market, everything just fell off. All of the solar companies in Maine were coming over to New Hampshire during that time period to try to stay afloat." *Id.* at 293. Mr. Littell continued that the Maine example showed that the length of the legacy period "makes a difference, even for the residential market, where people are not motivated, in my estimation, primarily to save money, but they still don't want to pay $15,000 to $20,000 for something on the rooftop that, you know, they—they are not sure they're—what economic [benefits there] are after five years." *Id.*

With respect to the required length of a legacy period, Brian Rice, the Director of Customer Solar Programs at Eversource, testified that, "[t]hird-party ownership . . . is a common model for residential customers to acquire distributed generation" and his "understanding [was that] probably these terms are fifteen, twenty years." *Id.* at 300. Notably, Mr. Beach of Clean Energy New Hampshire testified that the payback period for residential solar varied, "ranging from between nine and fourteen years." *Id.*

CPCNH presented the testimony of its president Clifton Below, who supported the twenty-year legacy period proposed by the Joint Parties as a means of providing a more secure investment environment. Mr. Below acknowledged that there were

potential concerns about “lock[ing] in” net-metering compensation levels for long periods of time but noted that compensation levels were only one part of the total credit paid to customer-generators. Trans. (Day 2) at 115–16. Thus, according to Mr. Below, even if the Commission were to approve the proposed legacy period, the amount that net-metered customers would receive would still vary depending on the value of the underlying rate elements (namely, the distribution, transmission, and default service rates). *Id.* at 116. Mr. Rice echoed this sentiment, noting that one of the reasons the Joint Parties supported the continuation of the existing compensation levels was it was a “market-based compensation structure,” that would be responsive to changes in the energy market because the largest component of the net-metering credit was the default service rate, which fluctuates depending on energy prices. Trans. (Day 1) at 219.

Having reviewed these arguments and evidence, the Commission will evaluate whether the Joint Parties (and CPCNH) have met their burden to show that the proposed twenty-year legacy period for all newly-installed customer-generators is necessary for either commercial or residential installations.

With respect to larger, commercial installations, the Commission does not believe that the Joint Parties and CPCNH have submitted sufficient evidence to show that any legacy period is necessary to secure investment, never mind a twenty-year legacy period. The primary evidence in support of the necessity of a legacy period is the testimony of Mr. Littell and Mr. Hayden that the legacy period was necessary because third-party financiers would not otherwise invest in large commercial distributed energy projects. Notably, both witnesses testified that they based their opinions on their awareness of individuals and projects attempting to get financing for distributed energy resource projects.

The Commission does not believe that these unspecified, anecdotal reports about unidentified individuals and projects are sufficient evidence to establish the need for an expanded legacy period. The Commission does not know what projects are at issue, whom they have sought funding from, and what other reasons there might be to explain their difficulties in obtaining funding. For this reason, the Commission has no idea whether these anecdotal reports reflect actual financing conditions for commercial distributed energy resource projects in New Hampshire or the specific circumstances of these unidentified individuals.

In addition, the Commission does not believe that the witnesses adequately considered how the extension of the legacy period for newly-installed customer-generators would shift financial and business risk from customer-generators and investors onto non-net-metered customers, and ratepayers at large. In the Commission's view, this is a central consideration to ensure that costs are not being unduly shifted onto ratepayers at large.

Even if these witnesses had proven that investment would not occur absent a legacy period, they have not shown that the twenty-year legacy period proposed is necessary. The primary evidence the Joint Parties cite to establish the need for the twenty-year period is Attachment B, which is a table that purports to show the long-term profitability of 1 MW and 4.99 MW solar installations under six different net-metering compensation schemes. The Commission is not persuaded by Attachment B for several reasons. First, the document is not self-explanatory and the Joint Parties' witnesses provided no explanation of it in their direct testimony. While the Commission acknowledges that it is supposed to show that larger solar installations will not be profitable absent a twenty-year legacy period, the Commission does not see how the figures demonstrate that proposition. Second, the information in Attachment

B is unverified. Mr. Littell testified that the information was provided by a member of Clean Energy New Hampshire but did not explain who this member was or where he or she obtained this information. Therefore, the Commission has no basis to accept that the numbers in the table are accurate. Third, Attachment B appears to rely on dubious assumptions. For example, Mr. Littell testified that the table assumed that there would be no revenue for large installations after 2040. However, he also testified that this assumption was unlikely because, even assuming there is no net-metering program in place at that time, the projects could still sell their electricity on the market. For these reasons, the Commission does not find Attachment B compelling evidence.

Outside of Attachment B, there was little other evidence presented in support of the twenty-year period. Mr. Littell asserted in his testimony that financiers would not finance the projects with only a ten-year guarantee about the compensation levels. The Commission does not find this unspecified and general description sufficient evidence, in large part because the Commission does not know on what sources or data Mr. Littell is basing this observation. In addition, Mr. Hayden testified that the twenty-year period was consistent with the period usually set for long-term financing agreements and that they were appropriate for that reason. But the absence of a twenty-year legacy period for net-metering compensation levels will not itself prevent investors from entering long-term financing agreements. Therefore, the prevalence of twenty-year financing agreements does not itself justify the imposition of a twenty-year legacy period.

With respect to smaller customers, the Commission finds the Joint Parties and CPCNH have likewise failed to meet their burden to support an extension of the legacy period. In support of the twenty-year legacy period for residential customers, the

Conservation Law Foundation cited the testimony of Mr. Woolf, Mr. Beach, and Mr. Littell as establishing that without the twenty-year legacy period, "consumers *may* be unwilling to invest in small behind-the-meter rooftop solar projects because of uncertainty regarding project payback periods." CLF Brief at 4 (citing Trans. (Day 1) at 288–294) (emphasis added).

Nothing in these witnesses' testimony supports the proposition that a twenty-year legacy period is *necessary* to ensure that residential consumers continue to invest in rooftop solar. At most, they testified that a guarantee that they would recoup their investment within a particular timeframe—a "payback period"—was important to consumers and was thus an important part of the sales pitch for residential solar developers. *But see* Trans. (Day 1) at 288–294 (Mr. Littell testifying that, based on his experience, it may not be the primary motivation for many residential solar customers who are more motivated by environmental consciousness). However, the need for a "payback period" does not itself prove the necessity of the proposed legacy period to secure residential investment in rooftop solar. Simply put, there is insufficient evidence in the record that third-party residential solar developers will be unable to effectively enroll homeowners in contracts for rooftop solar absent a legacy period for the net-metering compensation mechanism. While Mr. Littell testified that Maine experienced a decrease in residential solar participation after that state altered its legacy period, he did not testify to any of the pertinent facts about that experience, such as what the prior legacy period was, what it was changed to, and whether Maine's net-metering compensation levels were comparable to NEM 2.0, and thus the Commission cannot draw any conclusions from Maine's experience.

In addition, even if it was established that a legacy period was necessary to secure investment in residential solar, the evidence does not support the need for the

twenty-year legacy period proposed. The only evidence about the average payback period for residential solar came from Mr. Woolf, who testified that the average payback period was between nine and fourteen years. There is thus no evidence that the proposed twenty-year legacy period is necessary.

For the foregoing reasons, the Commission finds that the Joint Parties have not shown that a twenty-year legacy period (beyond the existing December 31, 2040 termination date for NEM 2.0) is necessary to secure investment in commercial or residential customer-generator installations. Therefore, the Commission will not approve such a modified, extended legacy period in this order.

D. Application Fees

The Joint Parties next recommend that the Commission authorize application fees for customer-generators seeking to enroll in a utility's net-metering program based on the size of the project. *See* Exh. 1, Attachment C (containing the Joint Parties' New Hampshire Customer-Generator Application Fee Proposal). Specifically, the Joint Parties recommend the following fees:

Table 3

Project's Total Peak Generating Capacity	Fee
≤ 25 kW	$200
25 kW to 100 kW	$500
> 100 kW	$1,000

Id.

The three electric utilities would use these fees and apply them to qualifying expenses, which would include costs for staff, services, and systems that are required

to efficiently process customer-generator applications to interconnect to the grid in a manner consistent with applicable rules and statutes. *See id.*

The Joint Parties further propose that each company would file an annual reporting and reconciliation of the revenue they receive from the application fees, which the Joint Parties contend should occur during a pre-existing rate reconciliation mechanism. Any overcollections will be credited to ratepayers using this mechanism. On the other hand, undercollections will not be collected from ratepayers using this mechanism without prior authorization from the Commission. However, the parties request that the Commission approve a change to fee amounts in the annual filing to "achieve better alignment of revenues and administrative expenses in future years." Exh. 1 at Bates Page 31. Each utility will bear the burden in each filing of demonstrating that its administrative costs were incurred directly in support of the interconnection processes for customer-generators. *Id.* The Joint Parties stated that Eversource would submit this filing in its annual reconciliation for its Stranded Cost Recovery Charge and UES would submit the filing in the annual reconciliation of its External Delivery Charge. *Id.*; *see also* Trans. (Day 1) at 148. The proposal does not specify where Liberty would submit this filing. At hearing, Liberty's witness testified that it would likely use its Stranded Cost Charge but could also utilize another reconciling mechanism. *Id.* at 148–49.

The Joint Parties argue that the proposed application fees are appropriate because they will allow the electric companies to recoup the costs of administering the programs from participants and thus prevent shifting the cost onto general ratepayers. With respect to the actual amount for each fee, Mr. Rice of Eversource testified that they derived these fees by assessing the actual costs to the utilities of administering the net-metering programs. He further testified that they compared the fees to those in

comparable jurisdictions and confirmed that they were commensurate with similar fees in those states. Both the DOE and CPCNH agree that this proposal is appropriate, including that the specifically proposed fees are reasonable, and recommend that the Commission adopt it.

