

STATE OF MAINE

CUMBERLAND, SS.

SUPERIOR COURT

_____)	
CONSERVATION LAW FOUNDATION,)	
INDUSTRIAL ENERGY CONSUMER GROUP,)	
REVISION ENERGY INC.,)	
and)	
NATURAL RESOURCES COUNCIL OF MAINE,)	
)	
<i>Plaintiffs,</i>)	Civil Action No. _____
)	Expedited Track (M.R. Civ. P. 16C(b)(1))
v.)	
)	
MAINE PUBLIC UTILITIES COMMISSION,)	
)	
<i>Defendant.</i>)	
_____)	

COMPLAINT FOR DECLARATORY RELIEF

1. Plaintiffs Conservation Law Foundation (CLF), Industrial Energy Consumer Group (IECG), ReVision Energy Inc. (ReVision), and Natural Resources Council of Maine (NRCM) bring this Complaint for Declaratory Relief pursuant to 14 M.R.S. § 5953, 5 M.R.S. § 8058 and 35-A M.R.S. § 1320(6) against the Maine Public Utilities Commission, and allege as follows:

2. This action seeks a declaration from the Court that Defendant’s rule 65-407 CMR, ch. 313 (“Chapter 313”), as amended on March 29, 2017 to institute a gross metering scheme for distributed generation customers in the State (“Chapter 313 Amendments”), is arbitrary, capricious, an abuse of discretion and not in accordance with law due to Defendant’s failure to adhere to statutory provisions applicable to utility rates, its imposition of rates and charges that are not just and reasonable, and its infringement of the statutory right to self-generate. Further, Plaintiffs seek a declaration that the Chapter 313 Amendments are invalid because they exceed Defendant’s statutory authority and because Defendant failed to consider all information

available to it in promulgating the rule amendments. The Court should vacate the Chapter 313 Amendments and reinstate Chapter 313 as it existed prior to the rulemaking.

Jurisdiction and Venue

3. This Court has jurisdiction over Defendant pursuant to 4 M.R.S. § 105 and over this action pursuant to 14 M.R.S. § 5953 and 5 M.R.S. § 5058.

4. Venue is proper in this Court pursuant to 14 M.R.S. § 501 because Plaintiff CLF is located in Cumberland County, Maine.

Parties

5. Plaintiff CLF is a non-profit, member-supported organization incorporated under the laws of Massachusetts with offices at 53 Exchange Street, Suite 200, Portland, in Cumberland County, Maine. CLF is a regional organization founded in 1966 with over 5,000 members, more than 350 of whom live in Maine, and is dedicated to the conservation and wise management and development of Maine and New England's natural resources, including developing and implementing policies that harness renewable sources of energy such as wind, solar, geothermal and hydro. Consistent with that mission, CLF actively participated in Defendant's investigatory docket considering whether to amend Chapter 313. *See Public Utilities Commission*, Commission Initiated Inquiry into Net Energy Billing Rules (Chapter 313), No. 2016-120, Comments of CLF (Me. P.U.C. July 22, 2016). CLF also commented on the Chapter 313 rulemaking itself, *see Public Utilities Commission*, Amendments to Net Energy Billing Rule (Chapter 313), No. 2016-222, Comments of CLF (Me. P.U.C. Oct. 12, 2016), *see also id.* Corrected Supplemental Comments of CLF (Me. P.U.C. Nov. 2, 2016), petitioned Defendant for reconsideration of the rule, *see id.* Petition for Reconsideration of NRCM, CLF, ReVision,

Insource Renewables, and IECG (Me. P.U.C. Mar. 21, 2017), and along with the other Plaintiffs, appealed the rulemaking amending Chapter 313 to the Supreme Judicial Court.

6. The Chapter 313 Amendments will harm a variety of interests held by CLF members, including their economic, public health, aesthetic and professional interests. CLF members include homeowners and business owners with solar energy systems, including some subject to the Chapter 313 Amendments, those contemplating installation of solar energy systems that would be subject to the Chapter 313 Amendments, as well as Maine individuals who work for businesses that sell and/or install solar energy systems.

