STATE OF MAINE
PUBLIC UTILITIES COMMISSION

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Testimony of the Maine Public Utilities Commission

In Opposition To

LD 1792, An Act Regarding the Energy Policy of the State

May 15, 2025

Senator Lawrence, Representative Sachs, and Distinguished Members of the Joint Standing Committee on Energy, Utilities, and Technology (Committee), my name is Philip Bartlett, testifying in opposition to the sponsor's amendment to LD 1792, An Act Regarding the Energy Policy of the State on behalf of the Public Utilities Commission (Commission).

The sponsor's amendment to LD 1792 requires the Commission to implement the provisions of the stipulation filed in Docket No. 2024-00137 in direct contradiction to the Commission's decision regarding the stipulation in this case. The Commission believes that as drafted, the proposed Resolve is unconstitutional as it violates the doctrine of separation of powers.

In *Avangrid Networks, Inc. v. Secretary of State*, 2020 ME 109,[1] the Law Court found "By statute, the Commission's adjudicatory decisions may then be appealed directly to the Law Court 'in the same manner as an appeal taken from a judgment of the Superior Court in a civil action.' The Commission's adjudicatory decisions therefore are subject to judicial—not legislative—review." The Court further found "The initiative at issue here is ***not legislative*** in nature because its purpose and effect is to dictate the Commission's exercise of its quasi-judicial executive-agency function in a particular proceeding. ***The resolve would interfere with and vitiate the Commission's fact-finding and adjudicatory function—an executive power conferred on the Commission by the Legislature***. Although the Legislature may properly constrain the Commission in its legislative functions and may alter the authority conferred on the Commission, ***the Legislature would exceed its legislative powers if it were to require the Commission to vacate and reverse a particular administrative decision the Commission had made***."

While the Legislature could amend existing law to incorporate the eight-step method for stranded cost allocation and rate design recommended in the stipulation, the Legislature cannot reverse the decision of the Commission in the manner proposed in LD 1792 without violating the Constitution. If commissioners were to follow such a directive, they would be required to violate their oath to uphold the Constitution.

[1] This case involved a citizen's initiative that proposed a Resolve to reverse a Commission order granting Central Maine Power a CPCN for a transmission line. Parties, including Avangrid Networks, Inc., Maine Chamber of Commerce and Industrial Energy Consumer Group appealed a judgment of the Superior Court dismissing their complaints for declaratory judgment and to enjoin the Secretary of State from placing a citizen initiative on the November 2020 ballot.

LD 1792 also proposes that the Commission develop draft legislation to codify in law the provisions of the stipulation and submit the proposed legislation to this Committee by November 1, 2025. This requirement illustrates that placing specific rate design methodologies in statute is a massive undertaking—one that could have unintended negative consequences in the future. Once a complicated methodology to allocate costs resulting from public policy is placed into statute, it leaves no flexibility to make any necessary adjustments in the future. The Commission cautions the Committee against this approach without careful consideration of the voluminous record in this case and careful consideration of the goals to achieve equity in the allocation of costs to all ratepayers. Furthermore, the Stipulated parties advocating for the adoption of the stipulation emphasized that the Commission could make changes anytime there are justifiable reasons to do so. As proposed, LD 1792 would not allow for future adjustments.

The stipulation shifts costs from larger to smaller customer classes, resulting in an 18% increase in costs for residential, small and medium commercial customers. Large commercial and industrial customers would see a decrease in costs of 54% in CMP's territory, 28% in Versant's Bangor Hydro District, and 75% in Versant's Maine Public District. Additionally, it increases stranded costs by creating a low-income bill credit at a cost of approximately $5.7 million funded by the small classes. While I would have approved the stipulation, it was not because I thought it was an ideal or even the best possible outcome. I concluded that it fell within the range of reasonableness, though just barely given the concerns I share with my colleagues. We routinely hear from residential and small commercial customers, as well as policymakers, about the impact of rising rates on their tight budgets. With this change, they will pay a larger share not only of current policy costs, but all future costs as well.

I have attached the Commission's Order for the Committee's reference. Given the complexity of the case and the issues involved, it cannot adequately be summarized in a few minutes, and I would urge the Committee to spend time at work session digging into the details of the stipulation and the policy questions involved before adopting it.

Finally, if the Committee is interested in getting involved in rate design, there is no compelling reason to consider just the stipulation. It was, at best, an imperfect compromise amongst parties. Instead of adopting it carte blanche, the Committee could consider the larger policy questions first and either dictate a rate design or require the Commission to apply the principles you identify. For example, you could assess how much of current and future policy costs should be borne by each customer class. You could decide the extent to which you want to incorporate economic development considerations into rate design, which is what you're being asked to do here. The Commission welcomes the Committee's engagement and direction on the policy issues in play with rate design.

I would be happy to answer any questions or provide additional information for the work session.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2024-00137

April 30, 2025

PUBLIC UTILITIES COMMISSION
Follow-On Proceeding to Further
Investigate Stranded Cost Rate Design

ORDER

BARTLETT, Chair; SCULLY[1] and GILBERT, Commissioners

I. SUMMARY

Through this Order, the Commission rejects[2] a Stipulation signed by the Office of the Public Advocate (OPA); Industrial Energy Consumer Group (IECG); Competitive Energy Services (CES); Brookfield White Pine Hydro LLC, Rumford Falls Hydro LLC, Black Bear Hydro Partners, LLC, and Great Lakes Hydro America, LLC (collectively, "Brookfield Entities"); Onward Energy Holdings, LLC, Hancock Wind, LLC, Evergreen Windpower II, LLC, and Blue Sky West LLC (collectively, "Onward Energy"); Casco Bay Energy Company, LLC (Casco Bay); Calpine Corp. (Calpine); and NextEra Energy Resources, LLC (NextEra) (collectively, the "Stipulating Parties"). The Commission cannot find that the Stipulation is reasonable or in the public interest, both of which are required by Chapter 110 of the Commission's rules when approving a Stipulation.

With respect to the merits of this investigation, the Commission makes changes to the intraclass rate design of post-restructuring stranded costs. Specifically, the Commission adopts a rate design for large class customers that recovers 70% of post-restructuring stranded costs though volumetric charges and 30% through a fixed charge. For medium commercial class customers, the Commission adopts a rate design that recovers 50% of post-restructuring stranded costs through volumetric charges and 50% through a fixed charge. For residential and small commercial customers, the Commission maintains a rate design that recovers all post-restructuring stranded costs through a fixed charge.

[1] On April 29, 2025, the Industrial Energy Consumer Group filed a Motion for Recusal of Commissioner Scully from any participation in this proceeding, including retroactive recusal from his participation in the deliberations on April 16, 2025. A statement of Commissioner Scully in response to the motion is attached to this Order.
[2] Chair Bartlett voted to approve the Stipulation. While Chair Barlett partly joins this Order, Chair Bartlett's dissenting opinion, with respect to the Stipulation, is attached to this Order.

II. BACKGROUND

A. Stranded Cost Mechanism

On March 1, 2000, pursuant to legislation, Maine ratepayers were provided with the opportunity to purchase generation services from the competitive market and as of that date the generation portion of electricity service was no longer subject to rate regulation in Maine. Title 35-A, Chapter 32 Electric Industry Restructuring (the "Restructuring Act"). As a part of the Restructuring Act, the Commission was required to determine and permit recovery of each utility's stranded costs, defined to be the "legitimate, verifiable and unmitigable costs made unrecoverable as a result of the restructuring of the electric industry." 35-A M.R.S. § 3208(1).

Thus, stranded cost rates were originally created to allow the transmission and distribution (T&D) utilities to recover the difference between the amount they had invested in generation assets, and the market value of those assets at the time of divestiture. *See, e.g., Public Utilities Commission, Investigation of Stranded Cost Recovery, Transmission and Distribution Utility Revenue Requirements, and Rate Design of Bangor Hydro-Electric Co.*, Docket No. 1997-00596, Order at 57 (Nov. 24, 1999). These costs are recovered through the stranded cost mechanism.[3]

Since restructuring, the Commission has used the stranded cost mechanism as a means to allow T&D utilities to recover other costs and lost revenues resulting from State policy initiatives that are not stranded costs as defined by 35-A M.R.S. § 3208. These policy initiatives include, among other items, long-term energy supply contracts entered into pursuant to 35-A M.R.S. § 3210-C, community renewable energy contracts pursuant to 35-A M.R.S. § 3604, Renewable Portfolio Standard (RPS) contracts pursuant to 35-A M.R.S. § 3210-G, and net energy billing (NEB) program costs. The Commission has referred to these costs as "post-restructuring" stranded costs.[4]

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[3] Separate from traditional rate cases, every three years the Commission determines the revenue requirement associated with the T&D utilities' stranded costs and legislatively mandated policy costs and sets "stranded cost" rates for the next three years. 35-A M.R.S. § 3208(6). These are generally referred to as "reset" cases. The T&D utilities make annual filings where actual stranded cost mechanism revenue and actual stranded cost mechanism costs are reconciled with the revenue requirement that was set in the reset case. Any accumulated difference is recovered from or returned to ratepayers beginning on July 1 of each year. These annual filings are referred to as "reconciliation" cases.

[4] While only costs recovered as a result of industry restructuring ("pre-restructuring stranded costs"), meet the definition of "stranded costs" under 35-A M.R.S. § 3208, the Commission refers to all costs recovered through the stranded cost mechanism collectively as "stranded costs." Costs recovered through the stranded cost mechanism that are not stranded costs under Section 3208 are referred to as "post-restructuring stranded costs."

B. Net Energy Billing

In its 2019 session, the Legislature enacted An Act to Promote Solar and Distributed Generation Resources in Maine. P.L. 2019, ch. 478, Pt. A, §§ 3, 4 (codified at 35-A M.R.S. §§ 3209-A, 3209-B) (the Act). The Act significantly expanded the State's NEB program through changes to the existing program structure and the creation of a new NEB program to apply to commercial and institutional (C&I) customers.