The Commission agrees with the parties that the proposal for application fees, including the proposed fee amounts, and the proposed annual reporting and reconciliation mechanism are appropriate. Specifically, the Commission finds that both features are appropriate because they will reduce cost-shifting from net-metered to general customers. In addition, the Commission accepts Mr. Rice's testimony that the proposed fee amounts are reflective of the utilities' actual administrative costs relative to interconnection applications, and appreciates that there is a feature in the reconciling mechanism that will allow these fees to be adjusted in the future if appropriate. The Commission thus approves the Joint Parties' proposal—outlined in Attachment C to Exhibit 1—in full. With respect to the specific existing mechanism for each utility, the Commission agrees that Eversource should utilize its Stranded Cost Recovery Mechanism and UES should utilize its External Delivery Charge to reconcile the application fee overcollections. The Commission directs Liberty to submit a filing stating the existing mechanism they intend to reconcile the application fee revenue in within five days of the date of this order.

E. Time-of-Use Rate, Data Collection Efforts, and Stakeholder Process

The Joint Parties next propose that, subsequent to this order, the electric utilities undertake an eighteen-month data collection effort that further eluc*id*ates the costs and benefits of net-metering to residential customers. Per their proposal, the Joint Parties would confer after the Commission issues this order to agree on the data elements to be collected. This process would include the electric utilities obtaining

data relevant to net-metering time-of-use (TOU) rates. According to the proposal, the electric utilities will develop TOU rates based on these efforts and file a petition for the Commission to review and approve the TOU rates in an adjudicative docket within two years of the date the Commission issues this order. Both the DOE and CPCNH support this proposal.

The Commission agrees with this proposal in part but finds that the data collection effort should occur in this docket and on a timeframe set in a supplemental order of notice after the Commission issues this order. This decision is based, in part, on the Commission's desire for more regular updates from the parties involved in the data-collection effort to ensure that the process is running efficiently. The Commission has an obligation under RSA 362-A:9, XVI to continue to review and develop alternative net-metering tariffs. The evidence in this docket and the parties' briefs have raised numerous issues related to net-metering that the Commission believes merit further consideration and review. Accordingly, the Commission will issue a supplemental order of notice outlining the process for this additional review, which, as described below, will also include several issues raised by CPCNH.

F. CPCNH Requests for Additional Review

In its pre-and post-hearing filings, CPCNH recommended that the Commission direct the electric utilities, as well any other parties interested in participating, to convene working groups to discuss several issues related to net-metering in addition to the TOU study recommended by the Joint Parties and DOE. These issues include: (1) whether exports to the grid by customer-generators taking default service should be accounted for as a reduction to what would otherwise be the wholesale load

obligation of the load serving entity providing default service to the grid;[5] and (2) how customers of suppliers other than the utility can receive credit for actual avoided ISO-NE Forward Capacity Market charges by reducing the capacity load obligation.

Similarly, CPCNH has made several recommendations that the Commission order the electric utilities, within varying lengths of time, to file proposals to: (1) allow distributed storage to participate in net-metering; (2) exclude RPS compliance costs from the default service supply credit net-metered customers receive; (3) credit customer-generators with total peak generating capacity greater than 100 kW for actual avoided transmission costs; and (4) prevent the dual participation of customer-generators in both the state net-metering program and the ISO-NE market. CPCNH proposes that, after the utilities submit their proposals, the other parties will have the opportunity to conduct discovery and submit evidence in favor or against them.

In their brief, the Joint Parties objected on the grounds that CPCNH did not introduce sufficient evidence to establish whether CPCNH's numerous proposals would result in just and reasonable rates and avoid undue cost shifting. Accordingly, the Joint Parties contend that these additional changes require further investigation and development prior to being approved.

As the Commission interprets CPCNH's requests, CPCNH is not asking the Commission to take immediate action on the record before it. Although it recommends several different processes depending on the recommendation, it is essentially requesting that the Commission direct the parties to engage in further process to

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[5] CPCNH notes, and the Commission acknowledges, that RSA 362-A:9, XXI(a) directed the Commission to "use its best efforts to resolve [this] question through an order in adjudicative proceeding . . . issued no later than June 15, 2022." *See* CPCNH Brief at 5 (quoting RSA 362-A:9, XXI(a). The Commission did not provide notice of this issue in its September 20, 2022 order commencing this docket, however, and there is an insufficient evidentiary record for the Commission to rule on this issue in the current order. Accordingly, the Commission will provide additional process to consider this issue in this docket after its uses this order.

consider additional changes to the net-metering tariff. To this end, the Commission does not believe CPCNH's proposals are necessarily inconsistent with the Joint Parties' position on these issues—i.e., both believe that these additional changes require further development and review prior to implementation.

The 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. The Commission agrees that CPCNH's proposals merit further consideration. The Commission, however, does not agree with the processes proposed by CPCNH. Specifically, while the parties are free to discuss any issue they choose to amongst themselves and to engage in data collection as they see fit, the Commission will not endorse the creation of a "working group." The Commission also disagrees with CPCNH's requests to direct the utilities to develop new tariffs on distributed storage and avoided transmission costs as the first step in the development of those recommendations. The Commission believes it would be more appropriate to establish the necessity and parameters of these changes based on an established record in the first instance. Accordingly, the Commission will notice the changes CPCNH has proposed in the order of notice the Commission will issue after this order to consider additional changes to the net-metering tariffs.

Based upon the foregoing, it is hereby

ORDERED, that the existing compensation levels in NEM 2.0 for all categories of net-metering customer-generators, which were approved in Order No. 26,029, shall remain in place; and it is

FURTHER ORDERED, that the Eversource, UES, and Liberty are authorized to assess application fees to individuals or entities seeking to interconnect as net-

metering customer-generators consistent with the parameters laid out in Attachment C to Exhibit 1; and it is

FURTHER ORDRED, that Eversource, UES, and Liberty are authorized to begin assessing the approved application fees on January 1, 2025; and it is

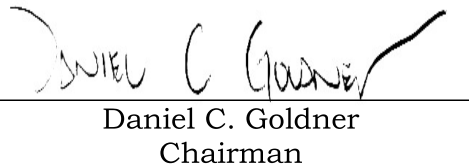
FURTHER ORDRED, that Liberty shall file notice to the Commission of which existing rate mechanism it intends to file for its annual reconciliation of the interconnection fees within five days of this order; and it is

FURTHER ORDERED, that Eversource, UES, and Liberty shall file properly annotated tariff pages in compliance with this order, as required by N.H. Code Admin. Rules Puc 1603 no later than 15 days from the issuance of this order; and it is

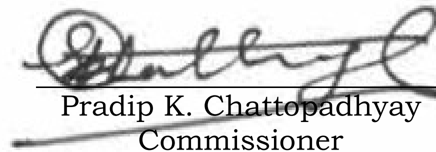
FURTHER ORDERED, that the Commission retains the existing "legacy period" termination date of December 31, 2040 for all net-metered customers; and it is

FURTHER ORDERED, that the Commission shall issue an order of notice to review and adjudicate additional proposals related to the net-metering program and tariffs pursuant to its obligation to continue to review and develop net-metering tariffs under RSA 362-A:9, XVI.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 2024.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner

BEFORE THE

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

ELECTRIC AND GAS UTILITIES

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

Docket No.: DE 22-060

PETITION FOR REHEARING
BRIGHT SPOT SOLAR, LLC

NOW COMES Bright Spot Solar, LLC (hereafter "Bright Spot"), by its sole owner and member W. Packy Campbell, and pursuant to NH RSA 541:3, respectfully moves and petitions for a rehearing of the Commission's Order No. 27,074 (hereafter "the Order") dated November 18, 2024, and respectfully states in support thereof as follows:

I. STANDING:

1. That Bright Spot is a New Hampshire company based out of Farmington and Rochester, New Hampshire, and is perhaps the state's largest seller and installer of dual action solar tracker arrays for the production of electricity. Bright Spot employs 10 full time workers in the state, and its gross sales exceeded $6,000,000.00 in 2024.

2. That Since its inception in 2020, Bright Spot has erected approximately 200 dual axis solar trackers in the State, with 80 installed in 2024 alone to date. Bright Spot and its affiliated companies, all owned by the undersigned W. Packy Campbell, owner of six (6) LLC's chartered in the State of New Hampshire, own and operate fourteen (14) solar tracker sites producing a

combined total of approximately 1.014 Megawatts DC, generating approximately 1.875 MW of electricity per year.

3. Additionally, another affiliated company named GNM Solar 17, LLC, is in the finishes stages of constructing and interconnecting a sixty (60) dual-axis solar tracker array project with a nameplate rating of 975 kW AC located at 60 Shaw Drive in the City of Rochester. Once on line, that project will produce an estimated total of 2.4 MW electricity per year. Combined current and future production of electricity by the Petitioner and affiliated companies will, after interconnection of the 60 Shaw Drive project, will total over 6.4 MW of electricity produced in New Hampshire per year, electricity that offsets said affiliated companies' energy demands and sends the balance to the New Hampshire electric grid via the net metering process authorized by NH RSA 362-A.

4. Additionally, beyond procuring and installing dual axis solar tracker arrays for itself and affiliated companies, Bright Spot has sold and installed 62 separate solar tracker projects totaling approximately 1.823 kW DC in the State of New Hampshire, State of Maine and Commonwealth of Massachusetts for various residential, commercial and industrial third party customers. All of those sales were to Customer-Generators under the net-metering regulatory regimes of the aforesaid states, including the said RSA 362-A in New Hampshire.

5. Decisions reached in this Docket# DE 20-060 will clearly have a direct and indirect impact upon the conduct of your Petitioner's business, its affiliated companies, and its customers that seek to also develop solar power in this State. The potential change to the net metering tariffs, and further the possible elimination of legacy net metering rates, could cause great harm to the present and future financial return on investments of your Petitioner, its affiliates and customers, that jeopardize future development of solar powered DE in this State in general, and sales of dual axis solar trackers by your Petitioner in particular.

6. Accordingly, your Petitioner respectfully asserts that it is "a person directly affected by" the deliberations of this Commission in Docket 22-060, and that it is therefore a party withstanding to bring this Petition for Rehearing pursuant to NH RSA 541:3.

