LEBANON ENERGY ADVISORY COMMITTEE
THURSDAY, FEBRUARY 18, 2021 - 4:00 PM
REMOTE VIA MICROSOFT TEAMS
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1. Call to Order

2. Approval of Minutes

A. January 21, 2021

3. New Business

A. Update on CPCNH & LCP Planning

B. Legislative Update: HB 315 City Testimony and Attachments, HB 407, and SB 91

C. NSF Smart & Connected Communities Grant Proposal for Lebanon Transactive Energy Community (LEBTEC) with Dartmouth, UNH & MIT

D. Update on LED Street Light Conversion Project

E. 2021 Goals & Work Plan

. With Planning Dept: Evaluate enhanced/accelerated energy code requirements and/or encourage commitment to above-code performance

. With DPW & Other

4. Other Business

5. Open to the Public

6. Committee Reports

A. EV Subcommittee

7. Future Agenda Items

8. Next Meeting Date

A. March 18, 2021, 4 PM

9. Adjournment

Due to the current situation with the COVID-19 Pandemic, the City of Lebanon is offering its meetings via Microsoft Teams. Members of the public are encouraged to attend by going to LebanonNH.gov/Live where you will find instructions on how to enter the meeting. Members of the public will be able to participate and ask questions through the Microsoft Teams software or by phone. Please visit LebanonNH.gov/Live for full details.

THE AGENDA, IN ITS ENTIRETY IS AVAILABLE ON THE CITY'S WEBSITE AT LEBANONNH.GOV

LEBANON ENERGY ADVISORY COMMITTEE MEETING MINUTES

Due to the Covid 19 Pandemic, the meeting was held virtually via MS Teams
January 21, 2021
4:00 PM

DRAFT

MEMBERS PRESENT: Clifton Below (Chair, Council Representative), Greg Ames (Vice-Chair), Jon Chaffee, Woody Rothe, Gene Homicki (alternate)

MEMBERS ABSENT: Joan Monroe (Planning Board Representative)

STAFF PRESENT: Everett Hammond, Tad Montgomery

GUESTS PRESENT: None

CALL TO ORDER: Meeting called to order by Clifton Below at 4:05 PM.

ELECTION OF CHAIR: Greg nominated Clifton Below to serve as Chair, Jon seconded. Approved unanimously by roll call vote.

ELECTION OF VICE-CHAIR: Meghan nominated Greg Ames to serve as Chair, Jon seconded. Approved unanimously by roll call vote.

ACCEPTANCE OF MINUTES: Jon moved to accept the 12/17/2020 minutes as presented; Meghan seconded. Approved unanimously by roll call vote.

NEW BUSINESS

Proposed Joint Power Agreement for Community Power Coalition of NH (CPCNH), Review and Recommendation to Council: Clifton presented, and the Committee discussed, the Community Power of NH (CPCNH) documents that he plans to present to the City Council.

Revised Scope of Work for NHCDFA Grant: Clifton presented, and the Committee discussed, a proposed statement of work for bringing on a contractor to assist in the development of CPCNH and using the NHCDFA grant funds to pay the contractor.

Review of Phase 2 options for LED Streetlight Conversions: Everett presented two options for updating the downtown streetlights around Colburn Park and on the Mall. Option 1 uses existing poles, rehabbed as necessary. Option 2 uses new decorative poles. DPW has analyzed the poles and wiring and determined the existing poles are in good shape, pending refinishing or powder coating. The Committee discussed several options for light fixtures on top of the poles. Clifton moved that the Committee recommend to the City Council that the City pursue the lower cost option 1 (using the existing poles) and consider using 2700K lighting and converting all decorative posts to use dark sky-friendly luminaries. Jon seconded. Approved unanimously by roll call vote.

2021 Goals and Work Plan: Deferred to next meeting.

OTHER BUSINESS

NH Legislative Issues: HB 315 was recently filed at the request of Eversource, which would make significant changes to the municipal aggregation law (RSA 53-E) and make it very difficult for community power to proceed in NH. Clifton described it as "way over-reaching and will gut the Municipal Aggregation Law." Not scheduled for a hearing for at least 2 weeks; Clifton will send more information to the Committee. There is also a Senate bill being pursued which will fix some minor issues in 53-E without completely gutting the bill.

Other:

- Clifton mentioned that water treatment and wastewater treatment have been on real-time pricing for a couple of years. Voluntary reduction of power usage during peak power usage have resulted in these 2 sites being net exporters of power during the peak hour last summer, reducing the capacity tags of these 2 accounts to 0.
- Woody moved that LEAC recommend that LEAC control access to, and manage contents, of the LEAC sharepoint drive. Additionally, he volunteered to be the LEAC database manager for this purpose. Greg seconded. Approved unanimously by roll call vote.
- Tad discussed the possibility of setting up a fuel buying cooperative for City residents, potentially under the auspices of Lebanon Community Power. Jon and Gene expressed concerns about LCP promoting the use of fossil fuels. Tad mentioned that this was a good way to reach out to potential LCP customers.

OPEN TO THE PUBLIC – None

COMMITTEE REPORTS – None

FUTURE AGENDA ITEMS: Discussion on Building Codes update and City Procurement policy deferred to a future meeting.

NEXT MEETING:
Scheduled for Thursday, February 18th at 4pm.

ADJOURNMENT:
A motion was made by Greg to adjourn the meeting at 6:33 PM. The motion was seconded by Jon. The motion was unanimously approved by roll call vote.

Respectfully submitted,
Gregory Ames

CITY OF LEBANON
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February 9, 2021

Hon. Michael Vose
Chair, Science, Technology & Energy Committee
New Hampshire House
107 North Main St.
Concord, NH 03301

RE: **HB 315, relative to the aggregation of electric customers**

Dear Rep. Vose & Members of the NH House Science, Technology & Energy Committee,

As the Assistant Mayor of the City of Lebanon I write to express and explain the City's strong opposition to HB 315 as introduced. The one suggested amendment that I have seen, dated 2/1/21 and circulated by Eversource, does little overall to address the many problems with this bill, so I will address that too.

Let me be clear though, I recognize that RSA 53-E could be improved upon, and there are a few parts of this bill that would improve RSA 53-E and help expediate the development of municipal and county electric aggregations (that I call community power aggregations or CPAs for shorthand). To that end I would be happy to work with the committee, sponsors, PUC, utilities, and other interested stakeholders to find language that can gain broader support, either in HB 315 or SB 91. Absent much broader bipartisan support for an amendment, I recommend the bill be found Inexpedient to Legislate or retained for future consideration and allow the PUC to propose administrative rules and SB 91 to come over from the Senate with broad bipartisan support, which is when we usually make the best policy decisions for energy legislation.

I have heard that this bill is intended to speed up the adoption of rules to enable CPAs to launch sooner, but it has already been more than a year and a half since the Governor signed SB 286 into law creating that need and authority. The PUC began an informal stakeholder discussion of draft proposed rules nearly a year ago. After a series of virtual work sessions concluded last November PUC staff indicated that they expected that the commission might make an initial proposal in December, and then in December staff told at least one person maybe in January. My guess is that an initial proposal is now on hold due to the introduction of HB 315, which may further delay the start of formal rule making by perhaps another 6 months or more. My suggestion is to allow the PUC to proceed with proposed rules and then consider whether a course correction is needed.

The City favors market-based choices for energy supply and services over regulated monopoly control of customer choice. In numerous ways that I will detail HB 315 largely guts RSA 53-E as a means to help animate the retail market for residential and small business customers in order “to harness the power of competitive markets” “to reduce electricity costs for all consumers of electricity,” drive market-based innovation and a “more productive economy while maintaining safe and reliable service with minimum adverse impacts on the environment” as is the stated goal of RSA 374-F, NH’s Electric Utility Restructuring Act, enacted 25 years ago this spring.

HB 315:

- Is contrary to the RSA 374-F purpose of increasing “customer choice and the development of competitive markets for wholesale and retail electricity services.” (RSA 374-F, I).
- Is contrary to the General Court’s finding (in 1996 in RSA 53-E, I) that it is “in the public interest to allow municipalities and counties to aggregate retail electric customers, as necessary, to provide such customers access to competitive markets for supplies of electricity and related energy services.”
- Stands against the finding that community power “aggregation may provide small customers with similar opportunities to those available to larger customers in obtaining lower electric costs, reliable service, and secure energy supplies.” *Id.*
- If enacted, would frustrate the stated purpose of RSA 53-E “to encourage voluntary, cost effective and innovative solutions to local needs with careful consideration of local conditions and opportunities.” *Id.*
- Is **against customer choice** for competitive electricity services.
- **Greatly limits or eliminates community choice and local control**.
- Frustrates efforts to “provide electricity buyers and sellers with appropriate price signals” and “improve public confidence in the electric utility industry.” (RSA 374-F:1, II)
- Stands in opposition to opening “markets for new and improved technologies.” (RSA 374-F:1, II).
- Further delays and obstructs Grid Modernization efforts.
- Has the potential to delay the development of CPAs by 2 years or more.
- **Reinforces and expands monopoly control of electricity services that are not inherently monopoly functions.**

I note this provision of the purpose clause in RSA 374-F, II:

> II. A transition to competitive markets for electricity is consistent with the directives of part II, article 83 of the New Hampshire constitution which reads in part: "Free and fair competition in the trades and industries is an inherent and essential right of the people

> and should be protected against all monopolies and conspiracies which tend to hinder or destroy it.

I urge you, on behalf of the City of Lebanon and the many other communities that will be represented by others testifying against this bill, to consider the power invested in you to favor competition, free markets, and customer choice over monopoly power, as called for in our NH Constitution at Part II, Article 83 that provides, for the purpose of limiting and regulating the power of monopolies that:

> ". . . all just power possessed by the state is hereby granted to the general court to enact laws to prevent the operations within the state of all persons and associations, and all trusts and corporations, foreign or domestic, and the officers thereof, who endeavor to raise the price of any article of commerce or to destroy free and fair competition in the trades and industries through combination, conspiracy, monopoly, or any other unfair means; [and] to control and regulate the acts of all such" entities.

RSA 53-E as HB 315 would amend it, along with comments, is ***Attachment A*** to my testimony.

Before I turn to my detailed critique of HB 315, for the many new members of ST&E I'd like to share with you a little bit of the journey that has brought me to this point. I served on ST&E for 6 years from 1992 to 1998. As the ranking minority member, I collaborated closely with then Chair Rep. Jeb Bradley on all the legislation regarding restructuring of the electric industry. All of the important energy and electric utility legislation was passed with overwhelming bipartisan support, regardless of who sponsored it. I believe that is because we worked hard to find the common ground that made the most sense to the most people and stakeholders.

Rep. Bradley and I were the lead sponsors and drafters of RSA 374-F over the course of 1995 and the winter of 1996. The bill that first created RSA 53-E came over from the Republican led Senate during the 1996 cross-over in which we sent them the Electric Utility Restructuring Act. The Senate version of the bill creating RSA 53-E allowed municipal aggregation on an opt-out basis. Then Rep. Bradly sponsored the amendment in ST&E that limited aggregation to an opt-in only basis and created most of RSA 53-E as it existed until 2019 when now Sen. Bradley cosponsored SB 284 that enabled aggregation on an opt-out basis as well. I supported that original amendment, allowing only opt-in aggregation, as both pieces of legislation, for restructuring to make retail generation supply a competitive market function and to enable municipal and county retail electric aggregation, were the first such laws in the nation and it made sense to proceed cautiously.

I went on to serve in the state Senate for 6 years (1998-2004) and was appointed to serve as a NH Public Utilities Commissioner in 2005, where I served until 2011 in such capacities as President of the New England Conference of Public Utilities Commissioners, on the FERC-NARUC smart grid and demand response collaborative, and on the Electric Power Research Institute (EPRI) public advisory council and its smart grid and energy efficiency advisory group. For the past 6 years I have served as a Lebanon City Councilor where I have volunteered my time and expertise to provide advocacy and testimony on behalf of the City in numerous PUC proceedings, including DE 16-576 to develop new alternative net metering tariffs. ***Attachment B*** is a statement of my background and a more detailed one is available on my Linkedin page: www.linkedin.com/in/clifton-below.

In my testimony in that net metering proceeding, I proposed that the City of Lebanon partner with Liberty Utilities to undertake a pilot using real time pricing (RTP, also known as LMP for locational marginal price) as an element in valuing exports of net metered power to the grid, along with enabling RTP for customer imports or purchases from the grid. Proposed settlements and the PUC order in that case in 2017 called for each utility to undertake a time-varying rate (TVR) pilot with the Liberty's being the RTP pilot with the City that was to use opt-in municipal aggregation under RSA 53-E as it existed at the time. The PUC endorsed that idea and directed Liberty to work with the City to work out the details of such a pilot.

One of the first problems we ran into is that the RSA 53-E:7, II required that written notification about the aggregation program be sent to every electric utility customer within the municipality but did not require the utility to provide the names and addresses for such customers to enable such a mailing. Liberty concluded that the more recently enacted RSA 363:38 precluded them from providing an approved aggregation with customer names and addresses to comply with RSA 53-E. So, we put the RTP pilot on hold and sought to amend RSA 53-E and bring it up to date in terms of enabling the possibility of value-added services and rate options that could expand retail customer choice and generate cost savings and benefits for all ratepayers. We also realized that no state had successfully developed municipal aggregation solely with an opt-in option, so offering an opt-out option, if approved by a majority vote of the legislative body of the local jurisdiction as a proxy for individual consent, would be an appropriate option to offer municipalities and counties.

That bill, SB 286, received unanimous favorable votes out of committee in both chambers and Governor Sununu signed it into law on August 2, 2019 and it became effective on 10/1/19. However, because it was heard in the House Municipal & County Government committee, members of this committee may not be as familiar with all the reasons for the 2019 amendments to RSA 53-E, which were carefully thought through, so I am providing the City's testimony for that bill in the House as ***Attachment C***.

SPECIFIC ISSUES WITH HB 315

The first cross reference below is to the bill PDF page, section, and line numbers while the 2nd reference is to the Comment (**A1-A23**, with associated page and line number) in ***Attachment A***, RSA 53-A as it would be amended by HB 315.

p.1, §1, lines 1-4; **A1** (p.1, lines 14 & 31) strikes the word "***provide***" from the definition of what CPAs are authorized to do, with the apparent intent to require municipalities and counties to ONLY be able to offer aggregation through 3rd party contractors. Municipalities and counties only have authority as is granted to them by law. If a word is in the statute today and then is removed by new legislation, that has to be given weight as reversing the inclusion of the word. Thus, in combination with §3 of the bill at line 11, where "***provide***" is also removed from the statute, the effect would be to say that CPAs **cannot** "***provide***" supply of electric power or any other related services except through 3rd party brokers or contractors. While many CPAs may want to do exactly that, others may want to be able to ***provide*** some of these services directly.