The first program structure, referred to as the "kWh Credit Program," is available to all customers. By its structure, this program provides kWh credits to participating customers, which reduces the amount of kWh for which the customer is billed, thereby reducing the bills of those customers. 35-A M.R.S. § 3209-A. The application of these credits to customers' bills results in a cost to the utilities in the form of lost revenues, which must be recovered from other customers.

The second program structure, referred to as the "Tariff Rate Program," is available to C&I customers. The Tariff Rate Program provides a financial credit on the bill of participating customers. 35-A M.R.S. § 3209-B. All energy generated by the NEB facility is transferred to the utility, which then sells it at the real-time price in the wholesale market. The utilities incur a net cost if the value they receive from the sale of the energy generated by the NEB facilities into the wholesale market is less than the financial credit they allocate to participating customers' bills. This amount must be recovered from ratepayers.

In 2019, the Commission amended Chapter 313 of its rules to provide that the costs and benefits incurred or realized from the Tariff Rate program by the T&D utilities be recovered through annual stranded cost rates. *Maine Public Utilities Commission, Amendments to Chapter 313 – Net Energy Billing*, Docket No. 2019- 00197, Corrected Order Adopting Rule and Statement of Factual and Policy Basis (Nov. 25, 2019).

C. Recovery of NEB Costs through Stranded Costs

In 2021, the Commission opened an investigation into the rate treatment of NEB program costs. *Public Utilities Commission, Investigation of Rate Treatment of NEB Program Costs*, Docket No. 2021-00360, Notice of Investigation (Nov. 18, 2021). At that time, the costs and benefits of the Tariff Rate Program were being recovered through stranded costs pursuant to Chapter 313, but the lost utility distribution revenues from the kWh Credit program were recovered through distribution rates.

In Docket No. 2021-00360, the Commission noted "that the kWh Credit Program was designed primarily for residential customers, while the Tariff Rate Program was designed for larger C&I ratepayers and is not available to residential customers." *Docket No. 2021-00360*, Order at 11 (Mar. 11, 2022). The Commission also noted that certain C&I ratepayers do not pay distribution costs. Therefore, because the T&D utilities recovered the costs of the kWh Credit Program through distribution rates, some C&I

ratepayers were not paying for the costs (*i.e.*, lost revenues) of the kWh Credit Program. Thus, because all classes of customers pay costs through the stranded cost mechanism, non-C&I customers were paying for the kWh Credit Program through distribution costs and paying for the Tariff Rate Program through the stranded cost mechanism. *Id.* However, because some C&I customers do not pay distribution rates, those C&I customers were only paying for the Tariff Rate Program.

The Commission found that the above situation was inherently inequitable and ordered the utilities to stop recovering the kWh Credit Program distribution lost revenue through distribution rates and instead recover both Tariff Rate and kWh Credit Program costs through the annual stranded cost mechanism, resulting in all classes paying for the costs of both programs. The Docket No. 2021-00360 Order also stated that the Commission would initiate a review of the existing rate design governing how pre-restructuring stranded costs and legislatively mandated policy costs are recovered through the stranded cost mechanism.

D. Docket No. 2022-00160

On June 16, 2022, the Commission issued a Notice of Investigation in Docket No. 2022-00160 to consider both the interclass allocation of and intraclass rate design for the recovery of all categories of stranded costs. *Maine Public Utilities Commission, Investigation of Stranded Cost Rate Design*, Docket No. 2022-00160, Notice of Investigation (June 16, 2022).

On April 21, 2023, the Commission issued the 2022-00160 Order. With respect to interclass allocation, the Commission concluded that all categories of stranded costs be allocated to each rate class according to each class's proportionate kWh load share.

In examining intraclass rate design, the Commission considered two options for rate recovery: a volumetric charge and a fixed charge. In its decision, the Commission determined that pre-restructuring stranded costs and non-NEB post-restructuring costs should be recovered through volumetric charges. However, with respect to NEB costs, the Commission noted that a volumetric rate design results in costs largely being paid by customers that are not NEB participants due to certain NEB program participants' ability to offset volumetric charges. 2022-00160 Order at 14-15. For this reason, the Commission adopted a fixed charge for the recovery of NEB costs.

The 2022-00160 Order also directed Commission Staff to collect data and submissions from the parties to assess and evaluate the implications of recovering all stranded costs through a fixed charge versus a volumetric charge.

E. July 2023 Stranded Cost Increase

The fixed methodology for NEB stranded cost recovery was implemented in CMP territory on July 1, 2023, as part of CMP's annual stranded cost reconciliation docket. *Central Maine Power Company, Request for Approval of Rate Change Regarding*

Annual Reconciliation of Stranded Cost Revenue and Costs, Docket No. 2023-00039, Order Approving Stipulation (June 15, 2023). Versant was unable to implement the fixed charge rate design for July 1, 2023, due to its billing system being unable to accommodate the change.[5]

Concurrently with the adoption of the fixed charge methodology on July 1, 2023, CMP's stranded cost revenue requirement increased substantially.

F. Docket No. 2023-000230

After the fixed charge was implemented for the recovery NEB stranded costs in the CMP service territory on July 1, 2023, multiple CMP customers filed out-of-time petitions to intervene and requests for reconsideration in Docket No. 2022-00160. The petitioners in that docket[6] indicated they were customers of CMP's LGS-T-TOU and MGS-P-TOU rate classes (the "generator intervenors"), and that they would experience a substantial bill increase as a result of the implementation of the fixed charge methodology set forth in the 2022-00160 Order.

The generator intervenors argued that they did not previously understand the full extent and magnitude of the rate impacts resulting from the adoption of the NEB fixed charge methodology set forth in the 2022-00160 Order. The generator intervenors further argued that due to the implementation of the fixed charge, their utility bills following CMP's July 1, 2023 rate change rose exorbitantly.

Based on these late-filed petitions to intervene and their request for rate relief, on September 12, 2023, the Commission issued a Notice of Investigation in Docket No. 2023-00230. The investigation in 2023-00230 centered on analyzing the rate impact of the implementation of the fixed charge rate design for the recovery of NEB costs established in Docket No. 2022-00160. Specifically, the scope of the investigation in Docket No. 2023-00230 was limited to (1) examining the impact of the fixed charge on customers; (2) clarifying the definition of "rate class," as requested by Versant in its Motion for Clarification filed in Docket No. 2022-00160; and (3) examining the possibility of a fixed charge for recovery of non-NEB stranded costs, as directed by the Commission in the 2022-00160 Order.

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[5] The fixed charge stranded cost rate design was subsequently implemented in Versant territory on July 1, 2024. *Versant Power, Request for Approval of Rate Change Regarding Annual Reconciliation of Stranded Cost Revenue and Costs*, Docket No. 2024-00078, Order Approving Stipulation (June 20, 2024).

[6] The late-filed petitioners in Docket No. 2022-00160, who were subsequently made parties to Docket No. 2023-00230, included several of the parties granted intervention in this case. *See infra* Section III. These parties include Calpine; Brookfield Entities, NextEra; CPV Canton Mountain Wind, LLC, CPV Saddleback Ridge Wind, LLC, CPV Spruce Mountain Wind, LLC, and CPV Beaver Ridge Wind, LLC (collectively, "CPV Wind"); Bucksport Generation, LLC (Bucksport); and Helix Maine Wind Development, LLC (Helix).

On May 23, 2024, the Commission issued its Order in Docket No. 2023-00230, finding that the rate impact analysis showed that the fixed charge implemented on July 1, 2023 in CMP territory impacted some larger rate classes dramatically, with low kWh usage customers within some classes paying much more than they would under volumetric recovery, and high kWh usage customers in some classes paying much less than they would under volumetric recovery. 2023-00230 Order at 30. However, the Commission also noted that because there was also a substantial increase in the revenue requirement, the large increase in costs on July 1, 2023 could not be exclusively attributable to the implementation of the fixed charge rate design.

Nonetheless, the Commission noted that a new proceeding would be needed to investigate whether the rate design could and should be altered. Thus, the Commission directed Commission Staff "to open a new proceeding to investigate alternate intraclass rate designs and, to the extent determined necessary, order changes to the rate design to adjust for inequities or to effectuate legislative policy directives." *Id.* at 1.

Finally, the Commission found that because all post-restructuring stranded costs (both NEB and non-NEB) derive from state policy programs that benefit all Maine ratepayers, non-NEB post-restructuring costs should be recovered in the same manner as NEB costs. *Id.* at 31. Thus, the Commission determined that all post-restructuring costs should be recovered through a fixed charge.

III. PROCEDURAL HISTORY

On July 2, 2024, the Commission issued its NOI, opening this investigation into stranded cost rate design of post-restructuring costs pursuant to 35-A M.R.S. § 1303(2). Specifically, the NOI stated that the investigation would investigate alternate intraclass rate designs, and to the extent determined necessary, the Commission may order changes to the rate design to adjust for inequities or to effectuate legislative policy directives.

Petitions to intervene were granted at a case conference held on July 23, 2024. The parties granted intervention were: OPA; CMP; Versant; IECG; NextEra; Calpine; Casco Bay; Onward Energy; Brookfield Entities; CPV Wind; Bucksport; Helix; Eagle Creek Renewable Energy, LLC (Eagle Creek); JGT2 Energy LLC (JGT2 Energy); Maine Renewable Energy Association (MREA); Cogentrix Energy Power Management, LLC (Cogentrix); SWEB Development USA, LLC (SWEB)[7]; ReGenerate Energy Holdings, LLC (ReGenerate); Natural Resources Council of Maine (NRCM); and Preserve Rural Maine. Glenvale LLC (Glenvale) filed a late-filed petition to intervene that was granted by procedural order on August 12, 2024.

On July 30, 2024, the Hearing Examiners issued a procedural order, incorporating specific materials from Docket No. 2023-00230 into the evidentiary record.

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[7] SWEB withdrew its intervention on September 3, 2024.

The July 30th procedural order also provided that the parties would be allowed to issue data requests prior to the submission of testimony. The procedural order noted that the purpose of this initial discovery was limited to seeking information needed for the development of Testimony.

On August 12, 2024, the Hearing Examiners issued a procedural order listing further items from Docket No. 2023-00230 that would be admitted into the evidentiary record, along with specific testimony from Docket No. 2022-00160.

