

FRANCIS X. BRUTON, III
CATHERINE A. BERUBE
JOSHUA P. LANZETTA

OF COUNSEL
JAMES H. SCHULTE

Bruton & Berube, PLLC
ATTORNEYS AT LAW

601 Central Avenue
Dover, NH 03820

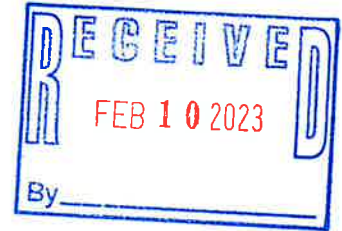
TEL (603) 749-4529
(603) 743-6300
FAX (603) 343-2986

www.brutonlaw.com

February 10, 2023

VIA HAND DELIVERED

Shanna B. Saunders,
Director of Planning and Development
City of Rochester
City Hall Annex
33 Wakefield Street
Rochester, NH 03867-1917



**RE: Owner/Applicant: Packy's Investment Properties, LLC
17 Sterling Drive, Rochester, NH
Map 208, Lot 18**

Dear Ms. Saunders:

Enclosed please find ten (10) copies of a Motion for Rehearing relative to the above-referenced property.

Should there be any questions regarding the enclosed, please do not hesitate to contact us.

Sincerely,

Francis X. Bruton, III
E-mail: fx@brutonlaw.com

FXB/mas
Enclosure

cc: Packy's Investment Properties, LLC
Norway Plains Associates, Inc.
Fraggle Rock Environmental

STATE OF NEW HAMPSHIRE

Strafford, SS.

City of Rochester
Zoning Board of Adjustment

**In Re: Application of Packy's Investment Properties, LLC, 17 Sterling Drive,
Rochester, New Hampshire to permit solar use (referred to by City as Power
Generation Utility)**

**MOTION FOR REHEARING
PURSUANT TO RSA 677:2**

NOW COMES Packy's Investment Properties, LLC, of P.O. Box 77, Farmington, New Hampshire (hereinafter the "Applicant"), by and through its attorneys, Bruton & Berube, PLLC, who respectfully move for a rehearing pursuant to NH RSA 677:2 with respect to the denial of the appeal of an administrative decision, and states as follows:

The Proposed Project

1. At its January 4, 2021 meeting, the Rochester Planning Board approved a site plan for mini-self storage as well as 11 solar trackers, with the solar trackers allowed as an accessory use (hereinafter the "Site Plan"), for property at 17 Sterling Drive, depicted as Tax Map 208, Lot 18 comprising of 6.67 acres is located within the Granite Ridge Development (GRD) zoning district (hereinafter the "Property"). See Planning Board case 208-18-GRD-21.
2. The Applicant recently sought to amend the Site Plan with the installation of thirteen (13) additional solar tracker on the Property.
3. The solar project will have a total peak generating capacity of less than 1-megawatt of alternative current under the State of New Hampshire's Laws pursuant to NH RSA 362-A, *et seq.* By limiting the total peak generating capacity to less than 1-megawatt, the Applicant is considered a "customer-generator" pursuant to RSA 362-A:1-a, II-b.
4. With the addition of the proposed 13 solar tracker, Ms. Saunders has determined that the Applicant's use now falls into the definition of a "Power Generation Utility," requiring the need for a special exception from the ZBA before it can proceed with the amended Site Plan (hereinafter referred to as the "Decision").
5. The Applicant has filed a concurrent application for a Special Exception to permit the proposed solar use, reserving the assertion that the project, as proposed, represents an

accessory use, as previously considered and/or that the Rochester zoning restrictions are preempted by NH RSA 362-A, *et seq.*

6. At its January 11, 2023 meeting, this Board granted the aforementioned Special Exception, permitting the additional solar trackers.

7. At its January 11, 2023 meeting, however, this Board denied the aforementioned Appeal of Administrative Decision.

8. The Applicant respectfully disagrees with Ms. Saunders' interpretation that the additional 13 solar trackers now means that the use is not accessory, but now a Power Generation Utility.

9. On or about January 19, 2022, the Director of Planning & Development, Ms. Shanna B. Saunders, issued a Notice of Decision (hereinafter referred to as the "NOD"), indicating the reason for the denial as follows:

At its January 11, 2023 meeting the Zoning Board of Adjustment DENY the Administrative Decision Appeal. The decision of the Zoning Administrator stands because the commercial use is far greater than the accessory structure.