II. GROUNDS FOR REHEARING

A. Misapplication of Law:

7. In Section II of the Order the Commission stated the standard of review applicable to the issues before it, and specifically in response to the Conservation Law Foundation's arguments that the Commission consider "non-economic" benefits of net metering. While those standards of review the Commission articulated is accurate, it then erroneously did something in the Order that the standards it articulated prohibited.

8. The first error is only incorporating only the fourth (4th) articulated purpose set forth in RSA 362-A:1 as the premises of its Order. (Order at Page 12, 13). In so doing, it ignored the first three statements of purpose that clearly included what are non-economic factors behind the spirit and intent of the statute. As a result, it was recognized that there are factors beyond the economic benefits of net-metering, but then failed to consider them in its subsequent analysis.

9. Petitioner avers that the Commission then ignored the standards of review it articulated by, in essence, reading into the eight (8) factors set forth in RSA 362-A:9, XVI, or "add(ing) language that the legislature did not see fit to include." (*Polonsky* at 229). Specifically, it appears that the Commission "read into" and added the word "economic" in front of the second factors, most importantly the words "costs" and "benefits."

The second factor is "the costs and benefits of customer-generator facilities." While the words "cost" and "benefit" are often tied to economics, those words also have non-economic uses. Merriam-Webster defines "cost" as "loss or penalty incurred especially in gaining something,, the example being "the cost of lives during war." As a verb, costs can be to "require effort, suffering or loss" or "to cause to pay, suffer or lose something," the example being "frequent absences cost him his job." Likewise for "benefits", Webster's first definition is "something that produces good or helpful results or affects that promotes well-being" before applying the financial or economic contexts to define the word.

10. It goes without saying that the fossil fuel burning facilities in the state, such as the Newington gas plant or the Merrimack coal plant, emit air pollution in the process of generating electricity. Those air pollution particulates are proven to affect the health and well-being of persons, including residents and ratepayers in the State of New Hampshire. (See Dunsky report). Those facilities impose "costs" on our state and ratepayers beyond economic costs; they impose societal costs that affect the health and well-being of citizens in generally, and those with lung issues, such as asthma, in particular.

11. Conversely, the solar tracker facilities that your Petitioner sells, builds, and operates emit no air pollution into the state's environment during the operation of those facilities.[1] As such, those facilities impose no such societal costs. Instead, they provide "societal benefits" (so to speak) to the state, and ratepayers, by not adding to the air pollution that the Dunsky report shows imposes "societal costs" (so to speak) on society beyond economic loses; burning fossil fuels emit air pollution that directly contributes to human suffering and death, to include citizens and rate payers in the State of New Hampshire.

12. By essentially adding the word "economic" or "financial" in its consideration of the "costs and benefits of customer-generator facilities," the Commission erred by limiting the scope of its review to solely economic factors that ignore both the stated purpose and language of the statute.
I offer this petition to the Commission to provide an opportunity to rehear the issue as to whether the scope of its inquiry into the eight factors of RSA 362-A 9, XVI is limited to "economic" costs and benefits.

13. Additionally, the undersigned personally suffers from the very type of "public health" issue that environmental issues caused by air pollutants generated by fossil-fuel burning power plants. I suffer from asthma, a debilitating lung condition. From the Dunsky Report that details

[1] While vehicles or equipment used in constructing, operating or maintaining such facilities may emit pollutants, the facilities themselves do not. Note, however, that the Petitioner uses three (3) EV vehicles that are almost exclusively powered by solar generated electricity in its operations, thereby even minimizing air pollution by use of such EVs.

the personal and financial "costs" imposed by air pollution to the World Health Organization finding that show how many people die from air pollutants each year, there is no dispute in fact or law that air pollution caused by the burning of fossil fuels has environmental and public health costs that affect the citizens and ratepayers in the State of New Hampshire.[2], [3], [4] I can offer personal testimony as to the public health "costs" that fossil fuel burning imposes on people in my situation, costs that the Commission ignored in its deliberations and Order.

14. Another "benefit" of distributed energy provided by customer-generators is the effect such power has on other aspects of the economy. For example, your Petitioner and its affiliated companies have, in 2024, produced 3,644,069 kWh of electricity that offsets the demand for 123,370 therms of natural gas for producing the equivalent amount of electricity, or for 98,488 gallons of gasoline to fuel combustion engines. Beyond reducing greenhouse gas and air pollutant emissions, this customer-generated electricity replaces the physical demand on these depleting commodities in the marketplace. Applying Adam Smith's concept of "supply and demand," this electricity in turn contributes to lowering the demand upon, and therefore the costs of, those commodities due to simple supply and demand market dynamics. When applied to all electricity provided by customer-generators in this State, the benefit clearly exists but is not considered by the Commission.

15. Whereas the undersigned Member of the Petitioner is a former New Hampshire state legislator, I am personally concerned when state bodies, whether courts, commissions or other quasi-judicial bodies, misinterpret statutes or seemingly change the very tenor of a statue by

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[2] "Health consequences of air pollution on populations," 25 June 2024, accessed at https://www.who.int/news/item/25-06-2024-what-are-health-consequences-of-air-pollution-on-populations

[3] "Pollution from Fossil-Fuel Combustion is the Leading Environmental Threat to Global Pediatric Health and Equity: Solutions Exist," by Frederica Perera, accessed at https://pmc.ncbi.nlm.nih.gov/articles/PMC5800116/#:~:text=An%20estimated%20%24361%20to%20%24886,fuel%20electricity%20%5B105%2C107%5D%3B

[4] The Public Health Impact of Energy Policy in the United States," Dated November 13, 2018. Accessed at: https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2019/01/28/public-health-impact-of-energy-policy

"add(ing) language that the legislature did not see fit to include." Whether the error was caused by a simple mistake or by a personal or political preference that deviates from the very statement of purpose of the statute, the error warrants a rehearing in order to correctly apply the statute as written.

16. Accordingly, your Petitioner respectfully requests that this Commission rehear the issue as to the scope of "costs" and "benefits," consider environmental and public health costs as well as economic costs when interpreting those two quoted words, and revise its findings in Section II of the Order to factor environmental and public health costs and benefits.

III. "Cost-Shifting" Analysis

17. The statute does clearly provide a solely economic factor that this Commission may consider, namely that of "cost shifting." However, your Petitioner respectfully avers that the Commission utilizes a concept of "cost shifting" that does not adequately factor in all of the saved costs and other benefits to the utilities, ratepayers and grid, that are provided by customer-generators.

18. Under the net-metering tariff, customer-generators selling surplus electricity "to the grid" are credited at a rate that includes (a) the default service rate, (b) transmission charges, and (c) 25% of the distribution costs; those components presently result in a net-metering credit of approximately $0.11/kWh. Conversely, when utilities sell electricity to ratepayers they charge the full average rate of electricity in New Hampshire, which includes the "supplier" fee and the "delivery" fee of roughly $0.2486 / kWh for commercial and $0.2002 / kWh for residential customers.[5]

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[5] Compare New Hampshire Electricity Rates, by Thad Warren of "Energybot" dated December 16, 2024, accessed at https://www.energybot.com/electricity-rates/new-hampshire/#:~:text=The%20average%20New%20Hampshire%20commercial,higher%20than%20the%20national%20average).

19. When a customer-generator feeds electricity into the grid, the physics of electricity results in that electricity being delivered and consumed by the nearest service connection with a load demand calling for electricity. In other words, for the purpose of this Petition, I will say that the electricity that your Petitioner sells is literally sold and delivered to its residential, commercial or industrial neighbors who consume electricity from the line my facilities feed power into. Whether those neighbors are a hundred feet away, or one thousand feet, the physics is that electricity the Petitioner sells to the grid is consumed in close proximity to my point of interconnection.

20. The utility to which we sell electricity, typically Public Service Company of New Hampshire ("PSNH") in my region, then sells that electricity to my neighbor, and charges the tariff that includes delivery charges. That power did not pass through transmission lines from Canada, or from Tamworth, or from Merrimack, or from Newington; it was sent from my properties to my literal neighbors over a distance measured in feet, not miles. As such, the electricity this customer-generator sold to the utility did not utilize but a microscopic fraction of the utility lines of the grid, yet the utility seller of that electricity was paid the full "delivery' fee established by tariff as if the electricity my neighbor consumed came from a distant generating source.

21. The Order recites the concept of "cost-shifting" without considering that net-metering provides this significant benefit to the grid, as well as to the utilities purchasing electricity from a customer-generator and then selling the electricity to the "next door neighbor" in close proximity to the generator of that electricity. The reality is that customer-generators provide a hidden benefit to the grid, utilities and ratepayers by minimizing the need to upgrade or maintain power lines to deliver power to my neighbors and by avoiding the loss of electricity during transmission. The Commission seemed to only consider the "costs" but not the benefits of net-metering in its cost-shifting analysis.

22. To demonstrate the above-stated argument, your Petitioner will introduce compelling evidence at rehearing to show that its utility bills document the significant economic benefits, or contribution margin, made by its sales of electricity to the utility that then sells that electricity to

Petitioner's neighbors. In the specific case of your Petitioner, it has a net-metering project at 17 Sterling Drive in Rochester, and then an affiliated company owns a car wash at 123 Farmington Road; a non-net metered customer, the distance between the transformers on those properties are approximately three hundred feet (300'). While the electricity sold at 18 Sterling received about $0.11/kWh, the electricity purchased at 123 Farmington Road was about $0.28/kWh. Evidence of the bills for only those two properties will show that the utility had a contribution margin of $3,200 solely in the month of November for the power that the Petitioner produced and, essentially, sold some 300' away to myself; the middleman and ratepayers benefited from that transaction.

23. To demonstrate this dynamic, your Petitioner and its affiliated companies have, in 2024, produced 3,644,069 kWh of electricity as a customer-generator, of which approximately one-third was "sold to the grid" via net metering at an average price of less than $0.11/kWh. The electricity, about 1,093,000 kWh, was then turned around and sold by the utility *to my neighbors* for approximately $0.28/kWh, with a resulting "contribution margin" of about $185,847 calculated at $0.17/kWh for delivery charges. That "contribution margin" income helps both the utility and the ratepayers by minimizing the use of the grid for the delivery of that electricity while generating a high rate of return to the utility. This benefit will lower the utility tariff to ratepayers must be considered as a *positive cost shift* in favor of all non net-metered customers.

