

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Electric Distribution Utilities

Development of New Alternative Net Metering Tariffs and/or Other Regulatory Mechanisms and
Tariffs for Customer-Generators

Docket No. DE 16-576

Post-Hearing Brief of the Office of the Consumer Advocate¹

I. The Context: From Chaos to Order

Net metering was an act of accidental, ad-hoc, somewhat mischievous innovation.² The phenomenon began in the 1970s when it occurred to a restless and risk-tolerant engineer in Massachusetts that if he wired the inverter tied to photovoltaic panels on the roof of a new apartment building directly onto the building's grid-connected electric system, when the inverter's production of AC power exceeded the building's usage the surplus electricity might cause the analog meter of the local electric utility to spin backwards. To the surprise of the engineer, the building's developers had apparently concluded it would be better to ask forgiveness than to seek the permission of the utility.

Such a conclusion was hardly irrational. No one would have accused the vertically integrated electric industry in the 1970s of anything but a stolid commitment to business as usual – big-ticket central station generation premised on ever-escalating economies of scale – even as

¹ At the direction of Chairman Honigberg at hearing on March 29, 2017, the Office of the Consumer Advocate (OCA) is foregoing the procedural history and other introductory material that typically appears in a pleading of this sort.

² The account of the origins of net metering is adapted from the January 5, 2017 edition of the New Hampshire Public Radio Program *Outside/In*, entitled "The Accidental History of Solar Power." It is available in audio and written form at <http://outsideinradio.org/shows/ep28>.

evidence mounted that what Amory Lovins famously described in 1976 as a new and “soft” path of small-scale innovative technology deployed at the grassroots was the better future for the electric grid.³

The meter *did* spin backwards. The technology proliferated, particularly in desert and tropical locales with lots of sun but also in New Hampshire – where, in 1998, net metering was explicitly authorized as an amendment to RSA Chapter 362-A, the Limited Electrical Energy Producers Act. *See* RSA 362-A:9. And, according to New Hampshire Public Radio, “for years not only was [net metering] totally non-controversial: solar power was seen as something that a few tech enthusiasts and environmental zealots would do, but certainly it wasn’t expected to spread to the masses. In hindsight this seems short-sighted, that a policy with the potential to shape the future of something as important as the electric grid would be allowed to grow so organically and without any real vetting or thought. . . . Until, suddenly, solar suddenly started to get cheap.”⁴

In 2016, the New Hampshire Legislature caught up with this trend. Specifically, House Bill 1116, codified as 2016 N.H. Laws Chapter 31, became law and, with it, a directive to the PUC to open this proceeding for the purpose of adopting new net metering tariffs for the purpose of replacing the currently applicable caps on net metered capacity with an approach that could be put in place without such industry-constraining limitations. At the executive session in which the Senate Energy and Natural Resources Committee reported the bill favorably to the floor of the Senate, the lead Senate sponsor of the bill pointedly advised the representatives of the solar industry who were present that they should expect to receive a “haircut” at the PUC. By this he clearly meant that he expected the PUC to end the era of old-fashioned net metering.

³ Lovins’ groundbreaking 1976 article, “Energy Strategy: The Road Not Taken?,” originally published in *Foreign Affairs*, is available at http://www.rmi.org/Knowledge-Center/Library/E77-01_EnergyStrategyRoadNotTaken.

⁴ *Outside/In*, supra note 2.

Or, as the Legislature put it more formally in the purpose statement to the Legislation, “it is in the public interest to continue to provide reasonable opportunities for electric customers to invest in and interconnect customer-generator facilities and receive fair compensation for such locally produced power while ensuring costs and benefits are fairly and transparently allocated among all customers.” 2016 N.H. Laws, Ch. 31:1. HB 1116 directed the Commission to consider the following questions in developing new tariffs for distributed generation:

- the costs and benefits of customer-generator facilities;
- an avoidance of unjust and unreasonable cost shifting;
- rate effects on all customers;
- alternative rate structures, including time based tariffs;
- whether there should be limitation on the amount of generating capacity eligible for such tariffs;
- the size of facilities eligible to receive net metering tariffs;
- timely recovery of lost revenue using an automatic rate adjustment mechanism; and
- electric distribution utilities’ administrative processes required to implement such tariffs and related regulatory mechanisms.

Id. at section 5, codified as RSA 362-A:9, XVI.

II. The Progress: From the Extremes to “Somewhere in the Midwest”

Seeking to assist the Commission with confronting these questions, most of the parties to the docket began at the extremes. On one end of the spectrum were Unitil, seeking a three-part rate that would have added an unprecedented and regressive demand charge to customer bills, *see* Testimony of Thomas P. Meissner, Jr., Exh. 8, at 45-47; Eversource, requesting that compensation of customer energy exports be limited to the avoided cost rate as fixed by the Commission pursuant to the federal Public Utility Regulatory Policies Act (PURPA), *see* Testimony of Edward A. Davis, exh. 15, at 6 lines 1-6; Liberty Utilities, similarly seeking to

limit compensation to the applicable energy service rate, *see* Testimony of Heather M. Tebbetts, exh. 16, at 12 lines 19-20; and the New England Ratepayers Association (NERA), which sought to limit compensation for energy exports to the applicable Locational Marginal Price (LMP, basically the wholesale price of energy) adjusted either positively or negatively for the quantified cost or benefit of having distributed generation on the applicable node, with an additional interconnection charge, *see* Testimony of Michael Harrington, exh. 27, at 22-29. On the other end of the spectrum were solar companies and several nonprofit organizations whose missions include the promotion of renewable energy, all of which argued, in essence, that in the absence of hard evidence that costs were being shifted from customers to customer-generators the current net metering regime should remain in place, at least for the time being, particularly for customer-generators with installations of 100 kW and under. *See* Testimony of R. Thomas Beach on behalf of The Alliance for Solar Choice (TASC), exh. 19, at v (“the testimony supports the continuation of net metering in New Hampshire . . . [a]ny future review of net metering tariffs and associated rate designs should occur within the data-rich context of a utility’s general rate case”); Testimony of Patrick Bean on behalf of the Energy Freedom Coalition of America (EFCA), exh. 21, at 5, lines 19-20 (“Net metering has been, and continues to be, a fair and efficient mechanism for encouraging the adoption of distributed solar in New Hampshire, and therefore should not be changed at this time”); Testimony of Paul Chernick on behalf of Conservation Law Foundation (CLF), exh. 22, at 36 lines 19-24 and 37, lines 1-2 (“Maintain the current net metering program” but with “declining net-metering credits for new installations on feeders for which hourly maximum distributed-generation output net of load exceeds half the feeder capacity, except for systems that do not add to the reverse load flow”); Testimony of Kate Bashford Epsen on behalf of N.H. Sustainable Energy Association (SEA), exh. 28, at 12-13

