

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 16-576

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

Order Addressing Certain Grandfathering Issues

ORDER NO. 26,047

August 18, 2017

In this Order, the Commission addresses two specific questions regarding grandfathered status for net-metered customer-generators, as identified in the Commission's Order No. 26,029 issued on June 23, 2017 (June 23rd Order). In the June 23rd Order, the Commission approved the adoption of an alternative net metering tariff to be in effect for a period of years while further data is collected and analyzed, pilot programs are implemented, and a distributed energy resource valuation study is conducted. Renewable energy distributed generation (DG) systems that are installed or queued during that period of years will have their net metering rate structure grandfathered until December 31, 2040, consistent with the grandfathered status afforded DG systems installed or queued prior to that period of years by statute or prior Commission order.

We clarify in this Order that subsequent transfers of ownership of a net-metered DG system or of the property upon which the system is located will not affect its grandfathered status, provided that the system is not moved to a different location. We also determine that subsequent DG system expansions or modifications will not affect grandfathered status except in certain situations for commercial or industrial customers. Small systems (100 kW or less) that expand by more than the greater of 20 kW, or 50 percent of existing capacity, will not be grandfathered. Large systems (above 100 kW) that expand by more than the greater of 50 kW or

110 percent of the customer-generator's annual on-site load, as demonstrated through historical documentation, will also not be grandfathered. In addition, for either residential or commercial and industrial customer DG systems, any expansion that changes a system from a small to a large customer-generator, or from a large customer-generator to an ineligible system, will result in the entire system losing its grandfathered status.

I. PROCEDURAL HISTORY

In the June 23rd Order, the Commission identified two issues regarding implementation of the grandfathering provisions that were not addressed by any of the parties prior to or during the hearings in this proceeding:

(1) whether a subsequent sale or other ownership transfer of the house, building, or property upon which the DG system is installed, or a subsequent sale or other ownership transfer of the DG system itself, would entitle the new owner to continue to be net-metered under the grandfathered tariff provisions; and

(2) whether subsequent expansions of or modifications to DG systems would be entitled to net metering under the grandfathered tariff provisions.

June 23rd Order at 51. Parties were provided an opportunity to address those two grandfathering implementation issues in writing. *Id.*

Comments were submitted by Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource), Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities (Liberty), Representative Lee W. Oxenham,¹ the Office of the Consumer Advocate (OCA), and a coalition of parties consisting of members of the "Energy Future Coalition"² together with the City of Lebanon (collectively, the Joint Commenters).

¹ Ms. Oxenham is a New Hampshire State Representative, but she appeared as an individual ratepayer in this proceeding. Prehearing Conference June 10, 2016 Transcript at 13-15.

² These parties are Acadia Center, The Alliance for Solar Choice, Borrego Solar, Conservation Law Foundation, Energy Freedom Coalition of America, LLC, New Hampshire Sustainable Energy Association, ReVision Energy, Granite State Hydropower Association, Sunraise Investments LLC, Solar Endeavors LLC, and Revolution Energy, LLC.

The June 23rd Order, the written comments filed by parties with respect to the two grandfathering implementation issues, and the other filings and documents in this matter, can be found at <http://puc.nh.gov/Regulatory/Docketbk/2016/16-576.html>.

II. POSITIONS OF THE PARTIES

A. Eversource

Eversource maintained that a subsequent sale or other ownership transfer of the house, building, or property upon which the DG system is installed should not cause the net-metered system to be removed from the grandfathered tariff. Eversource Comments at 2. Eversource cited administrative burden and other factors as grounds for that position. *Id.* According to Eversource, if a property is sold but the DG system remains at that location and is not enlarged or modified, there should be “no cause to review and revisit the propriety of including that system in the program,” because “[t]he net metering tariff, and the utility facilities, would already accommodate that system in that location.” *Id.* Eversource asserted that “simply changing the owner of the property on which a DG system sits does not appear to justify removing such a system from the net-metering grandfathering.” *Id.*

Eversource maintained that, if a DG system is sold separately from the property where it was originally installed and then relocated and reinstalled elsewhere, the relocation to a new site would require a new engineering review just as with any other new DG installation, and therefore it would be “appropriate to remove that system from the grandfathering and treat it as the thing it is, a new entrant to the net metering program.” *Id.* at 2-3.

