



January 24, 2024

New Hampshire Department of Energy  
21 South Fruit Street  
Concord, NH 03301-2429

**Re: NH EBT Working Group Preliminary Agenda (1/25/24 Meeting)**

The Community Power Coalition of New Hampshire (CPCNH) appreciates and thanks the N.H. Department of Energy (the Department) for reconvening the New Hampshire Electronic Business Transaction Working Group (EBT Working Group).

It has been close to two years since CPCNH, in joint comments submitted with Clean Energy NH and the Office of the Consumer Advocate, first recommended reconvening the EBT Working Group *“to modernize the competitive market and ensure that Community Power Aggregators [CPAs] and Competitive Electricity Powers Suppliers [CEPS] are able to create new value for customers in the context of the increasingly rapid pace of technological change and market disruptions taking shape across all organized electricity markets.”*<sup>1</sup>

CPCNH has subsequently grown into an innovative power agency that serves more retail electric supply customers than Unitil, Liberty Utilities, or any CEPS, and we expect to become the second largest default supplier in the state later this year. We operate as a default service supplier and on a competitive basis with the combined authority of our growing membership of more than 50 town, city, and county members — representing more than 30% (~425,000 residents) of the population in New Hampshire — 14 of which have launched CPA programs, and at least 20 more of which will launch in 2024.<sup>2</sup>

Informed public advocacy to enable market-based solutions to energy challenges is a top priority for CPCNH. Each of our 50+ member communities have executed our Joint Powers Agreement, which authorizes and empowers CPCNH to *“Engage in germane legislative activity...”* and *“Intervene in germane regulatory proceedings on behalf of itself and its Members.”*

In addition, the Charter of our Regulatory and Legislative Affairs Committee (RLAC)<sup>3</sup> requires CPCNH’s regulatory and legislative engagement *“to broadly enable an affordable, equitable, and market-based sustainable energy transition”* centered around three foundational principals — the first of which is (emphasis added):

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<sup>1</sup> See Docket # 21-142, CPCNH Reply Comments, p. 31. Online: [https://www.puc.nh.gov/regulatory/Docketbk/2021/21-142/LETTERS-MEMOS-TARIFFS/21-142\\_2022-03-28\\_CPCNH\\_OCA\\_CENH-COMMENTS.PDF](https://www.puc.nh.gov/regulatory/Docketbk/2021/21-142/LETTERS-MEMOS-TARIFFS/21-142_2022-03-28_CPCNH_OCA_CENH-COMMENTS.PDF)

<sup>2</sup> Webpages for CPAs operated by CPCNH are online at: <https://www.communitypowernh.gov/>

<sup>3</sup> CPCNH’s RLAC is currently comprised of 9 Member Directors, two of which are sitting members of the NH House of Representatives. RLAC’s Charter was recently approved at our October 2023 quarterly Meeting of the Members.



*“Advancing Community Benefits through Open Access to the Electric System: **ensuring equitable treatment of customers on competitive supply, community power default and utility power default service** by the NH General Court, NH Public Utilities Commission, NH Department of Energy, other state agencies, distribution utilities, and other venues as appropriate – **and ultimately achieving non-discriminatory open access to the electric system for wholesale and retail transactions – is of paramount importance to achieving an affordable, equitable, and market-based sustainable energy transition in New Hampshire.**”*

Our members recognize that the ability of CPAs and CEPS and distributed energy resource (DER) providers to innovate and create new value for customers is contingent upon being afforded non-discriminatory use of the utility systems and services that the competitive retail market needs to engage with and effectively help customers in practice: retail metering and data management, customer billing services, and the calculation of transmission cost allocation and wholesale load settlement profiles.

Equal treatment for all market participants and transparent, open access across these systems and market functions is vital to ensuring that New Hampshire maximizes cost-effective innovation — through the promulgation of time-varying rate structures, new products, and enabling services that lower customer bills and appropriately reward and leverage private investment in electric vehicles, storage, and distributed energy technologies based on the value that they actually produce.

Toward this end, CPCNH has been a driving force behind a range of critical market reform and modernization initiatives in the past three years. We look forward to contributing substantially as an active participant in the NH EBT Working Group.

The Department’s 1/11/24 announcement, while noting that a final agenda would be provided prior to the 1/25/24 meeting, provided the following preliminary agenda:

*Agenda items for this January 25<sup>th</sup> meeting will include:*

- *How similar working groups operate in other jurisdictions*
- *Leadership for New Hampshire’s Working Group*
- *Identification of immediate EDI needs*
- *Working Group process (e.g. Meeting frequency, next steps, etc.)*

This letter provides CPCNH’s initial feedback for the Department’s consideration.