10. For the reasons set forth below, it is respectfully submitted that the Rochester Zoning Board of Adjustment's denial of the appeal of administrative decision, as set forth in the NOD is unreasonable and/or illegal.

11. The New Hampshire Supreme Court has ruled that the rehearing process is designed to afford a zoning board of adjustment an opportunity to correct its own mistakes or to consider new evidence. *Fisher v. Town of Boscaawen*, 121 NH 431 (1981).

I. THE APPLICANT'S PROPOSED PROJECT SHOULD BE PERMITTED AS AN ACCESSORY USE TO THE STORAGE UNITS

12. The originally approved Site plan treated the installation of the original 11 solar trackers as an accessory use.

13. Pursuant to the Rochester Zoning Ordinance, an Accessory Use is defined, *inter alia*, as follows:

- A. Is customarily or reasonably associated with the principal use;
- B. Has hours of operation the same as or less than the principal use;
- C. Is incidental and subordinate to the principal use; and
- D. Is located on the same lot or tract as the principal use.

14. The proposed additional trackers are limited to a total peak generating capacity of 400kw AC well below 1-megawatt of alternative current, the same as the originally installed solar trackers, should be permitted as an accessory use, as these additional trackers satisfy all elements listed above as an accessory use.

15. During the January 11, 2023 hearing, the Applicant demonstrated that the criteria for the determination that the use proposed is accessory has been met.

16. During the permitting of the Site Plan, the installation of the solar trackers was encouraged, rightfully so, by the City. Specifically, the Technical Review Group ("TRG") minutes, dated October 22, 2020 (see copy attached), encouraged the Applicant to install solar panels (see Planning Department's note 12).

17. Not permitting the same type of solar trackers as those previously approved as an accessory use is arbitrary, and it is respectfully submitted, unreasonable and illegal. Nothing has changed as to the solar trackers other than the number of solar trackers to be located on the Property.

18. At the January 11, 2023 hearing, ZBA members were questioned Ms. Saunders as to the threshold used to determine when a "use is far greater" than an accessory structure.

19. Ms. Saunders did not suggest a limit or threshold to determine when an accessory use is exceeded, and thus her assessment was arbitrary and unreasonable.

20. The Applicant, however, suggested at the meeting that the provisions of NH RSA 362-A in fact suggest a definitive, rather than arbitrary, threshold that should be adopted by the ZBA in making its determination. Specifically, that threshold should be triggered when total peak generating capacity is more than one megawatt (hereinafter referred to as the "One Megawatt Threshold") as set forth in NH RSA 362-A:1-a, II-b.

21. NH RSA 362-A:1-a, II-b states as follows:

"Eligible customer-generator" or "customer-generator" means an electric utility customer who owns, operates, or purchases power from an electrical generating facility either powered by renewable energy or which employs a heat led combined heat and power system, with a total peak generating capacity of up to and including one megawatt, except as provided for a municipal host as defined in paragraph II-c, that is located behind a retail meter on the customer's premises, is interconnected and operates in parallel with the electric grid, and is used to offset the customer's own electricity requirements. Incremental generation added to an existing generation facility, that does not itself qualify for net metering, shall qualify if such incremental generation meets the qualifications of this paragraph and is metered separately from the nonqualifying facility.

22. During the January 11, 2023 hearing the ZBA discussed these statutory definitions and the Public Utility Rules associated with net-metering.

23. Given the inquiry by the Board as to the Rules, the Applicant has appended a copy of the definitional portion of NH RSA 362-A and the definitional portions of PUC Rule 900 attached hereto as additional evidence to consider when considering the threshold at which a solar producer is no longer an accessory use by exceeding the One Megawatt Threshold set forth above.

24. As this Board can see, when reviewing the statutory and rules definitions, generators exist that are not customer-generators, such as “Limited Producers,” with a capacity to generate energy up to 5 megawatts, per NH RSA 362-A:1-a, III or “Small Power Production Facility, which can have a capacity to generate up to 30 megawatts per NH RSA 362-A:1-a, X.

25. It is respectfully submitted that the statutory definition and the PUC Rules represent additional evidence that should be considered by the ZBA at a rehearing as to the determination of what threshold should be used to determine when the use is no longer an accessory structure.