On October 1, 2024, Testimony was filed by the OPA, NextEra, CMP, CPV Wind, IECG, Calpine and Casco Bay, Eagle Creek, MREA, Brookfield and Onward Entities, CES, and Bucksport. A Technical conference on the testimony filed in this case was held on November 18, 2024.

On December 4, 2024, Commission Staff filed a Bench Analysis. Also on December 4, 2024, the IECG and CPV Wind filed Rebuttal Testimony.

Settlement conferences were held on December 3, 2024 and January 21, 2025, and a hearing was held on January 10, 2025.

On January 24, 2025, briefs were filed by Versant, CMP, the OPA, Regnerate, MREA, Brookfield Entities, CES, IECG, Bucksport, Calpine and Casco Bay, CPV Wind, and NextEra. Reply briefs were filed on February 3, 2025 by the OPA, NextEra, CES, MREA, Versant, Brookfield Entities and Onward Entities, Bucksport, CPV Wind, Calpine and Casco Bay.

On January 24, 2025, the IECG filed a Stipulation that was signed by the IECG, the OPA, CES, Brookfield Entities, Onward Energy, Calpine, Casco Bay, and NextEra. The Commission held oral argument on the Stipulation on February 12, 2025.

On March 4, 2025, Commission Staff issued its Examiners' Report on Stipulation and Stranded Cost Rate Design, recommending that the Commission reject the Stipulation and instead adopt a fully volumetric intraclass rate design, or alternatively, a hybrid rate design.

On March 17, 2025, Exceptions and Comments were filed by IECG, OPA, CMP, Versant, Brookfield and Onward Entities, CPV Entities, NextEra, Bucksport, Calpine and Casco Bay, CES, Eagle Creek, EMT, MREA, NRCM, and ReGenerate.

IV. DISCUSSION AND DECISION ON STIPULATION

On January 24, 2025, the Stipulating Parties filed a Stipulation in this case. The

Stipulating Parties consist of the OPA, IECG, CES, and the generator intervenors.[8] On February 27, 2025, Eagle Creek joined the Stipulation. No parties objected to the Stipulation, but several parties did not join the Stipulation. Parties that did not join the Stipulation include CMP, Versant, CPV Wind, ReGenerate, MREA, Bucksport, Cogentrix, Preserve Rural Maine, and NRCM. On February 27, 2025, Preserve Rural Maine filed a letter in the docket, stating that while it takes no position on the stipulation itself, it is concerned that it allows for rate adjustments to one or more ratepayer classes without proper notice.

The Stipulation attempts to resolve all issues in this proceeding and proposes an eight-step method for reallocating, aggregating, and altering the rate design for stranded costs. This process would entail a significant departure from the current practice of stranded cost recovery, including changes to intraclass and interclass rate design, the creation of a new bill credit for Low-Income Assistance Program (LIAP) participants, and changes to class aggregation.

A. Components of Stipulation

1. Stranded Cost Reallocation (Interclass Rate Design)

The Stipulation reallocates stranded costs by shifting costs from larger to smaller customer classes. At present, stranded costs are allocated across utilities and classes based on kWh usage. The Stipulation shifts a portion of stranded costs away from large C&I rate classes to residential and small & medium commercial rate classes. The outcome of all cost shifts in this Stipulation is an increase in stranded costs for residential, small and medium commercial customers of 18%, and a decrease in costs for large C&I customers of approximately 54% for CMP, 28% for Versant's Bangor Hydro District (BHD), and 75% for Versant's Maine Public District (MPD). Stipulation Att. A. Assuming a statewide stranded cost revenue requirement of $182 million, the total cost shift from larger classes to smaller customer classes in the Stipulation is approximately $18.9 million per year. This would entail a cost shift of more than 10% of all post-restructuring stranded costs from larger to smaller customers.

2. Low-Income Bill Credit

The Stipulation creates a bill credit for residential customers who participate in the LIAP. The LIAP credit is also funded through the 18% increase in residential and small and medium commercial stranded cost rates. Assuming a total stranded cost revenue requirement of $182 million, the total statewide amount of funds for the LIAP credit is approximately $5.7 million per year, or 30% of the $18.9 million cost shift away from large classes. Stipulation Att. A. The LIAP credit would be administered by the

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[8] The generator intervenors consist of Brookfield White Pine Hydro, Rumford Falls Hydro, Black Bear Hydro, Great Lakes Hydro, Onward Energy, Hancock Wind, Evergreen Windpower II, Blue Sky West, NextEra Energy Resources, Casco Bay Energy, and Calpine. Stipulation at 1.

utilities as an annual lump sum payment to LIAP enrollees at the end of each LIAP rate year, with the first credit payments disbursed on October 1, 2026 for the 2025-2026 LIAP year.[9] Stipulation at 19-20.

3. Intraclass Rate Design

The Stipulation proposes changes to stranded cost rate design that differs across utilities and classes. For CMP, residential and small commercial classes would retain a 100% fixed charge rate design. For medium classes, the rate design would be 50% fixed and 50% demand.[10] For large C&I classes, the rate design would be 85% fixed and 15% demand. Stipulation Att. A. For Versant, the proportions are identical for each class type, but the non-fixed portion would be billed volumetrically (on kWh) rather than demand (on kW), due to Versant's billing system constraints. Stipulation at 6.

4. Class Aggregation

The Stipulation proposes aggregating stranded costs for Versant between its BHD and MPD districts in five "class groupings": Residential, Small Business, Medium Business, Large C&I, and Lighting. Stipulation at 14. This aggregation is done "to address burdens for customers in Versant's Large C&I rate classes and for all customers in MPD." Stipulation at 13. The aggregation has the effect of equalizing the fixed portion of stranded cost rates across BHD and MPD and generally results in shifting costs from MPD to BHD customers, relative to the status quo. Stipulation Att. A. Furthermore, the Stipulation aggregates large CMP rate classes for the purposes of stranded costs.

B. Stipulation Methodology

The Stipulation proposes an eight-step method for stranded cost allocation and rate design. In Step 1, the initial interclass stranded cost allocation is set based on kWh load share for each class. The stranded cost revenue requirement continues to be determined in the annual stranded cost reconciliation dockets. The Stipulation results in an increase in the overall stranded cost revenue requirements, relative to what revenue requirements would be otherwise in the outcome of the reconciliation dockets. In short, the Stipulation creates new stranded costs. Assuming an annual statewide stranded cost revenue requirement of $182 million, the estimated increase in the total stranded cost revenue requirement from the Stipulation is $3.9 million annually for CMP ratepayers and $1.8 million annually for Versant ratepayers, or $5.7 million per year statewide. Stipulation Att. A.

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[9] The LIAP year runs from October 1 to the following September 30.

[10] The demand charge is to be assessed based on customers' Billed Demand, generally the highest 15-minute integrated kW demand each month. For TOU rate classes, Billed Demand is calculated based on On-Peak period demand. *See* Stipulation at 10-11.

In Step 2, the stranded cost revenue requirement for residential, small commercial, and medium commercial classes is increased by 18%. The additional revenues from this increase are termed Additional Stranded Cost Charge Revenues (ASCCR) in the Stipulation.

In Step 3, a specified percentage of the ASCCR is applied as an annual bill credit to LIAP participants. The percentage of ASCCR that flows to the LIAP credit is 21% for CMP and 30% for Versant.

In Step 4, the stranded cost revenue requirements are aggregated across specified classes. For CMP, costs are aggregated across LGS-S, LGS-P, LGS-ST, and LGS-T classes. For Versant, costs are aggregated across both BHD and MPD based on five "class groupings": Residential, Small Business, Medium Business, Large C&I, and Lighting. Stipulation at 14.

In Step 5, the aggregated stranded cost revenue requirements from Step 4 are divided by the total number of customers in the class aggregations.

In Step 6, for each class, the amount calculated in Step 5 is multiplied by the number of customers in each class. In general, Steps 4-6 perform class aggregation.

In Step 7, the remainder of the ASCCR (79% for CMP and 70% for Versant) is used to reduce the stranded cost revenue requirement of large classes. The large classes for CMP are LGS-S, LGS-P, LGS-ST, and LGS-T. The large classes for Versant are D-4, T-1, EPT, HT, and ST.

In Step 8, rates are designed based on the revised stranded cost revenue requirement from the previous seven steps and the Stipulation proposed rate design. The proposed rate design, as previously described above, differs between utilities and classes. For CMP, residential and small commercial classes retain a 100% fixed rate design. For medium classes, the rate design is 50% fixed and 50% demand. For large C&I classes, the rate design is 85% fixed and 15% demand. Stipulation Att. A. For Versant, the proportions are identical for each class type, but the non-fixed portion is instead billed volumetrically (based on kWh) rather than demand due to Versant billing constraints. Stipulation at 6.

C. Decision[11]

In order to approve a stipulation, the Commission must consider the following criteria:

1) Whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;

[11] Chair Bartlett dissents from the decision on the Stipulation.

2) Whether the process that led to the stipulation was fair to all parties;

3) Whether the stipulated result is reasonable and is not contrary to legislative mandate; and

4) Whether the overall stipulated result is in the public interest.

MPUC rules, ch. 110 § 8(D)(7).

As described below, the Commission finds that while the process that led to the stipulation was fair for all intervening parties, and that the Commission has historically found that Stipulations entered into by and among the OPA represent a sufficiently broad spectrum of interests, the Commission cannot find that the stipulated result is in the public interest, especially with respect to non-LIAP residential, small and medium commercial customers.

1. Notice and Scope

The Commission opened this investigation pursuant to 35-A M.R.S. § 1303(2) and followed the provisions of the Commission's Rules of Practice and Procedure (Chapter 110). Chapter 110 provides that notice must be provided to persons whose legal rights, duties or privileges are at issue. MPUC Rules ch. 110, § 8(A)(1)(a). The NOI stated that this investigation was an investigation into "intraclass rate design," specifically noting that it was being opened pursuant to the 2023-00230 Order, where the Commission directed Commission Staff "to open a new proceeding to investigate alternate intraclass rate designs and, to the extent determined necessary, order changes to the rate design to adjust for inequities or to effectuate legislative policy directives." NOI at 1, citing 2023-00230 Order at 1.