For additional background and context, please also refer to our [recommendations](#) regarding the EBT Working Group that were recently submitted to the NH Public Utilities Commission (the Commission).<sup>4</sup>

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<sup>4</sup> See Docket No. IR 22-076, tab 75: <https://www.puc.nh.gov/regulatory/Docketbk/2022/22-076.html>



## NH EBT Working Group Process: CPCNH Recommendations

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CPCNH recommends that public meetings be held regularly every two weeks (or twice monthly) for the next 3-6 months, until such time as the proposals recommending priority updates to utility EDI, billing, and load settlement systems have been fully developed, refined by the Working Group, and submitted to the Commission for approval. Subsequently, the NH EBT Working Group should meet at least monthly thereafter to oversee utility implementation of approved changes and to consider additional upgrades.

Meetings should be noticed in advance on a dedicated website or page hosted by DOE and allow for remote participation. Video recordings of meetings, along with any materials presented, and summary notes, should be subsequently posted online and shared promptly with Working Group members.

A SharePoint site should be established, with permissioned access for Working Group members, for the purposes of enabling a shared workspace for drafting and finalizing proposals (and to house related reference materials).

## Identification of Immediate EBT Needs

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CPCNH prioritizing enabling CPAs and CEPS to serve TOU and NEM customers.

### Summary of CPCNH Recommendations

To provide the NH EBT Working Group with situational awareness regarding each utility's infrastructure and current quality of services provided to CEPS / CPAs:

1. The NH EBT Working Group should refine and maintain CPCNH's summary table of utility services, which each utility should confirm and update going forward as solutions are implemented across EDI, consolidated billing, and settlement services.
2. Each utility should provide and update summaries of their current and planned metering and data management infrastructure, inclusive of pilot initiatives and programs that are making targeted deployments of interval meters and submetering technologies that can provide more granular usage data (e.g., electric vehicle supply equipment, battery inverters, smart breaker boxes, etc.) in their respective service territories.

To implement the changes required to EDI, utility consolidated billing, and wholesale load settlement services required for CPAs / CEPS to serve TOU and NEM customers:

3. Each utility should bring forward a proposal (including cost estimate and implementation timeline) for review by the NH EBT Working Group to:
  - a. Enable transmittal of 2-part and 3-part TOU usage data, import and export usage data for net metered customer-generators, and interval meter data, which would likely be best accomplished by transitioning from using the EDI 810 to EDI 867 file format for sending monthly usage data to CPAs and CEPS.
  - b. Enable CPAs and CEPS to submit advanced rates on a meter (or submeter) basis, which will require updates to EDI 814 file formats and associated utility





**CPCNH's understanding as of 1/24/24**

	<b>Eversource</b>	<b>Liberty</b>	<b>Unitil</b>	<b>NHEC</b>
<b>ELECTRONIC DATA INTERCHANGE SERVICE</b>				
<i>Customer's Current Billing Month Usage Data File</i>				
2-part TOU usage data	<b>Yes</b>	<b>No</b>	<b>No</b>	<b>Yes</b>
3-part TOU usage data	<b>N/A</b>	<b>No</b>	<b>No</b>	<b>N/A</b>
NEM usage data	<b>No</b>	<b>No</b>	<b>No</b>	<b>Yes</b>
Interval usage data	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>
<i>Customer's Historic Usage Data File (12 Prior Months)</i>				
2-part TOU usage data	<b>No</b>	<b>No</b>	<b>No</b>	<b>Yes</b>
3-part TOU usage data	<b>N/A</b>	<b>No</b>	<b>No</b>	<b>N/A</b>
NEM excess generation data	<b>No</b>	<b>No</b>	<b>Yes</b>	<b>Yes</b>
Interval usage data	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>
<i>Customer's Account Data</i>				
Billing Cycle	<b>Yes</b>	<b>Yes</b>	<b>No</b>	<b>Yes</b>
Distribution Tariff Rate	<b>Yes</b>	<b>Yes</b>	<b>No<sup>1</sup></b>	<b>Yes</b>
Default Supply Rate Election	<b>N/A</b>	<b>N/A</b>	<b>No<sup>2</sup></b>	<b>N/A</b>
NEM flag	<b>Yes<sup>3</sup></b>	<b>Yes<sup>3</sup></b>	<b>Yes<sup>3</sup></b>	<b>N/A<sup>3</sup></b>
NEM tariff (1.0 or 2.0)	<b>No</b>	<b>No</b>	<b>No</b>	<b>Yes</b>
Group NEM (host or member)	<b>No</b>	<b>No</b>	<b>No</b>	<b>Yes</b>
<b>ISO-NE WHOLESALE SETTLEMENT SERVICE</b>				
Interval hourly data (large C&I)	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
Interval hourly data (mass market)	<b>N/A</b>	<b>?</b>	<b>?</b>	<b>No</b>
Large NEM hourly data	<b>Partial<sup>4</sup></b>	<b>Partial<sup>4</sup></b>	<b>Partial<sup>4</sup></b>	<b>Partial<sup>4</sup></b>
Small NEM hourly data	<b>No</b>	<b>Partial<sup>4</sup></b>	<b>?</b>	<b>?</b>
NEM profiles	<b>No</b>	<b>No</b>	<b>No</b>	<b>?</b>
2-part TOU profiles	<b>No</b>	<b>?</b>	<b>?</b>	<b>?</b>
3-part TOU hourly data	<b>N/A</b>	<b>Yes</b>	<b>?</b>	<b>N/A</b>
3-part TOU profiles	<b>N/A</b>	<b>N/A</b>	<b>?</b>	<b>N/A</b>
<b>UTILITY CONSOLIDATED BILLING SERVICE</b>				
Monthly Rate Proration	<b>No<sup>5</sup></b>	<b>Yes<sup>5</sup></b>	<b>No<sup>5</sup></b>	<b>No<sup>5</sup></b>
Index rates (hourly market + RPS adder)	<b>No<sup>6</sup></b>	<b>No<sup>6</sup></b>	<b>No</b>	<b>No</b>
2-part TOU supply rates	<b>No<sup>6</sup></b>	<b>No</b>	<b>No</b>	<b>No</b>
3-part TOU supply rates	<b>No<sup>6</sup></b>	<b>No</b>	<b>No</b>	<b>No</b>
NEM 1.0 (kWh supply credits)	<b>Partial<sup>7</sup></b>	<b>Partial<sup>7</sup></b>	<b>Partial<sup>7</sup></b>	<b>Partial<sup>7</sup></b>
NEM 2.0 (\$\$\$ supply credits)	<b>No</b>	<b>No</b>	<b>Partial<sup>8</sup></b>	<b>No</b>
Group NEM Participant	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
Group NEM Host	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>
Transactive Energy Rates	<b>No<sup>6</sup></b>	<b>No<sup>6</sup></b>	<b>No<sup>6</sup></b>	<b>No</b>