Eversource further asserted that, if ownership of DG system equipment is transferred but the system remains installed in its present location, there would be no need to remove the project from the grandfathering provisions “so long as the utility customer is treated as the customer-

generator for billing and reporting purposes.” *Id.* at 3. According to Eversource, its agreement is with the customer of record in the billing system, not the DG system owner, and therefore it “has no reason to determine or track the legal owner of the DG system equipment, either during the initial application review or subsequently.” *Id.*

Regarding the question of whether subsequent expansions of or modifications to DG systems would be entitled to net metering under the grandfathered tariff provisions, Eversource asserted that expansions or modifications to residential customer DG systems should not affect grandfathered net metering status. *Id.* at 3-4. According to Eversource, residential DG systems “tend to be small, and expansions of those systems would likely be small as well,” with anticipated “minimal implications on the overall administration of the net metering program or on the issues explored in [this proceeding] (i.e. lost revenues, cross subsidization, impact on non-participants, etc.)” *Id.* Eversource distinguished commercial and industrial customers, however, maintaining that their “DG system changes can be larger and, in aggregate, may result in material impacts relative to the issues investigated in this docket.” *Id.* at 4. Eversource therefore proposed that a threshold be set where an expansion of 10 kW or more above the initially-approved DG system capacity “would be the limit for determining when the DG system of a commercial or industrial customer would be removed from the grandfathered tariff and treated as a new installation.” *Id.*

As a final point, Eversource expressed concern that “even minor modifications, if aggregated, could create difficulties in operating the electric system.” *Id.* Eversource therefore asserted that the Commission should “make it clear that all DG customers have an ongoing obligation to report all system modifications to the interconnecting utility.” *Id.* According to Eversource, there should also be an “enforcement mechanism, such as the withholding of net

metering credits, for any system that is found to have failed to report a system expansion of any size [to the utility].” *Id.*

B. Liberty

Liberty included comments on the two grandfathering issues in its compliance tariff filing cover letter. Liberty maintained that a DG system owner’s subsequent sale or other ownership transfer of the house, building or property upon which the system is installed should not affect the grandfathered status of the system and the new customer should “assume the tariff under which the system was installed.” Liberty Comments at 1. For DG systems that are moved from one location to another, however, Liberty argued that the customer should not be grandfathered under the tariff “as the Company does not track the system itself, only the location at which the system was installed.” *Id.* at 1-2.

With respect to subsequent expansions or modifications to DG systems, Liberty asserted that those systems should remain entitled to be net-metered under the grandfathered tariff provisions, “although the customer [should be] required to complete an application to ensure the guidelines in Docket No. DE [15-271] are followed.” *Id.* at 2.

C. Lee W. Oxenham

Representative Oxenham submitted comments stating there was no reason to “penalize” either the seller or the buyer in the transfer of a property with an existing renewable energy system with grandfathered status, so “there should be no impediment to that system’s maintaining its grandfathered status.” With respect to DG system expansions, Representative Oxenham asserted that “penalizing” the expansion of an already grandfathered renewable energy system would “[fly] in the face of established state policy – which is to expand renewable energy development.” According to Representative Oxenham, termination of grandfathered net

metering status for expanded DG systems would “establish an obstacle to the beneficial move to increased renewable energy in the state, and would therefore constitute a counterproductive step.”

Representative Oxenham further stated her agreement with the Joint Commenters that the grandfathering provisions should apply to commercial and industrial customers as well as to residential customers. She maintained that “[r]eaching our renewable energy goals and accomplishing the transition to a clean energy economy requires a major effort on the part of all sectors of our economy,” and that, “[a]t a minimum, we should be reducing barriers to the expansion of renewable energy by all sectors.”