26. The applicant respectfully submits that the “One Megawatt Threshold” was created by the New Hampshire state legislature to define the smallest form of a generator under NH RSA 362-A, known as the Limited Electrical Energy Producers Act, with the full understanding that that a customer-generator is engaged in a use that should be considered an accessory use given the parallels in the definition of the customer-generated and the requirements of an accessory use in the Rochester Zoning Ordinance.

27. It is respectfully submitted that the threshold considered by Ms. Saunders is arbitrary, and thus unreasonable and/or illegal, and that the ZBA need only look to the statutory definition of the smallest customer generator, which is the One Megawatt Threshold, to which the Applicant’s proposal is limited.

II. THE RESTRICTION SET FORTH IN THE ADMINISTRATIVE DECISION IS PREEMPTED BY NH RSA 362-A, ET SEQ.

28. At the January 11, 2023 hearing, the ZBA made little reference to the argument that the City is preempted by the statutory scheme developed by the New Hampshire legislature in adopting NH RSA 362-A:1 to classify the Applicants use as a Power Generation Facility.

29. NH RSA 362-A:1 provides as follows:

Declaration of Purpose. – It is found to be in the public interest to provide for small scale and diversified sources of supplemental electrical power to lessen the state's dependence upon other sources which may, from time to time, be uncertain. It is also found to be in the public interest to encourage and support diversified electrical production that uses indigenous and renewable fuels and has beneficial impacts on the

environment and public health. It is also found that these goals should be pursued in a competitive environment pursuant to the restructuring policy principles set forth in RSA 374-F:3. It is further found that net energy metering for eligible customer-generators may be one way to provide a reasonable opportunity for small customers to choose interconnected self generation, encourage private investment in renewable energy resources, stimulate in-state commercialization of innovative and beneficial new technology, enhance the future diversification of the state's energy resource mix, and reduce interconnection and administrative costs.

30. It is the Applicant's position that the state of New Hampshire has clearly adopted a policy of promoting the establishment of self-generating power facilities, as proposed by the Applicant.

31. NH RSA 362-A permits all customers with any meter to have, by right, solar and to generate power pursuant to the net-metering guidelines for the community in which the customer's property exists. The statute itself makes no attempt to limit where those customers are located. The administrative action subject to this appeal attempts to do so by denying the net-metering customer the use by classifying the use as a Power Generating Facility, and thus undermines, the very state policy and purpose on NH RSA 362-A.

32. The doctrine of preemption allows the legislature to override or ignore local land use controls in instances where the legislature has manifested an intent to control a particular activity or where a statute and local ordinance conflict.¹

33. The doctrine of preemption allows private entities to avoid local land use controls. See 15 New Hampshire Practice: Loughlin, Land Use Planning and Zoning, Ch. 12, Generally, Section 12.01, Page 205.

34. The theory behind preemption is that municipal regulation should not be allowed to frustrate the implementation of what might be referred to as state policy. While New Hampshire has a long tradition of local home rules, plenary authority exists within the legislator to override local control when necessary for the greater good.² If a particular activity is found to be exclusively regulated by a state regulatory process, or if the activity is found to be essential to the carrying out of a state policy, such activities will not be allowed to be frustrated by local zoning restrictions.³ The terms of NH RSA 362-A, *et seq.*, clearly define and regulate the customer generator that the Applicant

¹ Derry Sand & Gravel, Inc. v. Town of Londonderry, 121 N.H. 501, 431 A.2d 139 (1981). See also 15 New Hampshire Practice: Loughlin, Land Use Planning and Zoning, Ch. 12, Generally, Section 12.01, Page 205.

² Region 10 Client Mgt., Inc. v. Hampstead, 120 N.H. 885, 424 A.2d 207 (1980). See 15 New Hampshire Practice: Loughlin, Land Use Planning and Zoning, Ch. 12, Generally, Section 12.01, Page 205.

³ Region 10 Client Mgt., Inc. v. Hampstead, 120 N.H. 885, 424 A.2d 207 (1980); City of Edmonds v. Oxford House, Inc., et al., 514 U.S. 725, 115 S. Ct. 1776, 131 L.Ed.2d 801.

would be, as defined by state statute. To deny the use as a permitted accessory use is to flagrantly disregard the provisions of NH RSA 362-A.

35. The Applicant respectfully submits that it is instructive to acknowledge that the New Hampshire Supreme Court has found that municipalities are preempted from attempting to control locations of lines through local zoning regulations the location of electric transmission lines.⁴

36. To be clear, even where the state has preempted a particular field, a municipality may enforce its regulations against a particular land use so long as the regulations do not have an exclusionary effect. For example, regulations relating to traffic and roads, landscaping, building specifications, snow, garbage and sewage removal, signs, and other related matters which are enforced against all other industrial users may also be enforced against proposed hazardous waste sites.⁵ In this instance, the Applicant will meet all of the dimensional requirements set forth withing the Rochester Zoning Ordinance. It is the “use” solely that is in question, and, as assured by the Applicant, that Rochester may not regulate as to where in the zones the use is permitted. See 15 New Hampshire Practice: Loughlin, Land Use Planning and Zoning, Ch. 12, Generally, Section 12.01, Page 207.

37. Similarly, and consistent with the use that is proposed by the Applicant, the construction and maintenance of dams in hydroelectric generating facilities are regulated by state statutory scheme, the New Hampshire Supreme Court has held that local land use regulations cannot prohibit their location within the municipality. As a result, a hydroelectric facility could be placed in a residential district within a municipality.⁶

38. The Applicant respectfully submits that the intent of NH RSA 362-A, *et seq.* is to provide for the “net-metering” by “customer-generators,” as defined by NH RSA 362-A:1-1, II-b, and that the attempt by the City of Rochester to regulate such use is preempted by the general provisions of NH RSA 362-A, *et seq.*

39. The solar use proposed by the Applicant accomplishes every aspect of the purpose of NH RSA 362-A, providing community customer generation of sustained and green solar power. The actions of the City frustrate that objective without legal justification.

40. The Applicant respectfully submits that the ZBA’s lack of determination that NH RSA 362-A, *et seq.* preempts the zoning restrictions within the Use Tables of the

⁴ Public Service Company of New Hampshire v. Hampton, 120 N.H. 68, 411 A.2d 164 (1980). See also 15 New Hampshire Practice: Loughlin, Land Use Planning and Zoning, Ch. 12, Generally, Section 12.01, Page 206.

⁵ *Stablex*, 122 N.H. at 1094, 456 A.2d at 95.

⁶ *Wasserman & Sandell v. Lebanon*, 124 N.H. 538, 474 A.2d 994 (1984). See also 15 New Hampshire Practice: Loughlin, Land Use Planning and Zoning, Ch. 12, Generally, Section 12.01, Page 207.

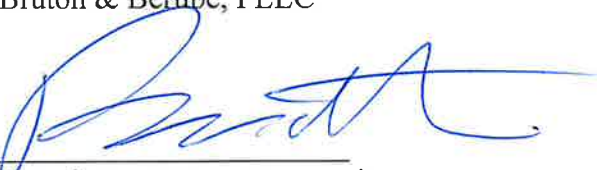
Rochester Zoning Ordinance is illegal and/or unreasonable and should be reconsidered at a rehearing.

WHEREFORE, the Applicant respectfully requests the Rochester Zoning Board of Adjustment to:

- A. Grant a rehearing as to the above matter; and
- B. That upon a rehearing, grant the administrative appeal requested by the Applicant and specifically permit the Applicant's proposed use as an accessory structure and/or not classify the Applicants proposed use as a Power Generation Facility; and
- C. For such other and further relief as may be just and equitable.

Respectfully submitted,
Packy's Investment Properties, LLC
By and through its attorneys,
Bruton & Berube, PLLC

Dated: February 10, 2023

By: 
Francis X. Bruton, III, Esquire
Bruton & Berube, PLLC
601 Central Avenue
Dover, New Hampshire 03820
Phone: (603) 749-4529

TITLE XXXIV PUBLIC UTILITIES

CHAPTER 362-A LIMITED ELECTRICAL ENERGY PRODUCERS ACT

Section 362-A:1-a

362-A:1-a Definitions. –

In this chapter:

I. "Bio-oil" means a liquid renewable fuel derived from vegetable oils, animal fats, wood, straw, forestry byproducts, or agricultural byproducts using noncombustion thermal, chemical, or biological processes, including, but not limited to, distillation, gasification, hydrolysis, or pyrolysis, but not including anaerobic digestion, composting, or incineration.

I-a. "Bio synthetic gas" means a gaseous renewable fuel derived from vegetable oils, animal fats, wood, straw, forestry byproducts, or agricultural byproducts using noncombustion thermal, chemical, or biological processes, including, but not limited to, distillation, gasification, hydrolysis, or pyrolysis, but not including anaerobic digestion, composting, or incineration.

I-b. "Biodiesel" means a renewable diesel fuel substitute that is composed of mono-alkyl esters of long chain fatty acids, is derived from vegetable oils or animal fats, and meets the requirements of the American Society for Testing and Materials (ASTM) specification D6751.

I-c. "Cogeneration facility" means a facility which produces electric energy and other forms of useful energy, such as steam or heat, which are used for industrial, commercial, heating, or cooling purposes.

I-d. "Combined heat and power system" means a new system installed after July 1, 2011, that produces heat and electricity from one fuel input using an eligible fuel, without restriction to generating technology, has an electric generating capacity rating of at least one kilowatt and not more than 30 kilowatts and a fuel system efficiency of not less than 80 percent in the production of heat and electricity, or has an electric generating capacity greater than 30 kilowatts and not more than one megawatt and a fuel system efficiency of not less than 65 percent in the production of heat and electricity. Fuel system efficiency shall be measured as usable thermal and electrical output in BTUs divided by fuel input in BTUs.

II. "Commission" means the New Hampshire public utilities commission.

II-a. "Electricity suppliers" has the same meaning as in RSA 374-F:2, II.

II-b. "Eligible customer-generator" or "customer-generator" means an electric utility customer who owns, operates, or purchases power from an electrical generating facility either powered by renewable energy or which employs a heat led combined heat and power system, with a total peak generating capacity of up to and including one megawatt, except as provided for a municipal host as defined in paragraph II-c, that is located behind a retail meter on the customer's premises, is interconnected and operates in parallel with the electric grid, and is used to offset the customer's own electricity requirements. Incremental generation added to an existing generation facility, that does not itself qualify for net metering, shall qualify if such incremental generation meets the qualifications of this paragraph and is metered separately from the nonqualifying facility.

II-c. "Municipal host" means a customer generator with a total peak generating capacity of greater than one megawatt and less than 5 megawatts used to offset the electricity requirements of a group consisting exclusively of one or more customers who are political subdivisions, provided that all customers are located within the same utility franchise service territory. A municipal host shall be located in the same municipality as all group members if the facility began operation after January 1, 2021. A municipal host may be owned by either a public or private entity. For this definition, "political subdivision" means the state of New Hampshire or any city, town, county, school district, chartered public school, village district, school administrative unit, or any district or entity created for a special purpose administered or funded by any of the above-named governmental units.

II-d. "Eligible fuel" means natural gas, propane, wood pellets, hydrogen, or heating oil when combusted with a burner, including air emission standards for the device using the approved fuel.

II-e. "Heat led" means that the combined heat and power system is operated in a manner to satisfy the heat usage needs of the customer-generator.

II-f. "Department" means the New Hampshire department of energy.

III. "Limited producer" or "limited electrical energy producer" means a qualifying small power producer, a qualifying storage system, or a qualifying cogenerator, with a maximum rated generating or discharge capacity of less than 5 megawatts that:

(a) Does not participate in net energy metering. Non-participation in net energy metering may be achieved by canceling participation in such upon assuming limited production.

(b) Is not registered as a generator, asset, or network resource with ISO New England.

(c) Does not otherwise participate in any FERC jurisdictional wholesale electricity markets, except as an alternative technology regulation resource (ATRR) to the extent ATRRs are deemed by ISO New England to function as retail or network load reducers for all other ISO New England purposes. Such non-participation in FERC jurisdictional interstate wholesale markets may be achieved by retirement from such markets.

III-a. "Net energy metering" means measuring the difference between the electricity supplied over the electric distribution system and the electricity generated by an eligible customer-generator which is fed back into the electric distribution system over a billing period.

IV. "Person" means any individual, partnership, association, corporation, governmental unit or agency or any combination thereof.

V. "Primary energy source" means the fuel or fuels used for the generation of electric energy, except that such term does not include the minimum amounts of fuel required for ignition, startup, testing, flame stabilization, or control uses or the minimum amounts of fuel required to alleviate or prevent unanticipated equipment outages or emergencies directly affecting the public health, safety or welfare which would result from electric power outages.