For example, the City of Lebanon is continuously flaring about 1 MW (1,000 kW) worth of renewable methane gas from its regional landfill (from the anerobic breakdown of organic materials like cellulosic and food wastes). We have been considering installation of electric generation for landfill gas to energy (LFGTE). It would produce more than the City government itself consumes, so we would like the option to use it to ***provide*** part of the electric supply needed by our planned Lebanon Community Power municipal aggregation (LCP). HB 315 would prohibit us from doing so unless we did a work around through a broker and 3rd party supplier resulting in needless extra costs and legal complications. We could just group net meter the power and get paid the default service rate for all of its production to the grid, but a market-based option for the City to provide the power to or through LCP, such as HB 294, HB 407, or SB 91 would more clearly enable, might be a better alternative for all ratepayers, avoiding any issue of cross subsidies that come up with net metering. Likewise, the City of Nashua owns hydroelectric dams that it might want to use to ***provide*** some of the power needed for their CPA and Hanover is looking to develop a community solar project that could ***provide*** some of the electric supply for its CPA. The alternative to allowing CPAs to ***provide*** such supply to customers is to seek an expansion of net metering for such distributed generator between 1 MW and 5 MW.

p.1, §2, lines 7-8; **A2** (p.1, lines 21-22). In and of itself adding a definition of "energy services" would be okay except for how it is used in conjunction with changes made by the next bill section.

p.1, §3, lines 9-20; **A3** (p.1, lines 31-36). The bill repeals and replaces this section of the law, in effect **prohibiting CPAs from providing any demand side management, conservation, or energy efficiency services directly** and only for utility and ISO-NE programs through a contract. None of these are natural monopoly functions of the distribution utility, nor should they be. Currently the City benefits from a broker (Freedom Energy Logistics or FEL) advising on when the City should curtail its two largest loads (water and wastewater treatment plants) to reduce its share of the annual hour of highest demand in all of New England that is used to determine capacity tags. This kind of demand side management is outside of any utility or ISO-NE administered program, but it is saving the City and its utility ratepayers tens of thousands of dollars per year. If the City put these accounts in LCP, HB 315 would prohibit this practice, even working with FEL. **WHY??**

p.1, §3, lines 16-17; **A4-A6** (p.1, lines 37-39) would delete from services that CPAs could provide **meter reading, customer service, and other energy related service**s, for no apparent reason other than to expand the distribution utility monopoly over such services, even where they don't provide it today. For example, many competitive electricity suppliers provide their own customer service for their energy supply portion of the electric bill. HB 315 would remove the authority for CPAs to do that, even by contract with a supplier or broker. If a CPA offered a RTP product as an opt-in option, does the utility really want to be the only entity that can address customer questions about that, instead of referring them to the customer's supplier: the CPA or the CPA's vendor?

Today there is a competitive market for **meter reading** in at least two areas. **First**, under the Renewable Portfolio Standard (RPS) law and PUC rules, qualified independent monitors can read customer or 3rd party owned revenue grade production meters for generating Renewable Energy Credits (RECs) for the purpose of registering those RECs in the NEPOOL Generation Information System so such RECs can be bought, sold, and retired for RPS compliance. HB 315 would prohibit CPAs from providing such a service, even through an established 3rd party monitor. **Second**, demand response providers, typically not the utility, can provide customers with a secondary revenue grade interval meter that is read by them and reports 5-minute interval data directly to ISO New England, so those customers can participate in the market for Active Demand Capacity Resources (ADCR) and get paid for performance based on the 5-minute settlement period for Real Time Prices paid to bulk Generators for production on the margin. Brokers, aggregators, and competitive electricity suppliers can provide for both forms of competitive meter reading, and do so for large customers, but HB 315 would turn the law on its head and not allow CPAs to provide for such meter reading services contrary to one of the stated purposes of RSA 53-E that CPAs might "provide small customers with similar opportunities to those available to larger customers in obtaining lower electric costs." **Why?**

HB 315 would also repeal the authority for CPAs to provide or contract for other related services for their customers. **Why?** How does that help the policy goal of enabling CPAs "to provide such customers access to competitive markets for supplies of electricity **and related services."** Some of the related services we have thought about as possibilities for LCP include assisting customers with battery storage solutions, time-varying public charging stations for electric vehicles, access to community solar, and power factor correction that can reduce demand charges. Why shouldn't CPAs be able to provide and contract for such services if the community is interested in them and see value in them? This law as it is does not authorize CPAs to take on the franchised utility monopoly function of electricity distribution, as perhaps someone fears. (RSA 38 does that.)

§4, p.1-2, lines 21-3; **A7-A8**, p.2. lines 7-8 & 17-18. These changes to the law seem to be based on a fear that CPAs might someday be able to prove to the PUC that it would be for the public good to end the utility monopoly on consolidated billing, like the Texas legislature concluded. The only implementing rule relating to this is a proposal from the City and some other supporters of community power that: a "CPA may propose to provide CPA consolidated billing and collection services, pursuant to RSA 53-E:3-a, through an adjudicated proceeding." (CPC proposed Puc 2007.23 (b)). In an adjudicated proceeding the burden of proof is upon the proponent of a proposed action to prove that it would be for the public good and adequately protect the interests of the investor-owned utility and other interested parties. That would be a tough burden unless the utility was very unreasonable in its administration of consolidated billing. Presently any interested party could make such a request for an adjudicated proceeding and in its Grid Modernization investigation the PUC did ask whether consolidated billing should be opened up to competition. The utilities strongly argued no and no one argued yes, so the commission dismissed it for the time being. But just keeping such a possibility open might tend to make the monopoly service provider of consolidated billing a bit more responsive to the needs of the competitive market and deliver the kind of billing options that they apparently agreed to develop over 20 years ago as part of the Electronic Data Interchange that suppliers use, but still have not enabled (such as a lump sum charges or credits from a supplier or 3-part time-of-use rates that would enable appropriate price signals about the temporal cost of electricity as a form of time-varying rates).

§5, p.2, lines 4-8; **A9-A10 (**p.2, lines 29-33). The 1st sentence struck from RSA 53-E:4, I is original back to 1996, but probably doesn't really matter. However, striking the second sentence, to not allow CPAs to function as "Load Serving Entities" (LSEs) seems ridiculous. Retail customers, including municipalities, can and do become their own LSEs now by becoming NEPOOL members and ISO New England market participants. The Town of Hanover is an LSE for its own load, savings thousands by buying at wholesale RTPs. In Lebanon we have thought that being an LSE might be the best way to provide opt-in access to day-ahead and real-time hourly pricing that offers substantial money saving opportunities for customers able to manage the price volatility of RTP. Why should this option, readily available to large customers, be ruled out, even if most CPAs might not be interested in such an approach and would rather use a competitive electricity supplier as their LSE, or do so for their fixed price opt-out option, as I expect LCP will do? **This is just anti-customer choice and anti-local control.**

§5, p.2, lines 18; **A11 (**p.2, lines 43-44, p.3, lines 1-5). HB 315 would block the ability of CPAs to try and negotiate with utilities to come to a mutual agreement to provide their customers with access to interval metering, by covering the incremental cost of such metering. Interval metering, also known as advanced metering functionality (AMF), is widely recognized as key to unlocking many cost saving opportunities and innovative rate options for retail customers. The NH Electric Cooperative and Unitil have already implemented AMF. Liberty Utilities is planning to do so. However, notwithstanding the fact that NH law at RSA 374-F:3, II has, now for 25 years, called for customer choice of options such as real time pricing, Eversource still seems determined to pull out all the stops to block small customer access to the metering necessary to enable such choices and deliver appropriate price signals that reflect the temporal value of electricity.

The commission's 5-year investigation into Grid Modernization (IR 15-296) concluded by calling for customers that don't have access to interval metering to be able to opt-in to AMF, at their own cost. PUC staff suggested that since utilities (Eversource and Liberty being the relevant ones here) spend hundreds of thousands every year on legacy (soon to be obsolete) meters, that maybe customers (or their suppliers) that want to upgrade their meters could contribute the incremental cost of such meters over what the utility would be spending in any case for new legacy meters. Rule language suggested by myself and other advocates for CPAs would only implement these options by mutual agreement with the utilities and a finding by the commission in an adjudicated proceeding that such agreement is for the public good and the terms and conditions are reasonable. As a last resort, if the utility and CPA can't come to terms then a CPC proposed rule would allow a CPA to submit a proposal for accessing interval metering data to the commission for adjudication. The burden of proof would be on the CPA to prove that implementing its proposal is for the public good, a standard that is very well developed and accepted in PUC case law.

§5, p.2, lines 18; **A12** (p.3, lines 6-8). HB 315 would repeal the language that allows for CPA use of the Electronic Data Interchange (EDI) in a manner comparable to how competitive electricity suppliers (CES) are allowed to use it and to handle transfer of customers back onto utility provided default service, should the CPA cease operations (which could happen if the CES serving them abruptly ceases operations due to a default with ISO New England). This seems to be another attempt to pigeon-hole CPAs into a singular simplistic model of market competition that is to require CPAs to procure power in the same manner as utilities are required to do with their default service supply, which is to periodically put the entire load out to bid and lock into a fixed price contract for a limited duration and then keep repeating the process. In Massachusetts this can be called the CCA (Community Choice Aggregation) 1.0 model. It is certainly an option that many CPAs may choose, but not the only approach, and use of the EDI is needed to support other approaches, if not the broker model, which could also benefit from CPA EDI access.

One such alternative approach to harnessing the power of competitive markets is portfolio management, which this and other changes to RSA 53-E would have the effect of frustrating or precluding all together. This different approach, sometimes referred to as CCA 2.0, would be to allow CPAs to carefully, with sophisticated risk management provided by expert vendors that are competitively procured, build a long term portfolio of generation supply that could support the development of local and regional renewables, storage capacity, and price responsive demand resources (generically called distributed energy resources or DERs) through long-term PPAs (purchase power agreements) either to or through the CPA (e.g. direct producer to consumer retail sale facilitated and accounted for by the CPA), while the CPA also participates in day-ahead and real time markets for the balance of load following service. Thousands of democratically and locally controlled municipal and cooperatively owned electric utilities (that are both load serving entities and distribution grid owners and operators) successfully use this approach for serving their customers, often beating the rates from short-term procurements used in utility default service and CCA 1.0. **What is the problem with enabling CPAs to consider such an option?** If a CPA screws up, then customers are free to revert to utility provided default service or other competitive supply, taxpayers are held harmless by the provision of RSA 53-E:5, and the local officials responsible are accountable to local voters.

§5, p.2, line 18; **A13 (**p.3, lines 11-13). HB 315 would strike the provision allowing approved CPAs (by the jurisdiction's legislative body) to use individual customer data to comply with the statute and for R&D to develop potential new energy services for their customers. **Utilities have this authority today, why shouldn't CPAs if the customer is their customer too?. Should regulated investor-owned monopoly utilities also have a monopoly on innovation?** They don't have a good track record there. This repeal is a poison pill that contributes to HB 315 having the effect of making an opt-out option impossible as I will explain in discussing comment **A18** and Eversource's 2/1 draft amendment.

§6, p.2, lines 21-27; **A14 (**p.3, lines 19-21). HB 315 would strike reference to allowing local jurisdictions to incur incidental costs, paid for from general taxpayer funds, to comply with the statute prior to producing revenue from implementation of an aggregation plan. After that point a CPA has to be self-supporting. The allowance for incidental costs has been in the statute since 1996. SB 286 did clarify what could be considered incidental costs – those to comply with the statute before start-up. This seems to be an extreme case of state nannyism toward local jurisdictions diminishing local control and accountability. It also would make the development of CPAs very difficult. This repeal would indicate that no cost, no matter how small, could be incurred by a town, city, or county, to comply with the statute. Here are several examples of such incidental costs:

1. The development and implementation of an aggregation plan requires a number of public meetings and hearings. Incurring incidental general fund expenses to advertise such public hearings would be prohibited.
2. A proposed aggregation plan has to be presented to the legislative body for review and approval. For most towns this is a town meeting. Printing copies of the proposed plan to give to voters would not be allowed as an incidental expense.
3. Once a plan is approved, whether opt-in or opt-out, RSA 53-E:7, II requires that written notification of the plan be mailed to all electric customers within the jurisdiction. HB 315 would prohibit the use of general fund dollars to pay for such a required mailing.
4. To enter into a contract for a broker to implement an aggregation plan, and perhaps pay for the required mailing, most jurisdictions would want to have a legal review of the proposed contract. HB 315 would prohibit such a cost paid for from the usual general fund legal services account.
5. HB 315 and Eversource's draft 2/1 amendment would likely trigger adjudicated proceedings at the PUC to review many, if not all, electric aggregation plans. Taxpayer funds could not be used cover the costs of required paper filings at the PUC (post-pandemic) or travel costs of volunteers to represent the City at the PUC, much less any legal representation. In contrast, the monopoly utility, which has a fiduciary duty to put their investors' interests first, would be using ratepayer funds to represent its interest in such proceedings.

§7, p.2, lines 26-37; **A15 (**p.3, lines 42-43). HB 315 would delete the requirement that Electric Aggregation Plans (EAPs) detail how net metered exports to the grid would be compensated by the CPA and accounted for (all regarding only the energy supply portion of the bill). Why this would be deleted I can't imagine, except maybe someone thinks that net metering should be a monopoly utility function only, as it seems to be in Massachusetts, or if an EAP doesn't take this into account, they may screw up and create unintended problems for net metered customers and undermine support for CPAs. RSA 362-A:9, II states that CPAs are responsible for determining how they would compensate or account for net metered exports to the grid with regard to the electricity supply portion of the bill, and this bill would not change that. **Why shouldn't a plan consider this?**

§7, p.3, lines 1-2; **A16 (**p.3, lines 44-45). HB would delete the requirement that EAPs detail how low-income participants in the Electric Assistance Program would receive their discounts. This provision was added at the request of the PUC to provide consumer protection, as the discount is currently only available through utility provided consolidated billing and plans should take that into account. **Why shouldn't a plan address this?**

§8, p.3, lines 9-11; **A17 (**p.4, lines 11-13). This new proposed language would require a PUC review and approval of EAPs, not just for compliance with the statute, but also whether it "imposes undue risk on non-participants." This would likely trigger an adjudicated case at the PUC, adding to their workload, and potentially taking a year or more to resolve (as is typical of many adjudicated cases, with pre-filed testimony, discovery, hearings, etc.) The purpose of such a requirement becomes more apparent with Eversource's 2/1 draft amendment, which is to require CPAs with any amount of material load (not insignificant or inconsequential) which could be the load for all counties, cities, all but the smallest towns, to only launch in conformity with the default service schedule of the distribution utilities or utilities serving the jurisdiction. Specifically, in the informal rules discussion with the PUC and other stakeholders Eversource proposed that a CPA would have to commit to launching (and secure a binding rate) in advance of the utilities issuance of its RFP for upcoming default service. Thus, they want a CPA to lock into and commit to launching in a very narrow window in which they would not know the rate their program is competing with. This is a set-up for failure and backlash that no elected official in their right mind would want to risk. No other state with municipal aggregation has such a requirement.

The wholesale electricity market in New England is very liquid and very dynamic. The best deals for customers aren't likely to occur on the utility's fixed default service schedule. Just having a longer lead time between securing initial supply and actual launch will add more hedging costs to the CPA service than utility provided default service which would be solicited at a date closer to when the load is to be served. This whole approach being advocated for by Eversource is directly contrary to the stated purpose of RSA 53-E to "provide small customers with similar opportunities to those available to larger customers" that can depart default service any time they want. It is also contrary to the restructuring principle at RSA 374-F:3, XIV that the commission should "enable competitors to adapt to changes in the market in a timely manner" and "reduce reliance on administrative process." We have proposed, instead, to mitigate any risk to load uncertainty in default service procurement, by having CPAs give regular notice on various milestones to the PUC and utility so the likelihood and timing of any CPA launches can be anticipated well in advance with increasing certainty. Launching early in a default service fixed rate period would require more advance notice than late in the fixed period.