D. OCA

The OCA argued that “the objective of just and reasonable rates is best served” if successor owners of DG installations are permitted to retain grandfathered status “rather than being subject to whatever terms and conditions would apply to a new installation at the time of the transfer.” OCA Comments at 2. According to the OCA, to do otherwise “would present unhelpful impediments to real estate transfers” or would “unfairly limit” the extent to which a transferring owner could obtain “the net present value of the income stream associated with the grandfathered rate” through the real estate sales price. *Id.* The OCA recommended that the Commission clarify that “the acquiring owner relinquishes the right to grandfathered [net metering status] if the system is moved to a different location.” *Id.*

With respect to the expansion of grandfathered DG systems, the OCA posited that it would be reasonable to build in some flexibility for system expansion under grandfathered rates, while recognizing that “allowing limitless expansion under grandfathered rates would invite gaming and [would raise] the specter of the very sort of unfairness the General Court tasked the

Commission with addressing in [this proceeding].” *Id.* Citing the experience of other states such as Arizona and California, the OCA recommended that the Commission authorize customer-generators to expand their DG system capacities by up to 10 percent without losing the right to grandfathered status, provided that the expansion does not disqualify a small customer-generator from remaining in that category (i.e., peak generating capacity not in excess of 100 kW) or a large customer-generator from remaining in that category (i.e., peak generating capacity not in excess of 1 MW). *Id.*

E. Joint Commenters

The Joint Commenters asserted that net metering grandfathering rights should attach to the property or meter and should continue for the benefit of any future owners, including those who have the legal right to enjoy the output of the DG system installed at the property. Joint Commenters’ Submission at 2. In support of that position, the Joint Commenters cited the reasonable expectations of a customer who installs a DG system to recoup the value of the investment, as well as the likelihood that the underlying property will change ownership one or more times during the useful life of the system. *Id.* at 2-4.

According to the Joint Commenters, clarification that grandfathering includes a subsequent transfer in ownership of the underlying property or the DG system would be consistent with the Commission’s recognition that one of the purposes of HB 1116³ was to provide for the “continuance of reasonable opportunities for electric customers to invest in and interconnect customer-generator facilities,” and that “the grandfathering provisions serve to preserve the value of the investments they have made in DG systems.” *Id.* at 4 (citing June 23rd Order at 69). The Joint Commenters maintained that, because the value of the DG system investment does not terminate with a transfer of ownership, and can reasonably be expected to

³ House Bill 1116, 2016 N.H. Laws Chapter 31 (HB 1116), pursuant to which this proceeding was conducted.

affect the marketability of the underlying property, “reasonable opportunities to invest” are best preserved by “protecting both the value stream and the salability of that value stream through grandfathering that attaches to the property or the meter, rather than to the initial capital investor.” *Id.* at 4-5.

With respect to DG systems owned by third parties, the Joint Commenters maintained that the identity of the legal title holder should be irrelevant to determination of grandfathered status, because “[w]hat is important in the context of the grandfathering policy is that the customer that is eligible to participate in net metering with the interconnected utility has a legal right to the output of the [net-metered DG] facility.” *Id.* at 5. According to the Joint Commenters, grandfathered status should “attach” to the DG system at the time it is installed and those rights “should flow through to [whoever] has the legal right to the output of the [system] and, in most cases, the use and enjoyment of the property where the [system] is located.” *Id.*

The Joint Commenters maintained that transferability of grandfathering rights represents a “national best practice” because “every jurisdiction” that has established grandfathering for net metering customers has provided that “grandfathering rights run with the net metering facility and the premises where it is installed.” *Id.* The Joint Commenters urged the Commission to “join these other jurisdictions in promoting policies that encourage and respect investment in net metering facilities without constraining the marketability of properties,” by permitting grandfathered status to be sold or transferred together with the underlying property within the useful lifetime of the net metering facility. *Id.* at 6.

The Joint Commenters further recommended that grandfathered net metering customers be provided the “option of voluntarily moving to another tariff or program in the future,” as options such as time-of-use pricing may be made available through future proceedings, including

sufficient flexibility to “[allow] new technology offerings, such as energy storage, to become available and widely implemented.” *Id.*

The Joint Commenters also addressed the effects of DG system expansions and modifications on net metering grandfathered status. The Joint Commenters urged the Commission to recognize that grandfathering should not be revoked as a result of either the routine maintenance and replacement of component parts or the reasonable expansion of the original net metering system, so long as the system continues to meet the definition of a net-metered facility. *Id.* at 6. According to the Joint Commenters, simple routine system maintenance often results in marginal increases in system output and efficiency gains as a result of equipment upgrades and improvements. *Id.* at 6-7. The Joint commenters argued it would be “illogical and unjust to punish customers for exercising warranty repair rights by forcing them to forfeit their grandfathering rights” based on marginal increases in system capacity or efficiency resulting from “routine and expected equipment replacements.” *Id.* at 7.