### **Table Footnotes**

? - Question marks indicate fields still under assessment.

1 - Unitil only identifies the wholesale supply group (e.g., "Residential") which cannot be used to identify customers on TOU rates.

2 - Unitil allows customers to elect monthly variable supply rates (instead of 6-month fixed rates), and places customers returning from competitive supply onto monthly variable rates, but does not identify which default rate individual customers take service under.

3 - All 3 IOUs have a field for NEM in their EDI 867HU reports, though a number of NEM customers with Eversource and Unitil were not initially indicated as such in their EDI (nor Puc 2204.03 reports). NHEC identifies NEM customers by NEM rate classes.

4 - Utilities treat negative interval data as zero for load settlement. Liberty smaller NEM uses consumption interval metering for load settlement only for NEM customers on 3-part TOU rates.

5 - Proration refers to applying calendar month rates to usage within individual customer billing cycles (which may span two calendar months). Eversource indicated to the PUC it is capable of prorating bills for customers in their C2 billing system upon CPA request; however, Eversource subsequently refused CPCNH's request to do so for the upcoming February-July 2024 rate cycle.

6 - Indicates a service that isn't provided to utility default service customers either.

7 - NEM 1.0 KWh credits rollover and offset supply charges each month, but no mechanism to cashout / compensate customer for excess supply on an annual basis.

8 - Unitil appears to have enabled consolidated billing for NEM 2.0 customers in Oct 2023, and is crediting CPA customers for excess generation at the CPA's supply rate — even though the CPA does not offer an approved NEM credit rate, and without the CPA's knowledge. It is unclear if Unitil is capable of accepting CPA NEM rates.

## **Assessment of Utility Metering, Communications, and Data Management Infrastructure**

The provision of innovative services depends to a significant degree upon utility provision of interval data, and utility incorporation of interval data into consolidated billing and wholesale settlement services.

CPCNH recommends that the utilities provide and maintain summaries of their current and planned infrastructure, inclusive of pilot initiatives and programs that are making targeted deployments of interval meters and submetering technologies that can provide more granular usage data (e.g., electric vehicle supply equipment, EVSE, battery inverters, smart breaker boxes, etc.).

CPCNH has prepared brief overviews regarding each utility to provide starting context for NH EBT Working Group stakeholders:



### **Eversource: ~520k customers (72% of market)**

Eversource has enabled interval metering (1/2-hour increments) for roughly 2,000 of their largest C&I customers. All other customer usage is recorded in monthly intervals. Most customers have AMR meters capable of supporting time-of-use, bidirectional (net) metering, demand with remote reset capability, event logs, and other advanced features. However, enabling this functionality requires that meter data be collected daily via a field network, instead of the monthly “drive-by” truck collection process Eversource currently relies upon in NH. The utility plans to but has not yet provided a timeline to deploy AMI and transition to SAS enterprise platform to manage customer data and billing. AMI deployment in NH will take place after Eversource AMI deployments in MA and CT. NH law does create a path for Community Power Aggregations (CPAs) to propose and for the PUC to compel upgrading to interval meters for load settlement purposes for their customers.