There is some merit to having the PUC review EAPs, before or after action by a jurisdiction's legislative body to approve such, for compliance with the requirements of RSA 53-E and applicable PUC rules without triggering an adjudicated proceeding. To that end I have attached a suggested amendment to provide for such as ***Attachment D.*** It is modeled on language in RSA 53-A that requires Joint Powers Agreements between subdivisions or agencies of state to be reviewed and approved by the Attorney General before going into effect, with a 30-day time limit for disapproval.

§8, p.3 line 14; **A18 (**p.4, lines 17-22). This extreme overreach in SB 35 as introduced would make CPA compliance with the law impossible. While requiring the municipality or county to mail notification to all electric utility customers within the jurisdiction, it would also require them to do so based only upon "addresses in the public records of the municipality or county for such customers." Municipalities and counties do not know who all the electric customers are, much less have all their addresses, especially for tenants (both residential and commercial).

In its 2/1 draft amendment Eversource did acknowledge this catch-22, but created a new one in its place that has the same effect. That amendment concedes that the utility should supply the CPA with the names and addresses of their customers to enable the required mailing.

But it conspicuously leaves out provision of the account numbers of default service customers, which is required for the CPA or their vendor/supplier to enroll customers that don't opt-out within the provided time period before enrollment in the CPA program begins. All the utilities have made the point that the CPA must have the account numbers to enroll any customer through the EDI. Eversource Attorney Matthew Fossum, who is an apparent author of this 2/1 draft amendment, argued last summer with CPA proponents and PUC Attorney David Wiesner that RSA 363:38 precluded them from providing a CPA with account numbers and suggested that we would need to affirmatively collect each customer's account number from them in order to enroll them into a CPA program, effectively turning an opt-out program into an opt-in only program. He did concede that RSA 53-E:4, VI that states that CPAs may use individual customer data to comply with the relevant statutory provisions, combined with the PUC's rule making authority in RSA 53-E:7, VI, should enable the PUC to adopt rules requiring the utility to provide account numbers and other account information to approved CPAs and that if the PUC did so they would comply with such adopted rules. Now, however, HB 315 would repeal precisely that authority, putting Eversource back into a position to contend that they are prohibited from providing CPAs with any customer account numbers or other customer information.

§8, p.3, line 35-line 4, p. 4; **A20 & A21 (**p.4 line 46 to p.5 line 14). The City is amenable to this amendment to change how new customers to the utility, after the initial opt-out customer list is provided to a CPA. is handled. It avoids the utility having to modify their software and business processes and is still workable for CPAs. I've merged some of this text with similar text from SB 91, Part VI, to suggest a more refined amendment to resolve this issue, which is ***Attachment E.*** I offered a similar amendment at the hearing on SB 91.

§8, p.4, lines 11-14; **A22** (p. 5, lines 20-21). This new language would require any amendment or modification to an aggregation plan or program to be approved by the commission. This is more state nannyism and regulation of local government that could result in more unnecessary adjudicated case workload for the PUC, while working against the purposes of the chapter and RSA 374-F. ***Attachment D*** includes suggested language that incorporates PUC review of amendments to plans that would create an opt-out program.

§9, p.4, lines 22-27; **A23** (p. 5, lines 35-39). This newly proposed language to require a purchase of receivables (POR) program is a welcome development. POR can be thought of as a risk pool, like insurance, where the costs of bad debt are spread over all receivables of the utility and suppliers using utility provided consolidated billing. Apparently, a number of suppliers have indicated that they are not likely to enter the NH CPA market without some form of POR or equitable treatment of bad debt compared with utility provided default service. A level playing field is needed. SB 91, Part III offers another approach to this problem. If there is to be legislation to require POR that applies to all competitive electricity suppliers using consolidated billing then the "Towns, Cities, Village Districts, and Unincorporated Places" Title 3 of RSAs is probably not the place to put it. This new provision would be more appropriate in the Public Utilities Title 34 of the RSAs (such as in RSA 374-F).

Finally, I would note that the 2/1 draft amendment from Eversource would require that the PUC conduct yet another protracted investigation into advanced metering. By my count this would be at least the 5th such investigation or proceeding by the PUC on this issue. I could write another 11 pages on just this topic, but please spare me and all of us and just let us try to work this out directly with the utilities and the PUC in ongoing proceedings and rulemaking – it was a topic just today at the PUC tech session in their docket to develop time of use rates for EV charging that will finally start to send “appropriate price signals” to retail customers as RSA 374-F:1 has called for as an element of competitive markets for electricity supply for the last quarter of a century.

I conclude by calling your attention to ***<u>Attachment F:</u>*** the Civil Society Declaration on Energy Choice & Competition that reflects important ideas first embodied in Article 83 of Part 2 of our state Constitution and reiterated with regard to electricity choice and competition in NH RSA 374-F. This is what RSA 53-E as it stands today will support, but not with most of the changes that HB 315 would make.

I thank you for your attention to this complex and challenging matter and I appreciate your volunteer service as a legislator, however you vote on this bill. Please do not hesitate to be touch if you have any questions or ideas to share.

Yours truly,

Clifton Below

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cc: PUC, OCA, utilities, NHMA, & others

SCHEDULE OF ATTACHMENTS TO TESTIMONY

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CHAPTER 53-E as it would be amended by 2021 HB 315

By Clifton Below, for City of Lebanon
1/24/2021

AGGREGATION OF ELECTRIC CUSTOMERS BY MUNICIPALITIES AND COUNTIES

53-E:1 Statement of Purpose. – The general court finds it to be in the public interest to allow municipalities and counties to aggregate retail electric customers, as necessary, to provide such customers access to competitive markets for supplies of electricity and related energy services. The general court finds that aggregation may provide small customers with similar opportunities to those available to larger customers in obtaining lower electric costs, reliable service, and secure energy supplies. The purpose of aggregation shall be to encourage voluntary, cost effective and innovative solutions to local needs with careful consideration of local conditions and opportunities.

Source. 1996, 192:2, eff. Aug. 2, 1996.

53-E:2 Definitions. –
In this chapter:
I. "Aggregation" means the grouping of retail electric customers to ~~provide,~~ broker~~,~~ or contract for ~~electric power supply and~~ energy services for such customers.
II. "Aggregator" means, unless the context indicates otherwise, a municipality or county that engages in aggregation of electric customers within its boundaries.
III. "Commission" means the public utilities commission.
IV. "Committee" means the electric aggregation committee established under RSA 53-E:6.
V. "County" means any county within the state.
V-a. "Energy services" means the provision of electric power supply solely or in combination with any or all of the services specified in RSA 53-E:3.
VI. "Municipality" means any city, town, unincorporated place, or village district within the state.

Source. 1996, 192:2, eff. Aug. 2, 1996. 2019, 316:1, eff. Oct. 1, 2019. [This applies to remaining sections unless otherwise noted. "2019, 316:1" refers to Chapter 316 NH Laws of 2019, SB 286]

53-E:3 Municipal and County Authorities. –
Any municipality or county may:
I. Aggregate the retail electric customers within its boundaries who do not opt out of or who consent to being included in an aggregation program.
II. (a) Enter into agreements ~~and provide~~ for energy services, specifically:
(1) The supply of electric power and capacity.
(2) Demand side management through utility or regional system operator administered management programs.
(3) Conservation through utility or regional system operator administered conservation and efficiency program.
(4) ~~Meter reading.~~
~~(5) Customer service.~~
~~(6) Other related services.~~

Commented [A1]: This deletion would require CPAs to contract out all services and preclude them from using their own generation sources, such as hydro owned by the City of Nashua, to supply their CPA, unless running it through a 3rd party contract, needlessly increasing costs.

Commented [A2]: This is to dramatically constrain what services CPAs can offer to the most basic of aggregation models, blocking the development of competition for a whole variety of services, even if provided by 3rd parties.

Commented [A3]: This is anti-market competition to an extreme. There is no good reason why demand side management (DSM), conservation, and energy efficiency services should be limited to utility monopolies and ISO-NE programs. Working with a broker, FEL, the City of Lebanon is saving tens of thousands of dollars by reducing the "capacity tag" and charges for our two largest loads, WTP and WWTP. This is not part of a utility or ISO-NE program. CPAs would be precluded from even contracting with a broker for such services, much less "providing" them.

Commented [A4]: Elimination of this 1996 language authorizing meter reading is designed to preclude CPAs from being able to access any customer meter data, regardless of who owns the meter or its purpose, even though 3rd parties routinely provide meter reading services now in a competitive market. A CPA wanting to provide independent monitoring services for renewable energy credit (REC) production could not do so, even by contract through 3rd parties, nor for customers participating in ISO-NE demand response programs that require metering beyond what the utilities offer, as competitive suppliers can and do now provide. This shuts down valuable customer choice options.
In proposed CPA rules regarding meters owned or used by the electric distribution utility this would only be realized by mutual agreement with the utility or by order of the Commission based on a finding that it is for the public good.

Commented [A5]: This deletion would preclude a CPA from even contracting for any customer service from their broker or supplier, much less provide any themselves. Apparently Eversource believes they should have a monopoly on all customer service, even related to electricity supply, which customer service they would charge CPAs for at monopoly rates. The electric distribution utility function is supposed to be limited to distribution functions, not generation supply, except as a provider of last resort (their default service).

Commented [A6]: This wipes out the possibly of doing a whole bunch of innovations and value added services, such as improving customer power factors to reduce costs and improve power quality, assisting customers with battery storage solutions or access to community solar, etc. etc.

HB 315 might as well repeal the entire RSA 53-E chapter enabling community power aggregation as its details appear to be designed to make it impossible for any municipality or county to meet the new requirements of the law and ever achieve a successful start-up. Even if these poison pill problems were fixed HB 315 would drastically curtail municipal and county authority to help animate a retail market to offer customers more choices and innovative new services to save them money and help their communities accelerate the cost-effective integration of clean distributed energy resources by harnessing the power of competitive markets to benefit residential and commercial customers.

CHAPTER 53-E as it would be amended by 2021 HB 315

~~(7)~~ The operation of energy efficiency and clean energy districts adopted by a municipality pursuant to RSA 53-F and as approved by the municipality's governing body.

(b) Such agreements may be entered into and such services may be provided by a single municipality or county, or by a group of such entities operating jointly pursuant to RSA 53-A.

53-E:3-a Municipal Aggregators Authorized. – Municipal aggregators of electricity load under this chapter, and municipalities operating municipal electric utilities under RSA 38, are expressly authorized to aggregate ~~other~~energy services as described in RSA 53-E:3~~commonly and regularly billed to customers~~. Municipalities may operate approved aggregation programs as self-supporting enterprise funds including the use of revenue bonds pursuant to RSA 33-B and RSA 374-D and loans from other municipal enterprise funds as may be approved by the governing body and the legislative body of the municipality. Any such loans from other municipal enterprise funds shall be used for purposes that have a clear nexus to the primary purposes of such other funds, such as generation, storage, or sale of power generated from sites, facilities, or resources that might otherwise be operated or produced by the other enterprise fund. Nothing in this chapter shall be deemed to limit the capacity of customers to select any service or combination of services offered by such municipal aggregators or to limit the municipality from combining billing for ~~any or all utility~~ energy services with other municipal services.

53-E:3-b Use of "Community Power" as a Name Reserved. – The use of the term "Community Power" following the name of a municipality or county shall be reserved for the exclusive use by such entity as a name for proposed or approved municipal or county aggregations. Aggregations operated jointly by a group of such entities pursuant to RSA 53-A may adopt an appropriate identifying name in conjunction with the term "Community Power" as a name.

Source. 2019, 316:3, eff. Oct. 1, 2019.

53-E:4 Regulation. –

I. An aggregator operating under this chapter shall not be considered a utility engaging in the wholesale purchase and resale of electric power and shall not be considered a municipal utility under RSA 38. ~~Providing electric power or energy services to aggregated customers within a municipality or county shall not be considered a wholesale utility transaction. However, a municipal or county aggregation may elect to participate in the ISO New England wholesale energy market as a load serving entity for the purpose of procuring or selling electrical energy or capacity on behalf of its participating retail electric customers, including itself.~~

II. The provision of aggregated electric power and energy services under this chapter shall be regulated by this chapter and any other applicable laws governing aggregated electric power and energy services in competitive electric markets.

III. Transmission and distribution services shall remain with the transmission and distribution utilities, who shall be paid for such services according to rate schedules approved by the applicable regulatory authority, which may include optional time varying rates for transmission and distribution services that may be offered by distribution utilities on a pilot or regular basis. An aggregator shall not be required to own any utility property or equipment to provide electric power and energy services to its customers.

IV. ~~For the purpose of obtaining interval meter data for load settlement, the provision of energy services, and near real-time customer access to such data, a municipal and county aggregator~~

Commented [A7]: This language and the language at the end of this paragraph has been in statute since 1996. This change is designed to block CPAs from even proposing to provide consolidated billing services as an alternative to the investor-owned utility monopoly. Texas, for example, opened consolidated billing to competition. Current language and CPA proposed rules only leaves the door open for CPAs to someday propose to do such in a litigated case at the PUC where the CPA would need to prove that it is for the public good (beneficial) to do so and it is fair to utility shareholders or other ratepayers.

Commented [A8]: See above.

Commented [A9]: This probably doesn't matter as other provisions in law and with ISO-NE cover this issue now. This language dates back to 1996 before other PUC & FERC rulings and other statutes addressed this.

Commented [A10]: This change, however, is very unreasonable. It precludes CPAs from being "load serving entities" (LSEs) and having a voice at the regional level. The Town of Hanover is already an LSE for its own accounts and is saving big $$ by doing so. Scores of municipal electric departments in New England are LSEs for supplying energy, much like CPAs should be able to do. They are quite successful at it and usually have lower and more stable rates that IOUs. There is no good reason CPAs should not also have this option, even if most choose to work with a broker and 3rd party supplier that is serves as their LSE.

Commented [A11]: Eversource has resisting providing customers with access to interval metering for two decades, even though many value-added (cost-saving) rates could be provided with such, such as time-varying rates, or the ability to reduce costly "capacity tags." Current language only makes this a possibility by mutual agreement with the utility or by proving to the PUC that it is for the public good in a litigated case. Metering in not a natural monopoly as shown by Texas and even in NH where customers can provide their own meters, including interval meters, for Renewable Energy Credit production (RECs) that the utilities purchase.

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~~may contribute to the cost of electric utility provided meter upgrades, jointly own revenue grade meters with an electric utility, or provide its own revenue grade electric meter, which would be in addition to a utility provided meter, subject to the commission finding in the public good and approval of the terms and conditions for such arrangements, including sharing or transfer of meter data from and to the electric distribution utility.~~

~~V. Municipal or county aggregations that supply power shall be treated as competitive electricity suppliers for the purpose of access to the electric distribution utility's electronic data interface and for ceasing operations.~~

~~VI. Municipal or county aggregations~~Aggregators shall be subject to RSA 363:38 as service providers and individual customer data shall be treated as confidential private information and shall not be subject to public disclosure under RSA 91-A. ~~An approved aggregation may use individual customer data to comply with the provisions of RSA 53-E:7, II and for research and development of potential new energy services to offer to customer participants.~~

53-E:5 Financial Responsibility. – Retail electric customers who choose not to participate in an aggregation program adopted under RSA 53-E:7 shall not be responsible for, and no entity shall require them to pay, any costs associated with such program, through taxes or otherwise except for electric power supply or energy services consumed directly by the municipality or county, ~~or incidental costs, which may include costs necessary to comply with the provisions of this chapter up to the time that the aggregation starts to produce revenue from participating customers~~.

53-E:6 Electric Aggregation Plan. –

I. The governing body of a municipality or county may form an electric aggregation committee to develop a plan for an aggregation program for its citizens. A municipality or county may join other municipalities or counties in developing such plans.

II. The plan shall provide universal access, reliability, and equitable treatment of all classes of customers subject to any differences arising from varying opportunities, tariffs, and arrangements between different electric distribution utilities in their respective franchise territories, and shall meet, at a minimum, the basic environmental and service standards established by the commission and other applicable agencies and laws concerning aggregated service.

III. The plan shall detail:

(a) The organizational structure of the program.

(b) Operation and funding.

(c) Rate setting and other costs to participants, including whether energy supply services are offered on an opt-in basis or on an opt-out basis as an alternative default service.

(d) The methods for entering and terminating agreements with other entities.

(e) The rights and responsibilities of program participants.

(f) ~~How net metered electricity exported to the distribution grid by program participants, including for group net metering, will be compensated and accounted for.~~

~~(g) How the program will ensure participants who are enrolled in the Electric Assistance Program administered by the commission will receive their discount.~~

~~(h)~~ Termination of the program.

Commented [A12]: This is to ensure utility monopoly on customer meter data and force CPAs to do everything through brokers and competitive electricity suppliers. However, brokers usually do not even have access to this data, so CPAs would be precluded from getting needed data for load forecasting to put their load out to bid and get the most competitive rates. Instead they may have to lock in with a single competitive supplier before they know what they are getting into.

Commented [A13]: This not only denies the possibility of innovation in providing customers with valuable new services and options but seems designed to make it impossible for CPAs to comply with the law, in effect repealing the whole chapter (RSA 53-E) as will be explained below. Customer names and addresses are required to do the required mailing to all customers. Customer account numbers are required to enroll customers. CPAs could be denied access to all those with this change in the law.

Commented [A14]: This would require communities to contract out ALL services and costs incurred before start-up. A town could not even print paper copies of a proposed aggregation plan to provide to voters who are considering whether to approve it, much less pay for a legal review of any proposed contracts to provide such services. It even raises a question as to whether any paid staff time could even be involved in considering whether to even work on developing an aggregation plan, much less have any legal review of proposed contracts with a broker or supplier before the program starts. So much for local control.

Commented [A15]: This is something proposed CPAs have to plan for and take in to account. Apparently Eversource now wants a monopoly on providing net metering, even though RSA 362-A:9, II regarding net metering provides that: "municipal or county aggregators under RSA 53-E may determine the terms, conditions, and prices under which they agree to provide generation supply to and credit, as an offset to supply, or purchase the generation output exported to the distribution grid from eligible customer-generators. The commission may require appropriate disclosure of such terms, conditions, and prices or credits." But apparently Eversource doesn't think aggregation plans should have to plan for this.

Commented [A16]: This is a low-income consumer protection provision specifically requested by the PUC in 2019. Currently the EAP discount would only be available if the are billed for their CPA charges through electric utility, so an EAP should consider that. Someday it may be possible to provide this discount with separate billing, but that is not the case today. Why Eversource wants this repealed is a complete mystery. Maybe they want a CPA to launch with separate billing and piss off low-income customers that lose their discount to discredit CPAs and reinforce their monopoly.

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IV. The committee shall approve a final plan which the committee determines is in the best, long-term interest of the municipality or county and the ratepayers.
V. The committee shall solicit public input in the planning process and shall hold public hearings.

53-E:7 Aggregation Program. –

I. The governing body of a municipality or county may submit to its legislative body for adoption a final plan for an aggregation program or any revision to include an opt-out default service program, to be approved by a majority of those present and voting.

II. Once adopted, or upon revision following adoption, the plan shall be submitted to the commission for review and the commission shall determine whether the plan conforms to the requirements of this chapter and whether the plan imposes undue risk on non-participants.

III. If the plan is adopted or once adopted is revised to include an opt-out ~~alternative default service~~, the municipality or county shall mail written notification to each retail electric customer within the municipality or county based upon the addresses in public records of the municipality or county for such customers. ~~To enable such mailed notification and notwithstanding RSA 363:38, after an aggregation plan is duly approved the electric distribution utility or utilities serving an adopting municipality or county shall provide to such municipality or county a current list of the names and mailing addresses of all their electric customers taking distribution service within the municipality or county.~~ Notification shall include a description of the aggregation program, the implications to the municipality or county, and the rights and responsibilities that the participants will have under the program, and if provided on an opt-out basis, the fixed rate or charges that will apply. No retail electric customer shall be included in a program in which the customer does not know all of the rates or charges the customer may be subject to at least 30 days in advance of the customer's application and has the option, for a period of not less than 30 days from the date of the mailing, to opt out of being enrolled in such program, unless the customer affirmatively responds to the notification or requests in writing to be included in the program.

IV~~II~~. Within 15 days after notification of the plan has been sent to retail electric customers in the service area, a public information meeting to answer questions on the program shall be held.

~~I~~V. Services proposed to be offered by or through the aggregation shall be on an opt-in basis unless the approved aggregation plan explicitly creates an opt-out ~~alternative default energy~~ service program where the rate or price is known at least 30 days in advance of its application and, for a period of not less than 30 days from the date notification is mailed, the customer has the opportunity to opt out of being enrolled in such program, by return postcard, website, or such additional means as may be provided. Customers who are on default service provided by an electric distribution utility shall be automatically enrolled in an aggregation provided alternative default service if they do not elect to opt out. Customers opting out will ~~instead~~ remain on default service. Customers taking energy service from a competitive electricity supplier shall not be automatically enrolled in any aggregation program, but may voluntarily opt in. A ~~N~~new customer~~s~~ to the electric distribution utility after the notification mailing required by paragraph III shall initially be enrolled in utility provided default service unless the customer has relocated

Commented [A17]: This would be a new requirement for the PUC to review and approve electric aggregation plans adding to the PUC's already heavy workload. The phrase "whether the plan imposes undue risk on non-participants" would almost certainly trigger an adjudicated proceeding in which the electric utilities could intervene and oppose the plan, at ratepayer expense, while towns could not spend any taxpayer dollars to support their case, not even to print the document for filing, much less pay for a lawyer or staff, or even the travel expense of a volunteer to represent them before the PUC. Written testimony might be required, and the utility could serve time consuming discovery on the community. This PUC case could drag out for a year or more.
Any tweak in the plan required by the PUC would require the plan to return to the legislative body for approval, which for town meetings could delay final approval up to 2 years. In the informal rule development process Eversource argued that CPAs should only launch on the utility's default procurement timetable (during only August or February) and they would have to lock into the rate they would offer at launch before they even knew the new utility default service rate they would be competing with. This is set up for failure and backlash if rates are increased in an opt-out program. Proposed CPA rules would provide plenty of notice and milestones so the utility and default service bidders could take in account the "risk" of departing CPA load and adjust accordingly in a very liquid market.
This is contrary to the purpose statement of the chapter to enable CPAs to provide "small customers with similar opportunities to those available to larger customers in obtaining lower electric costs". Large customers are free to switch between competitive supply and default service at any time. They do so to take advantage of market opportunities. No other state has restrictions like those Eversource argued for in the informal rules discussion at the PUC.
This provision is also contrary to the Restructuring Policy Principle at RSA 374-F:3, X, calling for the PUC to "make regulation more efficient and to enable competitors to adapt to changes in the market in a timely manner. The market framework for competitive electric service should,move deliberately to replace traditional planning mechanisms with market driven choice as the means of supplying resource needs."

Commented [A18]: This is really over the top – a very potent and fatal poison pill that would make it impossible for any CPA to launch, and unlike any limitation in any other state. The CPA is required to mail each retail electric customer within their community notice before launching but can only do so with addresses within their own database. Municipalities and counties do not know the names of all the utility's customers, much less their mailing addresses (think residential and commercial tenants with their own accounts). Even the addresses for property tax bills (that counties don't have) would be inadequate because the person or entity on the electric account may be different from that on tax bills.

Commented [A19]: Again, Eversource wants to claim a monopoly on the provision of default energy service.

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within a single utility's service area and is continuing service with a competitive electricity supplier. ~~given a choice of enrolling in utility provided default service or aggregation provided default service, where such exists~~. ~~New customers shall be informed of pricing for each when they apply for service. Such new customers may also enroll with a competitive electricity supplier.~~ On a recurring basis, but not more frequently than monthly, an aggregation may request, and the utility will provide, a list of customers within the aggregation's territory who are not enrolled with a competitive electricity supplier for the aggregation to use in identifying any new customers. New customers identified from such list ~~who do not make such a choice~~ shall be enrolled in the aggregation in the aggregation program, unless the customer opts-out of the aggregation ~~default service of any geographically appropriate approved aggregation, or, if none exists, the utility provided default service~~. Municipal aggregations shall take priority or precedence over any county aggregations and each such aggregation shall be responsible for assuring that customers are enrolled with the correct aggregation. Customers ~~automatically~~ enrolled in a municipal or county provided ~~default~~energy services shall be free to elect to return to utility provided default service or to transfer to a competitive electricity supplier with adequate notice in advance of the next regular meter reading by the distribution utility, in the same manner as if they were on utility provided default service or as approved by the commission.

Commented [A20]: This part is generally okay, though it is only needed because the utilities don't want to change their systems to make new customer enrollment in an opt-out CPA automatic. They want to continue to enroll new customers in utility provided default service until the CPA initiates an opt-out transfer. Not ideal, but we can live with that to help utilities avoid the cost of changing their software.

Commented [A21]: This is okay.

VI. Once adopted, an aggregation plan and program may be amended and modified from time to time as provided by the governing body of the municipality or county and approved by the commission. In all cases the establishment of an opt-out default service program shall be approved as provided in paragraph I.

Commented [A22]: This would require any amendment to an electric aggregation program to be approved by the Public Utilities Commission, unnecessarily adding to their work load, likely resulting in the opening of an adjudicated case that the utility can intervene in and drag out for many months, even for years, especially since any tweak required by the PUC would necessitate taking the plan back to the legislative body – the next town meeting for towns with such.

VII. The commission ~~may~~ shall adopt rules, under RSA 541-A, to implement this chapter, including but not limited to rules governing the relationship between municipal or county aggregators and distribution utilities, metering, notice of the commencement or termination of aggregation services and products, and the reestablishment of a municipal or county aggregation that has substantially ceased to provide services. Where the commission has adopted rules in conformity with this chapter, complaints to and proceedings before the commission shall not be subject to RSA 541-A:29 or RSA 541-A:29-a.

53-E:8 Other Aggregators. – Nothing in this chapter shall preclude private aggregators from operating in service areas served by municipal or county aggregators.

Source. 1996, 192:2, eff. Aug. 2, 1996.

53-E:9 Billing Arrangements. – Each electric distribution utility shall offer to bill customers on behalf of competitive electric power suppliers and to pay such suppliers in a timely manner the amounts due such suppliers from customers for generation services, less a percentage of such amounts that reflects uncollectible bills and overdue payments, as approved by the commission.

Commented [A23]: Generally something like this could actually be helpful as some provision along these lines is needed, usually known as a Purchase of Receivables (POR) program, but there is no requirement that CPAs be treated comparably to utility provided default service, so some work is needed on this language.

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BACKGROUND & EXPERIENCE with Focus on Energy

- **Managing General Partner of One Court Street Associates**, 1985-present, responsible as a sweat equity partner for the development and ongoing management of One Court Street, a commercial building in downtown Lebanon, home of Three Tomatoes and various offices.
- **Vice President, Ardent Realty Services, Ltd,** 1992-present (with greatly reduced direct activity 2006-2/2012 while a PUC Commissioner), provides ongoing property management services to One Court Street Associates including leasing, property maintenance and financial management.
- **Lebanon City Councilor,** March 2015-present, **Assistant Mayor** since March 2019, and Chair, Lebanon Energy Advisory Committee (LEAC) which is also Lebanon's Electric Aggregation Committee pursuant to RSA 53-C. In additional to usual Councilor duties, authorized to represent the City as advocate and expert witness in a several PUC proceedings, including Grid Modernization Investigation, development of new Net Metering tariffs, and Liberty's proposed residential battery and time-of-use rate pilot.
- **New Hampshire Public Utilities Commission, Commissioner,** 12/27/2005 – 2/6/2012: Participated in approximately 360 adjudicatory and rulemaking proceedings with public hearings and over 1,000 published adjudicatory orders and decisions. Often served as agency point person in legislative hearings and proposed administrative rules, as well as representing and advocating for New Hampshire in various regional and national forums.
  - **National Association of Regulatory Utility Commissioners** (NARUC) Energy Resources & Environment Committee; 2006-2011; **Co-Vice-Chair**, 2009-2011.
  - FERC-NARUC Smart Grid/Demand Response Collaborative, 2008-2011.
  - **New England Conference of Public Utility Commissioners** (NECPUC), Vice President, 9/09-9/10; **President,** 9/10-9/11.
  - **Electric Power Research Institute (EPRI)**, Advisory Council to the Board of Directors, 2009-2011; Energy Efficiency/Smart Grid Public Advisory Group, 2008-2010.
  - Regional Evaluation, Measurement & Verification (EM&V) Forum, Steering Committee, Northeast Energy Efficiency Partnership, 2007-2011; Co-Chair, 2011.
  - RGGI (Regional Greenhouse Gas Initiative) one of two NH agency head representatives and **RGGI, Inc.; Secretary** (2007-2009); **Vice-Chair** (2009-2011).
  - NH Energy & Climate Collaborative, 2009-2011.
  - Governor's Climate Change Policy Task Force, NH's Climate Action Plan, 2008.
  - Northeast International Committee on Energy (NICE) and Climate Change Steering Committee of the Conference of New England Governors and Eastern Canadian Premiers, 2007-2008.
  - NH Site Evaluation Committee, 2006-2011 and Energy Planning Advisory Board, 2006.
  - ISO-New England Scenario Analysis Steering Committee Co-Chair (for NECPUC, 2007).
  - Speaker and panel moderator at various meetings or conferences of NECPUC, NARUC, ISO-NE, NEEP, ACEEE, NEPPA, NECA, NESEA Building Energy, ACI New England, Restructuring Roundtable, and other forums.
- **NH State Senator,** District 5, 1998-2004:
  - **Senate Finance Committee**, 1998-2004, over the course of 3 state budget cycles worked on detailed review and recommendations for each of the 3 divisions of the state's approximately $4 billion annual budget.
  - **Senate Energy & Economic Development Committee**, 1998-'04; **Chair**.'00-'02; **VC** '02-'04.

- Senate Environment Committee, 1998-2004, Transportation Committee, 1998-2000, 2003-'04.
- **Joint Legislative Committee on Administrative Rules**, 2001-2004; **Chair**, 2001-2002.
- **Electric Utility Restructuring Oversight Committee**, 1998-2004; **Co-Chair**, 1998-2000.
- Telecommunications Planning and Development Advisory Committee, 2001-2004.
- **Nuclear Decommissioning Finance Committee,** 2003-2004.
- **State Wireless Communications Policy Study Committee,** 2000, **Chair.**

- **NH State Representative,** 1992-1998:
  - **Science, Technology & Energy Committee,** 1992-1998; dealt with utility, energy, telecommunications, and air quality policy; Chair of Electric Utilities Subcommittee.
  - Small Power Producers and PSNH Renegotiations Legislative Oversight Committee, 1994.
  - Retail Wheeling and Restructuring Study Committee, 1995, Chair of Policy Principles, Social and Environmental Issues Subcommittee whose report became the foundation for NH's Electric Utility Restructuring statute, RSA 374-F.
  - **Electric Utility Restructuring Oversight Committee,** 1996-1998.
  - Member of state's negotiating team with Public Service Company of NH and prime sponsor of securitization (debt refinancing) legislation that ended litigation resulting in a reduction of average NH electric rates from the highest in the nation to the regional average. Sponsor of over a dozen bills dealing with energy policy and electric utilities, most of which became law, including prime sponsorship of NH's first solar/renewable net energy metering law and an update of the energy facility siting statute.
  - **Testified on State-Federal issues related to electric utility restructuring before the Energy & Power Subcommittee of the U.S. House Committee on Commerce,** February, 1996.

- **Legislative Regional and National Policy Work:**
  - **Council of State Governments, Eastern Regional Council (CSG/ERC):**
    - **Energy and Environment Committee,** member, 1997-2004; **Vice-Chair,** 2001-2003.
  - **National Conference of State Legislatures (NCSL):**
    - **Advisory Council on Energy,** 1997-2004; **Chair,** 2001-2004.
    - **Energy and Transportation Committee, Assembly on Federal Issues, (and successor Energy & Electric Utilities Committee),** 1998-2004; **Chair,** 2000-2001. As Chair facilitated a consensus based comprehensive update of NCSL's National Energy Policy (and other policies) used for lobbying the federal government on behalf of all state legislatures.
    - **Testified before the United States Senate Committee on Energy and Natural Resources** on "Electric Industry Restructuring," with a particular focus on transmission issues, on behalf of NCSL, April 2000.
  - **National Council on Electricity Policy, Steering Committee, member, 2001-2004.**

EDUCATION:

- **Dartmouth College, class of 1978**, **B.A.** with Distinction in major of Geography and Environmental Studies, **1980.**
- **M.S. in Community Economic Development, Southern NH University, 1985,** with course work in such areas as accounting, financial and organizational management, financing, and housing and business development.

COMMUNITY SERVICE:

- City of Lebanon: served on a dozen boards and committees since 1980.
- Sustainable Energy Resource Group, Board of Directors, 2013 – 2015 (merged into Vital Comm.).
- Vital Communities, Board of Directors, May 2012 – June 2018; Advisory Council, 2002-2012.

CITY OF LEBANON

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April 23, 2019

Hon. Clyde Carson
Chair, Municipal & County Government Committee
New Hampshire House
107 North Main St.
Concord, NH 03301

RE: SB 286-FN-Local Relative to Aggregation of Electric Customers by Municipalities and Counties

Dear Rep. Carson and Members of the House Municipal & County Government Committee,

The City of Lebanon supports the passage of SB 286 that updates NH's existing RSA Chapter 53-E that enables municipal and county aggregations of electricity customers. SB 286 is about empowering communities to act to advance their local energy and economic development goals. It gives NH towns and cities a powerful tool for voluntary energy and climate action through customer choice and aggregated demand. It gives municipal aggregation a handy moniker as "Community Power" and can be referred to as Community Power Aggregation (or "CPA").

Over two years ago the Lebanon City Council voted unanimously to create a Lebanon Electric Aggregation Committee, which I've chaired, to develop and propose a municipal aggregation plan to support the energy goals in our Master Plan. This bill reflects the changes we have identified that we think are needed to make municipal aggregation an effective and practical option in NH. The purpose of this bill is to make it possible to realize the original purposes of RSA 53-E (with emphasis added):

53-E:1 Statement of Purpose. – The general court finds it to be in the public interest to allow municipalities and counties to aggregate retail electric customers, as necessary, to provide such customers access to competitive markets for supplies of electricity and related energy services. The general court finds that **aggregation may provide small customers with similar opportunities to those available to larger customers in obtaining lower electric costs,** reliable service, and secure energy supplies. **The purpose of aggregation shall be to encourage voluntary, cost effective and innovative solutions** to local needs with careful consideration of local conditions and opportunities.

In the spring of 1996 NH was the first state in the nation to pass comprehensive electric utility restructuring legislation (creating RSA 374-F) that sought to functionally separate distribution, transmission, and generation services and subject the later to competition and customer choice. That same session the Senate passed to the House a bill to enable municipal and county aggregation of electric customers to arrange for electricity generation supply and other services – not as a replacement for competitive choice but as a complement thereto. While NH's law enabling municipal aggregation was also the first of its kind in the nation, it has yet to used and NH is not even recognized as a state that enables such. Massachusetts and Ohio followed not long after, and today municipal aggregation, more commonly known as Community Choice Aggregation ("CCA") is enabled in about 7 states and there are over 1,300 villages, towns, cities and counties across the nation that offer electric aggregation programs, but not any in New Hampshire.

What's the difference? All the other states where it is being used have enabled CCA on an opt-out basis, rather than just on an opt-in basis, as NH law requires. The original NH bill was ambiguous on this point when it passed the Senate. In the House, when Sen. Bradley, a sponsor of today's bill and I were serving on Science, Technology & Energy (he as Chair, me as the ranking Democrat) in 1996, we voted unanimously to change the bill to require explicit "opt-in." We were being cautious as the whole idea of customer choice in generation supply was an entirely new paradigm and there was no experience to inform our decisions. Today we see things differently.

The central point of this bill is to enable communities to offer an opt-out choice, in addition to opt-in choices. Ohio also allows communities to chose opt-in or opt-out. Why enable opt-out?

- NH's constitution (Part II, Article 83) calls for the legislature to protect "free and fair competition" from "all monopolies" and empowers the legislature to "regulate and control the acts" of monopolies.
- Default energy service procured by the electric distribution utilities is provided on an opt-out basis, but there is no compelling reason for them monopolize such an approach. SB 286 empowers local communities, through majority consent, to offer an alternative default energy service, with advance notice of price and a reasonable time period to opt-out and stay on or later return to utility provided default energy as they so choose.
- RSA 53-E requires a good amount of work to develop and launch an aggregation plan, which under current law has to then be marketed on an opt-in basis with an unpredictable, but likely rather low participation rate. An opt-out option can yield a critical mass or rate of participation for successful launches that create value for customers.
- The relative predictability of opt-out participation rates (85% to 95%) yields enough aggregation power to attract competitive suppliers and vendors to make a successful launch that can retain most customers.
- The bill provides good consumer protection by requiring advance notice of the energy service rate to be offered and adequate time to opt-out.
- Because a launch of an opt-out program requires majority approval of the local governing body ***and*** legislative body, there is built-in accountability and presumptive fairness to the action. It seems unlikely that local elected officials will launch a CPA that is likely to upset voters, such as by moving them to a higher cost rate or providing inadequate notice or explanation.
- It will increase meaningful customer choice by providing new options for residential and small business customers with their local government looking out for their interests in vetting service providers and terms and conditions for any new services.
- Customers that are already exercising choice and are served by a competitive electricity supplier will not need to opt-out of any CPAs but may opt-in.

In New York this question was left for their Public Service Commission to decide. I've attached some excerpts from that decision 3 years ago that explains why they concluded that an opt-out option was essential for a successful community choice aggregation program.

Concerns were raised in the Senate that if communities launch CPAs the smaller numbers remaining on utility provided default service may face higher rates. However, such concerns are like saying competition and customer choice increases costs compared with one size fits all. Relatively small distribution utilities like Liberty and the NH Electric Coop have attracted competitive default service bids even though they are a fraction of the size of most other utilities procuring default energy service in New England. If CPAs that will individually constitute small portions of the total utility default service load can offer better rates or services and retain customers as an alternative to utility provided default energy service, then what's the problem? Both Eversource and Unitil successfully accommodate opt-out municipal aggregation in Massachusetts. All that being said, rulemaking authority for the PUC was added to the bill in the Senate so they can address such concerns by minimizing any increased risk to default service providers.[1]

Another key issue in the bill is new proposed language at RSA 53-E:4, IV that enables CPAs to contribute to the cost of utility provided meter upgrades, to jointly own revenue grade meters with utilities, or provide their own secondary revenue grade meters for load settlement, subject to commission finding that such an action would be for the public good and according to terms and conditions as they approve. Meters used by Liberty and Eversource do not record interval data such as to enable time varying rates and this provision would open the door for potential new rate options if a CPA wanted to pay for advanced metering before the utility offers it.

The bill addresses other issues that I won't explain here. I've attached an annotated version of RSA 53-E showing how it would be changed by SB 286 and that provides an explanation for each of the proposed changes. For your convenient reference I've also attached some excerpts from RSA 374-F, NH's Electric Utility Restructuring Act from 1996 that provides some context and RSA 363:37-38 concerning Customer Privacy as that subdivision is referenced in the bill. You were previously emailed a packet of articles and resources on CCA, including a link to detailed report on CCA in Massachusetts from the UNH Sustainability Institute. I've brought along a few copies for those who would like a paper copy.

I'm happy to respond to any questions and work with the committee on any concerns you may have about the specific policies and language in this bill. Thank you for your attention to this matter.

Yours truly,

Clifton Below

Clifton Below
Assistant Mayor, Lebanon City Council
Clifton.Below@LebanonNH.gov

[1] The PUC drafted proposed rulemaking language for this bill, but it arrived too late to be included in the Senate amendment, so generic language was used. The City supports amending the bill to replace the generic language at p. 5 lines 7-8 of the bill with the PUC's recommended specifically tailored rulemaking language:

> The commission may enact rules, under RSA 541-A, to implement this chapter, including but not limited to rules governing the relationship between municipal or county aggregators and distribution utilities, metering, notice of the commencement or termination of aggregation services and products, and the reestablishment of a municipal or county aggregation that has substantially ceased to provide services. Where the commission has adopted rules in conformity with this chapter, complaints to and proceedings before the commission shall not be subject to RSA 541-A:29 or RSA 541-A:29-a.

CHAPTER 374-F
ELECTRIC UTILITY RESTRUCTURING

374-F:1 Purpose. –

I. **The most compelling reason to restructure the New Hampshire electric utility industry is to reduce costs for all consumers of electricity by harnessing the power of competitive markets.** The overall public policy goal of restructuring is to develop a more efficient industry structure and regulatory framework that results in a more productive economy by reducing costs to consumers while maintaining safe and reliable electric service with minimum adverse impacts on the environment. Increased customer choice and the development of competitive markets for wholesale ***and retail*** electricity services are key elements in a restructured industry that will require unbundling of prices and services and at least functional separation of centralized generation services from transmission and distribution services.

II. A transition to competitive markets for electricity is consistent with the directives of part II, article 83 of the New Hampshire constitution which reads in part: "Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it." Competitive markets should provide electricity suppliers with incentives to operate efficiently and cleanly, open markets for new and improved technologies, provide electricity buyers and sellers with appropriate price signals, and improve public confidence in the electric utility industry.

III. The following interdependent policy principles are intended to guide the New Hampshire public utilities commission in implementing a statewide electric utility industry restructuring plan, in establishing interim stranded cost recovery charges, in approving each utility's compliance filing, in streamlining administrative processes to make regulation more efficient, and in regulating a restructured electric utility industry. In addition, these interdependent principles are intended to guide the New Hampshire general court and the department of environmental services and other state agencies in promoting and regulating a restructured electric utility industry.

Source. 1996, 129:2, eff. May 21, 1996.

Section 374-F:2

374-F:2 Definitions. –

In this chapter:
I. "Commission" means the public utilities commission.
I-a. "**Default service**" means electricity supply that is available to retail customers who are otherwise without an electricity supplier and are ineligible for transition service.
II. "**Electricity suppliers**" means 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.**
. . .
V. "**Transition service**" means electricity supply that is available to existing retail customers prior to each customer's first choice of a competitive electricity supplier and to others, as deemed appropriate by the commission.

374-F:3 Restructuring Policy Principles. –

I. System Reliability. Reliable electricity service must be maintained while ensuring public health, safety, and quality of life.
II. **Customer Choice.** Allowing customers to choose among electricity suppliers will help ensure fully competitive and innovative markets. Customers should be able to choose among options such as levels of service reliability, real time pricing, and generation sources, including interconnected self generation. Customers should expect to be responsible for the consequences of their choices. The commission should ensure that customer confusion will be minimized and customers will be well informed about changes resulting from restructuring and increased customer choice.
III. **Regulation and Unbundling of Services and Rates.** When customer choice is introduced, services and rates should be unbundled to provide customers clear price information on the cost components of generation, transmission, distribution, and any other ancillary charges. Generation services should be subject to market competition and minimal economic regulation and at least functionally separated from transmission and distribution services which should remain regulated for the foreseeable future. . . .
IV. **Open Access to Transmission and Distribution Facilities.** Non-discriminatory open access to the electric system for wholesale and retail transactions should be promoted. . . .
V. **Universal Service**. (a) Electric service is essential and should be available to all customers. A utility providing distribution services must have an obligation to connect all customers in its service territory to the distribution system. A restructured electric utility industry should provide adequate safeguards to assure universal service. Minimum residential customer service safeguards and protections should be maintained. Programs and mechanisms that enable residential customers with low incomes to manage and afford essential electricity requirements should be included as a part of industry restructuring.
. . .
XIV. **Administrative Processes.** The commission should adapt its administrative processes to make regulation more efficient and to enable competitors to adapt to changes in the market in a timely manner. The market framework for competitive electric service should, to the extent possible, reduce reliance on administrative process. New Hampshire should move deliberately to replace traditional planning mechanisms with market driven choice as the means of supplying resource needs. . . .

Privacy Policies for Individual Customer Data

363:37 Definitions. –

In this subdivision:
I. "Individual customer data" means information that is collected as part of providing electric, natural gas, water, or related services to a customer that can identify, singly or in combination, that specific customer, including the name, address, account number, quantity, characteristics, or time of consumption by the customer.
II. "Service provider" means a public utility, as defined by RSA 362:2; a competitive electricity supplier, under RSA 374-F:7; an aggregator, as defined by RSA 53-E:2, II; a rural electric cooperative, under RSA 301:57; suppliers of natural gas, under RSA 362:4-b; and any other service provider that receives individual customer data from electric, natural gas, or water consumption.

III. "Primary purpose" means the main reason for the collection, storage, use, or disclosure of individual customer data which is limited to:
(a) Providing or billing for electrical or gas service.
(b) Meeting system, grid, or operational needs.
(c) Implementing demand response, customer assistance, energy management, or energy efficiency programs.

363:38 Duties and Responsibilities of Service Providers. –

I. No service provider shall:
(a) Share, disclose, or otherwise make accessible to any third party a customer's individual customer data, except as provided in paragraph V or upon the express consent of the customer.
(b) Sell individual customer data for any purpose without the express consent of the customer.
(c) Provide an incentive or discount to the customer for accessing individual customer data, provided, however, that nothing shall prevent a service provider from providing consideration to a customer for reducing demand as part of a demand response, energy management, or energy efficiency program in which customer usage data is required to measure or verify such reduction.
II. Service providers shall:
(a) Collect, store, use, and disclose only as much individual customer data as is necessary to accomplish primary purposes.
(b) Use individual customer data solely for primary purposes.
III. A service provider that allows customer access to electric, natural gas, or water consumption data shall allow customer access to that data without requiring disclosure of that customer's individual customer data to third parties.
IV. A service provider shall use reasonable security procedures and practices to protect individual customer data from unauthorized access, use, destruction, modification, or disclosure.
V. (a) Nothing in this section shall preclude a service provider from using aggregate customer data for analysis, reporting, or program management after information that identifies an individual customer is removed.
(b) Nothing in this section shall preclude a service provider from disclosing a customer's individual data to a third party for system, grid, or operational needs, or the implementation of demand response, customer assistance, energy management, or energy efficiency programs, provided that the service provider for contracts entered into after January 1, 2017, has required by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, use, destruction, modification, or disclosure, and to prohibit the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the express consent of the customer.
(c) Nothing in this section shall preclude a service provider from disclosing electric, natural gas, or water consumption data required under state or federal law, or which is identified as information subject to warrant or subpoena or by an order of the commission.

Source. 2016, 258:1, eff. Aug. 14, 2016.

EXCERPTS WITH EMPHASIS ADDED

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on April 20, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman, dissenting

CASE 14-M-0224 - Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs.

ORDER AUTHORIZING FRAMEWORK FOR COMMUNITY CHOICE AGGREGATION OPT-OUT PROGRAM

(Issued and Effective April 21, 2016)

BY THE COMMISSION:

INTRODUCTION

The Commission initiated consideration of Community Choice Aggregation (CCA) as part of both Governor Cuomo's Reforming the Energy Vision (REV) initiative and its continued review and revision of retail energy markets. The goals of both REV and retail energy market reform include, among other things, increasing the ability of individuals and communities to manage their energy usage and bills, facilitating wider market-based deployment of clean energy including energy efficiency, large-scale renewables and distributed energy resources (DER), and increasing the benefits of retail competition for residential and small non-residential customers.[1] A well-designed Community Choice Aggregation (CCA) program will create these benefits for participating communities. The Commission also previously approved a petition by Sustainable Westchester, Inc. (SW) requesting authorization to run a CCA Pilot Program (the SW Pilot). The Commission will use the lessons learned from this experience in its review of future CCA applications.

CCA offers residential and small non-residential customers (mass-market customers) an opportunity to receive benefits that have not been readily available to them. At its February 23, 2016 Session, the Commission responded to the failure of energy service companies (ESCOs) to create benefits for most residential and small non-residential customers, as well as increasing customer complaints, by limiting the products that can be offered to those customers to products that create real customer value.[2] **CCA programs can result in more attractive energy supply terms than can be obtained by individual customers through the bargaining power that aggregation provides, the expertise provided by municipal or consultant experts, and the competitive public process for choosing a supplier.**

More importantly, the CCA construct provides substantial positive opportunity for meaningful and effective local and community engagement on critical energy issues and the development of innovative programs, products, and services that

[1] Case 14-M-0101, Reforming the Energy Vision, Order Instituting Proceeding (issued April 25, 2014); Case 12-M-0476 et al., Residential and Small Non-Residential Retail Energy Markets, Order Instituting Proceeding and Seeking Comments Regarding the Operation of the Retail Energy Markets in New York State (issued October 19, 2012).

[2] Case 15-M-0127, et al., In the Matter of Eligibility Criteria for Energy Services Companies. Order Resetting Retail Energy Markets and Establishing Further Process (issued February 23, 2016) (February Reset Order).

promote and advance the achievement of the State's energy goals. Existing programs such as the NY Prize microgrid competition, Solarize New York, and community distributed generation have demonstrated that local governments are an effective and powerful resource for educating and engaging citizens to take action with regard to energy that is positive for the environment, the resiliency of our power grid, and their own pocketbooks. CCA programs can educate, encourage, and empower communities and individuals to take control of their energy future through engagement with existing REV and CEF opportunities and development of new DER and clean energy programs.

For these reasons, the Commission authorizes the establishment of CCA programs by municipalities statewide.

. . .

BACKGROUND

In December 2014, the Commission instituted a proceeding to consider establishing CCA programs in New York State and to evaluate potential structures and best practices for such programs.[4] A Department of Public Service Staff (Staff) White Paper regarding CCA was attached to the Instituting Order (the White Paper). The White Paper posed 18 questions on various CCA program design and implementation issues for stakeholder comment. The Instituting Order and the White Paper contain extended discussion of the background for the authorization of CCA programs in New York, including the creation and oversight of retail energy markets, past and current uses of energy aggregation in New York, and the implementation of CCA in other states.

. . .

[4] Case 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs, Order Instituting Proceeding and Soliciting Comments (issued December 15, 2014) (Instituting Order).

NOTICE OF PROPOSED RULE MAKING

. . .

Comments were submitted by a wide variety of stakeholders representing various sectors impacted by CCA and are grouped by topic and addressed below. Also, written comments were submitted in response to questions posed at the Data Technical Conferences. A list of commenters is provided in Appendix A.

In general, the majority of stakeholders support the authorization of CCA in New York. They agreed that CCA programs are consistent with the goals of REV and have the potential to reduce costs and create benefits for customers, as well as promote a cleaner and more economically dynamic and efficient energy system. As discussed in the Instituting Order, the Staff White Paper, and several comments, CCA programs are already creating these benefits in other states.

A number of commenters expressed support for some aspects of CCA while expressing reservations about others. In addition, relevant comments received at, or filed after, the Data Technical Conferences are addressed. . . .

Customer Eligibility

The Instituting Order and Staff White Paper addressed customer eligibility and included the following questions for stakeholder response:

- Should non-residential customers who are not served by ESCOs be included in CCA programs on an opt-out basis? If not, should they be included on an opt-in basis? . . .

Comments

AEA, Energy Next, Local Power Inc., and many others commented that CCA programs should include non-residential customers not served by an ESCO on an opt-out basis. Constellation agreed with AEA, but suggested limiting those non-residential customers to those with a 50kW or less demand. UIU

[NY Dept. of State's Utility Intervention Unit] also agreed that non-residential customers should be included in CCA programs on an opt-out basis to ensure a greater likelihood of success for the CCA program. UIU noted that established CCA programs around the country have demonstrated that the larger the scale of customer participation, the greater the ability the municipality will have to negotiate lower energy rates and more favorable terms, as well as obtaining favorable financing options for locally-owned DER.

The Joint Utilities and MI agreed that residential and non-residential customers served by an ESCO should have the ability to opt-in to a CCA program. Constellation explained that customers already served by an ESCO should not be included in an opt-out CCA because it is essential to the competitive market that a customer's choice of ESCO be respected. . . .

CCP noted that in California, CCA programs are the default provider for any new customers in their territory. The Joint Utilities state that it should be the responsibility of each municipality to identify approaches that would recognize customers who move in or out of their area. The UIU stated that the CCA should be required to add customers as long as the additional load does not negatively impact the load forecast, which could drive up costs for the overall CCA program.

Discussion

All customers, including residential and non-residential, regardless of size, shall be eligible to participate in CCA programs. Based on experiences in other states and considering the above comments, CCA participation can be valuable for all customer rate classes and maximizing the number of customers included in CCA programs will maximize the overall benefits for CCA customer participants. . . .

Adoption of Opt-Out Aggregation for CCA Programs

A number of comments were received regarding whether

CCA programs need the enrollment of mass-market customers on an opt-out basis to be effective. Comments on this topic were received in response to several questions, including:

- Are there any reasons CCA programs should not be adopted, including issues with opt-out aggregation generally? (Q16)
- Are there any reasons supporting implementation of CCA, including descriptions of positive experiences in other states? (Q17) . . .

Comments

The overwhelming majority of commenters supported the opt-out provisions for CCA. Some commenters, however, questioned the need for Commission authorization of opt-out CCA programs since opt-in programs already exist. Joint Utilities assert that opt-in rather than opt-out more appropriately protects customers from unwanted switches by commodity suppliers. . . .

Discussion

Affirmative consent for participation in retail energy markets has always been deemed an important consumer protection. The Commission has previously declined to authorize the enrollment of customers into ESCO service on an opt-out basis based on concerns that transferring blocks of load to ESCOs through auctions would unduly interfere with the operation of markets by undermining efforts to educate customers regarding retail choice and that such an approach would be inconsistent with the UBP, which state that transfers of customers without their affirmative consent are impermissible slamming, and the Public Service Law, which guarantees customers, subject to limited exceptions, that the utilities will always be available as a supplier. The Commission has required explicit customer consent prior to the transfer of data or initiation of ESCO service since the introduction of ESCOs into New York markets to protect customer choice, recognize the varying needs of different customers, and encourage voluntary participation in retail energy markets. **Permitting the inclusion of customers in CCA on an opt-out basis rather than requiring explicit, affirmative consent represents a significant policy change.**

As more thoroughly described in the White Paper, **CCA programs in other states have only been successful where opt-out aggregation is permitted for mass-market customers**, while opt-in requirements have limited the success of widespread mass-market customer aggregation in New York. Opt-in aggregation has proved valuable to certain larger customer groups, but opt-out aggregation appears necessary for CCA programs to achieve the scale that will enable ESCOs to create meaningful benefits for mass market customers. Opt-in aggregation for residential customers is limited by the same factors that limit retail market participation in general, including lack of the time, interest, or knowledge needed to consider aggregation offers, lack of awareness, and the difficulty of comparing competing offers. In order to leverage the negotiating power to draw offers from ESCOs that will benefit residents, municipalities must have a reasonable level of certainty that a critical mass of customers will be available for their programs, which is best provided through a well-designed opt-out CCA program.

Furthermore, consumer engagement and protections designed into the CCA programs under consideration here should alleviate concerns that previously warranted the reluctance to proceed with opt-out aggregation. For instance, a new CCA program can only be established upon a decision reached by elected representatives after significant public outreach. In particular, **the requirement that elected officials approve a CCA program before one is implemented represents a reasonable proxy for customer consent**, when coupled with consumer education efforts and individual customer opt-out processes. These measures, consistent with Commission policy, will provide meaningful opportunities for customers to learn about retail energy markets and determine whether the product offered by the

CCA program meets their needs. The customer engagement and opt-out processes, as described below, will also ensure that customers receive notice sufficient to make an informed choice and give them the opportunity to control the sharing of their data and the decision to enroll.

These characteristics of CCA programs will help ensure that customers served by ESCOs through these programs do not encounter high-pressure or deceptive sales tactics, as some other mass-market customers have experienced, because the ESCO will be chosen by the municipality through a competitive procurement process. In addition, the negotiating power resulting from the scale created by CCA programs and the ability of the municipality to compare multiple bids will allow mass-market customers served through a CCA to receive the same benefits from ESCO service that large commercial and industrial customers currently enjoy.

For these reasons, CCA programs will be permitted to enroll eligible customers on an opt-out basis. Approval of CCA as an opt-out program is specific to its context and to the protections it provides, and should not be interpreted as an indication that the Commission intends to eliminate or modify the general requirement for explicit customer consent.

. . .

CONCLUSION

Community Choice Aggregation, as a part of the REV proceeding, aligns with the Commission's vision for an energy system that is cleaner and more dynamic. It will increase the options available to mass-market customers and allow them to access benefits that were previously limited to large customers. It also enables communities to determine their own paths and goals and collaborate with individuals, ESCOs, utilities, and DER providers to meet those goals and enhance a rapidly changing energy system.

Annotated SB 286 showing RSA 53-E its entirety as it would be amended with explanatory comments by Clifton Below for the City of Lebanon 4/22/19

53-E:1 Statement of Purpose. – The general court finds it to be in the public interest to allow municipalities and counties to aggregate retail electric customers, as necessary, to provide such customers access to competitive markets for supplies of electricity and related energy services. The general court finds that aggregation may provide small customers with similar opportunities to those available to larger customers in obtaining lower electric costs, reliable service, and secure energy supplies. The purpose of aggregation shall be to encourage voluntary, cost effective and innovative solutions to local needs with careful consideration of local conditions and opportunities.

1. Aggregation of Electric Customers; Definition; Aggregation. Amend RSA 53-E:2, I to read as follows:

53-E:2 Definitions. – In this chapter:

I. "Aggregation" means the grouping of retail electric customers to provide, broker, or contract for electric power supply and energy services for such customers.

II. "Aggregator" means, unless the context indicates otherwise, a municipality or county that engages in aggregation of electric customers within its boundaries.

III. "Commission" means the public utilities commission.

IV. "Committee" means the electric aggregation committee established under RSA 53-E:6.

V. "County" means any county within the state.

VI. "Municipality" means any city, town, unincorporated place, or village district within the state.

2. Aggregation of Electric Customers. Amend RSA 53-E:3 and RSA 53-E:3-a to read as follows:

53-E:3 Municipal and County Authorities. – Any municipality or county may:

I. Aggregate the retail electric customers within its boundaries who do not opt-out of or who consent to being included in an aggregation program.

II. (a) Enter into agreements and provide for:

(1) The supply of electric power.

(2) Demand side management.

(3) Conservation.

(4) Meter reading.

(5) Customer service.

(6) Other related services.

(7) The operation of energy efficiency and clean energy districts adopted by a municipality pursuant to RSA 53-F and as approved by the municipality's governing body.

(b) Such agreements may be entered into and such services may be provided by a single municipality or county, or by a group of such entities operating jointly pursuant to RSA 53-A.

53-E:3-a Municipal Aggregators Authorized. – Municipal aggregators of electricity load under this chapter, and municipalities operating municipal electric utilities under RSA 38, are expressly authorized to aggregate other services commonly and regularly billed to customers. Municipalities may operate approved aggregation programs as self-supporting enterprise funds

Commented [CB1]: 1. All of the amendments are adding to existing text (shown as underlined text) with almost no deletions of existing text. This addition is to make clear that municipal or county aggregations that I'll call Community Power Aggregations ("CPAs") can directly provide services and not just contract for a separate entity to do so. Current language isn't completely clear in this respect.

Commented [CB2]: 2. This is the first place where an opt-out option needs to be addressed.

Commented [CB3]: 3. Same as note 1.

Commented [CB4]: 4. This makes clear that a CPA may administer a clean energy district (CPACE) if such is approved by the terms of the next chapter, RSA 53-F. This could open new opportunities for innovation in the provision of commercial energy efficiency and clean energy options.

Commented [CB5]: 5 Same as note 3.

Commented [CB6]: 6. Added for clarity, RSA 53-A, "AGREEMENTS BETWEEN GOVERNMENT UNITS" allows for the "joint exercise of powers."

including the use of revenue bonds pursuant to RSA 33-B and RSA 374-D and loans from other municipal enterprise funds as may be approved by the governing body and the legislative body of the municipality.[1] Any such loans from other municipal enterprise funds must be used for purposes that have a clear nexus to the primary purposes of such other funds, such as generation, storage, or sale of power generated from sites, facilities, or resources that might otherwise be operated or produced by the other enterprise fund.[2] Nothing in this chapter shall be deemed to limit the capacity of customers to select any service or combination of services offered by such municipal aggregators or to limit the municipality from combining billing for any or all utility services.

Commented [CB7]: 7. See footnote #1 at bottom of next page.

Commented [CB8]: 8. See footnote #2.

3. New Section; Use of "Community Power" as a Name Reserved. Amend RSA 53-E by inserting after section 3-a the following new section:

53-E:3-b Use of "Community Power" as a Name Reserved. The use of the term "Community Power" following the name of a municipality or county shall be reserved for the exclusive use by such entity as a name for proposed or approved municipal or county aggregations. Aggregations operated jointly by a group of such entities pursuant to RSA 53-A may adopt an appropriate identifying name in conjunction with the term "Community Power" as a name.

Commented [CB9]: 9. This would reserve the use of the name "[muni name] Community Power" for each town and county, instead of more awkward terms "[muni name] municipal aggregation" or "community choice aggregation" and mimics the notion of "community solar" or "community renewables."

4. Aggregation of Electric Customers by Municipalities and Counties; Regulation; Financial Responsibility; Electric Aggregation Plan; Aggregation Program Adopted. RSA 53-E:4 through 53-E:7 are repealed and reenacted to read as follows:

53-E:4 Regulation. –

I. An aggregator operating under the provisions of this chapter shall not be considered a utility engaging in the wholesale purchase and resale of electric power. Providing electric power or energy services to aggregated customers within a municipality or county shall not be considered a wholesale utility transaction. However, a municipal or county aggregation may elect to participate in the ISO New England wholesale energy market as a load serving entity for the purpose of procuring or selling electrical energy or capacity on behalf of its participating retail electric customers, including itself.

Commented [CB10]: 10. This would make clear that CPAs can elect to be load serving entities (LSEs) which need not make them into "wholesale utilities" although they would be participating in wholesale energy markets and subject to FERC jurisdiction in that regard.

II. The provision of aggregated electric power and energy services as authorized by this chapter shall be regulated by this chapter and any other applicable laws governing aggregated

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[1] [Comment # 7: The use of revenue bonding (which are not backed by the full faith and credit of the government, but only by related revenue generation) for investing in power generation (up to 80 MW in capacity) is well established in NH law. See for example: RSA 374-D:2. This just makes clear that such authority may be exercised by a CPA. It is not clear that a municipality could use fund balance from another enterprise fund to capitalize an investment in power generation operated as part of a CPA enterprise fund. In Lebanon for example, it appears that the most beneficial way to fund an investment in a landfill gas to energy project may be to borrow from landfill fund balance, pay a higher return than those funds would otherwise return (for future landfill needs but still be a lower interest rate, with less complications, than the use of municipal revenue bonds).

[2] [Comment #8: Examples of this would include: 1) power generation from renewable methane gas generated from municipal landfills or anerobic digesters that might take sludge from waste water treatment plants or food, yard, and other organic waste from solid waste and recycling operations, 2) hydroelectric generation facilities and equipment used to enable pumped storage facilities to provide demand response that are related to municipal water treatment and distribution operations, including in-line potable water generators, and 3) solar PV on sites otherwise operated by other enterprise accounts such as landfills, airports, water, and waste-water treatment enterprises.]

electric power and energy services in competitive electric markets.

III. Transmission and distribution services shall remain with the transmission and distribution utilities, who shall be paid for such services according to rate schedules approved by the applicable regulatory authority, which may include optional time varying rates for transmission and distribution services that may be offered by distribution utilities on a pilot or regular basis. An aggregator shall not be required to own any utility property or equipment to provide electric power and energy services to its customers.

IV. For the purpose of obtaining interval meter data for load settlement, the provision of energy services, and near real-time customer access to such data, municipal and county aggregators may contribute to the cost of electric utility provided meter upgrades, jointly own revenue grade meters with an electric utility, or provide its own revenue grade electric meter, which would be in addition to a utility provided meter, subject to commission finding in the public good and approval of the terms and conditions for such arrangements, including sharing or transfer of meter data from and to the electric distribution utility.

V. Municipal or county aggregations that supply power shall be treated as competitive electricity suppliers for the purpose of access to the electric distribution utility's electronic data interface and for ceasing operations.

VI. Municipal or county aggregations shall be subject to RSA 363:37-38[3] as service providers and individual customer data shall be treated as confidential private information and not be subject to public disclosure under RSA 91-A. An approved aggregation may use individual customer data to comply with the provisions of RSA 53-E:7, II and for research and development of potential new energy services to offer to customer participants.

53-E:5 Financial Responsibility. – Retail electric customers who choose not to participate in an aggregation program adopted under RSA 53-E:7 shall not be responsible for, and no entity may require them to pay, any costs associated with such program, through taxes or otherwise except for electric power supply or energy services consumed directly by the municipality or county, or incidental costs, which may include costs necessary to comply with the provisions of this chapter up to the time that the aggregation starts to produce revenue from participating customers.

53-E:6 Electric Aggregation Plan. –

I. The governing body of a municipality or county may form an electric aggregation committee to develop a plan for an aggregation program for its citizens. A municipality or county may join other municipalities or counties in developing such plans.

II. The plan shall provide universal access, reliability, and equitable treatment of all classes of customers subject to any differences arising from varying opportunities, tariffs, and arrangements between different electric distribution utilities in their respective franchise territories, and shall meet, at a minimum, the basic environmental and service standards established by the commission and other applicable agencies and laws concerning aggregated

[3] RSA 363:38, enacted in 2018, concerns "Privacy Policies for Individual Customer Data" and generally applies to what are non-governmental entities, not subject to RSA 91-A. In *Lamy v. NH Public Utilities Commission*, 152 N.H. 106 (2005) the NH Supreme Court found that the names and addresses of commercial customers of a utility in the records of the PUC are not confidential and are subject to public disclosure under RSA 91-A, so this would make clear that such is protected private information under the terms of RSA 363:38 even if held by a municipal entity covered by 91-A.

Commented [CB11]: 11. Because we anticipate that CPA participants in Lebanon would be equipped with interval meters, this would allow CPAs to pilot the use of TOU rates and other TVRs, such as real time pricing, subject to PUC approval.

Commented [CB12]: 12. This is necessary as NH IOUs have argued that any metering they provide should only have such capabilities as they deem appropriate (in Grid Mod investigation). Competitive markets for revenue grade metering have driven innovation and cost reductions for such well below what NH utilities are offering. This is key to enabling CPA customers to access real time pricing and innovative services that may rely on near real-time access to meter data. Even with a secondary revenue grade meter the utility could continue to use their own meter for distribution service charges. There is no need for a monopoly in meters used for load settlement, if they are overseen by PUC, much as customers and vendors can supply their own revenue grade meters for REC production, read by an independent monitor per PUC rules and approval.

Commented [CB13]: 13. Currently only competitive electricity providers can use utility electronic data interfaces (EDI) for customer enrollment and transfer. This would allow CPAs to do so as if they were competitive electricity suppliers, subject to the same requirements.

Commented [CB14]: 14. SEE FOOTNOTE at bottom of page for comment.

Commented [CB15]: 15. It is not clear that RSA 363:37-38 allows for such uses. SB 78 also addresses this issue.

Commented [CB16]: 16. Incidental costs are not defined, and this is of concern in terms of municipal officials not wanting to avoid any inadvertent violation of the law. This would create a logical limit on those costs allowing for expenses necessary to comply with the statute before a CPA is up and running, such as the cost of a mailing to all electric customers within the municipality required by RSA 53-E:7, II.

Commented [CB17]: 17. Many towns (and counties) are served by more than one electric distribution utility and the opportunities (such as for interval metering) and tariffs that enable various options may not be uniformly available across the different territories, so this recognizes that reality.

service.

III. The plan shall detail:

(a) The organizational structure of the program;

(b) Operation and funding;

(c) Rate setting and other costs to participants, including whether energy supply services are offered on an opt-in basis or on an opt-out basis as an alternative default service;

(d) The methods for entering and terminating agreements with other entities;

(e) The rights and responsibilities of program participants; and

(f) How the program will ensure participants who are enrolled in the Electric Assistance Program administered by the commission will receive the discount.

(g) Termination of the program.

IV. The committee shall approve a final plan which the committee determines is in the best, long-term interest of the municipality or county and the ratepayers.

V. The committee shall solicit public input in the planning process and shall hold public hearings.

53-E:7 Aggregation Program Adopted. –

I. The governing body of a municipality or county may submit to its legislative body for adoption a final plan for an aggregation program or any revision to include an opt-out default service program, to be approved by a majority of those present and voting.

II. If the plan is adopted or once adopted is revised to include an opt-out alternative default service, the municipality or county shall mail written notification to each retail electric customer within the municipality or county. To enable such mailed notification and notwithstanding RSA 363:38, after an aggregation plan is duly approved the electric distribution utility or utilities serving an adopting municipality or county shall provide to such municipality or county a current list of the names and mailing addresses of all their electric customers taking distribution service within the municipality or county. Notification shall include a description of the aggregation program, the implications to the municipality or county, and the rights and responsibilities that the participants will have under the program, and if provided on an opt-out basis, the fixed rate or charges that will apply. No retail electric customer shall be included in ~~the~~ a program in which the customer does not know all of the rates or charges they may be subject to at least 30 days in advance of their application and has the option, for a period of not less than 30 days from the date of the mailing, to opt-out of being enrolled in such program, unless the customer affirmatively responds to the notification or requests in writing to be included in the program.

III. Within 15 days after notification of the plan has been sent to retail electric customers in the service area, a public information meeting to answer questions on the program shall be held.

IV. Services proposed to be offered by or through the aggregation shall be on an opt-in basis unless the approved aggregation plan explicitly creates an opt-out alternative default energy service program where the rate or price is known at least 30 days in advance of its application and, for a period of not less than 30 days from the date notification is mailed, the customer has the opportunity to opt-out of being enrolled in such program, by return postcard, web site, or such additional means as may be provided. Customers who are on default service provided by an electric distribution utility shall be automatically enrolled in an aggregation provided alternative default service if they do not elect to opt-out. Customers opting-out will instead remain on utility provided default service. Customers taking energy service from a competitive electricity supplier shall not be automatically enrolled in any aggregation program, but may

Commented [CB18]: 18. This is to make clear that a plan should specify whether all services being offered are on an opt-in basis, or whether a default service option may be offered on an opt-out basis.

Commented [CB19]: 19. This language, suggested by the PUC, it to help ensure that low-income customers that receive a discount on their electric bill through the EAP don't inadvertently lose their discount with program implementation.

Commented [CB20]: 20. These are to make clear that an aggregation plan could initially be adopted on an opt-in only basis but be subsequently revised to offer an opt-out default energy service option, with approval by the legislative body, like any original plan.

Commented [CB21]: 21. Right now there is a catch-22. The muni must mail notice to every electric customer, but RSA 363:38 prohibits the utility from sharing those mailing addresses with the muni without prior written consent of the customer. The muni or county would itself also be subject to RSA 363:37-38 per 53-E:4, VI above.

Commented [CB22]: 22. This provides customers with needed information to compare the CPA default option with the utility provided default energy service, and time to opt-out of being enrolled in the CPA default service.

Commented [CB23]: 23. This paragraph details how an opt-out default service option would work.

voluntarily opt-in. New customers to the electric distribution utility after the notification mailing required by paragraph II shall be given a choice of enrolling in utility or aggregation provided default service, where such exists, including pricing for each when they apply for service. Such new customers may also enroll with a competitive electricity supplier. New customers who do not make such a choice shall be enrolled in the default service of any geographically appropriate approved aggregation, or, if none exists, the utility provided default service. Municipal aggregations shall take priority or precedence over any county aggregations. Customers automatically enrolled in a municipal or county provided default service shall be free to elect to return to utility provided default service or to transfer to a competitive electricity supplier with adequate notice in advance of the next regular meter reading by the distribution utility, in the same manner as if they were on utility provided default service or as approved by the commission.

V. Once adopted an aggregation plan and program may be amended and modified from time-to-time as provided for by the governing body of the municipality or county. In all cases the establishment of an opt-out default service program shall be approved as provided in paragraph I.

VI. The commission shall adopt rules, pursuant to RSA 541-A, relative to administration and implementation of this chapter.

53-E:8 Other Aggregators. – Nothing in this chapter shall preclude private aggregators from operating in service areas served by municipal or county aggregators.

5. Voluntary Corporations and Associations; Name. Amend RSA 292:3, II(d) to read as follows:

(d) The name of an agency or instrumentality of the United States or this state or a subdivision thereof***, including names reserved pursuant to RSA 53-E***.

6. Business Corporation Act; Corporate Name. Amend RSA 293-A:4.01(b)(4), to read as follows:

(4) The name of an agency or instrumentality of the United States or this state or a subdivision thereof***, including names reserved pursuant to RSA 53-E***.

7. New Hampshire Investment Trusts; Use of Name Regulated. Amend RSA 293-B:17, I(b)(4) to read as follows:

(4) The name of an agency or instrumentality of the United States or this state or a subdivision thereof***, including names reserved pursuant to RSA 53-E***.

8. Professional Corporations; Name; Amend RSA 294-A:7, III(a)(4) to read as follows:

(4) The name of an agency or instrumentality of the United States or this state or a subdivision thereof***, including names reserved pursuant to RSA 53-E***.

9. Uniform Partnership Act; Registered Limited Liability Partnerships; Name. Amend RSA 304-A:45, II(d) to read as follows:

(d) The name of an agency or instrumentality of the United States or this state or a subdivision thereof***, including names reserved pursuant to RSA 53-E***.

10. Uniform Limited Partnership Act; Name. Amend RSA 304-B:2, III(d) to read as follows:

Commented [CB24]: 24. This addresses how an aggregation plan might be amended or modified, once initially adopted and again requires any opt-out program to be approved by both the governing and legislative body.

Commented [CB25]: 25. This was requested by the PUC in the Senate, although the language they suggested wasn't offered in time to make it into the Senate amendment so generic rule-making language was included. The House may want to amend the bill to use the PUC recommended language instead.

Commented [CB26]: 26. This series of amendments make clear that the term "Community Power" in conjunction with a municipal or county name is reserved for the use of municipalities and counties. It follows all the provisions covered by SB 413 of 2018.

(d) The name of an agency or instrumentality of the United States or this state or a subdivision thereof***, including names reserved pursuant to RSA 53-E***.

11. Limited Liability Companies; Name. Amend RSA 304-C:32, III(d) to read as follows:

(d) The name of an agency or instrumentality of the United States or this state or a subdivision thereof***, including names reserved pursuant to RSA 53-E***.

12. Foreign Limited Liability Companies; Name. Amend RSA 304-C:177, I(e)(4) to read as follows:

(4) The name of an agency or instrumentality of the United States or this state or a subdivision thereof***, including names reserved pursuant to RSA 53-E***.