The Joint Commenters asserted that the net metering grandfathering policy should not discourage or penalize incremental beneficial electrification, such as through fuel-switching, heating system conversion, electric vehicle adoption, or energy efficiency measures. *Id.* They claimed it is “essential not to discourage reasonable [net-metered DG] system upgrades and expansions that keep electrical load from skyrocketing as fuel-switching continues to take place in homes and businesses, and in the manufacturing and transportation sectors.” *Id.*

The Joint Commenters further urged the Commission to recognize that future DG system expansions will increasingly incorporate on-site storage, thereby impacting the electric system differently than system expansions without on-site storage, and potentially reducing the number of net metering credits received by the customer as compared to the credits received prior to the

expansion. *Id.* at 7-8. According to the Joint Commenters, DG system expansions with on-site storage represent “another means to keep demand from skyrocketing during the beneficial electrification process,” and such reasonable expansions “should not be discouraged or penalized by changes to the customer’s original investment expectations.” *Id.* at 8.

The Joint Commenters also argued that a reasonable grandfathering policy should account for “normal changes in lifestyle and economic activity, as well as variations in energy use that are consistent with the original intent of a [net-metered DG system].” *Id.* They offered as examples a family that expands from a couple only to include children, as well as a school, library, or business that adds space to accommodate growth in programs or functions, in each case increasing the customer’s electric load requirements to be met with reasonable DG system expansions or modifications. *Id.* According to the Joint Commenters, those types of customers should not be discouraged from meeting their additional load requirements through reasonable facility upgrades or expansion, as long as the facility continues to qualify under applicable standards. *Id.*

The Joint Commenters argued that grandfathering should be preserved for all DG system expansions, so long as the expanded system continues to meet the eligibility requirements of the applicable net metering program, such as total DG system size limits. *Id.* The Joint Commenters argued further that a liberal expansion rule would represent “a simple, straightforward approach that is easy for utilities to administer and for homeowners and others to understand.” *Id.* (noting that “type of approach has been adopted in Arkansas”).

As a potential alternative approach, the Joint Commenters recommended that the Commission consider establishing a “bright-line rule for capacity additions for grandfathered systems,” under which all grandfathered systems would be able to increase system size, “as long

as the new system size does not exceed the greater of 50 [percent of] the nameplate capacity of the [net-metered] system at the time that grandfathering rights attached or 110 [percent] of the customer's annual electrical usage." *Id.* According to the Joint Commenters, changes to DG systems that "enable up to 50 [percent] incremental expansion of clean, on-site, load-reducing generation," or up to 110 percent of total annual onsite load, whichever is greater, "should be considered incremental in nature, within the spirit of the initial investment, and strategically beneficial as a matter of state policy." *Id.* at 8-9.

The Joint Commenters supported the potential alternative 50 percent limitation on incremental capacity expansion, not tied to historic load levels, on the basis that DG system "investments are lumpy in nature," and the proposed standard therefore would provide "headroom for grandfathered customers to make modifications to meet both current and foreseeable changes in energy usage – such as an expected expansion of family size, the future purchase of an electric vehicle, or the planned addition of a manufacturing function – while establishing a reasonable upward limit that does not encourage oversizing." *Id.* at 9. According to the Joint Commenters, the proposed 50 percent incremental expansion limitation would also "[avoid] penalizing step-by-step electrification of strategic home and transportation functions." *Id.*

The Joint Commenters supported the potential alternative limitation on DG system expansions of up to 110 percent of current annual load on the basis that it would "ensure that customers can meet proven on-site load levels without voiding the previously applicable net metering rules." *Id.* According to the Joint Commenters, system expansion should be permitted to meet the entirety of demonstrated current annual load, "with a small 10 [percent] buffer for variation due to year-on-year usage and weather patterns," and current annual load should be

demonstrated through documentation of the “customer’s choice of any 12 consecutive month period ending within the previous two years, in effect the highest annual load for an annual period ending within the previous two years.” *Id.* The Joint Commenters advocated that “current load” for purposes of the annual load percentage limitation on system expansions may refer either to individual load or to group load, in the case of group net metering. *Id.* at 9-10. They maintained that the proposed load-based limitation would allow customers “the flexibility needed to maintain their existing systems and to adjust the systems, as appropriate, to documented increases in onsite energy usage.” *Id.* at 10.