To further demonstrate the equivalent environmental and public health benefit, that same 3,644,069kWh of power produced by out customer-generator facilities offsets the demand for 123,370 therms of natural gas for producing the equivalent amount of electricity, or 98,488 gallons of gasoline for combustion engines. Beyond reducing greenhouse gas and air pollutant emissions, this replaces the physical demand on these commodities in the marketplace, which in turn contributes to lowering the relevant costs of those commodities due to simple "supply and demand" market dynamics.

24. Another factor affecting "cost-shifting" not considered by the Commission to which the Petitioner will testify is that the reduction of demand load that distributed energy enables is that the lack of sales created by customer-generated power does not really add any costs to the grid or ratepayers. By producing power on site that it consumes behind the meter, the customer-

generator is, in a sense, simply not purchasing electricity from the grid or utility, and therefore not using the grid infrastructure. It is like turning off a light, or more appropriately simply not turning on a light. Consuming less electricity should not be considered a "cost-shift"; its like penalizing someone from not turning up the heat from 65° to 70°! This customer-generator activity reduces demand on the transmission grid that helps lower overall costs of improvement and repair and the underlying wholesale market of electricity costs.

25. Another factor of how net-metering benefits the utilities and rate-payers that was not considered by the Commission is how distributed energy production by customer-generators helps save the utilities, and ratepayers, for higher costs of electricity during peak demand hours. Specifically, the Commission should consider how the "innovative technology" of dual-axis trackers with real-time sensing to maximize production of PV electricity helps reduce rate-payer costs by driving down demand charges. For reference, your Petitioner understands that "demand charges" are the fees added to the "supply" fee of commercial and industrial users to pay for the higher market cost of peak demand periods.

24. Dual-axis solar power trackers using real-time sensing produce electricity at a much higher ratio of production than either fixed mounted or bi-directional solar trackers. While the industry average ratio of power production per kWh of fixed mounted PV panels is 1kw DC to :1.3 Kw AC your Petitioner will introduce evidence to show that its dual-axis trackers produce electricity at a ratio ranging from one and seven-tenth to one (1 kw DC :1.85 Kw AC) or even in some cases more than twice the face value of the DC panels in annual production. 1Kw DC to :2 KW AC) annual production. Making a single solar panel worth 2 times more on a tracker than a traditionally placed solar panel.

25. Beyond producing more than fixed panels, these innovative dual-axis tracker arrays reduce the "duck curve" affect by producing a near-steady stream of electricity to the grid from sun up to sun down. Unlike fixed solar that peaks near the noon hour, dual axis trackers with real time sensing produces maximal electricity during all sunlight hours. The benefit of dual axis trackers in reducing the duck curve is another non-economic benefit that the Commission should

consider in this Docket. Trackers are considered west facing panels and produce power while grid is experience peak demand.

25. By failing to consider the above indirect affects on the costs and benefits of customer-generator facilities, the Commission erred in its cost-shifting analysis which should be reconsidered in this Docket.

IV. Legacy Period

26. In making its findings and rulings on the issue of the "legacy period" of the various iterations of net-metering, including alternative tariffs, for both large and small customer-generators, the Commission rejected the proffered evidence of the parties, specifically Mr. Hayden and Mr. Littell, finding that there was insufficient direct evidence of the importance of a legacy period in procuring long term financing. (Order at Page 24). Your Petitioner is exactly the type of developer and owner of distributed energy assets that can provide direct evidence in support of that fact of the necessity for a legacy period to properly effectuate the spirit and intent of the legislation.

27. The undersigned member of the Petitioner, through the different New Hampshire based LLC's he owns, including the Petitioning LLC, has utilized various forms of financing in all aspects of its business operations to either purchase, develop, construct, operate or maintain the roughly 90 dual axis solar tracker arrays that it has built in the past four years. From owning single trackers in one business location to sixty trackers in a 975 kW ac for another project, the undersigned is an investor in both small and large residential and commercial solar projects with extensive first-hand experience with the requirements that banks and other lenders require in order to finance such projects. The Petitioner can provide first person testimony on the critical need for consistent long-term income that a defined long-term legacy period of twenty (20) years will provided in order to meet the underwriting criteria to finance DE systems, facilities and projects. Instead of anecdotal evidence, the undersigned can offer specific evidence, such as the following:

a. That a car wash facility was only able to procure a fifteen (15) amortization schedule for the construction of three (3) solar arrays to meet those businesses' electrical needs because the current legacy period is through December, 2040. The lender required that shorter period instead of the thirty (30) year life expectancy of the asset due to the uncertainty as to the value of the income the trackers would receive after that date, and the higher monthly payments caused by shorter amortization schedules results in less cash flow.

b. With an existing 16 year legacy period, the Petitioner overcame that issue for a specific lender by entering into a long term Power Purchase Agreement ("PPA") with a New Hampshire School Administrative Unit in Lempster. The twenty (20) year term of that PPA justified the financer to enter into a twenty year loan, amortized over the same 20 year term. This is the only project of the 15 separate customer-generator facilities owned by the undersigned's various entities with a twenty year term. This gave a reasonable monthly debt service payment, allowing the project to positively cash flow.

c. Other than the fixed twenty year term of the Lempster project being the linchpin to a multi-facility secured loan for small customer-generator sites, all other bank financing packages provided to the undersigned's various entities owning customer-generator facilities have terms of not more than ten (10) years. Every one. No lender was willing to go beyond that time period because of the lack of a long term defined income stream from the customer-generator facilities. So while the undersigned has procured commercial loans for other assets, such as residential or commercial real estate, the customer-generator business is unable to procure such longer terms.

d. And additional financing concern that the Petitioner can provide evidence of is that beyond being concerned with the length of the loan, lenders have a very standard debt to income ratio of, usually 1.25 to 1 for these loans. This means that any major drop in income due to a reduction in the NEM compensation rates has the potential to place the loans of the undersigned's various entities into technical default.

e. Next, because of the uncertainty as to the stability of long-term income generated by customer-generator facilities, lender's have imposed a much lower loan to value ("LTV") ratios. While commercial real estate loans may have LTV ratios of seventy-five to eight percent (75-80%), in certain of the undersigned's loans the LTV was as low as fifty percent (50%)! This lower LTV provided additional cushion to the lender that allowed it to grant the grant the financing.

f. The lack of a lengthy and certain legacy period just recently caused the Petitioner to recommend to a seventy-seven (77) year old potential customer - a Veteran on a fixed income - to delay deciding on purchasing a tracker to meet his residential needs. The undersigned could not in good conscience recommend that the 77 year old true Patriot living on a fixed income, in times of heightened inflation, enter into an agreement for solar power when this Commission could decide to not only *not extend* but to potentially *shorten* the legacy period of customer-generator facilities in the future. This seems to be in direct contract to the grandfathering period provided in Statute. In direct conflict with the sprit and intent of Net metering law. The Commission should clarify and specifically should offer an additional 20-year legacy period from date of interconnection.

g. The Commission should consider the "lifetime of the asset" as a permanent treatment of the customer-generator to keep the standard tariff at the time of interconnection. Given that the current standard tariff is a market-based rate that adjusts with market pricing of electricity, and given that cost-shifting in favor of the utility and ratepayers as described above , a permanent legacy period for the projected life of the asset of for customer-generators and storage systems with batteries is appropriate as both of those innovative technologies create long-term benefits, with cost savings, for all stakeholders including rate-payers.

h. Another entity of the undersigned operates an assisted living facility in Charlestown. That property is improved with both a 48 panel solar tracker and a 20 kW battery storage system to provide emergency power to the facility housing elderly residents. Again, like the Patriot, the beneficiaries of this project are elderly and low-income customers (in this case who generally qualify for Medicaid). Reducing or eliminating the legacy period would prevent

small entrepreneurs like the undersigned from utilizing customer-generator facilities to provide affordable, and secure, electricity to their elderly and poor patients.

i. Finally, the Commission by the Order implies they could change the standard tariff rate and not maintain the grandfather period for the Standard Rate. The Petitioner and its lenders relied upon the grandfathered period in pursuing the investment into customer-generation through solar to have, at least, a stable rate of return until the currently-stated deadline. The Commission should clarify that the standard and any new alternative rates that may be offered or approved by the Commission cannot change and does not supersede the grandfathered date of December 31, 2040. The Commission may only consider new net-metering tariffs per RSA 362-A:9, XVI (a).

28. To the extent that the Commission has implied that it may alter the duration of legacy period for alternative tariffs under RSA 362-A:9, XVI, your Petitioner respectfully suggests that the above-stated arguments for a twenty-year legacy period for tariffs most certainly apply equally to the future development of customer-generator facilities. Regardless of the tariff regime, i.e. of NEM 1.0, NEM 2.0 or a future NEM 3.0, etc., any developer of customer-generator facilities, including this Petitioner, will require a lengthy legacy period of stable defined income in order to procure financing for the development of such facilities.

29. In the Order when dismissing the evidence offered by various parties and experts at Page 25, the Commission stated that it "... does not find this unspecified and general description sufficient evidence..." It further declared, frankly without any evidence on the record to support the declaration, that "...the absence of a twenty-year legacy period for net-metering compensation levels will not itself prevent investors from entering into long-term financing arrangements." The record does not show that any evidence to support this declaration was offered; the declaration appears to simply come out of nowhere.

30. As reflected above, the Petitioner, by the testimony of the undersigned Member whose various entities have invested millions of dollars of customer-generator facilities, can therefore provide first hand evidence that the absence of a long-term defined legacy period has a

significant detrimental effect on the ability of entrepreneurs to procure financing for the development of customer-generator facilities Indeed, the undersigned would testify that lack of a legacy period will be the death knell for the development of customer-generator facilities by entrepreneurs because the absence of a legacy period will, indeed, prevent me from entering into long-term financing arranges. The lack of a legacy period will result in me, as an investor, to re-assess the economic risk profiles of this industry and, in spite of my strong personal commitment to personal and other societal benefits, I will need to stop my investment in customer-generation going forward. To be clear, as an investor the Commission by Order 27,074 creates economic uncertainty that will likely prevent me from continuing to invest in customer-generation solar power and will lead to closing down of my multi-generation small business Bright Spot Solar, LLC. Further, without a legacy period to at least December 31, 2040 I cannot in good conscience recommend to any of my customers to invest in distributed energy through customer-generation facilities except for small DE systems that are simply behind the meter to offset purchasing power from the grid, thus eliminating any of the net billing benefits in RSA 362-A:9 in the future.