7. Plaintiff IECG is a nonprofit trade association incorporated under the laws of the State of Maine, formed for the purpose of advocating for the interests of its members, each of which is a large consumer of electricity in Maine. It has a mailing address of P.O. Box 5117, Augusta, Maine 04333. Many IECG members engage in on-site generation of electricity to meet their energy needs and are therefore directly affected by the policies and rules of Defendant relating to rates, charges, billing and metering practices. IECG actively participated in Defendant's rulemaking proceeding in which it considered potential amendments to Chapter 313. *See, e.g., Public Utilities Commission, Amendments to Net Energy Billing Rule (Chapter 313), No. 2016-222, Comments of Industrial Energy Consumer Group (Me. P.U.C. Oct. 17, 2016).* IECG strongly objected to the concept of gross metering as being unlawful. *See, e.g., id.* at 5; *see also id.* Supplemental Comments of Industrial Energy Consumer Group (Me. P.U.C. Nov. 2, 2016). IECG appealed the rulemaking amending Chapter 313 to the Supreme Judicial Court with the other Plaintiffs and argued the appeal.

8. The members of IECG are harmed by the Chapter 313 Amendments because the rule strongly discourages installation and operation of solar panels on consumer rooftops behind

their meters. This reduces the amount of solar electricity generated and consumed in Maine at times of summer peak electricity consumption, thereby causing customers of Maine's utilities to pay a greater proportion of the annual cost of supporting the New England regional transmission system than they otherwise would. Moreover, the Chapter 313 Amendments establishes a precedent with respect to the manner in which delivery charges are calculated that chills investment in IECG member manufacturing facilities that rely substantially upon their own on-site generation.

9. Plaintiff ReVision (formerly known as ReVision Energy LLC) is an employee-owned Maine corporation with offices at 91 W. Main St., Liberty, Maine, and branch offices in Portland, Maine. ReVision is the state's leading installer of photovoltaic solar electric systems for residential and commercial customers. Since its founding in 1993, the company has installed over 7,000 solar photovoltaic systems in Maine, including 535 solar projects in 2017 and expects to build another 600+ per year for 2018 and future years. ReVision did over \$24 million of business in Maine last year and has in excess of 125 employees in the state, with an annual payroll of approximately \$6 million. ReVision maintains over \$5 million in Maine assets (vehicles, tools, offices, equipment, etc.) and \$2 million in inventory on a regular basis to conduct its business. ReVision is a certified Benefit Corporation (B-Corp) and has as its mission the goal to transition Maine's energy infrastructure from fossil fuel sources to renewable energy sources, primarily solar. ReVision and its employees are actively involved in corporate philanthropy in Maine, helping to solarize our public-sector institutions. ReVision actively participated in Defendant's investigatory docket considering whether to amend Chapter 313. *See Public Utilities Commission, Commission Initiated Inquiry into Net Energy Billing Rules (Chapter 313), No. 2016-120, Preliminary Comments of ReVision (Me. P.U.C. July 22, 2016).*

ReVision also commented on the Chapter 313 rulemaking itself, *Public Utilities Commission, Amendments to Net Energy Billing Rule (Chapter 313), No. 2016-222, Comments of ReVision (Me. P.U.C. Oct. 12, 2016), see also id. Supplemental Comments of ReVision (Me. P.U.C. Nov. 2, 2016)*, petitioned Defendant for reconsideration of the rule, *id.* Petition for Reconsideration of NRCM, CLF, ReVision, Insource Renewables, and IECG (Me. P.U.C. Mar. 21, 2017), and appealed, along with the other Plaintiffs, the rulemaking amending Chapter 313 to the Supreme Judicial Court. ReVision owns net metered photovoltaic systems at each of its Maine branch offices and intends to install a net metered photovoltaic system at its new facility in South Portland (currently in remodeling) in 2019, which system will be subject to the Chapter 313 Amendments.

