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TESTIMONY OF CONSUMER ADVOCATE DONALD M. KREIS
BEFORE THE HOUSE COMMITTEE ON SCIENCE, TECHNOLOGY, AND ENERGY
IN OPPOSITION TO
HOUSE BILL 315, RELATIVE TO THE AGGREGATION OF ELECTRIC CUSTOMERS

Chairman Vose and Honorable Members of the Committee:

The Office of the Consumer Advocate, which (as you know) represents the interests of residential utility customers pursuant to RSA 363:28, respectfully requests that you report HB 315 to the floor of the House with an “inexpedient to legislate” (ITL) recommendation.

New Hampshire’s residential customers have paid dearly -- hundreds of millions in stranded cost recovery charges -- for the electric industry restructuring that required our formerly vertically integrated utilities to divest their generation assets. The *quid pro quo*, of course, was the opportunity to purchase electricity from unregulated competitive suppliers.

To the best of my knowledge, commercial and industrial customers – particularly the larger ones – have been able to take advantage of this opportunity and save money by using competitive suppliers. But residential customers have been left in the dust, or worse. An analysis commissioned by the ratepayer advocate in Massachusetts determined that from 2015 through 2018, residential customers migrating to competitive suppliers in that state paid \$258 million more than they would have paid by simply purchasing default service from their legacy utility.¹ Of particular note: The report found that low-income customers are more likely to migrate than the general population and paid *especially* high prices.

Although the Office of the Consumer Advocate lacks the resources to commission a similar study for New Hampshire, many of the same competitive suppliers operating in Massachusetts are also present here and there is no reason to suppose the results would be any different in the Granite State. The reasons for the results observed in Massachusetts are intuitively obvious. An individual residential customer does not use enough electricity to be attractive to competitive suppliers – except, perhaps, to the bad actors whose business strategy focuses on exploiting vulnerable populations.

¹ The analysis, conducted by consultant Susan Baldwin, is available at <https://www.mass.gov/doc/2019-ago-competitive-electric-supply-report/download>.

What should be done to address this problem? At the New Hampshire Energy Summit held in September 2018, when the results of the first two years of the Massachusetts study were under discussion, the lead counsel for Eversource Energy spontaneously blurted out that we should simply eliminate retail choice for our state's residential customers (a suggestion his employer promptly walked back). That would, in effect, return residential customers to the bad old days when their local utility had a lock on a total electric service monopoly.

There is a better idea: Community Power Aggregation (CPA). Under CPA, each New Hampshire municipality is statutorily authorized to become the wholesale electric buying agent for the energy customers within its border.

You should keep in mind that Community Power Aggregation has *always* been part of New Hampshire's plan for electric industry restructuring. The General Court added CPA authority to RSA 53-E via Chapter 129 of the 1996 New Hampshire Laws, the same enacted bill that gave us the Restructuring Act (RSA 374-F).

Nevertheless, CPA did not become a 'thing' because, as authorized in 1996, it was an "opt-in" program. In other words, a municipality seeking to aggregate its electric load was required to obtain the affirmative permission of every participating customer – a completely unworkable proposition. That changed two years ago, when the General Court passed and Governor Sununu signed into law Chapter 316 of the 2019 New Hampshire Laws, which authorized *opt-out* municipal aggregation.

Now, as has been widely reported, several New Hampshire cities and towns are actively developing CPA initiatives. The most ambitious of them would use aggregation as the basis for a comprehensive municipal energy program which would include the provision of a suite of initiatives and services intended to "green" the municipality and save customers money. There is even an effort to establish a joint action agency – a multi-municipal initiative that could actually vault past our two smaller electric utilities in terms of load and, thus, buying power. I am referring to the Community Power Coalition of New Hampshire (CPCNH), whose lead participants are the Town of Hanover and the City of Lebanon. According to the [CPCNH web site](#), its purpose is "to enable New Hampshire communities to take control of their energy future."

Via HB 315, the empire strikes back.