31. Whereas the Commission specifically determined the record was devoid of such first-hand evidence, your Petitioner requests that the Commission rehear the matter so that such first-hand evidence can be provided in support of maintaining existing legacy periods and providing a lengthy period as recommended by the Settling Parties. To be honest, the undersigned would recommend that the Commission adopt a longer legacy period of thirty (30) years or life of the solar investment so that financing for solar projects can match the typical expected productive life-cycle of solar panels which is typically thirty years.

V. MOVE TO CLARIFY LAST ORDER IN 27,074

32. The last clause of the Orders of this Commission set forth of Order #27,072 states as follows:

> "FURTHER ORDERED, that the Commission shall issue an order of notice to review and adjudicate additional proposal related to the net-metering program tariffs pursuant to its obligation to continue to review and develop net metering tariffs under RSA 362-A:9, XVI."

33. Your Petition respectfully avers that the above language of the Order is missing a crucial word that is contained in the cited statute, specifically the word "new" that is situated between the words "develop" and "net-metering." Just as the Commission is not able to "add" a word that the legislature did not deem fit to add, likewise the Commission cannot ***delete*** a word that is present in the statute when it refers to said statue in its deliberations or Orders. This is especially true when a review that is missing the proper statutory language may potentially give the review a much more broad power than the statute delegates to the Commission.

34. Accordingly, your Petition request that this Commission amend the Order to clarify and confirm that it shall "continue to review and develop ***new*** net-metering tariffs" under RSA 362-A:9, XVI. Your Petitioner respectfully assert that a review that seeks to change ***existing*** net-metering tariffs, whether the Standard Tariff or NEM 2.0, is beyond the powers of the Commission, and the Order should be clear that the intent is only to consider new potential alternative tariffs.

VI. CONCUR WITH PENDING MOTIONS FOR REHEAR

35. The Petitioner is aware that other parties of record have filed various motions for reconsideration and rehearing. Without expressing an option as to concur or object to said motions, your Petitioner agrees that such motions should be granted, as the Order #27,074 has created more issues than it sought to resolve, warranting reconsideration and rehearing to resolve the myriad issues in this Docket.

CONCLUSION

36. For the reasons stated above, your Petitioner Bright Spot Solar, LLC, by and through its sole member W. Packy Campbell, requests that the New Hampshire Public Utilities Commission grant this Motion for Rehearing to reassess the implications of Order No. 27,074 in light of RSA 362-A:9 and the actual benefits provided by customer-generators to the grid system.

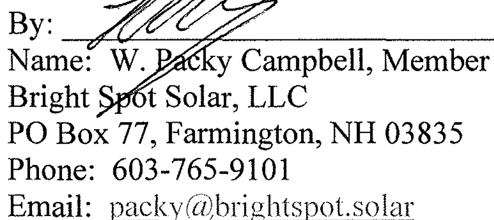
VII. REQUESTED RELIEF

Based upon the foregoing, your Petitioner respectfully moves that this honorable Commission:

1. Conduct a rehearing of the issues raised herein;
2. Conduct a rehearing as requested by other parties of record;
3. Reconsider the findings related to cost shifting in light of RSA 362-A:9 XV.
4. Reevaluate the economic impact of customer-generator contributions, considering both the geographic and economic benefits to the local grid and utility customers.
5. Grant this Motion for Rehearing to correct the Order and ensure compliance with state law and a fair assessment of the contributions made by customer-generators.
6. Clarify the final Order contained in Order #27,074 to ensure that the review referred to therein is limited to only new net-metering tariffs.

Notice: This pleading was prepared with the assistance of a New Hampshire attorney.

Respectfully submitted on this the 17th day of December, 2024.



By: ______________________
Name: W. Packy Campbell, Member
Bright Spot Solar, LLC
PO Box 77, Farmington, NH 03835
Phone: 603-765-9101
Email: packy@brightspot.solar

CC: I hereby certify that a copy of this Motion was delivered to the Service List of record on this date in Docket DE 22-060.

BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 22-060

Electric Distribution Utilities

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

New Hampshire Department of Energy
Objection to Bright Spot Solar, LLC Petition for Rehearing

Pursuant to New Hampshire Code Admin. Rule Puc 203.07, the New Hampshire Department of Energy ("Department" or "DOE") hereby files this Objection to Bright Spot Solar, LLC ("Bright Spot")'s Petition for Rehearing filed December 17, 2024, in this matter.

In support of this Objection, the Department states as follows:

I. Introduction

1. The Commission opened the above-captioned docket on September 20, 2022, to "consider amendments to the net metering tariffs applicable to customer-generators."[1]

2. The Commission required that any entity or individual seeking to intervene in the proceeding file a petition to do so by December 7, 2022.

3. Nine parties petitioned for and were granted intervenor status in the proceeding.

4. Hearings were held on August 20, 2024, and August 22, 2024, (together, the "August 2024 hearings") to decide the issues noticed by the Commission in this docket.

[1] See Docket No. DE 22-060, Tab 1, Commencement of Adjudicative Proceeding and Notice of Prehearing Conference at p. 1

5. At the August 2024 hearings, the parties to the docket offered evidence in support of their positions and were given the opportunity to cross-examine the other parties' witnesses. The parties' witnesses were also subject to questioning by the Commission.

6. Members of the public were also provided the opportunity to comment at the August 2024 hearings.

7. At the request of the Commission, the parties filed post-hearing briefs reiterating their positions and citing to the evidence in the record supporting their positions. The parties were also given the opportunity to submit reply briefs in response to briefs submitted by the other parties.

8. On November 18, 2024, the Commission issued Order No. 27,074, ruling on the net metering tariff.[2]

9. On December 17, 2024, Bright Spot filed a petition for rehearing of Order No. 27,074.

II. Legal Standard

10. Pursuant to RSA 541:3 and RSA 541:4, the Commission may grant a motion for rehearing made by, "any party to the action or proceeding before the commission, or any person directly affected thereby" for "good reason" if the moving party shows that an order is unlawful or unreasonable. Good reason may be shown by presenting new evidence that could not have been presented at the original hearing. *Appeal of Gas Serv., Inc.,* 121 N.H. 797, 801 (1981). Good reason may also be shown by identifying specific matters that were, "overlooked or mistakenly conceived" by the Commission. *Dumais v. State,* 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. See *Abenaki Water Company, Inc.,* Order No. 26,312 at 8-9 (November 27, 2019).[3]

[2] See Docket No. DE 22-060, Tab 124

[3] See also Commission Orders No. 26,772 (2023) and No. 27,046 (2024)

III. Analysis

a. Eligibility to file a Motion for Rehearing

11. As a preliminary matter, Bright Spot is not a party to the proceeding, and therefore must qualify as a "person directly affected" by an order or decision made by the Commission in order to be eligible to apply for rehearing.[4] The Department's arguments outlined herein should not be considered a waiver of its right to object to such qualification, including in the context of the Petition to Intervene filed by Bright Spot in this docket on December 16, 2024.[5] Should the Commission decide that Bright Spot is eligible to file a motion for rehearing, the Department lays out the following in support of its Objection.[6]

b. Bright Spot has not provided new evidence that could not have been presented at the original hearing.

12. Bright Spot does not allege that any of its proposed evidence constitutes new evidence that *could not* have been presented at the original hearing. Its request for rehearing contains numerous proposed facts not in evidence, and Bright Spot additionally offers that it could, "introduce compelling evidence at rehearing to show that its utility bills document the significant economic benefits" and "provide direct evidence in support of that fact of the necessity for a legacy period," and requests, "that the Commission rehear the matter so that such first-hand evidence can be provided in support of maintaining existing legacy periods and providing a lengthy period as recommended by the Settling Parties."[7]

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[4] RSA 541:3

[5] The original deadline to file a petition to intervene in this docket was December 7, 2022. See Docket No. DE 22-060, Tab 1 at p. 6. The deadline to file a petition to intervene in the additional phases of the docket noticed in the Supplemental Order of Notice filed on November 18, 2024, is January 2, 2025, with objections to petitions to intervene due by January 9, 2025. See Docket No. DE 22-060, Tab 125 at pp. 8-9

[6] See Docket No. DE 22-060, Tab 143

[7] See Docket No. DE 22-060, Tab 146 at pp. 7, 10, and 14

13. Bright Spot has not demonstrated that the evidence it seeks to introduce is new evidence that could not have been presented at the original hearing. The order that Bright Spot seeks rehearing of includes findings based on evidence introduced at the August 2024 hearings. As it was not an intervenor in the proceeding, Bright Spot did not present evidence at the hearings upon which the factual findings in the order were based – however, Bright Spot *could have* presented evidence at the original hearing had it petitioned for and been granted intervenor status in the proceeding in advance of the August 2024 hearings. According to Puc 203.23(a), "[t]he parties entitled to offer evidence at hearing in an adjudicative proceeding shall be the petitioner, the staff of the commission, the office of consumer advocate and any person granted intervenor status." As Bright Spot has not been granted intervenor status and was not an intervenor at the time of the August 2024 hearings in this matter, Bright Spot should not be allowed to introduce through rehearing evidence it could have introduced had it petitioned for and been granted intervenor status.

14. Bright Spot had an opportunity to petition for intervention in the original proceeding by the December 7, 2022, deadline – however, it does not appear that it did so. Additionally, the Commission denied an individual's request to intervene made at an April 11, 2024, prehearing conference held in this docket, in part because it had been almost eighteen months since the December 7, 2022, intervention deadline had passed.[8] The Commission encouraged that individual, however, "to participate in the docket as a member of the public, including at the final hearing."[9] Not only did Bright Spot not previously petition to intervene in the matter upon which it seeks rehearing, but it requests the opportunity to be entitled to enter evidence on issues that have already been decided in this proceeding twenty-six months after the December 7, 2022, intervention deadline has passed.