The proposed stipulation makes changes not only to intraclass rate design but also interclass rate design. The Stipulating Parties argue that the change in interclass rate design is within the scope of the NOI. The Stipulating Parties point to language in the NOI that referred to the Commission evaluating the alternate rate designs proposed in the Examiners' Report in Docket No. 2023-00230, "and additional alternatives that come to light during this proceeding." Stipulation Memorandum at 6, citing NOI at 2. The Stipulating Parties argue that the reference to "additional alternatives" opened the door to interclass rate design changes. Further, the Stipulating Parties note that the Commission stated that it would "thoroughly examine any potential adjustment in rate design, including how such shifts would impact customers in all classes." *Id.*

The Commission disagrees with the Stipulating Parties regarding the scope of this proceeding, and most importantly, the notice of the scope of this proceeding. When reviewing the record in this case, there is very little evidence presented by the parties or developed over the course of the investigation regarding changes to interclass rate design. While the IECG presented an alternative interclass rate design based on a "beneficiary pays" allocation of costs, no other party submitted testimony that proposed changes to interclass rate design. Based on this lack of record evidence, it appears reasonable that potential intervenors would have understood the scope of the investigation to be limited to intraclass rate design

Based on this expectation, it is possible that some residential, small commercial and/or medium commercial customers may have intervened if it was understood that this investigation could result in millions in NEB costs being shifted not just within classes, but also from large classes to smaller classes. The Commission is especially cognizant of this issue given the origin of this investigation. This investigation arose out of Docket No. 2023-00230, which investigated the impact of the fixed charge rate design following an outcry from many of the Stipulating Parties (the generator intervenors) when it was first implemented in Docket No. 2022-00160. These same Stipulating Parties once argued in Docket No. 2022-00160 that they had not understood the full impact of what the Commission was going to decide and that they would have originally intervened if they had known that a fixed charge would be implemented.[12]

The Commission has historically held that stipulations entered into with the OPA represent a sufficiently broad spectrum of interests. Thus, in line with this precedent the stipulation may have met the first prong of the Chapter 110 stipulation requirements. Nevertheless, the Commission is concerned that due to issues regarding notice and scope, approval of this Stipulation could result in a group of customers unrepresented other than by the OPA making the same argument as the generator intervenors in Docket No. 2022-00160, which could lead to the Commission being obligated to open a fourth investigation. Further, while the OPA represents the interests of residential and small commercial customers, 35-A M.R.S. § 1702-A(3) provides that when the interests of such customers differ, the OPA shall give priority to representing the interests of low-income customers, followed by residential and small commercial customers. While the OPA does indeed appear to prioritize the interests of low-income customers through this Stipulation, the Commission is concerned that it overly prioritizes low-income customers (and ultimately large commercial customers) at the expense of residential, small, and medium commercial customers.

While the Stipulating Parties argue that the notice requirement has been met,

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[12] *See, e.g. Docket No. 2022-00160*, Petition for Late Intervention and Request for Reconsideration of Brookfield White Pine Hydro LLC, and Rumford Falls Hydro LLC (July 31, 2023) ("[W]hile evidence presented during the hearing, if studied, might have led one to consider the potential, full extent of the rate increase, the record fails to reflect any robust discussion on the impact of certain rate classes that would have signaled to BWPH and Rumford that they should intervene in the proceeding." Petition at 3); *Docket No. 2022-00160*, Petition for Late Intervention and Request for Reconsideration of Calpine Corp. (July 20, 2023) ("Had Calpine been notified at the commencement of this proceeding that it would have potentially been exposed to a bill impact of this magnitude, it would have intervened in this proceeding at the outset." Petition at 2.)

Section 3(B) of the Stipulation contemplates that, in conjunction with CMP's and Versant's upcoming stranded cost reconciliation proceedings for rates effective July 1, 2025, notice of those proceedings will include the proposed implementation of stranded cost interclass cost reallocations and intraclass rate design adjustments contained in the Stipulation, "thereby giving any interested person(s) the opportunity to support, object or comment upon the rate design provided for in this Stipulation in advance of any rate setting based on the framework specified in the Stipulation." Stipulation Memorandum at 6-7. In other words, the Stipulating Parties propose that the Commission approve the Stipulation, which would result in final agency action, but then use the stranded cost reconciliation proceedings as a vehicle through which objections to the already adopted change in rate design be addressed.[13]

While the Stipulating Parties appear open to the possibility of the Stipulation being reversed in the reconciliation cases, the Commission still must ensure that the stipulation being approved in this case meets the requirements of Chapter 110. The Commission cannot rely on its authority afforded by 35-A M.R.S. § 1321 to revisit its orders to essentially waive the Chapter 110 requirements in this case based on its ability to alter its order in the future. Such a decision would render the requirements of Chapter 110 meaningless.

2. <u>The Stipulation Has Potential to Distort the Low-Income Assistance Program</u>

As a preliminary matter, similar to the proposed change in interclass rate design, the Commission notes that changes affecting LIAP were not a part of the scope of the NOI. For this reason, there is not a sufficient record in this case, aside from the Stipulation itself, to support the Stipulation's significant change regarding LIAP.

Furthermore, the Commission notes that unlike other parts of the Stipulation that involve shifting existing costs between classes and customers, because the additional revenue requirement for the proposed LIAP credit is not offset elsewhere, the LIAP portion of the Stipulation creates entirely new stranded costs. Increases (or in fact any changes) to the stranded cost revenue requirement were never part of the NOI. Additionally, the Stipulation's proposed increase in stranded costs to fund the LIAP proposal would be borne entirely by residential, small commercial, and medium commercial customers. Large commercial customers would bear none of this additional cost.

The Stipulation may have the potential to distort LIAP because the LIAP program

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[13] The Commission has previously noted that "trying to address rate design issues in a formulaic stranded cost reconciliation case, would significantly delay the effective date of updated stranded costs, including legislatively mandated post-restructuring costs, and such delay would likely harm customers." *Versant Power, Request for Approval of Rate Change Regarding Annual Reconciliation of Stranded Cost Revenue and Costs*, Docket No. 2024-00078, Order Approving Stipulation at 11 (June 20, 2024).

currently uses the full price of electricity, including stranded costs, when calculating benefit amounts. The Commission's default model for implementing LIAP assumes that a customer can afford to pay 4% of their annual income toward their electric bill. Through its LIAP calculation model, the Commission sets a credit level, subject to program funding, that is designed to keep electric costs to 4% of the participants' annual income. All additional costs for electricity are factored into this calculation, including stranded costs.

In addition to the 4% parameter, the LIAP calculation model takes into account the average usage for residential customers, the all-in price of electricity, and the midpoint of each of four income categories to calculate each customer's benefit. Thus, the Stipulation's provision of an additional lump sum credit (after a customer has already received their LIAP benefit) may result in some customers paying less than the 4% "affordable" level determined by the model. This would distort the LIAP benefit calculation and misallocate limited resources.

Because the proposed credit from the Stipulation does not actually flow through the LIAP mechanism, the Stipulation would not help address concerns regarding funding of the LIAP program.

A recent report prepared for the Maine Electric Ratepayer Advisory Council (ERAC)[14] found that some LIAP customers are already receiving more benefit than optimal given the 4% target (*e.g.* they are getting their entire electricity bill paid through the LIAP credit every month).[15] Providing an additional benefit in these situations through the Stipulation would only exacerbate this problem.

The Commission recently opened an Inquiry to explore ways to simplify and improve LIAP for program participants, the utilities, and other stakeholders. *Maine Public Utilities Commission, Inquiry Regarding Electric Low-Income Assistance Program*, Docket No. 2024-00363, Notice of Inquiry (December 10, 2024). In that Inquiry, the Commission noted that under the current program design, some customers are receiving a larger benefit than they need, and that ERAC has recommended that the Commission explore monthly benefits, opposed to the annual lump sum benefit process currently used.[16] *Id.* at 2-3.

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[14] An Act to Create the Electric Ratepayer Advisory Council (ERAC) was signed into law by the Governor on April 18, 2022. P.L. 2021, c. 623 (Act). ERAC members are appointed by the Public Advocate to three-year terms and are members of the public, subject area experts, industry professionals, and State of Maine officials. The Act mandates that ERAC make recommendations to the Public Advocate regarding methods to ensure that ratepayers are able to afford electricity in the State.

[15] *See* Vermont Energy Investment Corporation & Beech Hill Research Study: Quantifying Maine's Household Energy Burden and Affordability Gap: A report to the Maine Electric Ratepayer Advisory Council at 39 (Dec. 1, 2024).

[16] *See* State of Maine Office of the Public Advocate Electric Ratepayer Advisory Council Third Annual Report at 2 (Dec. 1, 2024).

In summary, the Commission concludes the lump sum credit proposed in the Stipulation is contrary to the goal of eliminating lump sum benefit payments and minimizing situations in which participants are receiving a larger benefit than they need. Moreover, while the Commission appreciates the good intention behind creating an additional benefit for LIAP participants, the Commission does not agree that a Stipulation in this proceeding is the appropriate vehicle for making changes to LIAP. The Commission finds that affordability for low-income customers and reform to the LIAP program, including considerations of stranded costs in the context of LIAP, is more appropriately evaluated through the LIAP Inquiry in Docket No. 2024-00363. The Commission can and will ensure that the LIAP program is sufficiently funded without the creation of $5.7 million in additional stranded costs.

3. No Clear Basis for Shifting Costs

In Docket No. 2023-00230, the Commission found that recovering stranded costs through a fixed charge can impact some larger classes dramatically, with low kWh usage customers within those classes paying much more than they would under volumetric recovery, and high kWh usage customers paying much less than they would under volumetric recovery. 2023-00230 Order at 30. To relieve the burden of those low-usage customers in large classes, the Stipulating Parties propose shifting a portion of stranded costs from large customer classes to residential, small commercial and medium commercial customers. The Stipulating Parties argue that this shift results in a "modest" increase to smaller customers, while easing the burden of large customers. The Stipulating Parties note that increasing stranded costs for smaller customers by 18% (based on a CMP stranded cost revenue requirement of $140 million) results in an increase in stranded cost rates for CMP residential customers of $1.45 per month (to $10.32 per month).