In other words, investor-owned electric utilities are seeking to impose restrictions and constraints that would make Community Power Aggregation an impossibility. To the extent they would suffer municipal aggregation at all, the utilities would limit cities and towns to contracting the whole venture out to third-party aggregators, as has been common in Massachusetts. I recently heard one such aggregator deride the more robust approach I describe above as the "California model" (because it has succeeded there).

What the "California model" threatens to prove is that the natural monopoly in electricity – the slice of the business that should continue to be the province of fully regulated utilities – is poles and wires, nothing more. Among other things, CPA paves the way for utilities to yield their absolute control over meters. That's a scary prospect for utilities, because high-tech meters beyond their control (but

still “utility grade”) open up possibilities (e.g., for innovative time-varying rates) that threaten their business model.

Frankly, I don’t blame the utilities for seeking to thwart Community Power Aggregation. If I were them and their shareholders, I too would want to keep as many residential customers as possible on their “default” energy service. Though the utilities don’t make a profit on default service (which they procure at wholesale via periodic competitive solicitations), they benefit by retaining the entire residential class on a plenary basis. I’m sure that’s the reason Eversource’s attorney blurted out his proposal in 2018 to end retail competition for residential customers, an improvident disclosure of what is usually said only behind closed doors at corporate headquarters.

Earlier this week, eight community choice aggregators in northern and central California announced the formation of California Community Power. It is similar in structure and purposes to CPCNH. According to the trade publication *RTO Insider*, California Community Power represents 2.6 million customer accounts – load equivalent to about 40 percent of the service provided by California’s largest utility, Pacific Gas and Electric.

Whether it’s California or New Hampshire, migration of that magnitude would transform the electric industry, particularly if it occurs in the context of municipalities jointly pursuing a coordinated set of energy policies, procurement strategies, and innovations in customer service. Imagine if Eversource were no longer the dominant voice in our state on matters of electricity. Imagine if local municipal actors, accountable to voters rather than distant and return-maximizing shareholders, were not artificially limited to farming out their load to profit-seeking aggregators but could, instead, pursue a full menu of coordinated energy initiatives.

I would like to close with a request. Before you vote on HB 315, please read the 2018 decision of the New Hampshire Supreme Court in a case captioned *Appeal of Algonquin Gas Transmission, LLC*.²

In the *Algonquin* case, the Court had its first (and, so far, only) opportunity to discuss the reasons your predecessors decided in 1996 to restructure New Hampshire’s electric utilities. Unfortunately, and with all due respect to the state’s highest court, they got it wrong.

What the majority decided in *Algonquin* was that the purpose of the Restructuring Act was to make electricity cheaper for customers. But former Chief Justice Lynn (who wrote the opinion) missed the point. Keeping electricity as inexpensive as possible (without compromising safety and reliability) has *always* been the reason for *any* state oversight of the industry. What changed thanks to the Restructuring Act is who bears the risk that investment and other business decisions related to electricity would go bad.

² For your convenience, I am transmitting a copy of the decision with this testimony. The majority and dissenting opinions were reported at 170 N.H. 763 (2018).

Pre-restructuring, the risk fell almost entirely on customers. After restructuring, the risk was transferred to where it belongs – investors. Justice Hicks, in his dissenting opinion, clearly understood what the Legislature was really up to via the Restructuring Act.³

If you agree with Justice Hicks – and I think you should – then you ought not let utilities or anyone else convince you to hobble Community Power Aggregation. You should, instead, do all you can to help CPA initiatives thrive and give the utilities’ default energy service the competition it deserves.

On the other hand, if you think Chief Justice Lynn was right, then you should do everything you can to keep default service as cheap as possible. Community Power Aggregation threatens that objective – indeed, it is calculated to make default service wither on the vine. I think it would be really great for residential customers if default service truly became a seldom-used backstop, and Community Power Aggregation offers the first real opportunity to make that happen for residential customers. It’s been a long time coming.

I therefore earnestly hope you will ITL House Bill 315. Thank you for considering my views.

³ Refer, in particular, to that part of Justice Hicks’ dissent that begins with the last paragraph on page 13 and continues through the following page.