[8] See Docket No. DE 22-060, Tab 82, Prehearing Order at p. 2
[9] Id.

15. Although it claims to be, " 'a person directly affected by' the deliberations of this Commission in Docket 22-060," Bright Spot does not appear to have taken the opportunity to participate at all in this proceeding prior to the Commission's issuance of Order No. 27,074. Even though Bright Spot did not participate as an intervenor, Bright Spot had the opportunity to participate in the docket as a member of the public and to provide comment regarding its position at the August 20, 2024, hearing; the August 22, 2024, hearing; the prehearing conferences held in this matter; or through the submission of written comments, as members of the public have done throughout the proceeding.[10] However, it does not appear to have done so.

c. Bright Spot has not sufficiently shown that specific matters were "overlooked or mistakenly conceived" by the Commission

16. Bright Spot claims several errors in the Commission's analysis, such as, "failing to consider the above indirect effects on the costs and benefits of customer-generator facilities," and that it failed to consider factors beyond the economic benefits of net-metering in its analysis.[11] However, Bright Spot's arguments seem to rely on new evidence and factual assertions laid out in the motion to show that the Commission erred in such matters, rather than relying solely on the Commission's decision and evidence in the record. For the reasons described above, any new evidence Bright Spot seeks to introduce into the proceeding should be considered inadmissible, and thus any arguments for rehearing that rest on the proposed introduction of new evidence, including new factual assertions presented in the petition for rehearing, should not be grounds for rehearing in this matter.

d. Bright Spot's motion reasserts prior arguments and requests a different outcome.

17. In its petition for rehearing, Bright Spot appears to reassert prior arguments made by parties to the docket – including those regarding legacy periods and categories of costs and benefits – and

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[10] See RSA 541-A:32, Puc 203.17, and Puc 203.18 and Docket No. DE 22-060

[11] See Docket No. DE 22-060, Tab 146 at pp. 3 and 10

requests to introduce new evidence into the record to bolster those arguments.[12] Such arguments have already been litigated and decided upon by the Commission on the basis of evidence introduced into the record, and thus do not qualify as a basis for rehearing.

IV. Conclusion

As described herein, the arguments presented in Bright Spot's Petition for Rehearing are not an eligible or sufficient basis upon which to grant rehearing of the Commission's Order No. 27,074. Bright Spot has failed to show that any new evidence it seeks to introduce could not have been introduced at the time of hearing, nor has it otherwise shown that the Commission's order was unjust or unreasonable. Therefore, the Department requests that the Commission deny Bright Spot's petition for rehearing.

WHEREFORE, the Department respectfully requests that the Commission:

1. Deny Bright Spot Solar, LLC's Petition for Rehearing; and
2. Grant such other relief as is just and required.

Date: December 24, 2024

Respectfully submitted,

New Hampshire Department of Energy
By its Attorney,

/s/ Alexandra K. Ladwig
Alexandra K. Ladwig, Esq.
21 South Fruit Street, Suite 10
Concord, NH 03301

[12] See, e.g., Docket No. DE 22-060, Tab 146 at pp. 3 and 10

BEFORE THE
STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

ELECTRIC AND GAS UTILITIES

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

Docket No.: DE 22-060

**RESPONSE OF PETITIONER
TO THE
OBJECTION OF THE
DEPARTMENT OF ENERGY**

NOW comes the Petitioner Bright Spot Solar, LLC (the "Petitioner") who respectfully submits its response to the Objection filed by the New Hampshire Department of Energy (the "DOE"), and states in response as follows:

1. That the essential argument in the DOE's Objection is that your Petitioner did not previously intervene in this Docket #: De 22-060, and therefore should not be allowed to offer evidence in a rehearing in a docket that is more than two years old. It further asserts that the evidence the Petitioner sought to introduce had already been heard and considered by this Public Utilities Commission ("Commission") in rendering Order 27,074 (the "Order").

2. In support of its first argument, the DOE utilized the cases of *Appeal of Gas Serv., Inc.* and *Dumais. v. State* to assert that there is no good reason for your Petitioner to seek rehearing. Unlike your Petitioner in this docket, in both of those cited cases the entity that petitioned for rehearing under RSA 541:3 were already direct parties to the action. As participants, they had the opportunity to provide evidence and/or identify specific matters upon which the finder of fact may have erred. Since your

Petitioner as a non-party to the proceedings did not offer evidence or seek to affect the Order, the cites cases by the DOE are not germane to whether your Petitioner's Petition for Rehearing should be heard or granted. To argue that since the Petitioner was not a party to the proceedings should disqualify it from seeking a rehearing of an order that affects the Petitioner's business ignores the specific purpose of RSA 541:3 that allows a person or entity "directly affected thereby" to challenge the outcome in a proceeding in which it did not take part.

3. The essential argument of the DOE is that the Petitioner seeks to introduce evidence already considered by the Commission. That argument is without merit. The Petitioner seeks to introduce evidence that the Commission's Order specifically said it did not have, to wit specific evidence of how the Order may affect the ability of a large solar developer (like your Petitioner) (Order at Page 23: "... the Commission does not believe that the Joint Parties and CPCNH have submitted sufficient evidence...") or a small customer of solar equipment (Order at Pages 25-26; "...the Commission finds that the Joint Parties and CPCNH have likewise failed to meet their burden.."). That deficiency in the evidentiary record is exactly what your Petitioner seeks to provide as a first-person witness as to how the Order may have detrimental affect on (a) solar developers and/or (b) small customers to procure financing that is essential to any project, large or small.

4. By repeatedly arguing that the Petitioner, essentially, "could have" intervened earlier during the course of this Docket[1] and introduce evidence if it had participated imposes an obligation on a party that does not exist. RSA 541:3 only requires that a petitioner be "directly affected" by an order of the Commission, not that it participate at all prior stages of the docket.

5. The DOE's arguments seem to imply that anyone who may be "directly affected" by any proceedings before the Commission should intervene and be a party in order to protect their interests. It further seems to imply that any person or entity that may be "directly affected" should foresee that an outcome of an adjudicative hearing may

[1] See DOE's Objection at paragraphs 12, 13, 14, and 15.

have a "direct affect" upon them. Any such argument is not supported by law; otherwise the legislature would have never granted a person or entity rights to petition for a rehearing under RSA 541:3.

6. In its final several objections, the DOE argues that the Petitioner should not be entitled to introduce new evidence, but must instead solely rely upon evidence in the record. That is not a factual statement of the law, as under a 541:3 rehearing it is permissible to introduce "new evidence that was "unavailable prior to the issuance of the underlying decision." *Hollis Telephone, Inc.*, Order no. 25,088 at 14 (April 2, 2010), cited in *Public Service Co. of New Hampshire*, Order no 25,846, DE 11-250 (December 3, 2015).

7. Your Petitioner responds that the new evidence regarding how financing requires a legacy period is exactly what the Commission found lacking. Further, as to the Petitioner's argument regarding the cost-shifting analysis, the argument of the Petitioner that his is a novel concept that it cannot find present in any deliberations before this Commission and offers a new approach at looking at the economic affect on how the utility and ratepayers benefit from how little of the grid it utilized to delivery distributed energy to, literally, next door neighbors while the utility collects full delivery fees under the tariff. Finally, until the Order was issued the Petitioner would have no ability to foresee that the Commission may consider a new alternative energy tariff that potentially would have a shorter legacy period than that in NEM 1.0 or 2.0. If a new alternative energy tariff is enacted without a legacy period similar to the existing December 31, 2040, your Petitioner asserts that it would destroy his business as both a developer of solar projects and as a large marketer of solar tracker arrays throughout the state.

8. As to the legal sufficiency of there being matters that were "overlooked or mistakenly conceived"[2] the Petition asserts that the Commission erred in two ways. First, when conducting the analysis of the "costs and benefits of customer-generator facilities" the Commission added a word into the statute when applying the eight (8) factors set

[2] Objection at Page 2, citing *Dumais v. State*.

forth in RSA 362-A:9, XVI, in that it only utilized economic costs and benefits, and ignoring non-economic factors such as public health. The Petitioners argument is that by "reading into the statute words that do not appear" and added "language that the legislature did not see fit to include." (Order at Page 12, citing *Polonsky* at 229). By limiting its analysis to solely economic factors the Commission erred as a matter of law by excluding the non-economic evidence offered at the hearing and which the sole member of the Petitioner, an asthma sufferer, may offer at rehearing.

9. Finally, Petitioner raised the error by the Commission in omitting the word "new" in the last clause of the Orders set forth in the Order. The statutory authority of granted in RSA 362-A:9, XVI (a) is to "continue to review and develop new alternative net metering tariffs." By omitting the word "new," the Commission may have potentially opened the door to changing all net metering tariffs. Such an error warrants review and correction under the format of the Petition for Rehearing.

10. For the foregoing reasons, your Petitioner moves that this Commission deny the Objection of the Department of Energy and approve the Petition for Rehearing.

11. Notice: This pleading was prepared with the assistance of a New Hampshire attorney.

Respectfully submitted on this the 3rd day of January, 2024.

By: ______________________
Name: W. Packy Campbell, Member
Bright Spot Solar, LLC
PO Box 77, Farmington, NH 03835
Phone: 603-765-9101
Email: packy@brightspot.solar

CC: I hereby certify that a copy of this Response to Objection of the DOE was delivered to the Service List of record on this date in Docket DE 22-060.