13. Registration of Foreign Partnerships; Name. Amend RSA 305-A:2-e, I(d) to read as follows:

(d) The name of an agency or instrumentality of the United States or this state or a subdivision thereof***, including names reserved pursuant to RSA 53-E***.

14. Cooperative Marketing and Rural Electrification Associations; Use of Name Regulated. Amend RSA 301:43-a, II(d) to read as follows:

(d) The name of an agency or instrumentality of the United States or this state or a subdivision thereof***, including names reserved pursuant to RSA 53-E***.

15. Trade Names. Amend RSA 349:1, IV(a)(4) to read as follows:

(4) The name of an agency or instrumentality of the United States or this state or a subdivision thereof***, including names reserved pursuant to RSA 53-E***.

16. Definitions in the Renewable Energy Portfolio Standard. Amend RSA 362-F:2, XIV to read as follows:

XIV. "Provider of electricity" means a distribution company providing default service or an electricity supplier as defined in RSA 374-F:2, II, but does not include municipal suppliers ***that are municipal utilities pursuant to RSA 38***.

17. Definitions in the Electric Utility Restructuring Act. Amend RSA 374-F:2, I-a to read as follows: –

I-a. "Default service" means electricity supply that is available to retail customers who are otherwise without an electricity supplier and are ineligible for transition service ***and is provided by electric distribution utilities pursuant to the provisions of RSA 374-F:3, V or as an alternative, by municipal or county aggregators pursuant to the provisions of RSA 55-E***.

18. Competitive Electricity Supplier Requirements. Amend RSA 374-F:7, II to read as follows:

II. Aggregators of electricity load that do not take ownership of power or other services and do not represent any supplier interest are not public utilities pursuant to RSA 362:2, but shall notify the commission of their intent to do business. Municipalities that aggregate electric power or energy services for their citizens pursuant to RSA 53-E are not public utilities pursuant to RSA 362:2 ***and are not subject to the provisions of paragraph III and section 374-F:4-b***.

Commented [CB27]: 27. I believe the original intent of this was to exempt existing municipal electric utilities (of which there are a handful of small ones in NH) from the RPS so as to not create an unfunded mandate. This would limit that exemption to such municipal electric utilities, so municipal aggregations that function as electricity suppliers would not be exempt from the RPS, and since none exist today and it is a voluntary choice, there is no unfunded mandate.

Commented [CB28]: 28. This makes clear that CPAs may provide an alternative to utility provided default service, but without the regulation written for IOUs.

Commented [CB29]: 29. These two referenced sections pertain to ratepayer protections against abuse and unfair practices by competitive suppliers. As public entities subject to voter control through elected representatives (including select persons, city councilors and the like) as well as through voting at town meetings, regulatory oversight of CPAs is not necessary to the same extent as for competitive suppliers who are not accountable to voters. This follows the model for the NH Electric Coop, which was exempted from most PUC regulation once a majority of its members voted to self-regulate and is consistent with RSA 374-F:3, XIV, the restructuring policy principle that calls for reducing "reliance on administrative process" to the extent possible.
The PUC 2000 rules were amended in 2017 to fully implement RSA 374-F:4-b and the PUC expressly exempted municipal and county aggregations from those rules at Puc 2001.02 (b): "These rules shall not apply to municipalities operating municipal electric utilities under RSA 38, or to municipalities or counties providing electricity or aggregating within the boundaries of participating municipalities under RSA 53-E, or to utilities as defined in Puc 2002.24."

Suggested amendment for PUC review of electric aggregation plans.
C. Below 2/5/21

53-E:7 Aggregation Program. –

I. The governing body of a municipality or county may submit to its legislative body for adoption a final plan for an aggregation program or any revision to include an opt-out default service program, to be approved by a majority of those present and voting. ***Every electric aggregation plan approved by a legislative body shall also be approved by the commission pursuant to paragraph II before becoming effective.***

II. Every electric aggregation plan and any revision of a plan to include an opt-out default service program shall be submitted to the commission either before or after being submitted by the governing body to the legislative body for approval, to determine whether the plan conforms to the requirements of this chapter and applicable rules of the commission. The commission shall approve any plan submitted to it unless it finds that it does not meet the requirements of this chapter and other applicable rules and shall detail in writing addressed to the governing bodies of the municipalities or counties concerned, the specific respects in the which the proposed plan substantially fails to the met the requirements of this chapter and applicable rules. Failure to disapprove a plan submitted hereunder within 30 days of its submission shall constitute approval thereof. A municipality or county may submit a plan that is revised to comply with applicable requirements at any time and start the review process over. Any plan submitted to the commission under this paragraph shall also be submitted on the same date to the office of the consumer advocate under RSA 363:28 and any electric distribution utility providing service within the jurisdiction of the municipality or county. The consumer advocate, utilities, and members of the public may file comments about such plans within the first 7 days of their submission. Commission review and approval of electric aggregation plans shall not require a contested case but shall allow time for submission and consideration of any such comments.

This language is based on the statutory language in RSA 53-A:3, V, concerning agreements for joint exercise of powers by public entities:

Every agreement made hereunder shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general who shall determine whether the agreement is in proper form and compatible with the laws of this state. The attorney general shall approve any agreement submitted to him hereunder unless he shall find that it does not in substance meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement substantially fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within 30 days of its submission shall constitute approval thereof.

Suggested Amendment to HB 315 to deal with new customers after CPA launch.
(from Clifton Below, 2/9/21)

[This proposed amendment draws from some of the text in in SB 91, Part VI and in HB 315, section 8, to further refine the text to make the enrollment of new customers to community power aggregations work well with existing utility software and processes. This is an area of general agreement between utilities and advocates of community power aggregations.]

Amend RSA 53-E:7, IV to read as follows:

IV. Services proposed to be offered by or through the aggregation shall be on an opt-in basis unless the approved aggregation plan explicitly creates an opt-out alternative default energy service program where the rate or price is known at least 30 days in advance of its application and, for a period of not less than 30 days from the date notification is mailed, the customer has the opportunity to opt out of being enrolled in such program, by return postcard, website, or such additional means as may be provided. Customers who are on default service provided by an electric distribution utility shall be automatically enrolled in an aggregation provided alternative default service if they do not elect to opt out. Customers opting out will ~~instead~~ remain on ***utility-provided*** default service. Customers taking energy service from a competitive electricity supplier shall not be automatically enrolled in any aggregation program, but may voluntarily opt in. New customers to the electric distribution utility after the notification mailing required by paragraph II shall ***initially be enrolled in utility provided default service unless the customer has relocated within a single utility's service area and is continuing service with a competitive supplier.***~~-~~[~~be given a choice of enrolling in utility provided default service or aggregation provided default service, where such exists. New customers shall be informed of pricing for each when they apply for service. Such new customers may also enroll with a competitive electricity supplier. New customers who do not make such a choice shall be enrolled in the default service of any geographically appropriate approved aggregation, or, if none exists, the utility provided default service.~~] ***The utility shall periodically, but not more frequently than monthly, make available to each operating municipal aggregation, or county aggregation where there is no municipal aggregation, the names, account numbers, and mailing addresses of customers that are new to the electric distribution utility after they have provided the customer list for the initial customer mailing required by paragraph II and that are located within the aggregation. The aggregation shall periodically mail a written notification to such customers and shall enroll them in the aggregation consistent with the opt-in or opt-out requirements of this paragraph and paragraph II.*** Municipal aggregations shall take priority or precedence over any county aggregations ***and each such aggregation shall be responsible for assuring that customers are enrolled with the correct aggregation.*** Customers ~~automatically~~ enrolled in a municipal or county provided default service shall be free to elect to return to utility provided default service or to transfer to a competitive electricity supplier with adequate notice in advance of the next regular meter reading by the distribution utility, in the same manner as if they were on utility provided default service or as approved by the commission.

The Declaration on Energy Choice & Competition

A Civil Society Call for all Leaders of Governments, States & Nations to Remove Barriers to Affordable, Reliable & Clean Energy

We, **members of civil society** and representatives of civil society organizations from across the world, first gathering in New York City – the site of Thomas Edison's first electrical lighting system and commercial-scale power plant – now join together with all present and future signatories, to call upon all leaders of governments, states and nations to undertake practical policy reforms that will improve the lives of billions of people by removing barriers to access to affordable, reliable, clean energy.† In support of this declaration, we offer these simple observations:

Clean Energy Saves Lives – Improving access to affordable, reliable, clean energy would save millions of lives every year. Over 2.5 billion people currently live in dwellings that use dirty fuels—such as wood, dung, coal and kerosene—for cooking, heat and light.[1] As a result, each year, around 2.7 million people, the majority of them women, die as a result of indoor air pollution caused by these dirty fuels. Another 4 million people die from outdoor air pollution caused in part by the use of dirty fuels in power generation and transportation.[2] In addition, energy is essential to the production and distribution of clean water, which is important not least because dirty water causes about 800,000 deaths each year.[3]

Reliable, Inexpensive Energy Promotes Economic Development – Access to increasingly reliable and efficient sources of energy has been a key driver of economic development.[4] Given its importance as a factor of production, expensive energy drives up costs, undermines competitiveness and reduces the amount of capital available for investment in innovation. Modern economies need affordable, reliable energy—especially electricity—for everything from basic industrial production to communications to air conditioning. Yet, over 800 million people currently have no access to electricity and many more lack access to *reliable* electricity.[5] This impedes, and may prevent, economic development.

Reliable, Inexpensive Energy Eases Adaptation to Climate-Related Problems – Most of the problems associated with climate change, such as access to adequate nutrition, clean water and sanitation, vector-borne diseases, natural disasters, and direct harms from heat, are problems today. Many can be reduced—and maybe even eliminated—through the use of technologies that rely on access to clean, reliable, affordable energy.[6].

Innovative, Reliable, Affordable, Low-Emission Energy and Affordable Energy-Efficient Products are Essential for Cost Effective Greenhouse Gas Emission Reductions – While GHG emissions have fallen in some nations, global emissions continue to rise. For GHG emission reductions to become politically and economically realistic for the world as a whole, barriers to the adoption of existing affordable, lower-carbon technologies and affordable energy efficient products must be removed. Breakthrough energy innovation could also improve affordability, reliability, access, and safety, with economic, environmental and health benefits.

Access to Improved Clean, Reliable, Affordable Energy is Best Achieved by Maximizing Choice and Competition – Choice and competition drive innovation, as producers strive to deliver better quality goods and services to consumers at lower prices. In seeking to lower costs of production, to remain competitive and sell more goods, producers reduce the use of inputs. In the case of energy, this increase in productive efficiency leads to reduced use of fuel and lower emissions per unit of output. Over time, this dynamic has driven a trend towards lower carbon emissions per unit of output.[7] This trend is greater in competitive power markets, such as those in Chile, Texas, Sweden, Norway and Finland, which have more affordable energy than many monopoly markets.[8] They also generally have high market share for low- and zero-emission power.[9]

Open, competitive energy markets are an essential component of any policy seeking to mitigate climate change risk through reduced emissions of greenhouse gases. First, because energy innovations simply cannot spread if markets are closed. Second, because there could exist no better incentive for rapid acceleration of energy innovation than the enormous potential offered by vast, growing, open energy markets, ready to adopt and scale up the best innovations. Finally, any policy oriented towards reductions in GHG emissions can only work if markets are open to innovation and transformation, and not impeded by bureaucratic rules and monopoly privileges.

Barriers to Choice and Competition in Energy Generation and Distribution are Contrary to our Human Rights – Article 3 of the Universal Declaration of Human Rights states that "Everyone has the right to life, liberty and security of person." While Article 7 states, inter alia, that "All are equal before the law and are entitled without any discrimination to equal protection of the law." And Article 27 states that "Everyone has the right freely… to share in scientific advancement and its benefits."

Taken together, these rights entail that each person has the right to protect their life from harms that might arise, such as those associated with pollution, contaminated water, disease and climate change – and to do so using whatever technologies they choose, so long as their action does not interfere with the like rights of others.

Therefore, we can conclude from the UN Universal Declaration of Human Rights, that everyone derives a right to produce, buy, trade or use the energy of their choice, and products using the energy technology of their choice, so long as doing so is reasonably clean and safe and does not infringe on the rights of others.

Yet today, billions of people are very much impeded in their ability to use and avail of modern energy technologies that would enable them better to protect their lives (to say nothing of improving those lives). Moreover, they are impeded through actions that are blatantly discriminatory, often through state preferences for energy technologies and companies and through various state-imposed restrictions on access to technologies and arrangements (such as micro-grids) that would better enable individuals to protect themselves.

Local Efforts to Advance Energy Choice and Competition will be Aided Greatly if Local, State & National Leaders Unite in Commitment to Such Energy Market Freedoms.

Thus, observing that:

1. Whereas access to clean, reliable, affordable energy is essential for human flourishing -- and to enable more effective mitigation of and adaptation to climate risks.
2. Whereas choice and competition empower and broaden access to clean, reliable, affordable energy.
3. Whereas choice and competition in energy generation, transmission and distribution are necessary for full protection of our human rights.

We hereby do DECLARE that:

In order to improve access to clean, reliable, affordable energy for all, and thereby reduce harmful air pollution, improve access to clean water and sanitation, reduce disease, improve productivity, and enable more rapid innovation and economic development, as well as more rapid and effective mitigation of and adaptation to diverse climate change risks, we now call upon leaders of all governments, states and nations to commit substantially to reduce, within and between nations, not only government-sanctioned barriers to choice and competition in energy markets, but also similar barriers to cleaner and more efficient products and energy innovations.

First Signed and So Declared, in Council on November 5, 2019, and Then Thereafter, by:

Footnotes:

† The signatories to this Declaration represent a diverse set of individuals and groups. In signing this Declaration, signatories imply neither assent nor dissent with respect to statements or actions of other signatories. Signatories may also submit separate and independent-minded commentary on the Declaration and issues discussed herein.

[1] https://www.iea.org/sdg/cooking/

[2] https://www.who.int/airpollution/en/

[3] https://www.who.int/news-room/fact-sheets/detail/drinking-water

[4] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1878863;
http://vaclavsmil.com/wp-content/uploads/docs/smil-articles-science-energy-ethics-civilization.pdf

[5] https://www.iea.org/sdg/electricity/

[6] https://www.researchgate.net/publication/242088799_Which_Policy_to_Address_Climate_Change

[7] https://kk.org/extrapolations/energy-mix-overall-consumption-prices-emissions/

[8] http://regulationbodyofknowledge.org/wp-content/uploads/2013/03/OECDIEA_Competition_in_Electri city.pdf;
https://www.researchgate.net/publication/222532951_Why_has_the_Nordic_electricity_market_worked_so_ well;
https://www.iea.org/publications/freepublications/publication/EnergyPoliciesBeyondIEACountriesChile201 8Review.pdf

[9] https://www.ei.se/PageFiles/310277/Ei_R2017_06.pdf;
https://thehill.com/opinion/energy-environment/457353-deregulated-energy-markets-made-texas-a-clean-en ergy-giant; Studies comparing monopoly to competitive power markets also bear this out. Competitive US state markets have delivered faster decarbonization at a lower cost, compared to monopoly markets since 1997. See: https://www.resausa.org/phil-oconnor-thought-leadership