10. The Chapter 313 Amendments will harm a variety of interests held by ReVision and its employee-owners, including their professional, economic, public health, aesthetic, social and philanthropic interests. The Chapter 313 Amendments increase the cost of photovoltaic solar by adding to the installation (or re-configuration) costs in order to comply with the new rules and simultaneously reduce the value of solar to Maine consumers by imposing a new delivery charge for gross output of electricity and reducing the value of net energy billing delivery credits (both annually starting in 2018 and for all projects once the grandfathering period expires in 2033). The Chapter 313 Amendments have significantly worsened the economics of investing in solar, which has harmed ReVision's sales, reduced profitability and growth, and hurt the viability of photovoltaic solar projects that ReVision owns or plans to build in the near future. ReVision has been forced to adapt to the negative environment for solar in Maine by shifting a significant portion of our enterprise, workforce and effort to neighboring states and by diversifying into other market sectors. The Chapter 313 Amendments have also slowed ReVision's ability to meet

its mission of transitioning our communities to renewable energy sources and away from carbon-intensive fossil fuels.

11. Plaintiff NRCM is a non-profit organization with over 20,000 members and supporters and is incorporated in the State of Maine and located at 3 Wade Street, Augusta, Kennebec County, Maine. Founded in 1959, NRCM's mission is to protect, restore, and conserve Maine's environment, including decreasing air and climate-changing pollution by promoting energy efficiency and renewable energy sources, such as solar power. NRCM actively participated in Defendant's investigatory docket considering whether to amend Chapter 313. *Public Utilities Commission*, Commission Initiated Inquiry into Net Energy Billing Rules (Chapter 313), No. 2016-120, Preliminary Comments of NRCM (Me. P.U.C. July 22, 2016). NRCM also commented on the Chapter 313 rulemaking itself, *Public Utilities Commission*, Amendments to Net Energy Billing Rule (Chapter 313), No. 2016-222, Initial Comments of NRCM (Me. P.U.C. Oct. 12, 2016), *see also id.* Additional Comments of NRCM (Me. P.U.C. Nov. 2, 2016), petitioned Defendant for reconsideration of the rule, *id.* Petition for Reconsideration of NRCM, CLF, ReVision, Insource Renewables, and IECG (Me. P.U.C. Mar. 21, 2017), and appealed, along with the other Plaintiffs, the rulemaking amending Chapter 313 to the Supreme Judicial Court.

12. Chapter 313 will harm a variety of interests held by NRCM and its members and supporters, including economic, public health, aesthetic and professional interests. NRCM installed Phase I of a net metered photovoltaic system at its office in Augusta prior to the amendment of Chapter 313 and intends to install Phase II of that system in 2019, which will be subject to the Chapter 313 Amendments. In addition to the planned expansion of NRCM's own photovoltaic system in 2019, the Chapter 313 Amendments have harmed NRCM members and

supporters who recently installed solar energy systems subject to the Chapter 313 Amendments. NRCM members and supporters also include solar industry professionals impacted by the Chapter 313 Amendments and homeowners and business owners who intend to install solar energy systems subject to the Chapter 313 Amendments.

13. Defendant Maine Public Utilities Commission is a state agency established by the Maine legislature under 35-A M.R.S. § 103 to regulate public utilities in accordance with that title.

Net Energy Billing

14. The generation of electricity by facilities located at Maine homes or businesses is known as distributed generation (DG), and contrasts with the traditional model of electricity generation in which centralized facilities generate power for all electricity customers that is delivered via utility transmission and distribution infrastructure.

15. DG resources in Maine are subject to a different billing mechanism than customers who have all their electricity delivered by a utility.

16. The DG-specific billing system authorized by the Maine Legislature (and used in the majority of states) is known generally as net metering, and is referred to as net energy billing (NEB) in the State:

“Net energy billing” means a billing and metering practice under which a customer is billed on the basis of net energy over the billing period taking into account accumulated unused kilowatt-hour credits from the previous billing period.

35-A M.R.S. § 3209-A; *see also id.*, § 3201(8) (“‘Electric billing and metering services’ means the following services: A. Billing and collection; B. Provision of a meter; C. Meter maintenance and testing; and D. Meter reading.”).

17. Defendant is authorized to adopt or amend rules governing net energy billing. *Id.* § 3209-A. Defendant regulates net energy billing through Chapter 313, Customer Net Energy Billing.