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 22-060

ELECTRIC DISTRIBUTION UTILITIES

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

Order on Bright Spot's Motion for Rehearing and Clarification

O R D E R N O. 28,100

February 10, 2025

On November 18, 2024, the Commission issued Order No. 27,074, which ruled on a number of recommendations about proposed changes to the currently effective net metering tariff (NEM 2.0) submitted by the parties to this docket based on evidence adduced at an evidentiary hearing in August 2024. On December 18, 2024, Bright Spot Solar, LLC (Bright Spot), which was not a party to this docket at the time of the hearing, moved for rehearing and clarification of Order No. 27,074 under RSA 541:3.[1] Specifically, Bright Spot: moves: (1) for rehearing of the Commission's ruling rejecting a proposed rolling "legacy period" for NEM 2.0, under which any individual who interconnects under NEM 2.0 could continue to operate pursuant to the terms of that tariff for twenty years from the date of interconnection; and (2) for clarification of an ordering clause in which the Commission stated its intention to review and develop net metering tariffs pursuant to its statutory obligations. The New Hampshire Department of Energy (DOE) objected, arguing that Bright Spot has not shown "good

[1] On November 18, 2024, the same day it issued Order No. 27,074, the Commission issued a supplemental order of notice, in which it advised the public that it would consider additional changes to the net metering tariff in future stages of this proceeding. In that supplemental order, the Commission stated that interested individuals could file a petition to intervene in the later stages of this proceeding by January 2, 2025. On December 17, 2024, Bright Spot filed a petition to intervene pursuant to the supplemental order. The Commission has since granted that motion.

reason" for rehearing as required by RSA 541:3.[2] For the reasons that follow, the Commission DENIES the motion for rehearing and clarification.

I. BACKGROUND

The Commission draws the following background information from the docket and Bright Spot's motion. The Commission only includes information relevant to Bright Spot's motion and the Commission's analysis thereof.

Although the Commission made several rulings in Order No. 27,074, Bright Spot only argues for rehearing of the Commission's ruling related to the so-called "legacy period" for NEM 2.0.[3] For brief background, the Commission approved NEM 2.0 in Order No. 26,029 (June 23, 2017) in Docket No. DE 16-576. The central aspect of NEM 2.0 is that it establishes a formula for compensating net-metered customer-generators, which are statutorily defined as utility customers who provide energy back to the grid through some form of renewable energy. *See* RSA 362-A:1-a, II-b. Although the NEM 2.0 formula does not set fixed compensation amounts, it does guarantee that customer-generators can sell their electricity to the electric distribution utilities at the default service price, which is often higher than the market rate. Consistent with Order No. 26,029, any individual who enrolls in NEM 2.0 is eligible to operate under the terms of that tariff until December 31, 2040, regardless of the date of interconnection.

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[2] The DOE also challenges whether Bright Spot, which was not a party at the time of the hearing, was a "person directly affected" by Order No. 27,074, and thus eligible to move for rehearing under RSA 541:3. Because the Commission denies the motion on alternative grounds, it will not address this issue in this order. Accordingly, the Commissions makes no conclusions as to whether Bright Spot is eligible to move for rehearing under RSA 541:3 in the first instance.

[3] Although Bright Spot challenges several additional aspects of Order No. 27,074, such as the legal standard that the Commission applied in reviewing alternative net metering tariffs, it did not argue that the Commission should reconsider any of its other actual rulings. Because resolution of Bright Spot's other arguments in motion would not impact the outcome of Order No. 27,074, the Commission will not address those arguments in this order on the motion for rehearing.

On September 21, 2022, the Commission convened this docket through a public notice of a commencement of an adjudicative proceeding to consider whether changes to net metering tariff were appropriate under RSA 362-A:9. In that notice, the Commission set a deadline of December 7, 2022, for interested individuals to file petitions to intervene. Numerous individuals, including several representing the solar industry, moved for intervention, and the Commission granted all motions for intervention filed by the applicable deadline. In April 2024, the Commission issued an order scheduling a two-day final hearing on August 20 and 22, 2024 and established a schedule for the parties to file their recommendations on how the Commission should adjust the net metering docket by August 1, 2024.

As one of their recommendations, a coalition of parties recommended that the Commission replace the existing fixed "legacy period" in NEM 2.0 with a rolling, twenty-year legacy period that would commence on the date of interconnection. Although this proposal would affect all customer-generators, regardless of their size and type of energy, Bright Spot's motion relates to larger-scale commercial solar installations. The Commission will therefore solely address the arguments and findings related to that type of customer-generator.

The proponents of the recommendation argued that it was necessary because commercial solar developments would not see a return on the initial investment within a reasonable period of time unless they were able to receive compensation for their electricity at the above-market rates guaranteed in NEM 2.0 for an extended number of years. As a result, the proponents argued, third-party lenders would not provide funding to commercial solar projects absent the proposed twenty-year legacy period. When asked at hearing why the proponents specifically proposed a twenty-year legacy period, at one least witness testified that the twenty-year period was consistent with

the standard financing period that investors would consider when evaluating the profitability of a project. *See* Order No. 27,074 at 20.

The Commission evaluated the proposal pursuant to RSA 362-A:9, XVI, which, among other standards, requires the Commission to establish net metering terms that maximize the benefits of distributed energy resources while minimizing cost-shifting from net-metered to non-net-metered customers. Applying this standard, the Commission ruled against the proposal in Order No. 27,074. The Commission found that the parties had failed to introduce evidence demonstrating that absent this legacy period, commercial solar installations would not recoup their investments within a reasonable time or that individuals and lenders would not invest in commercial solar projects in New Hampshire.

In addition, as is relevant to Bright Spot's motion for clarification, the Commission approved several parties' proposals to consider additional changes to the net metering tariff in further stages of this docket and, in an ordering clause, stating that it would do so "pursuant to its obligation to continue to review and develop net metering tariffs under RSA 362-A:9, XVI." Order No. 27,074 at 33.

Finally, in its motion for rehearing, Bright Spot represents that it is wholly owned by W. Packy Campbell and is New Hampshire's largest seller and installer of dual action solar tracker arrays for the production of electricity. Bright Spot's motion further represents that Mr. Campbell has significant experience obtaining finance capital from third-party lenders to either purchase the trackers or construct and install them. Thus, Bright Spot maintains that Mr. Campbell is very familiar with the loan underwriting requirements needed to satisfy third-party lenders regarding the cash flow projections from the sale of net metered electricity that are needed to procure finance capital to fund projects.

II. ISSUES AND ANALYSIS

Bright Spot moves for both rehearing of the Commission's finding related to the legacy period and clarification of the ordering clause related to further process. The Commission will consider each request in turn.

A. Motion for Rehearing

Bright Spot moves for rehearing under RSA 541:3 on two grounds, namely that: (1) it should be allowed to supplement the record with additional evidence; and (2) the Commission made an erroneous finding on the evidence before it. The Commission will consider argument each separately.

i. Request to Supplement the Record

With respect to its first argument, Bright Spot notes that the Commission rejected the twenty-year legacy period based on its finding that there was insufficient evidence that it was necessary to secure investment in distributed energy installations in New Hampshire. Bright Spot contends that based on his experience and knowledge obtaining financing for solar projects in this state, Mr. Campell would testify that a lengthy, rolling legacy period (such as the proposed twenty-year period) is important to ensure that commercial solar installations are able to obtain financing and that this evidence could support a finding that the proposed legacy period was appropriate. Bright Spot Mot. for Rehearing at 13–14.

The Commission does not find that Bright Spot has shown it is entitled to rehearing on the grounds that it would present additional evidence on rehearing that was not presented at the original hearing. In order for the Commission to grant a motion for rehearing, it must find that "good reason for the rehearing is stated in the motion." RSA 541:3. If a party argues that it has good cause for rehearing on the basis that it wants to supplement the record with additional evidence, it must "explain why

the new evidence it wishe[s] to present at a rehearing could not have been presented at the original hearing." *Appeal of Gas Serv.*, 121 N.H. 797, 801 (1981); *O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977).

In its motion, Bright Spot has made no argument as to why the evidence it wishes to present could not have been presented during the original hearing. Nor does the Commission find that the circumstances would support such a conclusion in any case. Notably, the proposal Bright Spot is in favor of was supported by a number of well-resourced and capable parties where the interests of solar developers were well represented. Those parties had every opportunity and incentive to present evidence related to the profitability of commercial solar installations and financing requirements. And, while the Commission appreciates that Mr. Campbell has extensive experience financing solar projects, the existing parties to the docket could have obtained and presented similar evidence. Thus, the type of evidence Bright Spot wishes to add to the record could have been provided at the original hearing.

In addition, despite the September 2022 order of notice providing a generous three-month timeframe for the filing of petitions to intervene, Bright Spot did not seek intervention status. Had a petition to intervene been granted, Bright Spot could have submitted evidence. Even without intervenor status, Bright Spot could have submitted a public comment in favor of the proposal. In April 2024, the Commission scheduled public hearings for August 20 and 22, 2024, providing five months' notice to the parties and interested members of the public, and laid out the process for the parties to file recommendations several weeks in advance to allow for consideration of the proposals. The proposal for the twenty-year legacy period was submitted in early August, thus providing at least three weeks' notice that the Commission would consider the issue at the August hearing. Bright Spot, however, made no appearance

in this docket until December 17, 2024, one month after the Commission issued its order and several months after the evidentiary hearing. Based on this procedural history, and the lack of any explanation in its motion, the Commission sees no reason why the company could not have intervened or otherwise participated in this docket prior to the evidentiary hearing in August 2024.

In sum, the Commission concludes that Bright Spot has failed to explain why the additional evidence it seeks to provide the Commission could not have been provided at the original hearing and therefore finds that Bright Spot has not shown good cause for rehearing under RSA 541:3 on this basis. *See Appeal of Gas Serv.*, 121 N.H. at 801.

ii. Improper Evidentiary Finding

Second, Bright Spot argues that a finding within Order No. 27,074 was unsupported by the record. In particular, Bright Spot challenges the Commission's statement that: ". . . . the absence of a twenty-year legacy period for net metering compensation levels will not itself present investors from entering into long-term financing arrangements." Bright Spot Mot. for Rehearing at 13 (quoting Order No. 27,074 at 25). Bright Spot argues that the "record does not show that any evidence to support this declaration was offered; the declaration appears to come out of nowhere." *Id.*

The Commission disagrees with Bright Spot's characterization of the Commission's statement within the context of Order No. 27,074. The Commission's statement was not a factual finding. In context, the Commission was observing the truism that the absence of a legacy period for NEM 2.0 would not itself prevent third-party lenders from financing commercial solar installations. Put another way, third-party lenders could, if they wanted to, still finance commercial solar installations

absent a twenty-year legacy period. In fact, the vast majority of investment in the United States occurs without government guarantees about compensation levels. A twenty-year legacy period would be an aberration from how most markets operate and is therefore not inherently necessary to ensure a secure lending environment.