### **Unitil: ~79k customers (11% of market)**

Unitil is updating its AMI network to provide automated daily readings and validation of all retail electric customers meters, and a billing system to accommodate new time-varying rates. The largest C&I customers are interval metered and their load is settled daily with that interval data. The mass market has 15-minute interval and 3-part TOU rate period capable meters, though most record at monthly intervals unless the customers have opted-in to the 3-part TOU whole house, EV charging rates, etc. offered by Unitil. The utility is well along in their upgrades to their PLC data collection system, along with hardware and software upgrades to individual Landis+ Gyr meters with the objective of fully enabling collection of granular interval data down to 5-minute intervals from all customers on a daily basis for hourly load settlement for their whole system.

### **Liberty: ~45k customers (6% of market).**

Liberty mainly has a legacy AMR system without interval metering (except for G1 large C&I accounts) and has begun to use AMI type interval meters with cellular data VPN connectivity for daily meter reading for both G1 and battery/TOU pilot accounts. In their current rate case, in which the Coalition is an intervenor and filed testimony in December, Liberty has proposed, as part of their “Rate Modernization Strategy” to begin offering 3-part TOU rates for EV charging and whole house applications as well as for smaller C&I accounts on an opt-in basis. One intervenor has proposed that a 3-part TOU rate option be extended to larger C&I accounts as well. In this docket, Liberty is also proposing a “Bring Your Own Battery” program that would be available to some residential customers, including those that net meter with DG, crediting exports to the grid at TOU rates. They are seeking approval to begin implementing full AMI using Itron’s latest Gen5 platform. While actual work would begin next year, AMI meter installations are not projected to start until 2025. (This would not hold up new TOU rate options.) Last year, Liberty deployed a new SAS enterprise system, including a new customer information and billing system, which should enable new functionalities at lower incremental costs than their legacy systems.



## **New Hampshire Electric Coop (NHEC): ~81k customers (11% of market)**

The NHEC has deployed an AMI network to provide frequent readings of (practically) all retail electricity customers' meters, and to validate the hourly interval data that the meters produce and has demonstrated the ability to provide time-of-use and critical peak pricing rate structures to customers in its territory (on an opt-in basis, and for electric vehicles, etc.). NHEC has recently deployed a Transactive Energy Rate pilot for sub-metered EV and storage assets as well. However, customers are still assigned average load profiles for settlement and NHEC currently has no way of providing interval data to CPAs at scale.

## **Priority Enablement of TOU and NEM Service**

CPCNH recommends that the NH EBT Working Group prioritize implementing changes required for CPAs and CEPS to successfully enroll and serve TOU and NEM customers.

Doing so requires changes to Electronic Data Interchange (EDI), utility consolidated billing, and utility wholesale load settlement services provided by utilities.

## **Updates to Electronic Data Interchange (EDI) Standards**

CPCNH proposes that each distribution utility develop a proposal to shift from relying upon the current EDI 810 to the EDI 867 file format for transmitting monthly usage data.

- ✦ A proposal for doing so has already been partially developed by the regulated utilities, as part of a broader proposal to implement bill-ready consolidated billing.<sup>5</sup> The regulated utilities should engage NHEC in the planning process and bring back individual utility proposals for finalization by the NH EBT Working Group and recommendation to the Commission.
- ✦ Use of the EDI 867 file format for monthly usage data will support transmittal of 2-part and 3-part TOU usage data, import and export usage data for net metered customer-generators, and potentially interval meter data as well.<sup>6</sup>

CPCNH also proposes that the distribution utilities each develop a proposal for expanding and standardizing the use of EDI 814 files to enable CPAs and CEPS to specify NEM, TOU, and other advanced rate customers for exports (as described in context immediately below under "Upgrades to Utility Rate-Ready Consolidated Billing"), and to do so on an individual meter basis rather than on a per account basis.

## **Updates to Wholesale Settlement Service**

The distribution utilities should bring forward: (1) a proposal to transition to jointly contracting for the provision of wholesale settlement services, capable of more accurately estimating supplier hourly profiles (including by incorporating TOU and net metering usage and export data); and (2) individual proposals to implement the same

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<sup>5</sup> See DE 23-063, tab 1. Online: <https://www.puc.nh.gov/regulatory/Docketbk/2023/23-063.html>

<sup>6</sup> Note that provision of interval data, however, both on a billing cycle basis and at lower latency (e.g., on a day-after or more real-time basis) might be better made available via the NH Statewide Data Platform, which should also be evaluated by the NH EBT Working Group over the near-term.





requirements on a utility-specific basis, for evaluation and cost comparison by the NH EBT Working Group.