18. From the initiation of Chapter 313 in the 1990s until adoption of the amendments being challenged here, Maine offered DG customers a reimbursement mechanism consistent with net metering approaches recognized by many other states, whereby “any excess generation from a customer’s own generating facility [could] be used as an energy credit to offset that customer’s electricity usage at times when the customer’s facility is not generating enough to meet the customer’ [sic] electricity needs.” *Maine Public Utilities Commission, Commission Initiated Inquiry into Market-Based Solar Policy Design Stakeholder Process, No. 2015-218, Report to the Legislature Regarding Market-Based Solar Policy Design Stakeholder Process pursuant to Resolves 2015, ch. 37 (Me. P.U.C. Jan. 30, 2016)* at 4.

19. Under this traditional net metering mechanism, surplus electricity distributed into the grid by NEB customers was credited at the same rate per kilowatt hour (kWh) as electricity purchased by the customer, which included charges for the electricity commodity itself (supply cost) as well as for delivery (transmission and distribution cost).

20. This mechanism did not require monitoring of – and did not impose charges for – electricity that was generated and consumed behind the meter by the NEB customer, known as customer self-generation.

The Chapter 313 Amendments

21. Defendant approved and adopted amendments to Chapter 313 in March 2017. The Chapter 313 Amendments began impacting the rates of those who became new NEB customers after March 16, 2018, following several Commission revisions to the effective date in light of

ongoing technical issues with regard to the logistics of implementation (the original effective date specified in the Chapter 313 Amendments was Jan. 1, 2018).

22. The Chapter 313 Amendments made at least two changes to net energy billing that Plaintiffs challenge here as unlawful.

23. First, the Chapter 313 Amendments fundamentally alter the basic structure of Chapter 313, turning it from a simple net energy billing mechanism into a wholly new and unique electric rate applicable only to DG customers, defined by Defendant as gross energy billing. *See Public Utilities Commission, Amendments to Net Energy Billing Rule (Chapter 313), No. 2016-222, Order Adopting Rule and Statement of Factual and Policy Basis (Me. P.U.C. Mar. 1, 2017) (“Order Adopting Rule”)* at 16-17, 23.

24. Previously, net energy billing credits for transmission and distribution (“T&D,” or together as “delivery”) service were based on the *net* difference between the amount of electricity that is delivered by the utility to the customer, and the excess generation that the customer delivers to the electric grid. Both amounts were measured by a single metering station at the customer’s point of interconnection with the grid. 65-407 C.M.R. Ch. 313, § 3(E) (2012).

25. Now, the Chapter 313 Amendments calculate charges for T&D service based on the customer’s total, or *gross*, consumption – not just the amount of electricity actually delivered by the utility to the customer, but also all the electricity the customer generates and uses itself, including even electricity generated and used by the customer when the utility is unable to deliver. *See Chapter 313, § 3(E)-(F)*.

26. This is a wholly new and nationally unprecedented delivery charge for electric customers: NEB customers now must pay, per kWh, a delivery service charge for electricity that is not delivered by the utility.

27. To implement this gross metering approach, the Chapter 313 Amendments require measurement of power that never enters the grid, formerly known as “behind the meter” generation and consumption. Order Adopting Rule at 16. This requires changes in how DG projects are designed and installed, and requires all ratepayers to pay for additional metering, data collection, reporting, management systems, and complex new billing software. For existing NEB customers that are grandfathered, the Chapter 313 Amendments will entail, in 15 years, retrofitting their systems to splice in the additional metering and data reporting equipment. Order Adopting Rule at 23.

28. The second fundamental change imposed by the Chapter 313 Amendments is to phase out credits for T&D charges by 10% each year for DG systems placed in service before 2027. Systems existing as of December 31, 2026 lock in the applicable rate for 15 years from the system’s in-service date. *See* Chapter 313, § 3(F)(2). For example, a DG system placed in service in 2018 will be charged for delivery service based on 100% of its gross output and will receive delivery billing credits for 90% of its gross output until 2033, after which it will receive zero delivery credits. A DG system placed in service in 2022, for instance, will be charged for delivery based on 100% of its gross output and will receive delivery billing credits for 50% of its gross output until 2037, and so on for DG systems placed in service in later years. DG systems placed in service in 2027 or later will receive no delivery billing credits at all.