(“there is no demonstrable nor unreasonable cost-shifting” so “the net metering reimbursement mechanism that is currently in place for systems under 100 kW [should] continue to be available” but with nonbypassable charges removed from the calculation); Rebuttal Testimony of Ellen Hawes on behalf of Acadia Center (Acadia), exh. 55, at 26, lines 3-7 (“Net metering in New Hampshire should start to transition from current net metering structures to value-based net metering credits for group net metering and for larger commercial and industrial projects. Projects 100 kW and under should maintain retail net metering, but gradually transition through a process of iterative rate design and net metering reforms in the coming years.”); Rebuttal Testimony of Stan Faryniarz on behalf of Commission Staff, exh. 64, at 80, lines 12-21 (“Staff recommends that the Commission consider whether the current and near-term levels of cost-shifting are significant enough to address at this time”).⁵

To the credit of these parties, several areas of consensus emerged and those with extreme positions ultimately compromised them.⁶ As a result, pending before the Commission are two rival proposals that are more alike than they are different.⁷ One proposal (exhibit 2) is from the

⁵ This does not purport to be a comprehensive summary of the initial positions of the parties whose testimony is cited. Significant details, and aspects on which there was broad agreement among the parties, are omitted. The point is to illustrate the chasm on the fundamental questions with which the parties began the docket. At least two parties – the City of Lebanon and the OCA – started with positions that were not at these extremes. *See* Testimony of Clifton Below on behalf of City of Lebanon, exh. 30, at 8 (proposing RSA 53-E municipal aggregation program as a “work around” pilot program for real-time prices) and Testimony of Lon Huber on behalf of OCA, exh. 17, at 7, lines 1-11 (proposing a time-of-use rate for residential customer generators and a fixed solar credit option for all customers).

⁶ To some extent, the testimony adduced at hearing belied this reality by focusing on the differences of opinion reflected in the parties’ original testimony. For example, CLF witness Paul Chernick described the testimony of the Utility/Consumer Coalition as “unsupported assertions, claims that solar does not affect generation and transmission peaks, that solar cannot reduce the need for distribution, that solar generation occurs at times of low energy costs.” Tr. 3/29a at 32 lines 9-13. Even assuming this accurately reflected the views held by all members of the Utility/Consumer Coalition – which it does not – or is a fair summary of testimony offered by other witnesses, the case in its present posture does not require the Commission to address any of these questions. The same is true of the dispute that erupted during the hearing over whether the annual peak in the ISO New England bulk power transmission system occurs in the afternoon or evening. *See id.* at 32 lines 17-24.

⁷ By way of analogy, if the utilities and NERA began this docket in New York and the solar interests started in San Francisco, both coalitions ended up “in the midwest somewhere,” according to the testimony of CLF witness Paul

so-called Energy Future Coalition (EFC) consisting of Acadia, TASC, CLF, EFCA, SEA, the Granite State Hydropower Association and certain individual solar companies that directly intervened (Borrego Solar, ReVision Energy, Sunraise Investments, Solar Endeavors and Revolution Energy). The other (exhibit 5) is from the Consumer/Utility Coalition consisting of Eversource, Liberty, Unitil, OCA,NERA, the Office of Energy and Planning (OEP, which is an executive branch agency that reports directly to the Governor), Standard Power of America and the Consumer Energy Alliance (CEA).

Both the EFC proposal and the Utility/Consumer proposal request that the Commission:

- Require utilities to transition from crediting exports on the basis of kilowatt-hours to crediting them on a monetary basis, with a “cash out” opportunity annually in April or upon terminating service;
- Require utilities to provide customer-generators with two-channel meters that separately record energy exported to the grid (net of energy self-consumed) and energy imported from the grid;
- Require customers to pay all nonbypassable charges (stranded cost recovery charge, system benefits charge, electricity consumption tax, etc.) applicable to their import of energy from the grid;
- For customer-generators with production capacities of 100 kilowatts or less taking default service, require utilities to continue to credit exports at the full retail rate for default service and transmission service, effectively leaving old-fashioned net metering in place for these elements as they apply to such customers;
- For customer generators with production capacities of more than 100 kilowatts, require utilities to credit exports at the default service rate but require such customers to register as group hosts unless their on-site annual volumetric load equal at least 20 percent of annual on-site energy production;
- Require utilities to provide customers with meaningful opportunities to transfer for value the Renewable Energy Certificates associated with their production of energy, in part by giving them access to utility-supplied production meters upon request;

Chernick. Tr. 3/29a, 68 at lines 22-24. City Councilor Clifton Below, who represented and testified on behalf of intervenor City of Lebanon in this proceeding, noted that he had participated “fully” in the settlement discussions and testified that “all of the parties have moved significantly from their original positions.” Tr. 3/29a, 104 at lines 2-7.

- Implement a pilot program designed to provide meaningful opportunities for low-income customers to participate in distributed generation even if they do not have the premises or resources necessary to make direct investments in distributed generation;
- Implement one or more pilot programs to test the efficacy of time-of-use (TOU) rates;
- Grandfather existing customer-generators under the old net metering regime through the end of 2040, and provide the same certainty for subsequent customer-generators taking service under the new tariffs;
- Allow the utilities to recover revenues lost as the result of net metering to seek Commission approval of a cost-based application fee to customers seeking to become customer-generators, and, similarly, to seek approval of a cost-based monthly customer charge applicable only to customer generators based on incremental costs associated with metering, billing and interconnection; and
- Require utilities to charge the otherwise applicable retail rates to customer-generators for electricity imported from the grid, without imposition of demand charges.

See generally exhibits 2 (EFF Joint Settlement Proposal) and 5 (Utility/Consumer Coalition Settlement Agreement).

III. The Issues in Dispute

Disagreement between the two coalitions that have placed proposals before the Commission centers on three key realms: (1) the Utility/Consumer Coalition’s proposal to phase out paying an export credit to customer-generators equal to the distribution service rate, vs. the EFF’s plan to phase out such credits through the end of 2020,⁸ (2) the Utility/Consumer Coalition’s proposal to credit customer-generators for exports and charge them for imports on a

⁸ Specifically, the EFF would reduce the distribution credit for small customer-generators (those with system capacities of less than or equal to 100 kilowatts) to 75 percent of the volumetric distribution charge on September 1, 2017, to 50 percent on January 1, 2019, and on January 1, 2021 to some percentage to be determined by a Commission-sponsored “Value of Distributed Energy Resources” (V-DER) study. The EFF would maintain the distribution credit for other customer-generators until it could likewise be recalculated based on the V-DER study as of January 1, 2021. *See* exh. 2 at 3.

continuous basis,⁹ as opposed to netting the two charges on a monthly basis, and (3) the nature and scope of a study to be conducted by the Commission, intended to provide the basis for future rates applicable to customer generators. Both coalitions refer to this as a “Value of Distributed Energy Resources” (V-DER) study but it emerged at hearing that each coalition has a somewhat different concept of what such a study should entail; moreover the Utility/Consumer proposal also calls for a “locational value study” under Commission supervision that would be similar to the one referenced in the rebuttal testimony of the Eversource witnesses and conducted for a utility in New York (*see* exh. 43 at 19, lines 9-10).