The Stipulation and accompanying memorandum do not explain how the Stipulating Parties determined that an increase of 18% in residential and small class stranded cost revenue requirement was the appropriate percentage change. In fact, the Stipulation provides no explanation or derivation of the proposed cost shifts at all. At oral argument on the Stipulation, the Stipulating Parties noted that they worked backwards, with the OPA first determining that an increase of approximately $1.45 to residential customers was reasonable, which resulted in an 18% shift.[17] Tr. 54-55 (Feb. 12, 2025). While on its face, an increase of $1.45 for residential customers may appear modest, this would increase each year if the stranded cost revenue requirement increases. Additionally, because there is no demand data for medium commercial customers in the record, the Commission is unable to determine the likely bill impacts upon medium commercial customers in CMP territory if the Stipulation were approved.

As the Commission explicitly found in Docket No. 2021-00360, "costs related to ongoing power supply obligations and state energy programs, are appropriately recovered from all ratepayers through stranded costs and, moreover, that such recovery

[17] The increase to CMP SGS customers is $2.12 per month. Stip. Att. A.

has consistently spread these costs across all customer classes in a relatively comparable manner." Docket No. 2021-00360, Order at 10 (Mar. 11, 2022). Shifting an arbitrarily determined percentage of costs to the residential, small, and medium commercial classes for the benefit of, and to reduce the stranded costs otherwise assignable to the largest customers, does not comport with this principle. This would be a massive cost shift that could not have been anticipated by residential, small commercial and medium commercial customers and is ultimately unjust and unreasonable.

At oral argument, the Stipulating Parties asserted that adopting the Stipulation would create "certainty" around stranded cost rate design and thereby provide a benefit to the residential, small, and medium customer classes. Tr. at 18-19 (Feb. 12, 2025). The Commission disagrees with this assessment for two reasons. First, it is unclear if the benefit of "certainty" in rate design for these classes is enough to offset the $24.6 million per year in additional stranded costs that would be charged to these classes. Stipulation at 7, 13. Second, any "certainty" resulting from the Stipulation is doubtful on its face due to the Stipulation contemplating a process in which any party could challenge the implementation of the Stipulation in the utilities' stranded cost reconciliation dockets. Stipulation Memorandum at 6-7. For these reasons, the Commission is unpersuaded that the Stipulation would lead to a durable result.

On February 10, 2025, the Stipulating Parties filed a Joint Response to questions posed by Staff in a January 30, 2025 Procedural Order. On page 11, the Stipulating Parties argue:

> If we were starting from a blank slate and the question was how to equitably allocate the costs of the NEB program, it would not be reasonable to suggest that some customers (*e.g.* LGS-T) pay 293,755% of what others (*e.g.* residential customers) pay for this public policy initiative.

The Stipulating Parties appear to imply that all customers, regardless of usage or size, should pay a similar amount for NEB costs. The Commission takes issue with this reasoning because it neglects the fact that NEB costs are allocated between utilities and between classes on a volumetric basis. For this reason, classes that use more kWh are charged more for NEB costs. The differences in kWh usage and customer counts between the LGS-T and Residential classes are the reason for the claimed 293,755% difference in charges between these classes. Even though the Stipulating Parties claim the result of the volumetric allocation is unreasonable, the Stipulation itself still uses the volumetric allocation method for the first step of the "eight-step method." The Stipulation does not change the fundamental allocation method to a more putatively reasonable method; it merely shifts an arbitrary amount of costs from the larger classes to smaller classes, solely for the benefit of the larger classes.

Moreover, regardless of the current status of interclass allocation, "starting from a blank slate," it would not be reasonable to expect a small residential customer, such as a single person living alone, to pay a similar amount for stranded costs as a large industrial customer, such as a large factory. There are significant differences between the largest and the smallest customers within the service territory of the utility. A rate design that attempts to elide these differences is clearly unreasonable.

Finally, the driving force behind these policy costs is a desire to reduce greenhouse gas (GHG) emissions. Given that GHG emissions increase with more energy use, it is reasonable to expect that larger users – who contribute more to GHG through higher electricity usage – contribute more to the programs that mitigate GHG.

For these reasons, the Commission is not convinced that the interclass allocation change in the Stipulation is in the public interest.

4. Conclusion

As the Examiners noted in Docket No. 2023-00230, "regardless of what approach the Commission takes, the complexity of rate design does not lend itself to a solution that will bring perfect symmetry or perceived fairness to all customers with respect to the difficult task of determining how to recover these public policy costs." *Docket No. 2023-00230*, Examiners' Report at 50 (April 12, 2024). The Commission appreciates that given the difficulty of rate design for costs that do not lend themselves to traditional cost-of-service studies, novel solutions may be necessary. And while the NOI tasked the Commission and the parties with investigating changes to rate design to adjust for inequities, including "additional alternatives that come to light during this proceeding," the Commission is still bound by its rules.

The Commission opened this investigation to fix the inequitable results of the fixed charge, whereby a large portion of costs were shifted from high-usage customers in the large customer classes to low-usage customers in those same classes. In other words, the fixed charge resulted in an inequitable intraclass rate design for the large classes. The Stipulation's proposed solution to this inequity is to simply shift these costs to a new group of customers: residential, small commercial and medium commercial customers. In other words, the Stipulation results in an inequitable interclass rate design.

In proposing a change to LIAP, the Stipulation appears to acknowledge that the shifting of costs from the large classes to the smaller classes will burden those least able to afford it. To alleviate his burden, the Stipulation creates millions in new stranded costs that are to be paid for by non-LIAP qualifying residential, small commercial, and medium commercial customers. Large customers are spared these new costs.

Approval of the Stipulation would ultimately result in a windfall for the largest customers that consume the most electricity, funded by residential, small, and medium commercial customers. And non-LIAP residential, small commercial, and medium commercial customers would be doubly burdened through not only the shifting of costs from the largest customers but then being forced to fund the remedy for the problem created by the shifting of costs in the first place. For all of these reasons, the Commission rejects the Stipulation.

V. POSITIONS OF THE PARTIES

In the NOI issued on July 2, 2024, the Commission requested that the parties address in their testimony various issues raised in Docket No. 2023-00230, including whether the creation of a "station service" rate class is a reasonable resolution, whether the utilities could designate a stranded cost volumetric charge as "non-usage" or "non-bypassable" for the purposes of billing, whether rate classes should be further aggregated, and whether and to what extent certain stranded costs should be recovered through both a fixed and volumetric charge.

While all Stipulating Parties recommend that the Commission approve the Stipulation, the position of the parties, absent approval, is described below.

A. Central Maine Power

In its testimony, CMP noted its support for further examination of a higher-level aggregation of rate classes for revenue allocation and for considering a percentage-based approach to volumetric versus fixed charges. CMP Test. at 7-8. In discovery, CMP provided analyses showing the impacts of these proposals and explained that they could be implemented quickly, as neither would require modifications to the billing system. The Company asserts that both the higher-level aggregation of rate classes and the percentage-based approach to volumetric versus fixed charges are worthwhile options. CMP Brief at 1.

With respect to station service, CMP states that setting up a separate rate class for station service generators within the LGS-ST and LGS-T rate classes could relieve the burden of the fixed charge. CMP Test. at 6. However, CMP notes that the remaining LGS-ST and LGS-T classes would bear the brunt of significant additional costs, and that without further aggregation of customer classes, the adoption of a station service class could have catastrophic impacts to the remaining customers in LGS-ST and LGS-T classes. *Id.*

Finally, CMP states that it is not aware of any statute that would prohibit designating a stranded cost volumetric charge as "non-usage" or "non-bypassable." *Id.* at 5.

B. Versant Power

Versant does not propose a specific alternative method for allocating stranded costs or advocate for altering the current stranded-cost rate design. Instead, Versant emphasizes several key principles for the Commission to consider should changes be made: 1) any adjustments to the stranded-cost allocation should be operationally feasible and able to be implemented within a reasonable timeframe; 2) any changes should be clearly defined and detailed, ensuring that the company can implement them with a high level of clarity and confidence; 3) any changes should be easy to explain to customers; 4) changes should promote fairness and equity, not only for its customers but also for the broader group of electric customers in Maine; and 5) that Versant advocates for a long-term solution, rather than one that would require constant reevaluation. Versant Power Brief at 2-3.

C. Office of the Public Advocate

The OPA states that if the Commission rejects the Stipulation, the Commission should exempt low-income customers from stranded cost charges. OPA Reply Brief at 2-4. The OPA also proposes a 25% volumetric component for residential and small commercial customers to alleviate some of the burden on low-usage customers, while ensuring that NEB participants pay their share of costs. *Id.* at 6. For medium commercial classes, the OPA proposes shifting recovery to a demand charge or, if a hybrid approach is adopted, recovering at least 50% of public policy costs in a volumetric charge. *Id.* at 6-7.

The OPA also recommends consolidating Versant's two districts for allocating public policy costs and deferring any determination of the benefits of NEB to the Commission's ongoing investigation in Docket No. 2024-00149. OPA Brief at 14.

The OPA states that creating a station service rate class could be reasonable, though it would be important to determine the full scope and impact of such a change. OPA Test. at 12. With respect to a non-bypassable charge, the OPA states that such a designation is an important potential solution in ensuring that NEB customers pay their fair share of stranded costs under a volumetric charge. *Id.* at 11.

D. Industrial Energy Consumer Group

The IECG states that in Docket No. 2022-00160, the Commission determined that the fixed charge design of rates is just and reasonable. IECG Brief at 5. The IECG asserts that it is the generator intervenors' burden to show that the fixed charge rate design is not just and reasonable and that the generators' alternatives satisfy the policy of beneficial electrification. *Id.* at 6-7. The IECG argues that the generators have not met this burden. *Id.* at 11-15.