III. COMMISSION ANALYSIS

In the June 23rd Order, the Commission approved as a common term of the two settlements the grandfathering through December 31, 2040, of continued net metering at the applicable net metering design and structure then in effect, for customer-generators who receive a net metering capacity allocation⁴ while the new alternative net metering tariff is in effect. June 23rd Order at 50-51. That grandfathering provision is consistent with the statutory requirements set forth in RSA 362-A:9, XV, added by HB 1116, as well as the Commission’s order approving an initial alternative net metering tariff to be effective for an interim period beginning on March 2, 2017. *See* Order No. 25,972 at 2-4 (December 21, 2016). The Commission found that “the grandfathering provisions serve to preserve the value of the investments [net-metered customer-generators] have made in DG systems.” June 23rd Order at 69. That result is consistent with the statutory purpose expressed in HB 1116 that an alternative net metering tariff should continue “reasonable opportunities for electric customers to

⁴ We take this opportunity to clarify that DG projects should be granted a utility net metering capacity allocation at the time that all required application materials have been submitted to the interconnecting utility under the relevant provisions of the Net Metering Program Capacity Allocation Procedures approved in Docket DE 15-271, subject to termination of the capacity allocation if the submitted application materials are subsequently found to be incomplete in any material respect.

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.” June 23rd Order at 70-71.

We find that clarification of the two issues identified in the June 23rd Order with respect to the grandfathering provisions will provide greater certainty regarding their implementation and effect for the benefit of customers, developers, installers, investors, financiers, and interconnecting utilities. We expressly confirm that the clarification provided in this Order is applicable to the statutory grandfathering provisions under RSA 362-A:9, XV, as well as to the grandfathering provisions approved by the Commission in Order No. 25,972 and in the June 23rd Order.

With respect to the first question, regarding the transferability of net metering grandfathered status, subsequent sales or other transfers of ownership of a net-metered DG system or of the property upon which the system is located will not affect the grandfathered status of the system, provided that the system is not moved to a different location by the purchaser, transferee, or otherwise. It is reasonable to assume that both residential and commercial properties are likely to be sold or transferred one or more times during the expected 20-30 year useful life of most DG systems. If system grandfathered status were lost when a property is sold or transferred, then the value of the DG system investment might not be fully recovered through the sale price or other consideration for the transfer. Alternatively, such a loss of grandfathered status could represent an effective restriction on sales or transfers and would not be beneficial from an economic perspective. Neither of those results would be consistent with the statutory purpose of continuing “reasonable opportunities” for customers to invest in and

interconnect DG systems and “receive fair compensation” through net metering for the electric output of those systems.

The same basic analysis is applicable to a sale or transfer of ownership of the DG system separate from the underlying property, which seems most likely to be related to financing or tax considerations. As an overriding principle, if the DG system is not removed and relocated to a different property, changes in ownership of either the system or the property should not affect net metering grandfathered status. We agree with Eversource that, following any sale or other transfer of a DG system or of the property upon which the system is located, the utility customer should be treated as the customer-generator for billing and reporting purposes.

With respect to the second question, regarding the effect of subsequent expansions of or modifications to net-metered DG systems, there is a wider range of recommendations among the various commenting parties. We agree with the majority of commenters that expansions of residential DG systems need not be limited and should continue to have grandfathered net metering status, provided the expansion does not result in total system capacity in excess of 100 kW. The effect of such residential system expansions, even on a cumulative aggregate basis, seems unlikely to cause either unreasonable burdens on the electric distribution system or unreasonable shifting of costs to customers without DG systems.