The remainder of this brief focuses on why the Commission should, as to each of these three questions, adopt the recommendations of the Utility/Consumer Coalition.¹⁰

⁹ The EFF Coalition refers to this concept as “instantaneous netting,” *see, e.g.*, Supplemental Settlement Testimony of R. Thomas Beach et alii (exh. 1) at 6-7), a characterization that the OCA regards as misleading. In reality, the concept is one of *no* netting, as distinct from the monthly netting that occurs presently. Regardless of how the concept is denominated, the Commission should keep in mind that the change as proposed by the Utility/Consumer Coalition for small customers applies only to the distribution portion of the export credit.

¹⁰ In so focusing, the OCA assumes the Commission will adopt the recommendations of the two coalitions to the extent they coincide – effectively treating the case as fully settled on those points. The Commission implicitly adopted this approach in its secretarial letter of March 26, 2017 granting the CLF motion *in limine* to “focus the issues” at hearing. The three chief issues the OCA believes are still in dispute are among the 16 issues the secretarial letter concluded were relevant.

The parties also differ on the start date for the new net metering tariff. The Utility/Consumer Coalition proposes July 1, 2017; the EFC seeks a start date of September 1, 2017. Both coalitions acknowledge that the transition may need to be delayed past those dates in order to accommodate changes to utility billing systems. The OCA does not object to the start date proposed by the EFC.

Additionally, the two proposals are not in alignment with respect to the extent to which exports of larger installations (greater than 100 kilowatts) are credited with transmission charges. The Utility/Consumer Coalition proposes no transmission credit for such customers. The EFC proposes the maintenance of such credit with an “opt-in program to allow RNS and LNS Transmission credit, based on actual avoided costs” or “[i]n other words, a credit for the reduced distribution load share and resulting variable transmission charges from what they would have been had the customer not reduced their demand.” Exh. 5 at 3. The OCA supports the approach adopted in the Utility/Consumer proposal.

Finally, the OCA acknowledges that the two coalitions are not in complete alignment with respect to pilot programs to be commenced in the immediate wake of this proceeding. As noted, *supra*, both coalitions agreed to a pilot program along the lines suggested by the OCA that would be intended to make the benefits of distributed generation meaningfully available to persons of low or moderate income. *See* Direct Prefiled Testimony of Elizabeth Doherty (exh. 18) at 72-76 (describing community solar projects compensated with “adder” pegged to percentage of participants with low or moderate incomes). Both coalitions are likewise on record supporting at least one pilot

A. Export Credit

The proposal to discontinue the provision of distribution credit for energy exported to the grid by customer-generators should not be considered in isolation. Though the solar industry's representatives attack this feature as an affront to notions of gradualism espoused by the influential thinker James Bonbright¹¹ and others, it is nothing of the sort. As reflected in Attachment B to the technical statement submitted by witnesses Tebbetts, Labrecque and Debski (exh. 6), for an Eversource residential customer this amounts to a reduction in the export credit of 4.2 cents per kilowatt-hour vs. the currently applicable full retail credit of more than 18 cents. The effect for a typical residential customer generator is a 14 percent decrease in the net revenue produced by a solar installation. *Id.* at 13. Overall, this is the "haircut" the Legislature is expecting to see – a modest one in the circumstances.

program involving TOU rates. The EFC proposal calls for two pilots not referenced in the Utility/Consumer proposal: (1) a voluntary "Smart Home Energy Rate" pilot program for residential customers that would test "other rate designs such as real-time pricing, critical peak pricing, demand charges or other structures that enable customers to adopt a variety of technologies to manage their electricity consumption," and (2) a "[n]on-wires alternative" pilot. Exh. 2 at 4. The Utility/Consumer Coalition proposes "a task force to be convened and overseen by the Commission, the purpose of which shall be to guide the creation, design, and request for Commission approval" of pilot programs. Exh. 5 at 9.

The OCA believes that if the Commission orders the creation of such a task force, directs a member of its staff to *lead* the task force, and makes clear both to the leader and to prospective members of the task force that this is a priority effort of the Commission that requires attention and cooperation, the parties will collaborate successfully and pilot programs will move forward effectively and efficiently. (The OCA would certainly react to such a stimulus by participating vigorously and cooperatively.) In that regard, the OCA notes that while the hearing naturally focused on the points of disagreement that remain in the docket, this tended to obscure the significant degree of comity and trust that developed among the major parties over the course of the docket as reflected by the broad array of issues on which there is agreement despite the vast gaps between the parties' initial positions.

¹¹ James Bonbright's seminal treatise on utility rate design, published in 1961 as *Principles of Public Utility Rates*, is available at media.terry.uga.edu/documents/exec_ed/bonbright/principles_of_public_utility_rates.pdf. The word "gradualism" does not appear in the document. In its 2014 publication "Rate Design for a Distribution Edge," available at

www.fortnightly.com/sites/default/files/whitepapers/Rate%20Design%20for%20the%20Distribution%20Edge.pdf, the Rocky Mountain Institute offered what purported to be a reinterpretation of the Bonbright Principles for the 21st Century. *See id.* at 38 (describing the traditional Bonbright principle as "[r]ates should be relatively stable such that customers experience only minimal unexpected changes that are seriously adverse" and its 21st Century reinterpretation as "[c]ustomer bills should be relatively stable even if the underlying rates include dynamic and sophisticated price signals. New technologies and service offerings can manage the risk of high customer bills by enabling loads to respond dynamically to price signals."