Nevertheless, the IECG does support recovering a portion of NEB stranded costs on a kWh or kW basis where NEB creates benefits accruing to customers in direct relationship to that specific benefit of electric energy consumption, such as price suppression. IECG Silkman/Welch Test. at 29. Specifically, the IECG supports 70/30 hybrid solution, where 70% of costs are recovered through a fixed charge. *Id.* at 35.

The IECG does not support the creation of a station service class. *Id.* at 22. The IECG states that the only reason for creating rate classes is to recognize differences in the costs of providing electric service to different types of utility customers and to charge customers based on any cost of service differentials. *Id.* at 22. IECG argues that absent a difference in use of plant and equipment and therefore a cost causation basis for establishing a new station service customer class, there is nothing in the underlying principles of rate regulation and design that supports a new station service class. *Id.* at 25.

E. Competitive Energy Services

Like the IECG, CES argues that reverting to a fully volumetric stranded cost rate design would fail to meet the legislative policy of advancing beneficial electrification. CES Test. at 5. CES contends that fixed charges are the fairest intraclass rate design outcome because they reflect the fact that all ratepayers in Maine will benefit from the State's climate mitigation policies. *Id.* at 15. CES states that a volumetric charge will raise the financial cost for ratepayers to consume incremental volumes of electricity, thus inhibiting adoption of electric vehicles or the installation of heat pumps and thereby slowing Maine's progress toward beneficial electrification. CES Brief at 1.

With respect to the creation of a "station service class," CES notes that, based on CMP's definition of "station service," CMP estimates that stranded cost charges for the remaining LGS-ST-TOU customers that would not qualify for station service would nearly double. CES Test. at 21.

Finally, CES asserts that customers in northern Maine are paying significantly more in annual stranded costs compared to customers in southern and central Maine, and that maintaining this geographic disparity in stranded cost burden is not sustainable. CES Brief at 11-12.

F. Maine Renewable Energy Association

MREA recommends that all stranded costs be recovered through a volumetric charge but also states that rate designs utilizing both fixed and volumetric charges can represent significant improvements to the current fixed charge rate design. MREA Test. at 13.

With respect to a station service class, MREA states that if rate design reverts to a volumetric rate structure there would be no need for a separate station service class. *Id.* at 20. However, MREA asserts that if a different rate structure is utilized, creating a station service rate class would be a useful tool to ensure an accurate distribution of inter-class costs and address unfair intraclass allocation. *Id.*

G. Generator Intervenors

The generator intervenors in this case all oppose the current fixed charge rate design, arguing that it has led to extreme increases in costs for low-kWh customers within large rate classes. For instance, ReGenerate Energy Holdings states that the fixed charge methodology has disproportionately increased its costs by over 1,600%, forcing it to pay more than $620,000 annually in stranded costs. ReGenerate Brief at 3.

The generator intervenors all argue that there should at least be some volumetric component to the recovery of post-restructuring stranded costs. Calpine, Casco Bay, Bucksport, CPV Wind,[18] and ReGenerate all support recovering stranded costs through a fully volumetric charge, asserting that this would appropriately allocate cost responsibility to each customer based on the customer's proportional load, consistent with how costs are allocated to rate classes. Calpine/Casco Bay Test. at 3-5; Bucksport Test. at 3-4; CPV Wind Test. at 4-5; and ReGenerate Brief at 3-4.

NextEra, Brookfield Entities, Onward Entities and CPV Wind also propose a hybrid approach, with the majority of costs being recovered through a volumetric charge. Brookfield Entities and Onward Entities, for example, argue that a hybrid approach strikes the right balance by taking into consideration prior Commission decisions finding that all customers benefit from the NEB program while scaling the level of NEB stranded cost payment obligation by customer usage. Brookfield/Onward Entities Test. at 26. NextEra proposes that 80% be recovered volumetrically, and 20% be recovered through a fixed charge, while Brookfield recommends that 15% be recovered through a fixed charge. NextEra Reply Brief at 2; NextEra Test at 6; and Brookfield/Onward Entities Test. at 26.

Many of the generator intervenors are supportive of the creation of a station service class if a volumetric or hybrid rate design is not adopted. CPV Wind Test. at 10; NextEra Test. at 7; and Bucksport Test. at 4. Such a proposal would move users with similar load and service needs into a single class. CPV Wind Test. at 10. However, the generator intervenors do note that the remaining customers in the large rate classes not eligible for station service would experience an increase in their fixed stranded cost allocation due to a reduced number of customers in the class. *Id.*

VI. DISCUSSION AND DECISION

A. Current Rate Design

Each of the preceding stranded cost rate design dockets has been based on the concept of fairness; namely, that all customers should pay for stranded costs. In Docket No. 2021-00360, the Commission determined that the lost revenue from the kWh Credit program should be recovered through the stranded cost mechanism. Docket No. 2021-00360, Order (Mar. 11, 2022). Prior to the issuance of that Order, the Tariff Rate program costs were being flowed through stranded costs, while the costs of the kWh Credit program were recovered through distribution rates, which some customers – most notably those taking service at transmission and sub-transmission voltages – do not pay or pay very little. Thus, the Commission found that it was inherently inequitable to require residential customers to pay for both the Tariff Rate program and kWh Credit program costs while at the same time requiring that commercial and industrial customers only pay the costs of the Tariff Rate program. *Id.* at 11.

[18] In the alternative CPV Wind supports a hybrid approach.

Continuing with that theme, in Docket No. 2022-00160, the Commission sought to fix the inherently inequitable situation whereby some NEB participants were able to avoid paying stranded cost charges. The Commission also noted that by being able to offset stranded costs, "[n]ot only does a NEB participant benefit as all customers benefit from such policy initiatives, but such a customer also receives the added financial benefit of the program itself." 2022-00160 Order at 14. By adopting the fixed charge, the Commission hoped to eliminate this windfall for NEB participants, while also ensuring that customers were not disincentivized from investing in beneficial electrification, such as electric vehicles and heat pumps, which is a component of the State's overall climate policy. *Id.*

The 2022-00160 Order did not have the hoped-for result. The fixed charge rate design adopted in Docket No. 2022-00160 impacted some larger classes dramatically due to the cross subsidization of NEB costs of high-usage large C&I customers by low-usage customers of the same class.

B. <u>Decision on Intraclass Rate Design</u>

The Commission finds that both a fixed charge rate design and a volumetric rate design can have value when designing rates. As this investigation has shown, however, the different characteristics of the rate classes directly affect the efficacy and fairness of the various rate designs. For this reason, while in Docket Nos. 2022-00160 and 2023-00230 the Commission implemented the same rate design (the fixed charge) for all rate classes, the Commission finds that the appropriateness of a certain rate design is highly dependent on the characteristics of the rate class.

1. <u>Residential and Small Commercial Customers</u>

As noted above, one of the primary reasons the Commission adopted the fixed charge rate design in Docket No. 2022-00160 was to ensure that all NEB participants pay their fair share of the costs of the program. With respect to customers participating in the kWh Credit program, most of which are in the residential and small commercial classes, the fixed charge directly solved this inequity by ensuring that a customer could not offset the stranded cost portion of their bill. Thus, with respect to the residential and small commercial classes, the fixed charge rate design is a straightforward approach that cleanly resolves this problem.

However, as noted above, adoption of the fixed charge rate design in Docket No. 2022-00160 had unintended consequences. Specifically, in Docket No. 2023-00230, the Commission observed that some customers, particularly those in large classes, were greatly impacted by the implementation of the fixed charge rate design. With respect to the residential class, however, the Commission noted that there was relatively homogenous usage and that a typical residential customer pays a similar overall stranded cost charge whether the costs are recovered volumetrically or through a fixed charge. 2023-00230 Order at 16.

Further, the impetus for opening this and the preceding investigation was largely an influx of complaints from customers in the large customer classes.[19] No customers from the residential and small commercial classes intervened in this investigation nor in Docket No. 2022-00230, following the implementation of the fixed charge.

Because of the relatively homogenous nature of the residential and small commercial classes, ratepayers in those classes will pay approximately the same amount in stranded costs regardless of whether the costs are recovered through a fixed charge or volumetrically. Thus, it makes sense to continue to recover post-restructuring stranded costs through a fixed charge within these classes. The fixed charge will continue to address the goals of the 2022-00160 Order; namely, to ensure kWh Credit program customers cannot offset the stranded cost portion of their bill, while also ensuring customers are not disincentivized from investing in beneficial electrification, such as heat pumps and EVs.

2. Large Customers

a. Purpose of the Fixed Charge

With respect to the kWh Credit program, adoption of the fixed charge is a straightforward solution to ensuring that NEB participants pay for stranded costs. However, with respect to the Tariff Rate program, of which only commercial and institutional customers may participate, the impact of the fixed charge rate design is less straightforward due to the nature of the tariff rate itself. The tariff rate is calculated under either the "old" method or the "new" method. The Commission determined, however, that under either method, how stranded costs are recovered – whether volumetrically or through a fixed charge – has no impact on the tariff rate. 2022-00160 Order at 15-16.

While a major purpose of the fixed charge rate design is to ensure that NEB participants pay their fair share, whether a Tariff Rate customer pays through a fixed or a volumetric charge has no impact on the tariff rate and thus does not impact the Commission's decision.

b. NEB Costs Are Allocated Volumetrically

By law, the Commission is required to allocate NEB costs between utilities on a fully volumetric basis. Specifically, the Commission is directed to "allocate to each investor-owned transmission and distribution utility its pro rata share of net energy billing costs. ... The allocation must be based on each utility's total retail kilowatt-hour energy sales to ratepayers that pay net energy billing costs." 35-A M.R.S. § 3209-C(2)(B). Following the statute, NEB costs are allocated volumetrically in the first instance between utilities; they are not allocated based on customer count, demand, or any other basis.

In Docket No. 2022-00160, the Commission found that all stranded costs should be allocated to classes on a volumetric basis as well, finding that because the majority

[19] Some of the generator intervenors also have facilities that are in the medium commercial rate class.

of the policy objectives of both pre-restructuring and post-restructuring stranded costs do not benefit any particular class of customers, such costs should be allocated to all rate classes based on each class's proportionate kWh load share. 2022-00160 Order at 13.