29. These aspects of the Chapter 313 Amendments change T&D rates for NEB customers, effectively increasing T&D charges for NEB customers compared to charges for customers in the same residential or commercial rate class but who do not have a DG system.

30. In developing the Chapter 313 Amendments, Defendant did not rely upon the costs of servicing NEB customers. Instead, Defendant expressly premised the Chapter 313

Amendments upon its untested assessment of declining costs of photovoltaic solar (which is but one of many DG technologies eligible for net energy billing) and upon its conclusion – without any analysis or evidentiary support – that NEB customers do not adequately compensate the utility for the service they receive, resulting in lost revenue to utilities and a “cost shift” to non-NEB customers.

The Legal Framework Governing Ratemaking in Maine

31. A fundamental premise of ratemaking is that “[t]he rate, toll or charge, or any joint rate made, exacted, demanded or collected by any public utility for production, transmission, delivery or furnishing of electricity . . . shall be just and reasonable.” 35-A M.R.S. § 301(2). As a corollary, the Maine Legislature has declared that “[e]very unjust or unreasonable charge for public utility service is prohibited and declared unlawful.” *Id.* § 301(3).

32. Rates for utility service subject to the jurisdiction of the Commission may not unjustly discriminate against any individual customer or group of customers and may not “prejudice or disadvantage . . . a particular person.” *Id.* § 702(1). Unjust discrimination includes charging one customer or group of customers an amount that is “higher than that charged by the same utility for the same service or service of similar value and cost rendered to other users or consumers.” *Id.* § 1309(4).

33. Maine’s statutory prohibition against unjust discrimination explicitly identifies customers using solar energy as a class of customers that may not be discriminated against:

2. Solar energy. No public utility providing electric or gas service may consider the use of solar energy by a customer as a basis for establishing higher rates *or charges* for energy or service sold to the customer.

Id. § 702(2) (emphasis added).

34. While Chapter 313 is not specific to solar customers, solar comprises the majority of DG resources utilizing NEB in Maine. *See, e.g.*, Order adopting Rule at 10-11.

35. Maine statute also explicitly prohibits the imposition of exit fees, that is, charges imposed on customers who reduce or eliminate consumption of electricity by utilizing DG, converting to an alternative fuel, or conserving energy:

3. Exit fees. A customer who significantly reduces or eliminates consumption of electricity due to self-generation, conversion to an alternative fuel or demand-side management may not be assessed an exit or reentry fee in any form for the reduction or elimination of consumption or reestablishment of service with a transmission and distribution utility.

35-A M.R.S. § 3209(3).

36. Further, Maine statute explicitly prohibits the regulation of or charges for self-generation:

2. Use of electricity by the producer. Any small power producer or cogenerator may generate or distribute electricity through his private property solely for his own use, the use of his tenants or the use of, or sale to, his associates in a small power production or cogeneration facility and not for the use of or sale to others without approval or regulation by the commission.

Id. § 3205(2).

State Renewable Energy Policy

37. Net metering as it is commonly understood and as it existed in Maine prior to the Chapter 313 Amendments was consistent with the State's legislatively-established renewable energy policies, because it encourages investment in DG. *See* Chapter 313 § 1 ("The purpose of this Chapter is to implement the State's policy to encourage electricity generation from renewable resources through the adoption of requirements and standards for customer net energy billing.").

38. The Legislature has found that “it is in the public interest to develop renewable energy resources, including solar energy,” and that solar “constitute[s] a valuable indigenous and renewable energy resource and that solar energy development, which is unique in its benefits to and impacts on the climate and the natural environment, can make a contribution to the general welfare of the citizens of the State . . .” 35-A M.R.S. § 3472(1). *See also id.* at § 3472(2) (requiring Defendant to monitor the likely costs and benefits of solar for ratepayers).

39. The Legislature has provided that it is state policy “to encourage the attraction of appropriately sited development related to solar energy generation.” *Id.* § 3474(1).