In arguing to the contrary, witnesses from the EF Coalition claim that anything less than full retail credit for new customer-generators is insupportable given the lack of record evidence of costs shifted from customer-generators to others. For example, on behalf of CLF, consultant Paul Chernick asserted that reducing the retail credit now would be “sort of like locking everybody up to make sure they don’t commit any crimes, adding: “[R]ight now we don’t know whether other New Hampshire customers are paying higher bills or lower bills because of the behind-the-meter solar. So just assuming that it’s a problem and saying, ‘well, let’s stop it,’ . . . is unwarranted.” Tr. 3/39a at 63 lines 9-10, 23-24 and 64 lines 1-5.¹² Mr. Chernick also claimed that the Utility/Consumer proposal “improperly assumes zero distribution benefit. . . . They’ve simply insisted that the benefits are zero, despite the fact that all of the available data demonstrates that solar DG has substantial benefits.” *Id.* at 39 lines 6-12. Professor Karl Rabago of the Pace University Law School Energy and Climate Center testified on behalf of the EF Coalition that “[Z]ero is the only value of distribution costs or benefits that we know is absolutely wrong. But zero is the value that the Utility [and Consumer] Coalition proposes.” Tr. 3/27s at 52, lines 13-16.

What these witnesses ignore is that eliminating the distribution credit is in the nature of a compromise, to be considered alongside the retention of full credit for energy service and transmission service. The Utility/Consumer Coalition has *not* supported its settlement proposal with a claim of “zero distribution benefits;” to the extent any of the direct testimony filed in November makes such a claim, focusing on it here is a distraction. Indeed, as witness Thomas Meissner of Unitil pointed out, there is also no record evidence supporting the phase-out of the distribution credit as proposed by the EF Coalition either, *see* tr. 3/28a at 54 lines 21-24, which

¹² The court reporters who transcribed the proceedings in this docket filed separate transcripts for morning and afternoon sessions. Accordingly, in this brief the transcripts are cited by date as either “a” or “b” – with “a” referring to the morning session and “b” referring to the afternoon session.

means that *both* coalitions are implicitly asking the Commission to accept rate proposals that were developed through a negotiating process rather than through an empirical exercise.

Moreover, it is an exaggeration to claim the record is devoid of evidence to support a finding that the current net metering paradigm shifts costs from distributed generation “haves” to distributed generation “have-nots.” Witness Ellen Hawes of the Acadia Center testified that she “may differ slightly” from Mr. Chernick on this point, tr. 3/29a at 64 line 9, adding: “I don’t think Acadia Center would say that no changes are warranted. . . . I would just say I don’t think there’s any evidence on the record that this is an emergency, that there are these huge cost shift[s] that are happening that outweigh any benefits. So we want to make sure we don’t do anything silly or totally arbitrary or that would cause real harm to the industry,” *id.* at lines 9-20. Councilor Clifton Below of the City of Lebanon said he was “skeptical whether there’s a net cost shift,” but *only* if you “incorporate sort of all the social cost issues” such as the cost of carbon – externalities, he conceded, that have not been deemed cognizable as a matter of public policy in New Hampshire. Tr. 3/29b at 18 lines 13-22. But, apart from that, Councilor Below added that “the distribution utilities have a legitimate issue” when they point out that “when somebody who has net metering can put power onto the system and take it back, back and forth, essentially using the grid like a battery, if they’re not paying anything for the use of the distribution system on that element there may be some significant cost shift.” *Id.* at 18 lines 23-24 and 19 lines 1-16. This is precisely why the OCA proposed an export charge – essentially, a fee for using the grid as a virtual battery – embedded in an overall time-of-use rate option (see Direct Prefiled Testimony of Lon Huber, exh. 17, at 17-32) which the OCA agreed to defer as part of the compromise it struck with the other members of the Utility/Consumer Coalition and which it attempted to strike with the members of the EF Coalition.

Councilor Below also said “there is some logic in trying to foresee trends in trying to change the structure so that things are moving in sort of a change in course” but “a gradual change in course is going to be less disruptive than a big change all at once.” Tr. 3/29b at 15 lines 8-15. He warned that under the EF Coalition’s plan to phase out the distribution credit there could be “a slight unintentional effect . . . you could end up with a situation where you have a number of systems . . . developed specifically for the purpose of creating . . . value to be cashed out at the end of the year, that could be grandfathered for a long period of time that we’d be locked into.” *Id.* at 52 lines 4-23.

This concern deserves to be taken seriously. With respect to the objective of gradualism, the Commission should bear in mind that Professor Bonbright’s was not thinking of solar installers, solar leasing companies or regulated utilities when he opined in favor of rate stability; he was concerned about *consumer* welfare. This concern is fully addressed by the grandfathering provisions in the Utility/Consumer proposal, which assure that the reasonable financial expectations of customer-generators will be met in a manner calculated to give them confidence in an ability to recover their investments in distributed generation.

Likewise, the purpose statement of HB 1116 does not entreat the Commission to avoid changes that impose new challenges for the solar industry; rather, the Legislature declared that “it is in the public interest to continue to provide *reasonable opportunities for electric customers* to invest in and interconnect customer-generator facilities and *receive fair compensation* for such locally produced power while ensuring costs and benefits are fairly and transparently allocated among all customers.” 2016 N.H. Laws, ch. 31:1 (emphasis added).¹³ As noted *supra*, the

¹³ It is clear that the EF Coalition is unhappy with at least some of the Legislature’s determinations as reflected in HB 1116. For example, Professor Rabago testified that “there’s no fire” to justify taking decisive action in the near term to reform the terms of net metering tariffs, arguing that “[t]here’s a great adverse risk to an emerging market sector, contrary to the policy preferences of the Legislature.” Tr. 3/27b at 59, lines 18-21. This amounts to an

provision of H.B. 1116 that directed the Commission to open this proceeding included a list of eight issues the Commission “shall” consider, not one of which is the effect new alternative net metering tariffs would have on the solar industry’s profitability or ease of doing business.

This is not to suggest that the Commission should be indifferent to the concerns expressed on the record (and discussed more fully, *infra*) of the solar industry. It is, rather, simply to suggest that the proposal to eliminate the distribution credit -- considered as a component of the overall rate proposal advanced by the Utility/Consumer Coalition – comports fully with the explicit legislative directives that govern this docket.

The most controversial of these directives is “an avoidance of unjust and unreasonable cost-shifting.” It is the emphatically held view of the Office of the Consumer Advocate that the Commission should not wait for the widespread deployment of distributed energy resources and advanced metering to confront the question of cost shifting, at which point there would be ample data to support the proposition that customer-generators are being overcompensated at the expense of their neighbors. The Legislature did not find, or require a finding, that such cost-shifting exists to a significant extent at present in light of the nascent state of distributed generation in the Granite State; the Legislature told the Commission to take steps *now* to avoid such a problem *in the future*. Mr. Chernick and others can deride this approach as the equivalent of “locking everybody up to make sure they don’t commit any crimes,” but in reality what the Legislature had told the Commission to do is to prevent the ‘crime’ before it becomes a crime wave. A modest 14 percent reduction in the amount of compensation provided to customer-

implicit acknowledgement by the EFC that it simply disagrees with a binding legislative determination that action to reduce unreasonable cost-shifting should not await the widespread deployment of both distributed generation and advanced meters. The Commission is not free to ignore policy determinations made in HB 1116 regardless of how many parties to this docket disagree with them.

generators, at a time when the cost of deploying solar photovoltaics is declining, is a reasonable step, grounded in compromise, that the Commission should approve.