In Docket No. 2023-00230, the Commission examined the impact of the fixed charge in conjunction with volumetric allocation among the classes. The Commission concluded that for classes with heterogeneous usage among customers, a fixed charge will result in more cross-subsidization between customers within the class relative to recovering costs through a volumetric charge. 2023-00230 Order at 16. The reason for this cross-subsidization is that the inter-utility and interclass allocation of stranded costs "upstream" of final rate design continues to be done on a volumetric basis. In contrast, the fixed charge intraclass rate design ordered in Docket No. 2022-00160 effectively allocates stranded costs between individual customers within each class on a per capita basis, rather than on a volumetric basis.

To summarize the Commission's findings in Docket No. 2023-00230, any differences between the interclass allocation and intraclass rate design methodologies will result in disparate impacts for customers based on their class membership, individual usage, and the heterogeneity of usage in their class. Due to this mismatch between cost allocation and rate design, each customer effectively pays for stranded costs based on the usage behavior of other customers in its class. This naturally leads to cross-subsidization, but most significantly within the larger classes.

c. <u>NEB Costs Accrue Volumetrically</u>

The inequities that resulted in the large classes due to the implementation of the fully fixed charge rate design was a product of the high electricity usage within the class, and the extreme disparity in usage between customers in that class. And because NEB costs accrue volumetrically as NEB facilities generate electricity, the costs allocated to the class are inextricably linked with the volumetric usage of the class.

For the NEB Tariff Rate Program created by 35-A M.R.S. §3209-B, costs accrue as a function of the kWh generated by the participant. NEB costs do not accrue based on capacity (kW), carbon mitigation (lb. CO2 abated), per capita class membership, or per capita participation in NEB.

In addition, one of the primary purposes of the NEB program is to subsidize distributed renewable generation and thereby reduce GHG created in the generation of electricity by fossil fuel generators. Greenhouse gas emissions are created volumetrically, as natural gas or other fossil generators operate to produce MWh of electricity. Thus, the more MWh of electricity consumed by customers in Maine and New England, the more GHG emissions result. Given this volumetric relationship between consumption of electricity and the production of GHG, it is reasonable to use a method tied to consumption to allocate the costs of a program designed to reduce GHG emissions.

d. Inequities of the Fixed Charge Rate Design

The combination of allocating costs to rate classes based on that rate class's load share (volumetric allocation) and recovering costs though a fixed charge, results in low kWh volume customers paying a larger proportion of the allocated stranded costs and high kWh volume users paying a smaller proportion of the allocated costs relative to what those customers would have paid if costs were recovered volumetrically and not through a fixed charge.

Another unintended result of the fixed charge was a windfall to certain participants in the Tariff Rate program. As noted in Docket No. 2023-00230, five customers in the LGS-T-TOU class have an average usage of more than 80 million kWh and pay approximately $3.2 million less under the fixed charge rate design compared to volumetric recovery of NEB-related costs. 2023-00230 Order at 22. CPV Wind noted that the three customers in the LGS-T-TOU class that participate in the Tariff Rate program are also the three largest users within that class. CPV Wind Test. at 6. Together, these three customers received $3.8 million in NEB credits over for the period July 2023 through June 2024. CPV Wind Test. Exhibit 1. According to CPV Wind, these three large NEB participants pay between a third to a tenth under a fixed charge than what they would under a volumetric charge, "while also receiving anywhere from nearly $230,000 to over $2 million in NEB credits, resulting in paying the functional price of $0.03 or less per kWh, as compared to other members of the class who pay the equivalent price of greater than $1 per kWh." CPV Test. at 6. The three NEB participants in LGS-T-TOU, who are also the largest users, can shift $5.7 million in NEB costs to lower-usage non-NEB customers within their class, while also benefiting from the NEB Tariff Rate Program. CPV Wind Test. at 6. This runs contrary to the goal of ensuring all customers pay their fair share of stranded costs.

While the inequity of the fixed charge in the large classes is not limited to stand-alone generators, the stand-alone generators present the most extreme example of how the fixed charge rate design has created stark differences in costs relative to customer usage. The record in this matter and as explored in Docket 2023-00230, demonstrates that for stand-alone generators the fixed charge approach caused dramatic bill increases, in some cases increasing the fixed portion of a generator's bill by as much as 1700% and adding as much as 50% to their annual operating expenses. 2023-00230 Order at 9.

The majority of the stand-alone generators in the larger rate classes are renewable facilities, including hydroelectric, wind, biomass and solar. These facilities were built, refurbished and/or maintained pursuant to State policies encouraging the transition from fossil fired generation to renewable generation fueled by clean resources. The Legislature has adopted several programs to promote and support these renewable forms of generation, including resource portfolio requirements under 35-A M.R.S. § 3210, long-term Renewable Portfolio Standard (RPS) contracts pursuant to 35-A M.R.S. § 3210-G, long-term contracts pursuant to 35-A M.R.S. § 3210-C, and long-term community-based renewable energy contracts pursuant to 35-A M.R.S. § 3604. The resources built and maintained pursuant to this State policy are being built in large part to reduce the consumption of fossil fuels in the electricity supply and to encourage renewable generation investment in Maine. Like the NEB program, they are all part of a comprehensive State policy to reduce GHG. From a policy perspective, it makes little sense to design NEB cost recovery in a manner that imposes drastic cost increases from these policy programs on the renewable facilities built to effectuate these same policies. Such an approach undercuts the State's commitment to renewable power and the very programs and long-term contracts developed to implement that commitment.

Finally, the stand-alone generator facilities are built to generate power, not consume it. Their consumption of station service power is typically very small in relation to their output of clean renewable generation. The sole reason they tend to be members of the larger customer classes is because their export of power to the grid requires them to be interconnected at the same high voltage levels required of the customers within the large classes that consume the most electricity.

e. Decision on Rate Design for Large Classes

All of the above reasons justify the use of a volumetric charge for the recovery of stranded costs for the large classes. However, the Commission is mindful of the impact of a purely volumetric recovery on our State's largest industries, which are also among our State's largest employers and largest users of electricity. Additionally, 35-A M.R.S. § 3804 directs the Commission to "advance through its decisions and orders beneficial electrification." One possible interpretation of this directive is that the Commission should seek to minimize the volumetric cost of electricity, all else equal, to make beneficial electrification more attractive to consumers relative to fossil-fueled alternatives. This reasoning would appear to oppose a purely volumetric rate design for stranded costs.

Further, multiple parties proposed hybrid scenarios involving a combination of fixed and volumetric charges in various ratios, ranging from the IECG suggesting 70% of costs being recovered though a fixed charge, and Brookfield and Onward Energies suggesting that 15% be recovered through a fixed charge. Thus, a hybrid solution is supported by many of the parties and would provide relief to low-usage customers within the large classes, while also resulting in a less abrupt change to the current rate design and not disincentivizing beneficial electrification.

Considering these factors, the Commission finds that a hybrid approach is appropriate for the large classes, with 70% of costs recovered volumetrically and 30% through fixed charges. In the Commission's estimation, this ratio strikes a reasonable balance of the interests of customers on both the low-end and high-end of usage within the large classes, while also addressing the policy considerations described above.

f. Consideration of Consolidation of Classes in Versant Territory

The Commission observes that some of the most pronounced effects of the fixed charge rate design were felt among large class customers in Versant's MPD territory. The four customers in MPD Rate HT Transmission presently pay a fixed charge of $57,516.60 per month for stranded costs. Bench Analysis, Exhibit 1. In contrast, Versant's BHD customers in the analogous BHD Rate T-1 Transmission pay a fixed charge of only $6,002.29 per month for stranded costs. *Id.* Although these two rates are available to the same types of customers of the same utility company, the separation of stranded cost rates by Versant service territory causes a significant disparity.

The Commission finds that the consolidation of the districts for the large class customers may be appropriate. Specifically, it may be appropriate to combine analogous MPD and BHD large rate classes for the purpose of recovering stranded costs. At present, BHD rates T-1 Transmission and T1S Subtransmission are already aggregated for stranded costs, as customers in both classes pay the same fixed charge for stranded costs.

The Commission directs Commission Staff to provide further process in this docket to explore the implications and practicalities of this proposal. The Commission delegates to the Director of Electric and Gas Utility Industries approval of such consolidation, consistent with the Commission's intent.

3. Medium Commercial Customers

Finally, with respect to medium commercial class customers, the Commission finds that a 50% volumetric and 50% fixed charge rate design is most appropriate. First, the Commission notes that a 50/50 hybrid approach is similar to the proposal in the Stipulation, in which Versant customers would be billed on a 50% fixed and 50% volumetric charge for medium commercial customers.[20] Second, the disparity in usage between the high and low-usage customers in the medium classes is not as extreme as the large classes. Nevertheless, as the OPA notes in its Exceptions, there is still a range of usage, with the medium general service class customers for CMP ranging from 20 kW to 400 kW in usage. OPA Exceptions at 4. With more heterogenous usage than the residential and small commercial classes, but less heterogenous usage than the large classes, the Commission finds that recovering costs from the medium classes on a 50% volumetric and 50% fixed charge basis is a reasonable approach.

C. Addressing Alternatives

As part of this investigation, along with intraclass rate design, the Commission also examined alternative solutions aimed at resolving the inequities of the fixed charge rate design. These are described below.

1. Station Service Class

Rate classes are established through a utility's tariffs in order to assign costs, specifically for transmission and distribution service, to particular categories of customers that use the same types of plant and equipment. *See* IECG Silkman/Welch Test. at 22. Therefore, it is inappropriate to establish tariffed rates outside of the context of a utility's cost of service, which is presented and reviewed during a general rate case. Doing so could modify the relationship between rates paid by customers and the utilities'

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20 The Stipulation provided for a 50% fixed/50% demand charge in CMP territory.

costs of providing service. This could impact the ability of utilities to recover their revenue requirements.

Additionally, a high number of customers within the large C&I rate classes may potentially qualify for a station service rate, given that many of these customers have on-site generation that at least occasionally flows to the grid. IECG-001-002 Att 1 and IECG-002-002 Att A. Such a migration could cause further rate shock for those customers ineligible for the station service rate.