The proponents of the twenty-year legacy period argued that it was necessary for this particular industry because commercial solar installations in New Hampshire would either not be profitable or would not otherwise be an attractive investment opportunity for third-party lenders in the absence of a guarantee about the compensation levels in NEM 2.0. While either of these points could be true, they must be proven with actual evidence. The Commission carefully considered the proponents' evidence to support these arguments. The Commission's *factual finding* was that the record did not support the implementation of a twenty-year legacy period. Order No. 27,074 at 26–27.

The Commission notes that it made the challenged observation in order to differentiate the parties' arguments related to the need for a secure lending environment and lenders' desire to see a return on their investment within twenty years with the need for twenty years of compensation under the specific terms of NEM 2.0. In its challenged statement, the Commission was attempting to clarify that these are separate issues.

Accordingly, as the challenged statement was not a factual finding, Bright Spot has not shown good reason for rehearing on this basis. In addition, as Bright Spot has not shown good reason for rehearing on either ground it raised in its motion, the Commission DENIES Bright Spot's motion to the extent it seeks rehearing of Order No. 27,074.

B. Motion for Clarification

Bright Spot also moves for clarification of one of the ordering clauses in Order No. 27,074. Specifically, the Commission stated it would issue an "order of notice to review and adjudicate additional proposals related to the net-metering program and tariffs pursuant to its obligation to continue to review and develop net-metering tariffs under RSA 362-A:9, XVI." Bright Spot notes that RSA 362-A:9, XVI states that the Commission "shall continue to develop and periodically review *new* alternative net metering tariffs," and contends that the Commission omitted the word "new" in its recitation of its statutory obligations. Bright Spot requests that the Commission "amend the Order to clarify and confirm that it shall 'continue to review and develop ***new*** net-metering tariffs' under RSA 362-A:9, XVI." Bright Spot Mot. for Rehearing at 14–15.

To the extent necessary, the Commission notes that it fully intends to comply with RSA 362-A:9, XVI, agrees that the statute states that the Commission shall review and develop "new alternative net metering tariffs," and acknowledges that, in paraphrasing its statutory obligations, the Commission did not use the word "new," or, for that matter, the word "alternative." That said, the Commission does not believe it is necessary to amend its order or otherwise clarify the challenged clause. In the context of the order, in which the Commission was stating that it was going to issue a supplemental order of notice to consider future changes to the net metering tariff, the Commission's recitation of its statutory authority was substantively correct. The Commission was clearly referring to forward-looking changes to the net metering tariff. At no point did the Commission state an intention to change the net metering tariff terms for existing customer-generators, nor does the Commission believe that is a reasonable reading of the Commission's order. In sum, because the Commission finds

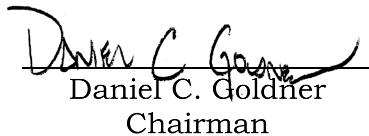
that, in context, its statement was substantively correct and clear under any reasonable reading of the order, the Commission will not amend Order No. 27,074 to clarify its meaning.

Accordingly, the Commission DENIES Bright Spot's motion to the extent it seeks clarification of Order No. 27,074.

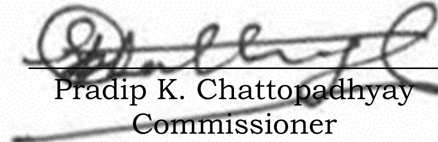
Based upon the foregoing, it is hereby

ORDERED, that Bright Spot's Motion for Rehearing and Clarification is **DENIED**; and it is

By order of the Public Utilities Commission of New Hampshire this tenth day of February, 2025.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner

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Docket#: 22-060

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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 22-060

ELECTRIC DISTRIBUTION UTILITIES

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

Order Closing Docket to Consider Remaining Issues in New Investigative Docket

O R D E R N O. 28,110

March 7, 2025

On November 18, 2024, the Commission issued Order No. 27,074, which ruled on a number of recommendations from the parties to this docket related to the net metering program in New Hampshire based on evidence adduced at a hearing in August 2024. That same day, the Commission issued a Supplemental Order of Notice, in which it informed the parties and the public that it would consider additional issues related to net metering in future stages of this docket. Since November, the Commission has received data responses from the three electric distribution utilities related to their net metering programs and has ruled on several motions for rehearing and clarification of its November orders. Based on these filings, the Commission concludes that the issues noticed would be best reviewed and resolved in a separate investigative docket as part of a holistic review of our state's net metering program pursuant to the Commission's ongoing obligation to review and develop alternative net metering tariffs under RSA 362-A:9, XVI(a) and our investigative authority under RSA 365:5 and RSA 374:4. Therefore, the Commission closes this docket and will issue an order of notice of a new investigative docket on our own motion under RSA 365:5 in due course.

In the Commission's view, closing this docket and considering the remaining issues in a new investigative docket as part of broader review of the net metering tariff is the fairest and most expedient method of resolving the remaining issues in the Supplemental Notice and achieving the Commission's intent when it issued Order No. 27,074 and the Supplemental Notice. Specifically, in the Supplemental Notice, the Commission stated that it would review additional issues related to net-metering in a three-phase process. With respect to the issues noticed as part of Phase I, the Commission has previously stated that these matters could be merged with Phase II in this docket. *See* Procedural Order dated January 3, 2025.

Taking the remaining two phases out of order, the largest and broadest in scope of the phases was Phase III. That phase included a data-collection effort and tariff development process recommended by a coalition of parties including the three electric distribution utilities pursuant to their settlement agreement. Based on the wording of that settlement agreement, the Commission had understood the parties to be recommending an eighteen-month data-collection effort that would gather information related to the benefits created for residential ratepayers through the utilities' net metering programs and culminate in a future proposal for a new, alternative net metering tariff based on this data. As the Commission understood, this process would include, but not be limited to, the development of a net metering time-of-use (TOU) rate.

In order to facilitate that process, the Commission requested that the three electric distribution utilities submit an outline of the data they intended to collect and their proposed process for collecting it, which the utilities filed on January 15, 2025. Having received the outline, it appears that the electric utilities had intended a far narrower data-collection effort than the Commission understood, one that was

essentially limited to the development of a future TOU rate. While the Commission agrees that an investigation into a TOU rate is appropriate, the Commission's intent in Order No. 27,074 and the Supplemental Notice was to create a process for a wider review of the net metering tariff, including an investigation into potential changes to compensation rates. *See* Supplemental Notice at 6. The Commission believes that such a review is appropriate at this time because no Commission has ever found the currently effective net metering compensation levels for small customer-generators to be consistent with the statutory standard. *See* Order No. 26,029 in Docket No. 16-576 (June 23, 2017) at 54–55 (noting that there was insufficient evidence to support the compensation levels and directing the commission of a study on the value of distributed energy resources); Order No. 27,074 at 15–16 (explaining why the final study on the value of distributed energy resources was uncompelling evidence in support of the compensation levels). Therefore, the Commission will convene a new investigative docket for that purpose.

In addition, the Commission finds that the utilities' proposal for an investigation and review of TOU rates should be included within the new investigation for several reasons. First, an investigation focused on TOU rates could implicate other aspects of the net metering program, and thus require addition changes to the tariff. Accordingly, it makes sense to consider potential TOU rates as part of a broader review of the tariff. Second, it would be more administratively efficient. Finally, it would avoid piecemeal alteration of the net metering tariff. Therefore, the Commission will no longer consider a potential TOU rate in this docket, but will do so in a new investigative docket.

The final phase (Phase II) included the consideration of several proposals submitted by the Community Power Coalition of New Hampshire (CPCNH) before the

August 2024 hearing. In Order No. 27,074, the Commission noted that CPCNH's proposals were not for the immediate implementation of changes to the tariff but rather requests for the Commission to create further process for the development and review of their proposals, many of which included quite extended timeframes. In the order, the Commission found that, on their face, CPCNH's proposals merited consideration and thus stated that it would consider them in future stages of this docket. However, because the Commission now intends to open a new investigative docket to provide for a broad review of the net metering tariff, the Commission finds it would be more efficient to include these proposals as part of that investigation for several reasons. First, it will provide a mechanism to investigate the merits of CPCNH's recommendations. Second, it will ensure that any future changes to the net metering tariff are implemented on a similar timeframe, and thus prevent piecemeal alteration of the tariff. Third, the Commission finds that this is generally consistent with CPCNH's recommendations for the further review and development of their proposals and the Commission's intent in Order No. 27,074. Therefore, Commission will no longer consider the issues in Phase II in this docket.

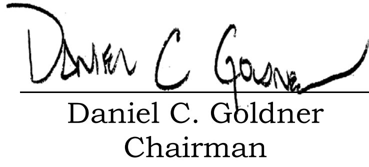
As all issues in the Supplemental Notice have either been resolved or will be considered in a new investigative docket, there are no remaining issues in this docket and it can now be closed.

Based upon the foregoing, it is hereby

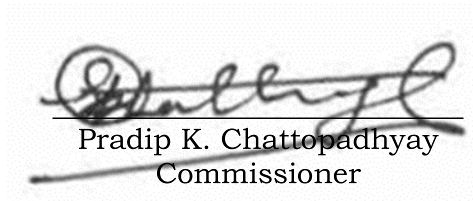
ORDERED, that this docket is closed; and it is

FURTHER ORDERED, that the Commission will issue notice of a new investigative docket in due course. The Commission will wait at least thirty-one days prior to issuing said notice to provide sufficient time to resolve any potential motions related to this order and the closing of this docket.

By order of the Public Utilities Commission of New Hampshire this seventh day of March, 2025.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner