

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2022-00160

April 21, 2023

MAINE PUBLIC UTILITIES COMMISSION
Investigation of Stranded Cost
Rate Design

ORDER

BARTLETT, Chair, and SCULLY, Commissioner

I. SUMMARY

In this Order, the Commission concludes that all categories of stranded costs, including pre-restructuring stranded costs, non-Net Energy Billing (NEB) post-restructuring stranded costs, and NEB stranded costs, be allocated to each rate class according to each class's proportionate kilowatt-hour (kWh) load share. Further, the Commission finds that with respect to rate design, NEB stranded costs shall be recovered through a fixed customer charge. Pre-restructuring costs and non-NEB post-restructuring costs shall be recovered through volumetric charges. However, the Commission directs Commission Staff to re-open the record for the limited purpose of exploring the implications of recovering pre-restructuring stranded costs and non-NEB post-restructuring stranded costs through a fixed charge.

II. BACKGROUND

A. Procedural Background

On March 11, 2022, the Commission issued an Order determining that the lost revenue from the NEB kWh Credit program should be included in the stranded cost recovery process. *Maine Public Utilities Commission, Investigation of Rate Treatment of NEB Program Costs*, Docket No. 2021-00360, Order (Mar. 11, 2022) (2021-00360 Notice of Investigation). The March 11, 2022 Order also indicated that the Commission would initiate a review of stranded cost rate design.

Consequently, on June 16, 2022, the Commission issued a Notice of Investigation (NOI) in the present docket to consider both the allocation of and retail rate design for the recovery of stranded costs. The NOI stated that the Commission would consider both inter-class and intra-class rate design in this proceeding.

The NOI allowed intervening parties to file initial comments and requested the initial comments address "the relevant attributes of, and policies furthered by, the contracts and programs included in stranded costs and what factors and principles should be considered when determining how these costs should be allocated among customers and rate components." Additionally, the Commission requested comments

on other issues that should be considered when structuring stranded cost charges, “such as whether this case should include consideration of design approaches that align rates with goals to encourage electrification in the heating and transportation sectors.”

Initial comments were filed by Versant Power (Versant), Central Maine Power Company (CMP), the Office of the Public Advocate (OPA), the Industrial Energy Consumer Group (IECG), the Efficiency Maine Trust (EMT), and Competitive Energy Services, LLC (CES).

An initial case conference was held on July 13, 2022. At the conference, the Hearing Examiners granted petitions to intervene from the OPA, EMT, IECG, CES, the Maine Renewable Energy Association (MREA), and the Coalition for Community Solar Access (CCSA). Versant and CMP were automatically designated as parties through the NOI.

On August 10, 2022, Versant, CMP, CES, and EMT filed testimony. On August 23, 2022, the parties and Staff issued data requests.

On September 16, 2022, Versant, CMP, and CES filed Rebuttal Testimony.

A technical conference was held on September 21, 2022, and a Hearing was held on October 5, 2022. Oral data requests were issued following the conference.

Versant, CMP, CES, OPA, and IECG filed Briefs on October 24, 2022, and Reply Briefs on October 31, 2022.

On January 25, 2023, Commission Staff issued its Examiners’ Report. Exceptions to the Examiners’ Report were filed on February 17, 2023.

III. HISTORY OF STRANDED COSTS

A. Pre-Restructuring Costs

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. As a part of the 1997 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. Thus, stranded cost rates were originally created to allow Versant and CMP 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 categorized as “pre-restructuring stranded costs.”

B. Post-Restructuring Costs

In the years since restructuring, stranded costs have become a mechanism to recover the costs and revenues related to State policy initiatives that are not necessarily related to restructuring. 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 NEB program costs.

1. Non-NEB Post-Restructuring Costs

Non-NEB post-restructuring costs include those policy driven initiatives other than the NEB programs. For instance, the utilities have entered into long-term contracts pursuant to 35-A M.R.S. § 3210-C. Subsection 3210-C(2) provides the policy underlying these contracts:

- a. That the share of new renewable capacity resources as a percentage of the total capacity resources in this State on December 31, 2007 increase by 10% by 2017 and that, to the extent possible, the increase occur in uniform annual increments;
- b. To reduce electric prices and price volatility for the State's electricity consumers and to reduce greenhouse gas emissions from the electricity sector; and
- c. To develop new capacity resources to reduce demand or increase capacity so as to mitigate the effects of any regional or federal capacity resource mandates.

During its 2009 session, the Maine Legislature enacted An Act to Establish the Community-Based Renewable Energy Pilot Program, P.L. 2009, ch. 329 (codified at 35-A M.R.S. §§ 3601-3610). Part A of the Act established a community-based renewable energy pilot program, to be administered by the Commission, to encourage sustainable development of community-based renewable energy. 35-A M.R.S. § 3602. Cost allocation language regarding these community energy contracts is set forth in section 3604(8), which states, "[t]he commission shall ensure that all costs and benefits associated with contracts involving investor-owned transmission and distribution utilities entered into under this section are allocated to electricity consumers in accordance with section 3210-F." Section 3210-F of Title 35-A requires that the Commission allocate to each investor-owned transmission and distribution utility its pro rata share of eligible costs and benefits from such contracts on an annual basis.

The utilities also enter into long-term contracts for the purchase of energy, capacity, or renewable energy credits (RECs) from Class IA Resources. 35-A M.R.S. § 3210-G. Section 3210-G provides that in selecting contracts for approval, the

Commission shall weigh the benefits to ratepayers and the benefits to the State's economy. In the Order directing the utilities to enter into these long-term contracts, the Commission explained how the utilities would recover costs associated with the contract payments:

As parties to the Contracts, the T&D Utilities must purchase and monetize the energy, RECs, and/or capacity provided for by each Contract, undertake administration of the Contracts, and reasonably fulfill all other obligations under each Contract. The Commission therefore finds that CMP and Versant may recover the costs they prudently incur in fulfilling these obligations through stranded cost proceedings.

With respect to the recovery of costs incurred in connection with the Contracts, the Commission notes that, consistent with recovery of such costs generally, the T&D Utilities have the obligation to reasonably maximize the value of products they receive under the Contracts and carry out their obligations under the Contracts fully and efficiently.

Maine Public Utilities Commission Request for Proposals for the Sale of Energy or Renewable Energy Credits from Qualifying Renewable Resources Pertaining to Versant Power and Central Maine Power Company, Docket No. 2020-00033, Order Directing Execution of Contracts for Sale of Energy or Renewable Energy Credits at 1-2 (Dec. 8, 2020).

The Commission has previously found that while "stranded costs" are defined in 35-A M.R.S. § 3208 as costs "made unrecoverable as a result of the restructuring of the electric industry," and the contracts entered into pursuant to Section 3210-C, Section 3604 and Section 3210-G are not costs made unrecoverable as a result of industry restructuring, they are nevertheless stranded costs, and for cost recovery purposes should be treated no differently than stranded costs associated with pre-restructuring purchased power contracts. *Public Utilities Commission, Investigation into Recovery of Expenses and Disposition of Resources from Long-Term Contracts by Maine's T&D Utilities, Docket No. 2011-00222, Order at 4-5 (Oct. 26, 2011).*

2. NEB Costs

In its 2019 session the Maine Legislature enacted provisions to encourage the development of distributed generation facilities that could participate in NEB. 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 tariff program available to commercial and industrial customers. Thus, the State now has two NEB programs: the kWh Credit program and the Tariff Rate program.

a. kWh Credit Program

The first program structure, set forth in 35-A M.R.S. § 3209-A, the kWh Credit program, is a significantly expanded version of the State's previous NEB program. The Act increased the size of eligible projects from 660 kilowatts (kW) to up to 5 megawatts (MW) and removed the cap on how many customers could have an interest in a shared facility (the cap was previously 10 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. Specifically, with respect to the kWh Credit program, Chapter 313 provides that:

Net energy billing-kilowatt-hour credits only applies to kilowatt-hour usage charges. Net energy billing customers or the shared ownership customers are responsible for all other charges applicable to the customer's rate class and recovered either through fixed amounts or over units other than kilowatt-hours.

Ch. 313, § 3(J)(4). The application of these credits to customers' bills has a corresponding impact on the utilities in the form of "lost revenues," which must be recovered from other customers.

b. Tariff Rate Program

The second program structure, set forth in 35-A M.R.S. § 3209-B, was a new NEB program for commercial and industrial customers, referred to as the Tariff Rate program. The Tariff Rate program provides a financial credit on the bill of participating customers. Under the Tariff Rate program, 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 it allocates to participating customers' bills. This amount must be recovered from ratepayers.

The Tariff Rate program rate calculations are specified in 35-A M.R.S. § 3209-B(5). Due to recent legislative changes to this statute, one method (the "old" method) applies to resources that began construction between December 1, 2019 and September 1, 2022, and a second method (the "new" method) applies to projects that began construction after September 1, 2022. To qualify for the existing rate under the "old" method, project developers were required to submit an affidavit to the Commission certifying that they met this statutory requirement. See *Maine Public Utilities Commission Net Energy Billing Documentation Process for Projects Pursuant to P.L. 2021, Chapter 390*, Docket No. 2021-00219, Order Regarding Process Announcement (Oct. 4, 2021). For projects that qualify for the "old" method, the tariff rate is calculated to equal the sum of the standard-offer service rate that is applicable to the customer, plus 75% of the "effective transmission and distribution rate" for the smallest commercial class of the utility. 35-A M.R.S. § 3209-B(5)(A).

Under the “new” method, the tariff rate is set in 2022 by reference to 2020 rates, and in 2023 and future years by a fixed 2.25% per year inflator on the last year’s rate. 35-A M.R.S. § 3209-B(5)(A-1).

As a result of the Act, in 2019 the Commission amended Chapter 313 of its rules, which addresses the requirements for NEB, to include the Tariff Rate program. This included language providing that the costs and benefits incurred or realized by the transmission and distribution utilities from the Tariff Rate program be included in stranded costs. *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). Specifically, Chapter 313 was amended to provide that:

The costs and benefits incurred or realized by the investor-owned transmission and distribution utility shall be reviewed by the Commission on an annual basis for inclusion in the utility’s stranded cost rates. The process established by the Commission shall be consistent with the allocation of costs and benefits specified in Title 35-A, section 3210-F. Eligible costs and benefits include: incremental administrative costs, payments or bill credits, and revenue from the monetization of the output of the eligible facility.

Ch. 313, § 3(K)(7). Thus, Chapter 313 specifically provides that in recovering Tariff Rate program costs and benefits through stranded costs, the process must be consistent with the allocation of costs and benefits specified in 35-A M.R.S. § 3210-F. Section 3210-F specifies that the costs and benefits of long-term contracts be allocated among all investor-owned utilities based on each utility’s total retail kilowatt-hour energy sales to ratepayers.

3. Docket No. 2021-00360

As noted in the procedural history above, the present case arose out of the Order issued in the 2021-00360 Notice of Investigation docket, which determined that the lost revenue from the NEB kWh Credit program should be included in the stranded cost recovery process. *Maine Public Utilities Commission, Investigation of Rate Treatment of NEB Program Costs*, 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 but require that commercial and industrial customers only pay the costs of the Tariff Rate program. *Id.* at 11. The Commission was not persuaded by arguments made by the IECG and CES that public policies on climate change largely benefit residential customers, and not commercial and industrial customers. *Id.* Instead, the Commission found that all

ratepayers benefit from the State's policies on climate change and beneficial electrification and, accordingly, basic rate design and equity principles would dictate that all ratepayers pay some portion of these costs. *Id.* Further, the Commission noted that:

[T]he Legislature has determined, in some situations to explicitly exempt [transmission and sub-transmission] customers from the costs of State energy programs. For example, 35-A M.R.S. § 3210(10) provides [transmission and sub-transmission] customers with an option to have their suppliers exempt from the Class IA and the thermal portfolio requirements. Thus, if the Legislature intended to exclude [transmission and sub-transmission] customers from the costs of the NEB programs, it would have presumably so stated in the NEB statutes.

Docket No. 2021-00360, Order at 11, n. 2.

Thus, having found that like other post-restructuring policy initiatives, the appropriate cost recovery mechanism for both the kWh Credit and Tariff Rate programs was through stranded costs, the present case requires the Commission to examine the allocation (interclass) and rate design (intraclass) of stranded costs.

IV. POSITIONS OF THE PARTIES

A. Pre-Restructuring Stranded Costs

Pre-restructuring stranded costs are those costs that were incurred by CMP and Versant when they had a load-serving obligation as vertically integrated utilities. No parties appear to suggest that the allocation of pre-restructuring stranded costs should be modified.

With regard to the rate design for pre-restructuring stranded costs, no parties suggest that the rate design be modified from that currently in place, except that CMP recommends that it design rates using kWh charges only. CMP Corrected Testimony at 12. While Versant currently only uses kWh charges, CMP's pre-restructuring costs continue to be recovered based on a cost causation theory that allocates costs on an energy/capacity basis. While CMP began using some form of equal percentage rate adjustments in Docket No. 2004-00339, CMP continues to recover pre-restructuring costs using an energy/capacity allocation. CMP Corrected Testimony at 12. CMP proposes to change its rate design to recover pre-restructuring costs on a per-kWh basis in the same way Versant currently does.

B. Post-Restructuring Costs

1. CMP's Position

With respect to non-NEB post-restructuring costs, CMP proposes using the same allocation and rate design as pre-restructuring costs because "the policy objectives for and the legislation by which these programs were established do not benefit any

particular class of customers.” CMP Br. at 4. CMP is open to collecting non-NEB post-restructuring stranded costs on a customer charge basis to support beneficial electrification, but it continues to prefer a volumetric, *i.e.* per kWh, charge. CMP Br. at 4; CMP Rebuttal Testimony at 5.

With respect to NEB costs, in its Testimony CMP proposed allocating the net costs of the kWh Credit and Tariff Rate programs proportionally to the rate classes producing these net costs. CMP Corrected Testimony at 13; CMP Reply Br. at 3. For example, the Tariff Rate program is available only to commercial and institutional customers. Thus, CMP stated that, as the customers producing the net costs of the Tariff Rate program, commercial and institutional customer classes should be solely responsible for these costs. CMP Reply Br. at 3. Likewise, for the kWh Credit program, CMP proposed that costs be allocated to the rate classes in which these costs arise, which are primarily residential and small commercial customer classes. CMP Reply Br. at 3. However, in its Exceptions to the Examiners’ Report, CMP states that it “moderates its prior position on NEB cost allocation to support an allocation based on load share,” as recommended by the Staff. CMP Exceptions at 3. While CMP still prefers its prior position, the Company states allocation based on load share, coupled with rates designed using fixed charges, would create a measured and balanced outcome. *Id.* at 3.

CMP notes in its Exceptions to the Examiners’ Report that while it has softened its position with respect to cost allocation for NEB stranded costs, with regard to rate design the Company continues to strongly advocate for fixed charges. *Id.* at 5. CMP states that under a fixed charge approach, all customers, including customers who financially benefit from the program through incentives, will be similarly required to contribute to the costs of the program. *Id.* CMP further states that it is troubling that NEB program participants, “in the face of the significant financial incentive they receive to subscribe to these NEB projects and the associated yet-unseen size of stranded costs that other customers will bear, would not have to contribute to the costs of these programs.” *Id.*

2. Versant’s Position

With respect to all stranded costs, Versant believes that the current allocation and rate design, which Versant describes as costs being “allocated to each rate class according to the class’s overall energy consumption” through volumetric charges, continues to be a reasonable approach to recover costs associated with State policy initiatives. Versant Testimony at 2.

Additionally, Versant notes and agrees with the Commission when it recognized that “all ratepayers benefit from the State’s policies on climate change and beneficial electrification and, accordingly, basic rate design and equity principles would dictate that all ratepayers pay some portion of these costs.” Versant Br. at 3, citing *Maine Public Utilities Commission, Investigation of Rate Treatment of NEB Program Costs*, Docket No. 2021-00360, Order at 11 (Mar. 11, 2022).

While Versant does not propose changing the current allocation and rate design for stranded costs, it believes that principles of equity require NEB participants to pay stranded costs. Versant Br. at 3. Versant notes that under the current stranded cost design and NEB programs, the value of NEB credits can offset the stranded cost portion of a NEB customer's bill. Versant Br. at 3. Versant suggests the Commission consider adjusting the value of NEB credits so that this no longer occurs and believes that the Commission has the authority to make this adjustment under existing law for the kWh Credit program and Tariff Rate program. Versant Br. at 3; Versant Testimony at 2-4.

Regarding the kWh Credit program, Versant states that 35-A M.R.S. § 3209-A does not include any specific requirements for how the Commission should determine which rates can be offset by a kWh credit. Versant Testimony at 3-4. Additionally, Versant states that Section 3(J)(4) of Chapter 313, which addresses "Non-usage Charges," clarifies that kWh credits apply only to kilowatt-hour usage charges. Versant Testimony at 4. According to Versant, the Commission could, through its Order in this proceeding, categorically designate stranded cost rates as a "non-usage charge" that will not be offset by kWh credits. Versant Testimony at 4. Alternatively, Versant suggests the Commission could amend Chapter 313 to clarify that kWh credits offset only supply and transmission and distribution usage charges, but no other charges. Versant Testimony at 4.

With respect to the Tariff Rate program, Versant notes that the Commission currently calculates the monetary value of a credit by taking the full standard offer rate and then adding 75% of the value of all other rates, including stranded cost, conservation, and distribution. Versant Testimony at 3, citing *Maine Public Utilities Commission, Amendments to Chapter 313 – Net Energy Billing*, Docket No. 2019-00197, Order Correcting Net Energy Billing Tariff Rate for 2022 – Exhibit A (Corrected) (Jan. 19, 2022) (showing calculation of tariff rates as including stranded cost rate component). Versant states that 35-A M.R.S. § 3209-B provides that the Tariff Rate must equal the customer's standard offer rate "plus 75% of the effective transmission and distribution rate for the rate class that includes the smallest commercial customers of the investor-owned transmission and distribution utility." Versant Testimony at 3. Versant further notes that Chapter 313 includes similar language (defining "effective transmission and distribution rate"). According to Versant, the stranded cost rate is neither a transmission rate nor a distribution rate and could therefore be excluded when calculating the value of the monetary credit, consistent with the plain language of section 3209-B and Chapter 313. Versant Testimony at 3. Versant states that by excluding the value of the stranded cost rate from the calculation of the tariff rate monetary credit, the Commission would, in effect, be requiring customers who participate in the Tariff Rate program to pay the incremental cost of the stranded cost rate. Versant Testimony at 3.

3. CES's Position

Throughout these proceedings CES has asserted that the Commission should apply taxation principles and the Inverse Elasticity Rule in particular to ensure that costs associated with NEB are properly assessed and recovered. CES relies on the Value of

Solar Study conducted in 2015, with modified results, to calculate price suppression as well as environmental benefits to ratepayers. Maine Public Utilities Commission, *Maine Distributed Solar Valuation Study, Presented to: The Joint Standing Committee on Energy, Utilities and Technology* (Mar. 1, 2015). In summary, the key elements of the CES proposal are as follows:

- a. A per kWh charge to offset the price suppression benefits received by all ratepayers as a result of the generation projects that give rise to stranded costs. CES Br. at 10.
- b. A per kW charge to offset the deferred transmission and distribution grid capital expenditures resulting from distributed generation located closer to load, such per kW charge to be modified to a per kWh charge for purposes of residential and SGS customers for ease of implementation through the CMP and Versant billing systems. CES Br at 10.
- c. A service charge to recover the remaining balance of stranded costs. CES Br. at 11.

4. OPA's Position

Like Versant, the OPA agrees with the Commission's finding in Docket No. 2021-00360 that all ratepayers benefit from the State's policies on climate change and beneficial electrification and, accordingly, basic rate design and equity principles would dictate that all ratepayers pay some portion of these costs. OPA Br. at 1

The OPA opposes CMP's original proposal to allocate NEB costs to the rate classes that it deems to have caused the costs on the grounds that this approach is not cost based and is premised on two flawed presumptions: (1) that the NEB-related stranded costs attributable to individual rate classes is proportionate to the load of customers in those individual rate classes that have contracted to receive NEB service; and (2) that NEB-related stranded costs are customer-related costs, *i.e.*, all customers contribute to the need for the NEB program by an equivalent amount regardless of load. OPA Br. at 4. The OPA notes that CMP's customer-charge approach appears to be designed to ensure recovery of a portion of the costs of the program from NEB program participants themselves. OPA Br. at 5. While the OPA sees some merit to this argument, it states that customers using more energy make a greater contribution to the need for programs that address climate change policy goals. OPA Br. at 5.

With respect to CES's proposal, the OPA questions CES's reliance on the Value of Solar Study presented by the Commission to the Legislature in 2015 because it did not consider the system impacts of solar projects of the size permitted under the legislative changes made to Maine's NEB program in 2019. OPA Br. at 6. Additionally, the OPA states that any price suppression benefits in the generation market derived from the deployment of more NEB projects in Maine will be enjoyed by all utility customers, because all customers purchase electric energy from the wholesale market. OPA Br. at 8. Further, the OPA states that to the extent there is a distinction among classes, it is arguably commercial and industrial customers who benefit to a greater

degree because the loads of these classes generally represent a higher percentage of system load during high output hours from solar generators during the middle of the day. OPA Br. at 8.

In sum, the OPA supports Versant's proposal to continue to recover all stranded costs from all rate classes on a volumetric basis.

5. IECG's Position

While the IECG agrees with some of the ideas suggested by other parties in this proceeding and rejects others, throughout these proceedings it has argued that the principles of cost causation must apply in assessing and recovering the costs associated with NEB. IECG Br. at 20. In its reply brief, IECG sets forth what it believes is the appropriate path forward for the Commission to determine how to recover NEB costs from ratepayers:

- a. Order that the outcome of this case will be on an interim basis, with an expiration date, "to be replaced by a cost allocation and rate design that fully considers on the record the size and timing of NEB excess costs, and their proper allocation and rate design, incorporating best available elasticities of demand." IECG Reply Br. at 5.
- b. Order the utilities and other parties to develop best available estimates of NEB excess costs for use in a follow-on rate design proceeding. IECG Reply Br. at 6.
- c. Order the utilities and other parties to develop "best available elasticities of demand" for ratepayer classes and groups for use in a follow-on rate design proceeding. IECG Reply Br. at 6.
- d. Accept CES's analysis of price suppression and grid benefits on an interim basis. IECG Reply Br. at 6.
- e. Accept CES's cost allocation approach on an interim basis. IECG Reply Br. at 6.

In its Exceptions to the Examiners' Report, the IECG states that NEB stranded costs are not legally stranded costs because, pursuant to 35-A M.R.S. § 3208, stranded costs include only those costs created before electric industry restructuring. IECG Exceptions at 1-2. The IECG argues that the Commission's Order in Docket No. 2021-00360, which determined that all NEB costs should be recovered through stranded costs, deviated from Commission cost allocation precedent and the force of Public Utilities Regulatory Policy Act (PURPA) and Maine's Electric Rate Reform Act (ERRA). *Id.* at 8. The IECG asserts that the Examiners' Report, having proposed allocating NEB stranded costs to classes based on class energy consumption also deviates from Commission cost allocation precedent. *Id.*

The IECG states that a proportional allocation relying on the 25/75 capacity/energy split is both more logical and more reasonable than allocating on the basis of kWh. *Id.* at 11. Further, the IECG states that allocating all NEB stranded costs on the basis of kWh will discourage beneficial electrification. *Id.* at 12.

V. EXAMINERS' REPORT

On January 23, 2023, Commission Staff issued its Examiners' Report. The Examiners' Report recommended that the Commission find that pre-restructuring stranded costs, non-NEB post-restructuring stranded costs, and NEB stranded costs should be allocated to each rate class according to each class's overall kWh usage and recovered through volumetric charges.

The Examiners found that if the primary purpose of adopting a fixed customer charge was to ensure that all NEB participants (whether participating in the kWh Credit program or the Tariff Rate program) pay a portion of the costs, such a goal would only be accomplished for the kWh Credit program and the "new" method Tariff Rate program. The Examiners noted that under the "old" method Tariff Rate program, the tariff rate has historically been calculated using a stranded cost component. Thus, because the rate is calculated using a stranded cost component, under the first method the monetary credit will offset any increase in stranded costs for customers receiving credits. Based on this, the Examiners found that ensuring NEB program participants pay a portion of stranded costs could not be achieved equally and consistently among all NEB participants through a fixed charge, and thus, the Examiners recommended a volumetric charge for NEB stranded costs.

VI. DISCUSSION AND DECISION

A. Pre-Restructuring Costs

Aside from CMP proposing to modify its rate design to collect pre-restructuring costs on a per kWh basis so that it is consistent with Versant's recovery of these costs, the parties do not suggest any major modifications to the allocation and rate design of pre-restructuring costs. The Commission agrees with CMP that its pre-restructuring stranded costs should be treated the same as Versant's, and thus supports CMP's removal of capacity from its rate design for pre-restructuring stranded costs.

The Commission notes that because any other change to the rate design for pre-restructuring stranded costs was largely unexplored in this case, the Commission does not have a record upon which to assess the impact of further modifications to the rate design for pre-restructuring stranded costs. Thus, while the Commission finds that such costs should continue to be recovered on a volumetric basis, the Commission directs Commission Staff to collect data and submissions from the parties to evaluate the policy considerations and the rate impact implications of continuing to collect pre-restructuring stranded costs on a volumetric basis versus a fixed charge basis.

B. Non-NEB Post-Restructuring Costs

As the Commission has stated since the start of this investigation, post-restructuring stranded costs arise out of energy-related public policy programs, and thus are not informed by the kind of cost-of-service studies and methods that are typically the focus of electric utility rate design. 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 has consistently spread these costs across all customer classes in a relatively comparable manner.” *Docket No. 2021-00360*, Order at 10 (Mar. 11, 2022). The Commission further found that “T&D rates are designed in a manner to recognize, among other factors, cost causation differences between rate classes to promote economic efficiency and appropriate price signals.” *Id.*

Thus, the Commission finds that because the majority of the policy objectives of the legislation by which non-NEB post-restructuring programs were established do not benefit any particular class of customers, such costs should continue to be allocated to all rate classes based on each class’s load share.

Based on the record in this case, the Commission finds that non-NEB post-restructuring stranded costs should continue to be recovered volumetrically. However, as with the rate design of pre-restructuring stranded costs, the Commission directs Staff to collect information and assess the impact of changing recovery of non-NEB post-restructuring costs from a volumetric charge to a fixed charge.

C. NEB Post-Restructuring Costs

1. Allocation

For the reasons stated above, the Commission finds that the most reasonable allocation of post-restructuring stranded costs, including NEB-related stranded costs, is to all rate classes based on each class’s proportionate kWh load share. The majority of the policy objectives of the legislation by which all post-restructuring programs were established do not benefit any particular class of customers. Thus, the Commission concludes that all ratepayers benefit from State policies on climate change and finds little to distinguish the policy-related objectives of NEB from other post-restructuring stranded costs. Because the benefits are the same, it makes little sense to attribute the “costs” of such benefits differently. Thus, the Commission rejects CMP’s original proposal to allocate NEB stranded costs only to those classes eligible to participate in each respective NEB program. Rather, such costs should be recovered from all rate classes based on each class’s proportionate kWh load share.

2. Rate Design

a. Volumetric Charges

As noted above, the Commission finds that because all customers benefit from the policy objectives of NEB, all customers must pay the costs of such initiatives. While this principal is relatively straightforward to implement on an interclass (allocation) basis, implementing it on an intraclass, or rate design basis, requires further analysis. Not only does a NEB program participant benefit as all customers benefit from such policy initiatives, but such a customer also receives the added financial benefit of the program itself. Currently, Versant recovers NEB stranded costs on a volumetric basis, and CMP recovers these costs through its fixed and variable rate components. These rate designs result in such costs largely being paid by non-NEB participants due to NEB program participants' ability to offset a majority of the stranded costs on their electric bill. In other words, under a volumetric rate design, (1) not all beneficiaries of NEB's financial incentives pay NEB stranded costs, and (2) most beneficiaries of NEB's financial incentives pay significantly less in stranded costs than non-participants. This is inequitable.

Additionally, while NEB-related stranded costs may be created principally on a volumetric basis – as those distributed generation projects produce energy – the benefits of such projects to ratepayers are not a function of the consumption of electricity by ratepayers.

Further, recovering NEB stranded costs through volumetric charges could create a disincentive for customers to invest in beneficial electrification, such as electric vehicles (EVs) and heat pumps. Like the NEB programs, beneficial electrification is a component of the State's overall climate policy. See *Maine Won't Wait: A Four-Year Plan for Climate Action*, Maine Climate Council (Dec. 2020).¹ Thus, it makes little sense to create a rate design that potentially undercuts a component of the very policy of which NEB programs are also a component.

For the reasons listed above, the Commission finds that recovering NEB stranded costs through volumetric charges is both inequitable and contrary to the State's climate policy goals.

b. Fixed Charge

The Commission finds that recovering NEB stranded costs through a fixed charge ensures that all customers, including NEB program participants, pay a portion of stranded costs. This is clearly the case with respect to the kWh Credit program.

¹This plan identified electrification of heating and transportation sectors as crucial to reducing greenhouse gas emissions. The report can be found at <https://online.fliphtml5.com/gkqg/hehn/#p=1>.

Under the kWh Credit program, in accordance with 35-A M.R.S. § 3209-A and section 3(J)(4) of Chapter 313 of the Commission's rules, NEB credits apply only to the kWh delivered by the T&D utility to the subscriber. For kWh Credit Program participants, NEB credits cannot be used to offset a fixed charge. Thus, a fixed charge for NEB stranded costs will result in NEB kWh Credit program participants paying for a portion of stranded costs.

Under the Tariff Rate program, the tariff rate is calculated under either the "old" method or the "new" method. The "new" method applies to resources that began construction between December 1, 2019 and September 1, 2022, and the "new" method applies to projects that began construction after September 1, 2022.

Under the "new" method, specified in 35-A M.R.S. § 3209-B(5)(A-1), the tariff rate is set in 2022 by reference to 2020 rates, and in 2023 and future years by a fixed 2.25% per year inflator on the last year's rate. Therefore, for participants eligible for this method, an increase in stranded cost rates (whether fixed or volumetric) would *not* directly increase the Tariff Rate, and therefore would neither increase the revenues of the participants nor the cost of the program. In short, Tariff Rate participants who receive the rate based on the second method would pay for any increase in stranded rates regardless of whether such costs are recovered through a volumetric or a fixed charge.

For projects that qualify for the tariff rate under the "old" method, the rate is calculated to equal the sum of the standard-offer service rate that is applicable to the customer, plus 75% of the "effective transmission and distribution rate" for the smallest commercial class of the utility. 35-A M.R.S. § 3209-B(5)(A).² The Commission has historically included stranded costs when calculating the "effective transmission and distribution rate" under the first method. *See Maine Public Utilities Commission, Amendments to Chapter 313 – Net Energy Billing*, Docket No. 2019-00197, Order Correcting Net Energy Billing Tariff Rate – Exhibit A (Jan. 19, 2022) (showing calculation of tariff rates as including stranded cost rate component). If stranded costs are included when calculating the tariff rate under the "old" method, an increase in the stranded cost rates of the smallest commercial class (whether through fixed or volumetric rates) would increase the tariff rate, and as a result, also increase the value of the financial credits available to the Tariff Rate program participants eligible for this method. Thus, under the "old" method, by including stranded costs in the "effective transmission and distribution rate," Tariff Rate participants are effectively insulated from

² Section 3209-B(5)(A) of Title 35-A requires that "[t]he tariff rate for a customer participating in net energy billing with a distributed generation resource described in this paragraph must equal the standard-offer service rate established under section 3212 that is applicable to the customer receiving the credit plus 75% of the effective transmission and distribution rate for the rate class that includes the smallest commercial customers of the investor-owned transmission and distribution utility."

a majority of the increases in stranded costs that would arise due to increasing NEB costs.

There is nothing in Chapter 313 or in the docket adopting Chapter 313, however, that states that the “effective transmission and distribution rate” should include stranded costs. Chapter 313 defined “effective transmission rate” as follows:

“Effective transmission and distribution rate” for a rate class means a rate per kilowatt-hour calculated as the sum of (a) all transmission and distribution revenue collected from customers in the rate class over a given period of time divided by the total kilowatt-hour usage of customers in that rate class over the same period of time.

Chapter 313, § 2(F).

Similarly, the statute makes no mention of stranded costs. Instead, the statute requires that for the “old method:

The tariff rate for a customer participating in net energy billing with a distributed generation resource described in this paragraph must equal the standard-offer service rate established under section 3212 that is applicable to the customer receiving the credit plus 75% of the *effective transmission and distribution rate* for the rate class that includes the smallest commercial customers of the investor-owned transmission and distribution utility.

35-A M.R.S. § 3209-B(5)(A) (emphasis added).

Stranded costs do not constitute transmission revenue or distribution revenue in that they are not compensation for the provision of transmission or distribution service. This interpretation is further supported by 35-A M.R.S. § 3209(1), which provides that, “The design of rate recovery for the collection of *transmission and distribution costs, stranded costs* and other costs recovered pursuant to this chapter must be consistent with existing law.” (emphasis added). Thus, in the very statute that addresses rate design, “transmission and distribution costs” are described as separate and distinct from stranded costs. As Versant noted in this proceeding:

The stranded cost rate is neither a transmission nor a distribution rate and could therefore be excluded when calculating the value of the monetary credit, consistent with the plain language of the statute and the rule. By excluding the value of the stranded cost rate from the calculation of the tariff rate monetary credit, the Commission would in effect be requiring NEB tariff rate project participants to pay the incremental cost of the stranded cost rate.

Exhibit A to Versant Initial Testimony at 3.

Finally, in the original Versant rate case proceeding that began the examination of the ratemaking treatment of the kWh Credit program in Docket No. 2021-000360, which resulted in the present case, the Commission specifically noted that “[t]he question . . . is whether to treat the impacts of the NEB kWh credit program through stranded cost rates or through distribution rates.” *Versant Power, Request for a Distribution Rate Change*, Docket No. 2020-00316, Order at 88 (Part II) (Oct. 28, 2021). Thus, the very question addressed in Docket No. 2021-00360 was predicated on the distinction between distribution costs and stranded costs.

For these reasons, the Commission finds that stranded costs are not transmission or distribution rates and should not be used when calculating the “effective transmission and distribution” under the “old” method tariff rate. With this clarification, applying a fixed charge for NEB stranded cost recovery results in all Tariff Rate program participants (both old and new method) paying for NEB-related stranded cost charges, just as all non-NEB participants already do.

VII. CONCLUSION

Based on the foregoing reasons, the Commission finds that pre-restructuring stranded costs, non-NEB post-restructuring stranded costs, and NEB stranded costs should be allocated to each rate class according to each class’s overall kWh usage. With respect to rate design, pre-restructuring stranded costs and non-NEB stranded costs should be recovered through a volumetric charge. However, Commission Staff should collect data and submissions from the parties to assess and evaluate the implications of recovering such costs through volumetric charges versus fixed charges.

With respect to NEB stranded costs, CMP and Versant should implement a fixed charge method of collecting NEB-related stranded costs. Further, when calculating the tariff rate under the “old” method, the “effective transmission and distribution rate” component of the calculation shall exclude stranded costs.

Accordingly, the Commission

ORDERS

1. That all stranded costs be allocated to each rate class according to each class’s overall kWh load share;
2. That pre-restructuring stranded costs and non-NEB post-restructuring stranded costs be recovered through a volumetric charge;
3. That NEB stranded costs be recovered through a fixed charge; and
4. That Commission Staff issue a Procedural Order requesting data and submissions from parties to evaluate the policy considerations and rate impact implications of continuing to collect all non-NEB stranded costs through volumetric charges versus fixed charges.

Dated at Hallowell, Maine, this 21st day of April 2023.

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear
Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Bartlett
 Scully

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).

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.