B. No netting vs. monthly netting

The aspect of the Utility/Consumer coalition proposal that has prompted the most vociferous objection from the solar industry and its allies is so-called “instantaneous netting,” which is more correctly described as converting customer-generator exports to monetary credit in real time as opposed to reconciling exports and imports for billing purposes on a monthly basis -- so-called “monthly netting.” In practical terms, this is relevant to the Utility/Consumer proposal only as to the distribution charges billed to customers for their imports, since the provision of full export credit for energy and transmission charges means the result as to these rate elements would be the same under either form of “netting.”

EF Coalition witness Fortunat Mueller of ReVision Energy described the effect of this proposed change -- i.e., no distribution credit for exports, and no monthly netting -- as “arbitrary and shocking.” Tr. 3/27a at 38, lines 22-23. Implicitly referring to language in the purpose statement of HB 1116, Mr. Mueller claimed that such a rate structure for customer-generators would “eliminate the reasonable opportunity for those customers to make those investments.” *Id.* at 41, lines 19-22.

It would do no such thing, as Mr. Mueller’s own testimony and that of other witnesses confirms.

All witnesses made clear that the issue is the extent to which solar companies can provide prospective customers with reasonable projections of what effect the installation of photovoltaic (PV) panels (or other distributed generation resources) on their premises would have on their

electricity costs overall. In other words, the question is not whether the new rate proposed by the Utility/Consumer Coalition is too low to make becoming a customer-generator cost-effective – the alleged problem is that solar installers cannot predict with sufficient precision how a particular project will perform for a prospective customer. Witness after witness, testifying on behalf of the EF Coalition, exaggerated this problem. The reality is that regardless of whether monthly netting persists or discontinues, no solar installer can reliably predict what supply rates will apply over the 10-plus years that comprise the useful life of a photovoltaic installation. The other reality is that customers will have the ability to control their load even as they are exposed to the vicissitudes of the electricity market. The solar industry’s expressed concerns about “instantaneous netting” are essentially an expression of worry about the effects on their bottom line of a time in which the export credit will be modestly less than the retail rate paid for imports.

During his cross-examination, Mr. Mueller admitted that it would be possible to provide prospective customers with projections of best-case and worst-case scenarios based on their historical monthly usage data and/or data from typical residential customers. *Id.* at 137 lines 19-24 and 138 1-2. Mr. Mueller made clear he doesn’t like such ideas – specifically, he said “I’m Swiss” and “an engineer” and thus “have a personal preference towards precision” meaning he does not “feel comfortable giving a customer a value . . . that is based on a fudge factor.” *Id.* at 69 lines 9-19. EF Coalition witness Patrick Bean (of SolarCity, the nation’s largest solar company, recently acquired by Tesla) testified about “selling a good customer experience,” worrying that “asking a customer about their family . . . whether their kids are going to move away, what types of appliances they might have” could make prospective customers “a little bit skeptical about privacy.” *Id.* at 69 lines 20-24 and 70 lines 1-5.

The fact that the rate proposal of the Utility/Consumer Coalition is challenging to the horologically inclined, or makes life difficult for those squeamish about asking personal questions of prospective customers, does not mean the proposal eliminates reasonable opportunities for New Hampshire's electric customers to invest in distributed generation. Mr. Mueller testified that the sales cycle of his company – the Maine-based ReVision Energy – is typically between four and seven months “from first contact until installation.” *Id.* at 40 lines 15-18. He claimed, but without elaboration or evidence, that it would “take a year’s worth of data collection . . . for us to responsibly advise potential customers about projects. *Id.* at 56, lines 14-23. The Commission should reject this argument as too self-serving. As Mr. Mueller himself said, “the residential solar market is obviously not monolithic, and different customers make investments for different reasons, and project economics look different for different customers.” Tr. 3/27b, 66, lines 20-24 and 67, lines 9-11.

As it considers the question of whether the demise of monthly netting for a portion of the rate paid for customer-generator exports would be so arbitrary and shocking as to consign to oblivion all opportunity for consumers to invest in solar self-generation, the Commission should credit the testimony of Utility/Consumer Coalition witness Richard Labrecque, who has served as manager of distributed generation for Eversource NH since 2009. In that capacity, Mr. Labrecque is responsible for Eversource’s relations with all customers seeking to interconnect generation resources to the utility’s distribution system in New Hampshire. *See* exh. 14 at 1-2 (summarizing Mr. Labrecque’s qualifications). In that capacity, he has presumably developed a working knowledge of what works and what does not work for solar companies and their customers.

According to Mr. Labrecque, the solar installers with which he is familiar

are highly sophisticated technology companies that are fully capable of modeling. If they would spend a little time with each customer perhaps getting to understand the load profile of the customer, they could install load-monitoring equipment for a period of weeks or months in order to get a better handle on the type of load profile of the customer that they are marketing to. They can take that opportunity to build a stronger relationship with their customer, create a workable model of the extent to which the solar power will be consumed internally by that customer rather than exported. That would also give them the opportunity to discuss with the customer additional products and services, such as battery storage and load-control technologies that might be used to ensure that a high proportion of the solar power was matched with internal consumption.

Tr. 3/28a, 46 lines 23-24 and 47 lines 1-19. Mr. Labrecque further pointed out that solar installers and their customers must always enter into their arrangements after undertaking a degree of guesswork, given the relatively long life (and long payback periods) associated with such investments. As he testified, “over 25 years, there is a considerable degree of uncertainty in any kind of economic modeling of the value of their investment because, you know, you can’t just say utility rates are going to escalate [at] the Consumer Price Index for the next 25 years.” *Id.* at 122 lines 8-13.

Moreover, a review of the EF Coalition’s rate-effect spreadsheet – which appears in the record as exhibit 3 – reveals that solar industry is exaggerating the effects of not netting exports against imports on a monthly basis. For a large PV system (e.g. one with production equal to 95 percent of a household’s energy consumption) on the premises of a residential Eversource customer, PV system production is less than household consumption for many months of the year. For these months, there is no change in the financial impact to the customer after switching to monthly netting.

For the remaining months, the impact on such a customer would be extremely small. For example, under the 75 percent distribution credit proposed by the EF Coalition for effect until 2019, the change from status quo to monthly netting would reduce monthly bill savings by about \$0.56 on average. Even with no distribution credit as proposed by the Utility/Consumer

Coalition, the move to monthly netting would reduce annual bill savings by a miniscule 2.5 percent. In other words, the impact of monthly netting -- even for a large PV system with substantial exports and a no distribution credit -- roughly equates to a slightly cloudier year than average.¹⁴

As an additional illustration based on data from exhibit 3, the Commission should consider the example of an average Eversource residential customer with a volumetric rate of 16 cents/kWh who installs a PV system sized to produce 100 percent of her annual energy consumption. Under the Utility/Consumer Coalition proposal, this customer would only experience a 12.9 percent decrease in the compensation for kilowatt-hours produced by the PV system when compared to status quo. This 12.9 percent decrease represents a worst-case scenario in which the customer adopts no behavioral changes and no technology solutions to minimize exports. Should the Commission adopt the Utility/Consumer proposal, this customer would be able to obtain a free production meter, potentially worth hundreds of dollars, that will enhance her ability to generate and sell renewable energy certificates (RECs). Finally, a customer who “right sizes” her PV system will see a much smaller decrease in bill savings than 12.9 percent. For example, a PV system sized to offset 55 percent of consumption would see only a 7.5 percent decrease in compensation under the Utility/Consumer proposal.

Residential PV system installation costs have decreased by around 8 percent annually, according to the National Renewable Energy Laboratory (NREL)¹⁵ and the analysis appended to the testimony submitted by Mr. Huber on behalf of the OCA. *See exh. 17* at 59 (“OCA Cost

¹⁴ These realities do not even take into account the many ways a customer could change behavior or install new technologies to reduce exports (e.g., by acquiring an electric vehicle, air source heat pump, smart thermostat or even a hot tub). Similarly, a simple and small adjustment in the size of the PV system would completely eliminate the negligible impact on system economics attributable to the elimination of monthly netting.

¹⁵ See “U.S. Solar Photovoltaic System Cost Benchmark: Q1 2016,” available at <http://www.nrel.gov/docs/fy16osti/66532.pdf>

Analysis Results by Supply Block”).¹⁶ Therefore, within one to one and a half years, a new residential PV customer should be no worse off than she is today, even under a worst-case scenario. Given this reality, it is entirely logical that several states which have grappled extensively with the issues the Commission confronts in this proceeding, including Hawaii and Arizona,¹⁷ have rejected monthly netting and adopted real-time netting as the Utility/Consumer Coalition proposes. In fact, if the Commission adopts EF Coalition’s recommendation, New Hampshire might be the only state in the country to adopt the monthly netting accounting scheme.

Several EF Coalition witnesses complained that an end to monthly netting would send inappropriate price signals to consumers – encouraging them to consume self-generated power during hours when rates should encourage exports to the grid. *See* tr. 3/27a at 137, lines 19-24 (“[i]nsane”); at 58, lines 4-5 (“exactly backwards”); at 67, line 14 (“mistake”); at 68, line 11 (“counterproductive”); at 57, line 17 (“wrong”). This argument incorrectly assumes that net metering as currently implemented encourages customer-generators to optimize their production. But, as Mr. Meissner explained on behalf of the Utility/Consumer Coalition, “[i]n fact, monthly netting sends no price signals. Customers are not incented to change their behaviors at all. Instead, it enables customers to continue to consume electricity at their own convenience, as they do now.” Tr. 28a, 53 lines 11-16; *see also* tr. 29a at 41, lines 1-3 (CLF witness Chernick

¹⁶ No record evidence disputes this analysis, conducted by Sustainable Energy Advantage for OCA, though the EF Coalition clearly does not want the Commission to take declining installation costs into account in developing new alternative net metering tariffs. *See, e.g.,* Mr. Mueller’s testimony that “[t]he goal of our proposal is not to match the compensation to the cost of installing the project. . . . The goal of our proposal is . . . so that the market can decide how much is the right amount of solar and other DERs to lower costs to all ratepayers. That is independent of what the cost of building that is.” Tr. 3/27a at 99 lines 16-24 and 100 lines 1-3.

¹⁷ The transition to instantaneous netting in Arizona – particularly noteworthy because the solar industry there appears to have acquiesced to it – was a subject of discussion at hearing. EF Coalition witness Beach testified: “The difference in Arizona is that the data is available to be able to understand and to quantify what ‘instantaneous metering’ means for solar customers because everybody has the meters that are capable of that.” Beach, 27a, 52, lines 17-23.

describing transition from “no cost signal” under current paradigm to a “*potentially* bad cost signal” under Utility/Consumer proposal”) (emphasis added) and *id.* at 70, lines 22-23 (CLF witness Mueller conceding that “[m]ost people are not investing in solar for philanthropic reasons”). According to Mr. Meissner, “one clear policy implication is that monthly netting will act as a deterrent to on-site energy storage, as there is now no economic incentive for customers to install energy storage behind the meter and to manage their own consumption.” *Id.* Tr. 3/28a at 53, lines 18-23.¹⁸

The remaining concern about real-time export credit discussed at hearing involves federal income tax implications. Councilor Below implied that the Utility Consumer Coalition proposal would leave customer-generators vulnerable to losing the so-called Paragraph 25D credit as well as having their export credit deemed by the Internal Revenue service to be taxable income. Since Councilor Below is not himself a tax attorney or otherwise an expert on federal tax law or accounting, to support his contentions he relied exclusively on a law review article that turns out to have been written by a law student (not an attorney) who was working under the supervision of an analyst who serves as a policy advisor to the California Solar Energy Industries Association. Notably, the article in question stops well short of endorsing the adverse tax consequences of which Councilor Below as attempting to warn. The other witness who

¹⁸ Councilor Below offered a somewhat less alarmist but ultimately unpersuasive argument in favor continuing monthly netting “for at least a year, probably more like two years,” while data is gathered and “everybody can know the ramifications of [the end of monthly netting] before we sort of take the leap.” Tr. 3/29a at 117, lines 21-24 and 118 lines 1-4. According to Councilor Below, the “biggest problem” with the Utility/Consumer Coalition proposal is the portion of the export credit that comprises the applicable default energy service rate, because “the process of truing up retail loads to wholesale is a complicated one.” *Id.* at 110 lines 4-10. Councilor Below complained about a “lack of transparency” and the fact that wholesale cost benefits arising out of load reductions produced by net metering would be “essentially buried, disappear[ing] into the load adjustment process.” *Id.* at 111, lines 1-7. This argument is essentially an attempt to throw up a smoke screen against the Utility/Consumer Coalition proposal. Either proposal could have unintended or unknown consequences; gaining insight into effects on wholesale transactions, whether conducted by utilities or competitive suppliers, is one of the purposes of the studies and pilot programs that are integral to both proposals.

discussed this issue was Professor Rabago of the EF Coalition. But he stressed that he was not “offering a formal legal opinion” about the tax consequences. Tr. 3/27a at 91, line 4-5. In other words, no record evidence supports the contention that adopting either the Utility/Consumer Coalition settlement or the EF Coalition proposal would expose customer-generators to unwelcome tax consequences.