VI. "Qualifying cogeneration facility" means a cogeneration facility which the commission determines meets such requirements, including requirements respecting minimum size, fuel use and fuel efficiency, as the commission may prescribe and which is owned by a person not primarily engaged in the generation or sale of electric power, other than electric power solely from cogeneration facilities or small power production facilities.

VII. "Qualifying cogenerator" means the owner or operator of a qualifying cogeneration facility.

VII-a. "Qualifying facility" means either or both of a qualifying small power production facility or qualifying cogeneration facility.

VIII. "Qualifying small power producer" means the owner or operator of a qualifying small power production facility.

IX. "Qualifying small power production facility" means a small power production facility which the commission determines meets such requirements, including requirements respecting fuel use, fuel efficiency and reliability, as the commission may prescribe and which is owned by a person not primarily engaged in the generation or sale of electric power, other than electric power solely from cogeneration facilities or small power production facilities.

IX-a. "Qualifying storage system" means an electric energy storage system as defined in RSA 72:84.

X. "Small power production facility" means a facility which produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, bio-oil, bio synthetic gas, biodiesel, or any combination thereof and which has a power production capacity which, together with any other facility located at the same site, as determined by the commission, is not greater than 30 megawatts.

Source. 1983, 395:1. 1989, 211:1. 1998, 261:2-4. 2006, 294:1, 2. 2007, 174:1, eff. Aug. 17, 2007. 2010, 143:2, eff. Aug. 13, 2010. 2011, 168:1, 2, eff. July 1, 2011. 2013, 266:1, eff. July 24, 2013. 2014, 130:2, eff. Aug. 15, 2014. 2021, 91:232, eff. July 1, 2021; 229:11, eff. Aug. 26, 2021. 2022, 218:1, 2, eff. June 17, 2022. 2022, 245:33, eff. Aug. 20, 2022.

Readopt with amendments Puc 901, effective 9-20-11 (Document #9998), cited and to read as follows:**CHAPTER Puc 900 NET METERING FOR CUSTOMER-OWNED RENEWABLE ENERGY GENERATION RESOURCES OF 1,000 KILOWATTS OR LESS****PART Puc 901 PURPOSE**

Puc 901.01 Purpose. The purpose of Puc 900, pursuant to the mandate of RSA 362-A:9, is to establish reasonable interconnection requirements for safety, reliability, and power quality for net energy metering as the public interest requires, and consistent with the legislative declaration of purpose set forth in RSA 362-A:1, in which the legislature found:

(a) “It to be in the public interest to provide for small scale and diversified sources of supplemental electrical power to lessen the state's dependence upon other sources which may, from time to time, be uncertain;”

(b) “It to be in the public interest to encourage and support diversified electrical production that uses indigenous and renewable fuels and has beneficial impacts on the environment and public health;” and

(c) “That net energy metering for eligible customer-generators may be one way to provide a reasonable opportunity for small customers to choose interconnected self-generation, encourage private investment in renewable energy resources, stimulate in-state commercialization of innovative and beneficial new technology, enhance the future diversification of the state's energy resource mix, and reduce interconnection and administrative costs.”

Puc 901.02 Applicability.

(a) Puc 904 through Puc 908 shall be applicable only to small net-metering customers.

(b) Puc 903.02(l) through (p) shall only apply to net surplus electricity exported to the distribution system that accumulates during the 12 monthly billing cycles preceding the March 2012 billing cycle and in subsequent billing cycles.

(c) Where expressly noted, the provisions of Puc 900 shall apply only to customer-generators subject to the standard net metering tariff or only to customer-generators subject to the alternative net metering tariff.

(d) Interconnection of large net-metering customer-generators shall be governed by each utility's interconnection practices as set forth in its tariff filed with the commission.

(e) With the exception of Puc 903.02(u) and Puc 905.07, and unless otherwise noted, Puc 900 shall be applicable to rural electric cooperatives for which a certificate of deregulation is on file with the commission with respect to customer-generator subject to the standard net metering tariff up to the applicable cap set forth in Puc 903.02(b).