40. In “encouraging the development of solar energy generation,” the Legislature has mandated that the “State shall pursue cost-effective developments, policies and programs that advance the following goals:

- A. Ensuring that solar electricity generation, along with electricity generation from other renewable energy technologies, meaningfully contributes to the generation capacity of the State through increasing private investment in solar capacity in the State;
- B. Ensuring that the production of thermal energy from solar technologies meaningfully contributes to reducing the State's dependence on imported energy sources;
- C. Ensuring that the production of electricity from solar energy meaningfully contributes to mitigating more costly transmission and distribution investments otherwise needed for system reliability;
- D. Ensuring that solar energy provides energy that benefits all ratepayers regardless of income level;
- E. Increasing the number of businesses and residences using solar technology as an energy resource; and
- F. Increasing the State's workforce engaged in the manufacturing and installation of solar technology.

Id. § 3474(2).

41. Maine law states that “it is the policy of this State to encourage the generation of electricity from renewable and efficient sources” including “solar arrays and installation,” in

order “to diversify electricity production,” and sets forth specific targets to that end. *Id.*
§ 3210(1), (2)(C), (3-A).

Procedural Background

42. On May 1, 2017, Plaintiffs timely appealed Defendant’s approval and adoption of the NEB Amendments. *See* Notice of Appeal, *CLF et al. v. Public Utilities Commission*, 2018 ME 120, No. PUC-17-185.

43. On August 16, 2018, the Law Court found that it did not have original jurisdiction over appeals from administrative rulemaking proceedings, “that any appeal from Commission rulemaking proceedings must be brought originally in the Superior Court,” and accordingly dismissed the appeal. *CLF et al. v. Public Utilities Commission*, 2018 ME 120, ¶ 13, --- A.3d ---.

Count I – Request for Declaration that the Chapter 313 Amendments are Arbitrary, Capricious, an Abuse of Discretion and Not in Accordance with Law because they Impose Illegal Exit Fees

44. Plaintiffs hereby repeat and reallege all previous paragraphs as if fully set forth herein.

45. There exists an actual controversy between Plaintiffs and Defendant involving the legality of Chapter 313.

46. The Chapter 313 Amendments impose charges for transmission and distribution service on NEB customers based on all electricity consumed, including self-generated electricity the customer produces and consumes behind the meter and which never uses the utility grid.

47. Maine statute explicitly prohibits the imposition of “exit fees . . . in any form” on customers who reduce or eliminate consumption of electricity by utilizing DG. 35-A M.R.S. § 3209(3). The Chapter 313 Amendments’ imposition of utility service charges for each kWh of

electricity that the customer self-generates from its DG system, and therefore does not buy from the utility, constitutes an unlawful exit fee.

48. The statutory prohibition on exit fees explicitly recognizes that lost utility revenue based on reduced consumption by a consumer can never be a legitimate basis for a charge on a customer. *See id.* § 3209(3). Defendant expressly based the gross metering scheme in the Chapter 313 Amendments upon the lost revenues to the utility allegedly arising from reduced consumption by customers utilizing DG. *See, e.g.*, Order Adopting Rule at 7.

49. Plaintiffs seek a declaration from the Court that the provisions of Chapter 313 that impose transmission and distribution charges on self-generated electricity are arbitrary, capricious, an abuse of discretion and not in accordance with law because they fail to follow statutory mandates pertaining to ratemakings and constitute illegal exit fees under Maine law.

Count II – Request for Declaration that the Chapter 313 Amendments are Arbitrary, Capricious, an Abuse of Discretion and Not in Accordance with Law because they Infringe on the Statutory Right to Self-Generate

50. Plaintiffs hereby repeat and reallege all previous paragraphs as if fully set forth herein.

51. The Chapter 313 Amendments regulate and impose charges for transmission and distribution service on NEB customers based on all electricity consumed, including self-generated electricity the customer produces and consumes behind the meter and which never uses the utility grid.

52. Maine statute explicitly protects the right to self-generation and prohibits Defendant from regulating or charging customers per kWh for their self-generation. 35-A M.R.S. § 3305(2).

53. Plaintiffs seek a declaration from the Court that the provisions of Chapter 313 that impose transmission and distribution charges on self-generated electricity are arbitrary, capricious, an abuse of discretion and not in accordance with law because they impose charges on DG in violation of statute.