CPCNH, and any other interested parties, will file a petition to the Commission requesting determination of an appropriate line loss factor to apply to net metering export usage data for purposes of integration into wholesale load settlement calculations (to implement the requirements of RSA 362-A:9, II).

### ***NEM Interval Metering Requirement***

To enable more accurate and automated incorporation of net metered customer usage into hourly wholesale load settlements for suppliers, CPCNH recommends that the NH EBT Working Group assess whether, on a going forward basis: (1) interval meters should be routinely installed for new net metered customers; and (2) REC production meters should also be required to generate and report interval data as well. CPCNH recommends that each regulated utility should bring forward a proposal to do so.

### ***Enablement of Submetering Protocols***

Secondarily, to consider incorporating into the utilities' upgraded wholesale load settlement procedures (and related EDI and billing system upgrades), the NH EBT Working Group should evaluate whether to recommend adoption of submetering protocols on a statewide basis.

Submetering technologies provide interval usage data for DER technologies, which enables innovations in retail rates and products to be offered to customers even if their electricity meter only records monthly usage. NHEC has successfully operationalized submetering protocols — leveraging and expanding upon protocols adopted by the California Public Utilities Commission — in order to integrate interval metered usage data from EV supply equipment (EVSE) and battery storage inverters.

The NH EBT Working Group should evaluate whether to recommend adopting these protocols for the regulated utilities' territories as well.

### **Updates to Utility Consolidated Billing Service**

Implementation of the EDI and load settlement upgrades described above would enable CPAs and CEPS to serve TOU and NEM customers on a dual-billing basis. However, to minimize costs and avoid subjecting customers to receiving separate bills for supply and distribution each month, the utilities will need to update their consolidated billing procedures, as explained below.

### ***Upgrades to Utility Rate-Ready Consolidated Billing***

CPCNH recommends that each utility bring forward proposals to implement rate-ready consolidated billing services supporting 2- and 3-part TOU rates and NEM export compensation for CEPS and CPA customers. Bill presentation and customer experience considerations (including procedures to ensure customers are properly compensated for banked supply credits when switching suppliers) should be part of the utility proposal process, requiring coordination of CPAs, CEPS, and utilities via the NH EBT Working Group process.



Rate-ready consolidated billing proposals should also ensure that CPAs and CEPS are able to provide utilities with the advanced rates to charge customers. At present:

- ⚡ NHEC, Liberty Utilities, and Eversource (for customers on their Large Power Billing system) use rate sheets that CPA/CEPS submit, which do not currently allow for provision of time-varying rates or rates to credit net metered customers for exports.
- ⚡ Until and Eversource (for customers on their C2 billing system) require CPAs/CEPS to submit rates via an EDI 814 file for each customer; while the EDI 814 format supports more advanced rate structures, each utility has implemented the file format in a manner that only permits specification of a single supply rate for each customer.

Utilities should coordinate to propose standardized means of enabling CPAs and CEPS to submit advanced rates on a meter (or submeter) basis, which will require updates to EDI 814 file formats and associated utility enrollment and billing processes to support NEM and TOU rates. Additional mechanisms may be required to enable more dynamic rates for CPAs and CEPS, which should be a subject of discussion for the NH EBT Working Group.

Related, CPCNH recommends that each utility's proposal enable proration of monthly bills. This refers to applying calendar month rates to usage within individual customer billing cycles (which may span two calendar months). While all utilities prorate bills for customers on utility default supply, only Liberty currently does so for customers served by CPAs and CEPS.

### **Implementation of Utility Bill-Ready Consolidated Billing**

Looking ahead, the NH EBT Working Group should also plan to evaluate the regulated utilities' proposal to implement bill-ready consolidated billing.<sup>7</sup> This service would enable CPAs and CEPS to provide innovative rates without relying upon the utilities to calculate customer bills. Instead, the utilities would send usage data to CPAs / CEPS, which would then calculate and transmit customer charges to the utility for presentation on the consolidated bill. CPCNH observes that the regulated utilities' proposal provides for up to 10 line-items to be presented as supplier charges, credits, or information fields on customer bills (which would enable a significant and laudable level of rate innovation).

The NH EBT Working Group should evaluate whether to recommend implementation across all regulated utilities (including NHEC, which is subject to PUC regulation for enabling customer choice and competitive supply access) or whether to stagger implementation to align with potential utility billing system upgrades to minimize costs. (As context, a significant portion of proposed costs may be due to the need to update Eversource's legacy Large Power Billing system, which might conceivably be replaced at some future point.)

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<sup>7</sup> *Ibid.*



## Leadership for NH EBT WG

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**CPCNH is concerned that significant possible antitrust problems could arise with the EBT Working Group unless the decision-making process guards against distribution utilities and market incumbents exercising undue influence over the deliberations.**

The General Court and Commission have supported development of a competitive market for electricity supply service, inclusive of time of use (TOU) supply rates and supply credits for net metered excess generation, electric vehicles, demand response products, behind-the-meter distributed energy resources (DER), and distribution-interconnected DERs.

As such, each of the distribution utilities compete against non-regulated providers of competitive services in offering some or all of these innovative services in their respective service territories to varying degrees.

Simultaneously — under the terms of the NH EBT Standards provisionally adopted by the Commission a quarter-century ago — the distribution utilities are relied upon to collect and manage meter and account data, issue consolidated bills to customers, and estimate each supplier’s hourly loads for wholesale load settlement. These are competitively sensitive services, controlled by the utilities, which directly determine the extent to which non-utilities can compete in the provision of services and innovations for retail customers.

In short, utilities exercise market power by virtue of being the day-to-day operators of the competitive retail electricity market in addition to being the dominant incumbents serving a substantial majority of retail customers within each of their respective franchise service territories. **Given this market context, antitrust concerns regarding the role of regulated utilities in unduly steering the NH EBT Working Group are both substantial and unavoidable.**

Relevant here is that CPCNH has previously documented:

1. How the regulated utilities have fallen short of implementing the NH EBT Standards, such that CPAs and CEPS are unable to offer net metering or advanced rate structures and innovative programs to the mass market of residential and small commercial customers.<sup>8</sup>
2. How NH’s competitive retail market has largely stalled, becoming highly concentrated (indicating a lack of competition) and fragmented (with limited choice depending on utility territory) — and how, as a consequence, the state has been forced to continue relying upon utilities to provide services that are not natural monopolies, such that the extent of retail innovation for the mass market has been limited by the content of utility proposals and pace of administrative regulatory proceedings.<sup>9</sup>

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<sup>8</sup> *Ibid.*, pp. 4-8, section “Need to Assess, Enforce, and Update NH EBT Standards”.

<sup>9</sup> See DRM 21-142, Community Power Coalition of New Hampshire, Office of Consumer Advocate and Clean Energy New Hampshire Comments, pp. 2-6. Online:



3. How Eversource, in particular, has increasingly attempted to portray utility-administered programs as the sole means to expand demand response in NH, going so far as to assert recently that “*DR is not a function of the competitive market*”<sup>10</sup> while entirely ignoring how the utility itself has foreclosed non-utility provision of demand response and time-varying rates — leading CPCNH to observe that “*the utility’s position openly contravenes state policy and Commission orders and that their arguments are entirely designed to elevate utility-administered programs as the sole mechanism available to expand retail services which create customer value for the residents and businesses of New Hampshire. In short, Eversource advocates for why the utility’s unjust monopolization of retail services should be strengthened.*”<sup>11</sup>

**A corollary concern is that non-utility market incumbents (e.g., the larger CEPS in NH) may be perversely incentivized to oppose measures that would increase market competition as well,** given that:

- ✦ The regulated utilities have withheld services that are required for rivals to compete in offering innovations desired by customers.
- ✦ This has created a weakly competitive retail market in which a small number of competitive suppliers offering simple wholesale products to the mass market have become dominant.
- ✦ Incumbent suppliers have a natural incentive to support the ‘status quo’, as doing so indirectly precludes new rivals from offering their customers more innovative services.

CPCNH emphasizes that concerns regarding incumbent suppliers being threatened by enabling more innovative competitors to enter NH’s market are not theoretical. To take one real-world example:

- ✦ Octopus Energy is a competitive supplier that was founded in 2015 and has grown rapidly to become one of the foremost global leaders in retail product innovation, lowering customer bills by intelligently combining renewables, dynamic rates, demand response, solar, heat pumps, and electric vehicles into attractive retail offers with data-driven marketing and strong customer service (from a technology

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[https://www.puc.nh.gov/regulatory/Docketbk/2021/21-142/LETTERS-MEMOS-TARIFFS/21-142\\_2022-03-28\\_CPCNH\\_OCA\\_CENH-COMMENTS.PDF](https://www.puc.nh.gov/regulatory/Docketbk/2021/21-142/LETTERS-MEMOS-TARIFFS/21-142_2022-03-28_CPCNH_OCA_CENH-COMMENTS.PDF)

See also DE 19-197, Testimony of Samuel Nash Vautier Golding on behalf of the Local Government Coalition, 17 August 2020, Bates pp. 51-56. Online:

[https://www.puc.nh.gov/Regulatory/Docketbk/2019/19-197/TESTIMONY/19-197\\_2020-08-18\\_LEBANON\\_LGC\\_REV\\_TESTIMONY\\_GOLDING.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2019/19-197/TESTIMONY/19-197_2020-08-18_LEBANON_LGC_REV_TESTIMONY_GOLDING.PDF)

<sup>10</sup> See IR 22-076, Eversource Initial Comments, pp. 5-6. Online

[https://www.puc.nh.gov/regulatory/Docketbk/2022/22-076/LETTERS-MEMOS-TARIFFS/22-076\\_2023-03-21\\_EVERSOURCE\\_INITIAL-COMMENTS.PDF](https://www.puc.nh.gov/regulatory/Docketbk/2022/22-076/LETTERS-MEMOS-TARIFFS/22-076_2023-03-21_EVERSOURCE_INITIAL-COMMENTS.PDF)

<sup>11</sup> See IR 22-076, CPCNH Reply Comments, pp. 2-6. Online:

[https://www.puc.nh.gov/regulatory/Docketbk/2022/22-076/LETTERS-MEMOS-TARIFFS/22-076\\_2023-05-09\\_CPCNH\\_REPLY-COMMENTS.PDF](https://www.puc.nh.gov/regulatory/Docketbk/2022/22-076/LETTERS-MEMOS-TARIFFS/22-076_2023-05-09_CPCNH_REPLY-COMMENTS.PDF)



perspective, the company is apparently very good at directly linking connected devices to lower energy rates).<sup>12</sup>

- ✦ The company recently became the largest supplier in the UK, after acquiring Shell Energy's customer base,<sup>13</sup> and is now expanding in Texas by offering market-driven demand response for residential customers.<sup>14</sup>
- ✦ Octopus Energy became a registered supplier with NEPOOL in April 2022,<sup>15</sup> and based upon CPCNH's recent conversations with their CEO, the company is evaluating whether it should register and begin offering new services for retail customers in NH.

Depending upon their individual strengths and internal business strategies, certain incumbent suppliers may support pro-competition measures, while others may not. The point here is that deciding whether or not to enable a broader scope of innovation invariably presents trade-off decisions for the businesses that have already established a stable presence in the marketplace.

The implications for the NH EBT Working Group are clear:

- ✦ **Every business, be it a competitive supplier or regulated utility, should be expected to advocate for the course of action that it deems to be in its ultimate best financial interest.**
- ✦ **The NH EBT Working Group should be considered a collaboration amongst rivals, the purpose of which is to agree upon standards governing the fair use of the utilities' assets that are essential to operate the competitive market.**
- ✦ ***Ipsa facto*, the NH EBT Standards — and the extent to which each utility's implementation conforms or deviates from the standards — substantially determines the extent of services and innovation that can be offered to customers by non-utility providers in practice.**
- ✦ **The oversight challenge here is that collaborations amongst competing firms can create antitrust problems if they agree upon rules that reduce the level of quality, service, or innovation below what would likely prevail in an open and fair market.**

CPCNH finds that the following situation from California offers striking parallels and insights with some applicability for the NH EBT Working Group:

- ✦ In response to a proposed decision by the California Public Utilities Commission regarding the implementation of dynamic and potentially transactive energy rates — which would have ordered the two largest regulated utilities to host workshops with demand response providers to propose market rules prohibiting dual enrollment of

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<sup>12</sup> See Officially the UK's most awarded energy supplier, Octopus Energy (September 27, 2021). Online <https://octopus.energy/blog/most-awarded-energy-supplier/>

<sup>13</sup> See Octopus Energy raises \$800m and aims to create 3,000 green jobs in UK, The Guardian (18 December 2023). Online: <https://www.theguardian.com/business/2023/dec/18/octopus-energy-raises-800m-aims-create-3000-green-jobs-uk>

<sup>14</sup> See Flex Appeal: Octopus Energy's New Demand Response Plan is a Huge Hit, Business Wire (July 12, 2023). Online: <https://finance.yahoo.com/news/flex-appeal-octopus-energy-demand-124100390.html>

<sup>15</sup> See NEPOOL Participants. Online: <https://nepool.com/participants/>



customers in dynamic rate and certain demand response programs — the utility Pacific Gas and Electric objected.