Readopt with amendments Puc 902, effective 1-8-15 (Document #10757), to read as follows:**PART Puc 902 DEFINITIONS**

Puc 902.01 “Affordable Housing Project” means any multi-family residential housing project that is:

- (1) Funded through a federal, state, or local program requiring that the real estate remains subject to land use restriction or rental housing affordability covenants that limit allowable rents charged to individuals or families, consistent with RSA 674:58, IV pertaining to workforce housing, or as otherwise required under the applicable federal, state, or local program;

- (2) A federal low-income housing tax credit project, as defined in Section 42 of the Internal Revenue Code of 1986, as amended;
- (3) A project funded with federal grants made to states for low-income housing projects in lieu of low-income housing tax credits under Section 1602 of the American Recovery and Reinvestment Act of 2009; or
- (4) A limited equity cooperative, including, but not limited to, a manufactured housing park or apartment building, in which the majority of members are of low or moderate income.

Puc 902.02 "Agreement" means the written agreement signed by the host and by each group member as required by RSA 362-A:9, XIV for the purpose of controlling energy costs of the group.

Puc 902.03 "Alternative net metering tariff" means the alternative net energy metering tariff provisions adopted by the commission pursuant to RSA 362-A:9, XVI in Order No. 26,029 issued in Docket DE 16-576 on June 23, 2017, which tariff provisions are applicable to customer-generators receiving a utility net metering capacity allocation on or after September 1, 2017 once the utility is capable of implementing such new tariff provisions.

Puc 902.04 "Combined heat and power system" means a "combined heat and power system" as defined in RSA 362-A:1-a, I-d, namely "a new system installed after July 1, 2011, that produces heat and electricity from one fuel input using an eligible fuel, without restriction to generating technology, has an electric generating capacity rating of at least one kilowatt and not more than 30 kilowatts and a fuel system efficiency of not less than 80 percent in the production of heat and electricity, or has an electric generating capacity greater than 30 kilowatts and not more than one megawatt and a fuel system efficiency of not less than 65 percent in the production of heat and electricity. Fuel system efficiency shall be measured as usable thermal and electrical output in BTUs divided by fuel input in BTUs."

Puc 902.05 "Customer-generator" means "eligible customer-generator" as defined in RSA 362-A:1-a, II-b, namely "an electric utility customer who owns, operates, or purchases power from an electrical generating facility either powered by renewable energy or which employs a heat led combined heat and power system, with a total peak generating capacity of up to and including one megawatt, that is located behind a retail meter on the customer's premises, is interconnected and operates in parallel with the electric grid, and is used to offset the customer's own electricity requirements. Incremental generation added to an existing generation facility, that does not itself qualify for net metering, shall qualify if such incremental generation meets the qualifications of this paragraph and is metered separately from the non-qualifying facility."

Puc 902.06 "Customer's own electricity requirements" shall include the electricity consumed in conjunction with or to operate the facility.

Puc 902.07 "Default service" means energy supply services provided by a distribution utility which includes a rural electric cooperative for which a certificate of deregulation is on file with the commission, but does not include alternative default service provided by a municipal or county aggregator under RSA 53-E.

Puc 902.08 "Distribution utility" means the company that owns and/or operates the distribution facilities delivering electricity to the customer-generator's premises, and includes a rural electric cooperative for which a certificate of deregulation is on file with the commission.

Puc 902.09 "Electric utility customer" as used in the definition of "customer-generator" means any retail ratepayer of a distribution utility.

Puc 902.10 "Electricity suppliers" means "electricity suppliers" as defined in RSA 374-F:2, II, namely "suppliers of electricity generation services and includes actual electricity generators and brokers, aggregators,

and pools that arrange for the supply of electricity generation to meet retail customer demand, which may be municipal or county entities.”

Puc 902.11 “Eligible fuel” means “eligible fuel” as defined in RSA 362-A:1-a, II-c, namely, “natural gas, propane, wood pellets, hydrogen, or heating oil when combusted with a burner, including air emission standards for the device using the approved fuel.”

Puc 902.12 “End-user customer” means any person or entity that purchases electricity supply at retail in New Hampshire from another person or entity, with the exception of a generating facility taking station service at wholesale from the regional markets administered by ISO New England, Inc. or its successor independent system operator or regional market administrator.

Puc 902.13 “Facility” means the electricity generating equipment, powered by renewable energy or that employs a heat led combined heat and power system, interconnected with the electric distribution system through any one retail meter or more than one retail meter, installed or to be installed in accordance with Puc 903.03.

Puc 902.14 “Federal poverty guidelines” means the federal poverty guidelines updated periodically in the federal register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. §9909(2).