Crediting customers in real time on a cents-per-kilowatt basis for net exports to the grid is simple and inherently fair to all customers. The concerns about this aspect of the Utility Consumer Coalition proposal reduce to nothing more than solar industry discomfort with the potential demise of a metering paradigm it found advantageous – but one that was developed by accident rather than via thoughtful policy deliberation. Now that the Legislature has mandated such thoughtful policy deliberation, the Commission should reject the industry’s laments about so-called “instantaneous netting.”

C. The Studies and Next Steps

The Utility/Consumer Coalition and the EF Coalition are in agreement that the end of this proceeding will mark only the end of the beginning of the process of developing sound policies and tariffs for distributed generation in New Hampshire.

Accordingly, the Utility/Consumer Coalition specifically calls for four additional steps in the wake of a final order in this proceeding:

- A locational value study similar to one performed by Nexant, Inc. as referenced in the rebuttal testimony of Eversource witnesses Labrecque,¹⁹

¹⁹ During his testimony, Mr. Labrecque explained that the Nexant-type study he has been referencing “uses actual circuit-by-circuit substation-by-substation interval loading from a particular utility relative to the . . . capacity of the substation or other projected upgrade needs,” using various scenarios” for load growth. Tr. 3/28b at 17-24. Such a study “attempts to do a probabilistic assessment of the extent to which solar or other types of [distributed generation] can defer or eliminate a typical utility capital investment.” *Id.* at 53, lines 1-7. He stressed that Nexant is not the only potential consultant to perform such a study and that he cited the Nexant project in New York as “just an example.” *Id.* at 54, lines 13-16.

- A further review by the settling parties of the appropriate compensation for avoided transmission cost allocation, particularly for customer-generation installations of greater than 100 kilowatts, by April 30, 2018,
- A Value of Distributed Energy Resources (V-DER) study; and
- Provision by the utilities of certain data, when available, to facilitate the determination of percentage change in annual load as the result of net metering.

See exh. 5 at 8-9.

The fourth item was neither controversial nor the subject of any comment at hearing. The other three commitments overlap significantly with the relevant provisions of the EF Coalition proposal. Specifically, the EF Coalition proposal (1) refers to a “DER Location Valuation study,” but without the reference to Nexant, (2) calls for “further review of avoided RNS cost allocation,” with RNS obviously a reference to the Regional Network Service component of transmission charges passed along to the utilities’ customers, and (3) the undertaking of a “Commission-sponsored independent Value of DER study.” Exh. 2 at 4, 3. With respect to the Value of DER study, the EF Coalition proposal calls for a “stakeholder working group” to “define the parameters and data requirements” of the study, establishes a deadline of January 1, 2020 for the completion of the study and provides for updating the study every three years “in order to account for changes in values and more precise data and analysis.” *Id.* at 5.

These significant overlaps notwithstanding, the Commission made clear it is concerned about the extent of disagreement as to “the parameters, timelines and subject matter of the studies that need to be done.” Tr. 3/30, 68 at lines 20-24 and 69 at line 1. Chairman Honigberg was explicit in his concern and his instructions: “[W]e don’t want to be put in the position of being back here in a few months to referee a slew of disputes about what the studies should look

like.” *Id.* at 69, lines 1-9 (requesting “as much specificity as possible” on these issues in post-hearing briefs).

Testifying on behalf of the EF Coalition, Professor Rabago said the Value of DER study being proposed by the EF Coalition is not a broad assessment (i.e., like the Maine study that sought to include all possible sources of value, including externalities) but is rather just an effort to “quantify the distribution value” of customer-generated power. Tr. 3/37b at 45, lines 5, 24. EF Coalition witness Beach complained that the Utility/Consumer Coalition would have the Commission ignore longterm price projections whereas the EF Coalition seeks to consider “long-term values consistent with the economic life of distributed energy.” *Id.* at 48, lines 12-18.

The Commission should resolve any disagreement by adopting a “both/and” approach. In other words, it should approve the creation of a working group to fashion guidelines for both studies and pilot projects and it should take care to assure that the research and insight sought by both coalitions is fully developed. This, in essence, was the suggestion of Utility/Consumer Coalition witness Edward Davis during a colloquy with Commissioner Bailey.²⁰

On behalf of the Utility/Consumer Coalition, Mr. Labrecque agreed that the reference in the proposal to the Nexant locational value study contemplates “some flexibility on the type of study that would be performed to determine locational value of distributed generation and other distributed energy resources.” Tr. 3/28b at 54, lines 17-23; *see also id.* at 59, lines 1-9

²⁰ Commissioner Bailey made this observation to the Utility/Consumer Coalition panel: “It doesn’t sound like you two parties or groups are going to agree on the length of time that these studies should cover.” Tr. 3/28b at 87, lines 13-15. In response, witness Edward Davis of Eversource agreed that the two coalitions are concerned for this purpose with “two different sets of life cycles,” with the utilities’ concern being “a recurring ongoing cycle” because utility marginal costs “are just a series of these short-term capital investments that go on and on and on.” *Id.* at lines 16-22. He noted that the solar installation firms represented by the EF Coalition were more concerned about “the life cycle of a single installation.” *Id.* at lines 23-24. Mr. Davis therefore conceded that “there’s an awful lot we need to discuss,” characterizing the proposed task force as an opportunity for the two groups of businesses (distribution utilities and solar installers) to “better understand each other.” *Id.* at 88, line 7; *see also id.* at lines 10-14 (“that’s just an example of the kind of things that certainly appears like we disagree on a lot of things, and I think we just don’t necessarily understand exactly where we’re each coming from”).

(confirmation from counsel for Unitil that the Utility/Consumer Coalition does not “put a limitation on the type of study” to be conducted and used the Nexant study merely as an example).

The locational value study should not be confused with the separate Value of Distributed Energy Resources (V-DER) study also called for in the Utility/Consumer proposal. The Utility/Consumer Settlement calls for such a study to be “based on real-time market prices and distribution system needs,” in which, *inter alia*, “valuation shall be based as closely as possible to real-time prices and near term marginal costs with no long-term projections or forecasts to be considered.” Exh. 5 at 8. Mr. Labrecque offered a sound basis for adopting this approach, at least with respect to valuing the commodity portion of any export credit: “You’ve already got the ISO New England [wholesale] market available to provide you with a near-term if not real-time pricing signals.” Tr. 3/28b at 62, lines 9-12.

As to the focus on near-term marginal costs, which Mr. Labrecque clarified as a maximum of five years, *id.* at lines 18-19, Utility/Consumer Coalition witness Michael Harrington of the New England Ratepayers Association offered this explanation: “Let’s go back 15 or 20 years, and over and over again we’ve proven the only thing we know about long-term future energy costs is we know nothing about long-term future energy costs. Every projection has virtually been wrong over the last 20 years when we go out beyond that five-year interval.” *Id.* at 63, lines 16-23. He noted that such five-year projections could be redone every few years. *Id.* at 64, lines 1-2. Utility/Consumer Coalition witness Edward Davis of Eversource pointed out that distribution planning and capital budgeting typically occurs with a planning horizon of three to five years. *Id.* at lines 13-15.

Utility Consumer Coalition witness Ashley Brown, executive director of the Harvard Energy Policy Group, reminded the Commission that the longer-term perspective urged by the solar industry may not be what produces the most optimal distribution grid, suggesting that “we need to separate what makes it easier to sell [solar] panels today from what’s the long range way to maximize the value of solar.” *Id.* at 93, lines 23-24 and 94, lines 1-2.

What this suggests is that, while the differences between the perspective of the utilities and the perspective of the solar industry, with respect to the time horizon applicable to assessing properly the value of distributed generation to the distribution grid, are real, the Utility/Consumer Coalition is not unwilling to accommodate the needs and perspective of stakeholders in business to deploy distributed generation capacity on the premises of retail customers. In these circumstances, the Commission can and should conclude that a well-facilitated task force process will yield the requisite degree of cooperation and collaboration.

IV. Conclusion

For the foregoing reasons, the Commission should heed the Legislature’s call for new alternative net metering tariffs by approving the Settlement Agreement signed by the Office of the Consumer Advocate and the other members of the Utility/Consumer Coalition. The terms of the settlement are reasonable, comport with the letter and spirit of HB 1116, and would move New Hampshire decisively off of a compensation regime born of accident to one that reflects a responsible assessment of the costs and benefits for all users of the electric grid, whether customer-generators or not.

On behalf of the EF Coalition, Mr. Bean offered a succinct summary of the alternative pitch from the solar industry and its allies: “Our proposal is not a ‘take it or leave it’ proposal. It

is however one that our coalition believes reduces the value of DER exports materially. What we seek in return is a transition to Phase 2 based on the completion of the studies and the collection of data we wish we would have had in this proceeding.” Tr. 3/27a at 48, lines 7-14. In other words, the EF Coalition implicitly invites Commission tinkering with its proposal, which it sees as a kind of trade-off that requires an implicit promise from the Commission of a promised land - Phase II, upon completion of a V-DER study – that will finally yield a correct and sustainable approach to distributed generation in the Granite State.

The Utility/Consumer Coalition’s proposal also acknowledges that the parties and the Commission have additional work to do, but the Coalition does not seek to defer to some future date the implantation of a suitable set of terms and conditions. HB 1116 requires such attention to the here and now.

The OCA also wishes to make clear that unlike the proposal of the EF Coalition, the proposal of the Utility/Consumer Coalition is styled as a settlement agreement. As such, it includes language to the effect that the signatories may withdraw the agreement and revert to their original positions (as stated in their prefiled and rebuttal testimony of October and December 2016) should the Commission not approve the proposal.

The OCA reserves the right to take that step. Unlike the proposal of the EF Coalition, which represents a melding of sometimes disparate perspectives among parties of a generally similar orientation, the proposal of the Utility/Consumer Coalition represents a true settlement – i.e., a genuine compromise among parties that are often not like-minded, began the case with conflicting approaches to the issues, and abandoned some fervently held views based on an assessment of litigation risk and a desire to find common ground in service of the greater good. In particular, the OCA agreed to forego two distinct approaches to net metering that it regards as

creative and worthy of serious consideration, and also agreed to defer any relief in connection with a key issue – making the benefits of distributed generation meaningfully available to customers of low and moderate income. In these circumstances, should the Commission reject the compromise offered by the Utility/Consumer Coalition, applicable law and longstanding Commission practice require an opportunity for the OCA to reassert its initial positions.

N.H. Code Admin. Rules Puc 203.20 requires the Commission to approve a settlement agreement upon a determination that the terms of the settlement agreement are just and reasonable and serve the public interest.²¹ The Commission has applied this standard regardless of whether all parties to a proceeding are signatory to the settlement. *See, e.g., Energy North Natural Gas Corp. d/b/a Liberty Utilities*, Order No. 25,822 (Oct. 2, 2015) in Docket No. DG 14-380 (approving settlement agreement between Liberty Utilities and Staff regarding firm natural gas capacity on highly controversial Kinder Morgan pipeline). The proposal of the Utility/Consumer Coalition is just and reasonable; its approval would serve the public interest and comport with HB 1116. As the Legislature has directed, the time is now to move New Hampshire out of the jury-rigged public policy that old-fashioned net metering comprises in favor of a new approach that promotes distributed generation and prevents unfairness.

WHEREFORE, the OCA respectfully request that this honorable Commission:

- A. Approve the Settlement Agreement entered into among and/or endorsed by Public Service Company of New Hampshire d/b/a Eversource Energy, Unitil Energy Systems, Inc., Granite State Electric Corp. d/b/a Liberty Utilities, the Office of

²¹ By its terms, Rule Puc 203.20 applies to contested cases before the Commission. Throughout this proceeding – literally from the Order of Notice which began the docket to the conclusion of the hearings last month -- the Commission has followed its rules applicable to contested cases. A suggestion to the contrary in Order No. 25,980 (Jan. 24, 2017), denying a motion for the designation of Staff advocates pursuant to RSA 363:32 and referring to this case as a “legislative docket” as opposed to an “adjudicative proceeding,” *id.* at 8, can be regarded as *dicta*. Should the Commission in deciding this case depart from the rules and standards applicable to contested cases, the OCA reserves the right to seek rehearing and appeal on that basis.

the Consumer Advocate, the New England Ratepayers Association, Standard Power of America, the Consumer Energy Alliance and the Office of Energy and Planning, and

B. Grant any other such relief as it deems appropriate.

Sincerely,



D. Maurice Kreis
Consumer Advocate

Office of the Consumer Advocate
21 South Fruit Street, Suite 18
Concord, New Hampshire 03301
(603) 271-1174
donald.kreis@oca.nh.gov

April 13, 2017

Certificate of Service

I hereby certify that a copy of this brief was provided via electronic mail to the individuals included on the Commission's service list for this docket.



D. Maurice Kreis