Count III – Request for Declaration that the Chapter 313 Amendments are Arbitrary, Capricious, an Abuse of Discretion and Not in Accordance with Law because they Unjustly Discriminate Against NEB Customers

54. Plaintiffs hereby repeat and reallege all previous paragraphs as if fully set forth herein.

55. Rates for utility service may not unjustly discriminate against any individual customer or group of customers and may not “prejudice or disadvantage ... a particular person.” *Id.* § 702(1).

56. Unjust discrimination includes charging one customer or group of customers an amount that is “higher than that charged by the same utility for the same service or service of similar value and cost rendered to other users or consumers.” *Id.* § 1309(4).

57. Maine’s statutory prohibition against unjust discrimination explicitly identifies customers using solar energy as a class of customers that may not be discriminated against. *Id.* § 702(2).

58. NEB customers reduce their consumption of electricity from the grid due to self-generation. The Chapter 313 Amendments impose delivery charges on customers for the volume of service that they would have purchased from the grid had they not installed DG equipment.

59. The imposition of delivery charges for gross output that reduces a customer’s consumption of service from the utility constitutes unjust discrimination because it treats NEB customers differently than other similarly situated customers, for instance those who reduce their electricity consumption by installing more efficient equipment (e.g., replacing a window air

conditioner with an air source heat pump that uses less than a third of the electricity to provide the same cooling effect), by fuel switching (e.g., switching from electricity to gas or oil for space or water heating), because of changing household circumstances (e.g., a child going off to college), or by simply declining to use electricity when they otherwise might (e.g., drying laundry on a clothesline rather than in an electric dryer). Such charges should therefore be rejected as a violation of 35-A M.R.S. § 702.

60. Plaintiffs seek a declaration from the Court that the provisions of Chapter 313 that impose T&D costs on NEB customers based on their gross energy consumption are arbitrary, capricious, an abuse of discretion and not in accordance with law because they violate statutory prohibitions on unjust discrimination in ratemaking.

Count IV - Request for Declaration that the Chapter 313 Amendments are Invalid because they Exceed Defendant's Statutory Authority

61. Plaintiffs hereby repeat and reallege all previous paragraphs as if fully set forth herein.

62. Prior to the Chapter 313 Amendments, Chapter 313 exemplified a traditional net metering approach. This approach was recognized and codified by the Legislature as a means to encourage growth in DG whereby electricity exported to the grid is netted against that imported. *Id.* § 3209-A; Ch. 313, § 1.

63. In that codification, the Legislature authorized Defendant to implement NEB as a “billing and metering practice under which a customer is billed on the basis of net energy over the billing period taking into account accumulated unused kilowatt-hour credits from the previous billing period.” 35-A M.R.S. § 3209-A.

64. Billing and metering services are defined by statute as those services that involve billing and collection, provision of a meter, maintenance and testing, and meter reading. *Id.* § 3201(8).

65. The Chapter 313 Amendments have fundamentally altered NEB so that it is no longer a billing and metering practice based on net energy use over a billing period. Rather, Chapter 313 now constitutes a new rate structure and imposes new charges for DG customers based on gross energy use.

66. The system implemented by the Chapter 313 Amendments vastly diverges from the net metering approach adopted and intended by the Legislature and will have the opposite impact by reducing growth of DG in the State. Chapter 313 is no longer net energy billing, and therefore diverges from and exceeds the Legislature's grant of authority under § 3209-A.

67. Further, Chapter 313 is now directly in conflict with various legislative statements of policy to encourage the development of DG in the State. *See, e.g.*, 35-A M.R.S. §§ 3472(1) & (2), 3474(2), 3210(1), (2)(C), (3-A). Chapter 313, particularly with its imposition of utility service charges for services not received and its phase-out of reimbursement for T&D costs, will result in less growth of the DG market in the state, directly undermining the Legislative policy.

68. By making installation of solar more expensive and a less attractive investment, the Chapter 313 Amendments are inconsistent with State renewable energy policies.

69. Plaintiffs seek a declaration from the Court that the provisions of Chapter 313 that establish the gross metering approach and impose transmission and distribution charges for behind the meter consumption are invalid because they exceed Defendant's statutory authority.