The potential effects of DG system expansions undertaken by commercial and industrial customers, however, may be more significant, and we therefore find that reasonable limitations on such expansions are warranted. We agree with the Joint Commenters that incidental increases in DG system capacity or efficiency resulting from inverter replacement, equipment upgrades, warranty work, and other routine maintenance should not affect grandfathered net metering status. Intentional increases in DG system capacity, however, may have a more significant

impact and should be limited. We find that the Joint Commenters' alternative limitation approach has merit, except that the proposed 110 percent of annual load limitation is too administratively complex for small customer-generator systems, and the proposed 50 percent of existing capacity expansion tolerance is too great and has the potential to result in unacceptable adverse consequences in the case of large customer-generator systems.

We therefore approve a limitation on expansions of commercial or industrial customer-generators' small net-metered DG systems (i.e., systems with a capacity of 100 kW or less) equal to the greater of either 20 kW or 50 percent of existing capacity, provided that in neither case can any such expansion have the effect of changing a system's eligibility from a small to a large customer-generator with capacity in excess of 100 kW. For commercial or industrial customer-generators' large net-metered DG systems (i.e., systems with capacity greater than 100 kW but not more than 1 MW), we approve a limitation on system expansions equal to the greater of (1) a system capacity increase of 50 kW, regardless of any on-site load changes, or (2) 110 percent of the customer-generator's annual load, as clearly demonstrated through the customer-generator's documentation of any consecutive 12-months within the previous two years; provided that in neither case can any such expansion have the effect of changing a system's eligibility from a large customer-generator to an ineligible system with capacity in excess of 1 MW. Expansion of a net-metered DG system by or for a commercial or industrial customer-generator smaller than the applicable limitation will continue to be grandfathered, while any such expansion in excess of the applicable limitation will result in the entire DG system losing its net metering grandfathered status.

We do not, however, agree with the Joint Commenters that "current load" for purposes of the annual load percentage limitation on DG system expansions "may refer either to individual

load or to group load, in the case of group net metering.” Because there is effectively no limitation on a net-metered group host’s addition of new group members by contract, and the group members’ electricity consumption is not “behind” the meter of the group host’s DG system, approval of the recommended implementation standard would result in no effective limitation on the expanded size of grandfathered DG systems used for group net metering. We therefore decline to approve that particular interpretation of the annual load percentage limitation alternative applicable to large customer-generator systems that are group net-metered.

With respect to Eversource’s proposal that net-metered customer-generators be required to report all system modifications to the interconnecting utility or have their net metering credits withheld as an enforcement mechanism, we agree that the interconnecting utility should be informed of any increases in DG system capacity, even if those increases do not result in loss of net metering grandfathered status. We are not prepared, however, to impose sanctions such as loss of net metering credits for DG system owners who fail to provide notification of system capacity increases, as we believe such sanctions could have a disproportionately adverse effect on net-metered customer-generators. Rather, we assume that existing utility interconnection processes and procedures should be adequate to address any material issues related to DG system capacity increases.

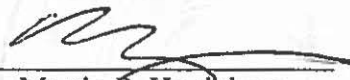
Finally, we respond to the Joint Commenters’ recommendation that grandfathered net metering customers have the option of voluntarily moving to another tariff or program in the future. That proposal addresses an issue the Commission did not raise in the June 23rd Order and which no other commenter has covered. We find that the recommendation is not properly before us at this time, and we therefore decline to issue the direction requested by the Joint Commenters with respect to any such tariff or program switching.

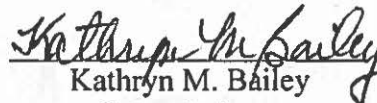
Based upon the foregoing, it is hereby

ORDERED, that the implementation and administration of the net metering program grandfathering provisions applicable under RSA 362-A:9, XV, Order No. 25,972, and Order No. 26,029, are clarified as set forth in the body of this Order; and it is

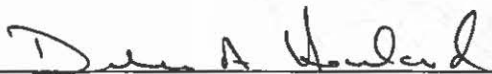
FURTHER ORDERED, that each of Public Service Company of New Hampshire d/b/a Eversource Energy, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities, and Unitil Energy Systems, Inc., shall, to the extent necessary, file pursuant to Part Puc 1603 revised tariff pages conforming to this Order within 30 days following the date of this Order.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of August, 2017.


Martin P. Honigberg
Chairman


Kathryn M. Bailey
Commissioner

Attested by:


Debra A. Howland
Executive Director