- ✦ Citing to Federal Trade Commission and U.S. Department of Justice ‘Antitrust Guidelines for Collaborations Among Competitors’,<sup>16</sup> the utility observed that since regulated utilities compete against third-party demand-response providers, CPAs, and other non-utility rivals to “*recruit and retain customers in their programs and portfolios*”, and since “*competitors should not discuss or agree on rules limiting competition among them*” as doing so “*raises the potential to unwittingly engage in a horizontal constraint of trade...*”, the workshop would “*require active Commission supervision and involvement for the activity to survive antitrust scrutiny*”.<sup>17</sup>
- ✦ California’s Office of Public Advocate disagreed, in part, by pointing out that the proposed decision had provided sufficiently granular directions for what the workshop needed to consider and propose for the Commission’s approval to survive antitrust scrutiny.
- ✦ The Final Proposed Decision agreed with the Public Advocate and emphasized that future approval of proposals remained with the Commission, but clarified that the workshop would be public, that Commission staff would be in attendance, and that staff from the California Energy Commission and California ISO would be invited too.<sup>18</sup>

**Consequently, CPCNH believes that the Commission must continue to actively exercise its authority to oversee NH EBT Standard updates to avoid the potential for antitrust challenges.** CPCNH excerpts, in part, relevant recommendations submitted to the Commission here for the Department’s consideration:<sup>19</sup>

*“CPCNH believes that, while a reconstituted EBT Working Group can bring forward the technical reports called for above in an expedited fashion, it is appropriate for proposals, especially where there is no consensus, to be adjudicated by the Commission.*

*CPCNH observes that the original NH EBT Working Group worked by consensus and where they did not have consensus in their original report, the issues were brought to the attention of the Commission for resolution. The decision-making process for a NH EBT Working Group going forward never seems to have been memorialized, and the description of the Change Control process in the main report (at 42) stated that it “is anticipated that the EDI standards will be modified and enhanced as market or regulatory requirements dictate.”*

*... CPCNH is of the view that the Commission should: 1) require those changes necessary to conform with the originally anticipated EDI/EBT functionality that*

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<sup>16</sup> See FTC/DOJ Antitrust Guidelines for Collaborations Among Competitors (April 2000), pp. 3-4, 12. Online: [https://www.ftc.gov/sites/default/files/documents/public\\_events/joint-venture-hearings-antitrust-guidelines-collaboration-among-competitors/ftcdojguidelines-2.pdf](https://www.ftc.gov/sites/default/files/documents/public_events/joint-venture-hearings-antitrust-guidelines-collaboration-among-competitors/ftcdojguidelines-2.pdf)

<sup>17</sup> See CA Rulemaking 22-07-005, Pacific Gas & Electric Opening Comments on Proposed Decision (January 5, 2024), pp. 4-5. Online: <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M522/K378/522378767.PDF>

<sup>18</sup> See CA Rulemaking 22-07-005, Proposed Decision of ALJ Wang (Mailed 12/15/2023), Rev.1, at pp. 64-65. Online: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M523/K990/523990361.pdf>

<sup>19</sup> See Docket No. IR 22-076, tab 75: <https://www.puc.nh.gov/regulatory/Docketbk/2022/22-076.html>



would still be of value and use to competitive suppliers and CPAs today, even if 25 years behind schedule; and 2) assert its authority to oversee updates to the electronic business transactions necessary to support “free and fair competition” in the supply of electricity to retail consumers, especially when comparing monopoly utility provided default service with alternative default service provided by community power aggregations and all of the competitive options provided by both CPAs and CEPS.”

## Recommendations for Future Priorities

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Looking further ahead, CPCNH recommends that the NH EBT Working Group plan to:

1. Evaluate enabling opt-in Transactive Energy Rates on a statewide basis, based upon NHEC’s current implementation, which will necessitate — in addition to the adoption of submetering protocols recommended earlier — enabling customers to opt-in to being charged for transmission based on their metered (or sub-metered) contribution to coincident peak hourly demand in each month, along with a mechanism to assign transmission charges to suppliers for collection from customers each month, and utility billing system and consolidated bill presentation changes. Please refer to CPCNH’s comments to the PUC describing NHEC’s TE rates program and the potential to implement TE rates in the regulated utilities’ territories for more detailed context and recommendations.<sup>20</sup>
2. Coordinate with the Governance Council regarding deployment of the NH Statewide Data Platform — which is intended to expand retail electricity and natural gas meter and customer data access — regarding any future corresponding changes to billing and settlement services to further enable innovation in the retail market.
3. Coordinate with the Grid Modernization Advisory Council (GMAG) regarding future planned upgrades to metering, information and communications technology infrastructure, and the corresponding changes to EDI, billing, and load settlement services.

Sincerely,

Clifton Below

Board Chair

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<sup>20</sup> See IR 22-076, CPCNH Final Comments, pp. 6-12. Online:

[https://www.puc.nh.gov/regulatory/Docketbk/2022/22-076/LETTERS-MEMOS-TARIFFS/22-076\\_2023-05-09\\_CPCNH\\_REPLY-COMMENTS.PDF](https://www.puc.nh.gov/regulatory/Docketbk/2022/22-076/LETTERS-MEMOS-TARIFFS/22-076_2023-05-09_CPCNH_REPLY-COMMENTS.PDF)



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