Count V – Request for Declaration that the Chapter 313 Amendments are Invalid because they are Unsupported by Substantial Evidence in the Record

70. Plaintiffs hereby repeat and reallege all previous paragraphs as if fully set forth herein.

71. Determining the costs and benefits to ratepayers associated with NEB is a threshold issue for any rulemaking that seeks to convert NEB billing from the authorized billing and metering practice, § 3209-A, to a new rate structure and charge for NEB customers.

72. Rather than assessing the net value of NEB, Defendant premised the Chapter 313 Amendments upon a pre-determined conclusion that the costs of NEB outweigh the benefits. The Defendant assumed, again without investigation, that the costs of NEB are measurable as lost revenue to the utilities, without explanation.

73. In so doing, Defendant refused to consider and ignored record evidence regarding the value of NEB and the value of solar DG to ratepayers. Defendant instead relied solely on its assumptions regarding the declining technology costs of solar, one of many NEB technologies, and on its presumption that the cost of NEB service is equivalent to lost revenue to the utilities.

74. Plaintiffs seek a declaration from this Court that the Chapter 313 Amendments are invalid because the Commission failed to consider mandatory criteria under the Maine Solar Energy Act, 35-A M.R.S.A. § 3471 *et seq.*, and because rules adopted without agency consideration of all relevant information available to it are void and of no legal effect. *See* 5 M.R.S. §§ 8058(1), 8052(4), 8057. Further, the record does not support the assumptions or conclusions of Defendant.

Count VI – Request for Declaration that the Chapter 313 Amendments are Arbitrary, Capricious, an Abuse of Discretion and Not in Accordance with Law because they Result in Rates and Charges that are Not Just and Reasonable

75. Plaintiffs hereby repeat and reallege all previous paragraphs as if fully set forth herein.

76. The overarching principle of utility ratemaking is that any “rate, toll or charge” for utility service must be “just and reasonable.” 35-A M.R.S. § 301.

77. Courts have consistently interpreted “just and reasonable” to mean rates and charges based on the utility’s cost of providing service.

78. The Chapter 313 Amendments, including the phase out of reimbursement for T&D costs as well as the implementation of a gross metering fee, impose new rates and charges on NEB customers.

79. The charges imposed on NEB customers by the Chapter 313 Amendments were not premised upon an analysis of the utilities’ costs of providing service to NEB customers in comparison to other customers. Defendant conducted no analysis of the utilities’ cost of providing service to NEB customers.

80. In setting the charges imposed on NEB customers by the Chapter 313 Amendments, Defendant relied upon unsubstantiated assertions of utility lost revenue and cost shifting, and on the Commission’s assumptions regarding the costs of solar generation equipment.

81. Plaintiffs seek a declaration from the Court that the provisions of Chapter 313 that impose charges on NEB customers are arbitrary, capricious, an abuse of discretion and not in accordance with law because they are not based on the cost of providing service to such customers and therefore violate the statutory requirement that rates and charges be just and

reasonable. The Chapter 313 Amendments are arbitrary and capricious and ultra vires because they are based on untested assumptions about the cost of solar generation, which is but one of many technologies eligible for NEB.

82. Finally, under the Electric Rate Reform Act, 35-A M.R.S. §§ 3151 *et seq.*, Defendant no longer has jurisdiction over generation and is barred from consideration of the costs of generation in setting electric rates. Defendant premised the Chapter 313 Amendments on the costs of solar generation in violation of law.

Prayer for Relief

WHEREFORE, Plaintiffs Conservation Law Foundation, Industrial Energy Consumer Group, ReVision Energy Inc., and Natural Resources Council of Maine request that this Court:

1. Enter a Judgment and Decree in accordance with the requests for declaratory relief in Counts I, II, III, IV, V and VI; and
2. Grant such other and further relief as it deems just and equitable, including Plaintiffs' costs and/or fees.

Dated: September 20, 2018

Respectfully submitted,

CONSERVATION LAW FOUNDATION

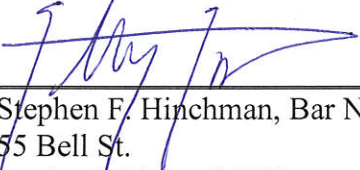
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