Puc 902.15 “Generating capacity” means, for inverter-based units, the maximum generating capacity alternating current kilowatt rating of the inverters, and for other interconnections, the nameplate capacity kilowatt rating of the generating facility.

Puc 902.16 “Group” means one or more members who are customers of the same distribution utility who have signed an agreement with a host as required by RSA 362-A:9, XIV. A group can include a host and a member that are the same entity or person.

Puc 902.17 “Heat led” means “heat led” as defined in RSA 362-A:1-a, II-d, namely, “that the combined heat and power system is operated in a manner to satisfy the heat usage needs of the customer-generator.”

Puc 902.18 “Host” means a customer-generator that elects to assume the duties and obligations of RSA 362-A:9, XIV, who is, and who remains during the term of the agreement, a customer of the same distribution utility as the group.

Puc 902.19 “Islanding” means a condition in which a portion of the utility system that contains both load and dispersed generation is isolated from the remainder of the utility system.

Puc 902.20 “Large customer-generator” means a customer-generator whose facility has a total maximum generating capacity greater than 100 kilowatts alternating current up to and including one megawatt.

Puc 902.21 “Low-moderate income community solar project” means “low-moderate income community solar project,” as defined in RSA 362-F:2, X-a, namely, “ground-mounted or rooftop solar arrays that directly benefit a group of at least 5 residential end-user customers, where at least a majority of the residential end-user customers are at or below 300 percent of the federal poverty guidelines.”

Puc 902.22 “Member” means a customer of the same distribution utility as the host, who signs an agreement to be a member of a group under RSA 362-A:9, XIV, who remains a customer of the same distribution utility as the host during its membership in the group, and, except as provided in Puc 902.16, who is not a customer-generator.

Puc 902.23 “Net energy metering” means “net energy metering” as defined in RSA 362-A:1-a, III-a, namely, “measuring the difference between the electricity supplied over the electric distribution system and the electricity generated by an eligible customer-generator which is fed back into the electric distribution system over a billing period.”

Puc 902.24 “Non-bypassable charges” means charges assessed on the full amount of electricity imports without any netting during the applicable billing period, including such charges as the system benefits charge, stranded cost recovery charge, and storm recovery surcharge.

Puc 902.25 “Renewable energy” means electricity produced by renewable resources including geothermal, tidal or wave, wind, solar, landfill gas, hydro, biomass, bio-oil, bio-synthetic gas, and biodiesel resources.

Puc 902.26 “Small customer-generator” means a customer-generator whose facility has a total maximum generating capacity of not more than 100 kilowatts alternating current.

Puc 902.27 “Standard net metering tariff” means the net energy metering tariff provisions as specified in RSA 362-A:9, as applicable to customer-generators receiving a utility net metering capacity allocation prior to September 1, 2017 and not in excess of the net metering cap applicable prior to commission adoption of the alternative net metering tariff.

Puc 902.28 “Witness test” means the process used by the electric distribution utility following the interconnection of a customer-generator’s facility to determine whether the interconnection affects the safety, reliability, or power quality of the utility’s distribution system.

Readopt with amendments Puc 903 – Puc 908, effective 9-20-11 (Document #9998), to read as follows:

PART Puc 903 CONDITIONS TO INTERCONNECTION

Puc 903.01 General Rules, Rights, and Obligations.

(a) Any distribution utility and any electricity supplier operating within the state of New Hampshire shall, upon request, provide net energy metering to customer-generators pursuant to Puc 900 and RSA 362-A:9.

(b) A distribution utility shall comply with Puc 900 in a non-discriminatory manner and shall not unreasonably withhold its permission to interconnect a customer-generator’s facility.

(c) Any electricity supplier operating within New Hampshire that is not the default service provider shall offer net metering pursuant to Puc 900, but may provide for rates and terms as provided in RSA 362-A:9, II and Puc 903.02(g).

(d) Any customer-generator who engages in net energy metering in New Hampshire shall comply with Puc 900.

(e) A customer-generator shall comply with:

(1) Applicable commission-approved rules, tariffs, and terms and conditions of the distribution utility not in conflict with Puc 900;

(2) Any local, state, or federal law, statute, rule, or regulation which applies to the design, siting, construction, installation, operation, or any other aspect of the customer-generator’s facility and associated interconnection; and