Further, station service generator-customers are heterogeneous in their load characteristics. Brookfield/Onward Entities Test. at 35. If high-use station service customers opted to migrate to a station service rate, then it is unclear whether the core concerns relating to heterogeneity of usage within industrial classes would be resolved by the implementation of a station service rate.

Finally, generators are only one type of customer that may have low usage relative to their rate class. Other examples include low-use residential and small general service customers. OPA Test. at 12-13. Implementation of this specific use-case rate classification does not address fundamental rate design considerations with regard to heterogeneity of load characteristics.

For these reasons, the Commission declines to create a station service class for generators.

2. <u>Non-Bypassable Volumetric Charges</u>

The Commission declines to adopt or further investigate a non-bypassable volumetric charge. While the concept of a non-bypassable volumetric charge has been floated in prior stranded cost rate design investigations as a way to ensure that kWh Credit program customers cannot offset NEB stranded costs when costs are recovered volumetrically, because the Commission is retaining the fixed charge for residential and small commercial customers (who make up the majority of kWh Credit program participants), a non-bypassable volumetric charge is unnecessary.

Further, as noted by the CMP in their Exceptions, "while a seemingly simple solution to ensure all customers contribute to stranded costs," adoption of a non-bypassable charge "would likely be time consuming and complex to investigate and implement." CMP Exceptions at 1.

3. <u>Demand charges</u>

Another alternative rate design discussed in this proceeding is recovering stranded costs through demand (kW) charges. Specifically, the recommendation applied to commercial classes because residential classes are generally not demand billed. OPA Test. at 19-20. It is important to note that this is only a partial solution because the applicability of this charge would exclude the largest number of customers, *i.e.*, the residential classes. Unlike CMP, Versant has not previously used demand billing for stranded costs and has indicated that even small changes to billing practices can take a significant amount of time to implement. Versant Brief at 2. Additionally, there is not a clear connection between demand-based charges and kWh-denominated policy programs. Thus, the Commission declines to adopt a demand based rate design.

VII. CONCLUSION

Based on the reasoning above, the Commission adopts a rate design for large and industrial customers that recovers 70% of post-restructuring stranded costs though volumetric charges and 30% through a fixed charge. For medium commercial customers, the Commission adopts a rate design that recovers 50% of post-restructuring stranded costs through volumetric charges and 50% through a fixed charge. For residential and small commercial customers, the Commission maintains a rate design that recovers all post-restructuring stranded costs through a fixed charge.

Accordingly, the Commission

ORDERS

1. That post-restructuring stranded costs be recovered through a fixed charge for residential and small commercial customers;
2. That post-restructuring stranded costs be recovered on a 50% fixed charge and 50% volumetric basis for medium class customers;
3. That post-restructuring stranded costs be recovered on a 30% fixed and 75% volumetric basis for large class customers; and
4. That Staff provide further process in this case to investigate the feasibility of consolidating large rate classes, based on in the MPD and BHD districts.

Dated at Hallowell, Maine, this 30th day of April 2025.

BY ORDER OF THE COMMISSION

/s/ Amy Dumeny

Amy Dumeny

COMMMISSIONERS VOTING FOR: Bartlett (concurring in part)
Scully
Gilbert

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party at the conclusion of an adjudicatory proceeding written notice of the party's rights to seek review of or to appeal the Commission's decision. The methods of review or appeal of Commission decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Pursuant to 5 M.R.S. § 8058 and 35-A M.R.S. § 1320(6), review of Commission Rules is subject to the jurisdiction of the Superior Court.

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal

Dissenting/Concurring Opinion of Chair Bartlett

While I join Commissioners Scully and Gilbert with respect to the ultimate decision on the merits underlying the investigation, I would have approved the Stipulation.

The expansion of net energy billing resulted in significant new costs that needed to be recovered through the stranded cost mechanism. While not traditional stranded costs, which arose from restructuring, they are similar in that they result from legislative policy and need to be recovered outside of cost-of-service utility ratemaking.

Historically, these costs have been collected on a volumetric, or per kilowatt hour basis. However, with the surge in NEB-related costs, two problems with the volumetric approach emerged. First, participants in NEB, who directly benefited from the kWh program, were largely shielded from its costs because their NEB credits effectively reduced their usage and corresponding per-kWh charges. Second, by adding more costs volumetrically to recover the costs for the NEB programs, which are aimed at reducing the State's reliance on fossil fuels, we were undermining another state policy goal to promote beneficial electrification. To remedy these issues, the Commission moved to fixed charges to recover NEB and most other stranded costs.

For the residential and small commercial classes, the fixed charge has been a reasonable solution. For the large classes, however, fixed charges have created new inequities. Those with the largest usage benefit from a significant reduction in costs but those with minimal usage have seen astronomical increases with the adoption of the fixed charge. In hindsight, it is clear to me that moving to a fixed charge for large commercial and industrial customers was a mistake. That is not to say that there is an obvious solution, however, and this highly contentious proceeding has demonstrated just how difficult it is to find an equitable outcome. The Commission is ultimately trying to allocate significant public policy costs through electric rates, where rate design is traditionally centered around cost of service. Invariably, the blunt tools available to us will produce imperfect outcomes.

Before us is a Stipulation signed by the IECG, the Office of the Public Advocate, CES, Brookfield Entities, Onward Energy, Calpine, Casco Bay Energy Company, and NextEra. No parties objected to the Stipulation, though several parties did not join it, including CMP, Versant, CPV Wind, ReGenerate, MREA, Bucksport, Cogentrix, Preserve Rural Maine, and NRCM.

At a high level, the Stipulation does the following:

- It shifts costs from larger to smaller customer classes, resulting in an 18% increase in costs for residential, small and medium commercial customers. Large

C&I customers would see a decrease in costs of 54% in CMP territory, 28% in Versant's Bangor Hydro District, and 75% in Versant's Maine Public District.

- It creates a Low-Income Bill Credit at a cost of approximately $5.7 million funded by the small classes through stranded costs rates.

- It makes changes to intra-class rate design that result in a reduction in costs to the vast majority of large class customers.

- It aggregates classes across Versant's two territories to address burdens for large C&I customers as well as all customers in the Maine Public District.

To approve a stipulation, pursuant to Chapter 110 of our Rules, the Commission must consider the following criteria:

1) Whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that we can be sure there is no appearance or reality of disenfranchisement;

2) Whether the process that led to the stipulation was fair to all parties;

3) Whether the stipulated result is reasonable and is not contrary to legislative mandate; and

4) Whether the overall stipulated result is in the public interest.

I believe the first two criteria are clearly met. A wide range of interests is reflected in the signatories to the Stipulation, which include the OPA, and the process was fair to all parties.

A question has been raised with respect to whether there was sufficient notice to cover the Stipulation's interclass rate design changes. While the Notice did state that the proceeding would investigate intraclass rate design, it also explicitly stated that "the Commission may order changes to the rate design to adjust for inequities or to effectuate legislative policy directives." In the description of the investigation, the Notice elaborated that the "Commission will thoroughly examine any potential adjustment in rate design, including how such shifts would impact customers in all classes." In my view, the Notice is broad enough that the provisions in the Stipulation do not run afoul of it. Additionally, the interclass changes impact customers that are squarely within the OPA's charge to represent. Moreover, as the Stipulated parties have emphasized, the Commission can make changes anytime there are justifiable reasons to do so.

The Stipulation is not contrary to any legislative directive. The stipulating parties point to the contentiousness of litigation and argue that the Stipulation offers a durable solution to address otherwise intractable issues and effectively moderates the disproportionate and inequitable impact on certain large customers. At oral argument, the OPA emphasized the benefits of getting out of the cycle of litigation and appeals on this issue and providing certainty to all classes of customers. The OPA also suggested that interclass reallocations would inevitably be an issue in future proceedings.

I have two primary concerns with the Stipulation. The first is the significant cost shift from large customers to smaller ones. Costs have been allocated across classes based on load, and the proposed shifting of costs is a significant departure to the detriment of residential and small commercial customers. Indeed, the Commission is hearing more and more frequently from customers struggling to pay their electric bills. Through this Stipulation, residential and small commercial customers are asked to spend more to give virtually all large customers a reduction in their stranded costs, even those who benefitted enormously from the shift from volumetric to fixed charges and those who directly benefit from participation in the Tariff Rate Program.

Second, I am concerned that the Stipulation is being used as a tool to leverage more LIAP funding when the Commission has an annual process to evaluate and set funding levels. In the Stipulation, the additional funding *increases* stranded costs and is effectively paid by the smaller classes, which is a smaller group than pay for LIAP through the traditional LIAP funding process. At oral argument, the OPA did express a willingness to revisit this once the Commission works through the docket on changes to the LIAP program to get to a place where all LIAP funding is addressed in a single proceeding. Tr. 38 (Feb. 12, 2025).

The fact that I would have resolved the case differently does not necessarily make the Stipulation unreasonable or adverse to the public interest. While the Stipulation is imperfect, I find that it is within the range of reasonable outcomes that satisfy the public interest standard. I tend to agree with the parties that there is significant value in both addressing the inequities in the large classes and in finding a durable solution. And given that the OPA is charged with representing small customers, I would put my trust in their assessment that this is a reasonable and acceptable outcome for the smaller classes. Accordingly, I would have approved the Stipulation.

My fellow Commissioners reached a different conclusion than I did with respect to the Stipulation presented by the parties. Having heard their ideas and deliberated with them regarding an alternative path to a solution, I find that I am able to support their conclusions. Although it is not a perfect solution, I agree with my colleagues that it better aligns with the public policy directives and presents a more equitable and legally supportable result. The hard fact that we have all been attempting to deal with in these continuing proceedings is that the costs associated with the NEB program are significant and must be paid for by all the customers of Maine's investor-owned electric utilities. Rate design cannot reduce these costs but I believe the Order issued today takes appropriate and measured steps to mitigate some of the inequities that resulted from our previous orders, and that it will serve to distribute the costs in a just, reasonable and equitable manner.