

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DRM 21- _

COMMUNITIY POWER COALITON OF NEW HAMPSHIRE,
CITY OF KEENE, CITY OF CLAREMONT, OFFICE OF THE
CONSUMER ADVOCATE, CLEAN ENERGY NEW
HAMPSHIRE, CONSERVATION LAW FOUNDATION,
STANDARD POWER, GOOD ENERGY, FREEDOM ENERGY
LOGISTICS, AND COLONIAL POWER GROUP
("PUBLIC STAKEHOLDERS")
PETITION FOR RULEMAKING TO IMPLEMENT RSA 53-E
FOR COMMUNITY POWER AGGREGATIONS

Pursuant to RSA 541-A:4, I and N.H. Code Admin. Rules Puc 205.03, the Community Power Coalition of New Hampshire ("CPCNH"), whose members are the Cities of Lebanon, Nashua, and Dover; the Towns of Hanover, Enfield, Plainfield, Walpole, Harrisville, Warner, Pembroke, Hudson, Exeter, Rye, Newmarket, and Durham; and the County of Cheshire, along with the Cities of Keene and Claremont¹, the Office of the Consumer Advocate, Clean Energy New Hampshire, Conservation Law Foundation, Standard Power, Good Energy, Freedom Energy Logistics, and Colonial Power Group (collectively "Public Stakeholders") hereby petition the New Hampshire Public Utilities Commission (Commission) to initiate a formal rulemaking proceeding under RSA 53-E:7, X, as amended by Chapter 229:1-10, NH Laws of 2021, (2021 [HB](#)

¹ The municipal members of CPCNH, along with town of Hudson, which has entered into the Joint Powers Agreement ("JPA") to join CPCNH, and the cities of Keene and Claremont comprise 20% of New Hampshire's 2020 population. CPCNH is a New Hampshire non-profit corporation formed on Oct. 1, 2021 as a governmental instrumentality governed by member municipalities and counties pursuant to a JPA entered into under [RSA 53-A](#) and RSA 53-E. The NH Attorney General's office reviewed and approved of the CPCNH JPA (which included Articles of Agreement for incorporation and initial By-Laws) as consistent with applicable NH law pursuant to RSA 53-A:3, V. The Joint Powers Agreement can be found at www.cpcnh.org under "About." The Office of the Consumer Advocate, Clean Energy New Hampshire, and the Conservation Law Foundation all represent various public interest constituencies on a non-profit basis. Standard Power, Good Energy, Freedom Energy Logistics, and Colonial Power are all businesses seeking to provide services to NH community power aggregations, while Good Energy and Colonial Power Group presently provide services to municipal electric aggregations in Massachusetts and other states. Most of these parties participated in stakeholder rule discussions with PUC staff and NH electric utilities last year.

[315](#)), to promulgate rules to implement RSA 53-E as new Chapter Puc 2200, MUNICIPAL AND COUNTY AGGREGATION RULES (Puc 2200 Rules).

RSA 53-E:7, X, effective as of October 25, 2021, provides as follows:

The commission shall adopt rules, under RSA 541-A, to implement this chapter and, to the extent authorities granted to municipalities and counties by [RSA 53-E] materially affect the interests of electric distribution utilities and their customers, to reasonably balance such interests with those of municipalities and counties for the public good, which may also be done through adjudicative proceedings to the extent specified or not addressed in rules. Such rules shall include but not be limited to rules governing the relationship between municipal and county aggregators and distribution utilities, metering, billing, access to customer data for planning and operation of aggregations, 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.

The Public Stakeholders are aware that the Department of Energy (DOE), on 10/25/21, filed a similar petition proposing to amend the existing Puc 2000 rules. Although these proposed rules are substantially the same as the DOE proposal, they do differ in several material respects, the most obvious of which is that we propose that a separate rules chapter be adopted for Community Power Aggregations that makes appropriate cross references to the Puc 2000 rules. The main reason for this is that the bulk of the Puc 2000 rules, if not their entirety, now fall under the jurisdiction of the new Department of Energy pursuant to Chapter 91:284, NH Laws of 2021 (effective July 1, 2021) that amended RSA 374-F:7 to place rules for and authority over competitive energy suppliers and aggregators of electricity load under the new DOE. (See specifically amended RSA 374-F:7, I, II, and V and note that municipalities that aggregate electric power or energy services pursuant to RSA 53-E are excluded from the reference to aggregators in several important respects, per RSA 374-F:7, II.)

Furthermore, Chapter 91:186, NH Laws of 2021, establishing the DOE provided in the new RSA 12-P:11 that all the functions, powers, and duties of the Commission “incorporated into the

statutes establishing the department of energy and which replace the authority of the commission with the department of energy” were transferred, as of July 1, 2021, to the department of energy. The new RSA 12-P:14 also transfers to the DOE authority for enforcement of existing Commission rules “which are associated with any functions, powers, and duties, transferred to the department of energy”. The new RSA 12-P:5, IV, and V further provides the Commissioner of DOE with the duty and authority to adopt “all rules to implement specific statutes administered by the department” which now includes RSA 374-F:7, which in turn is the statutory basis for almost the entirety of the Puc 2000 rules, and to reorganize and change references to such rules as Puc 2000 to reflect “reorganization of the department to the existing statutory structure”.

As a basic and general rule of statutory construction, where there may be any ambiguity or conflict in how different statutes may apply to a particular situation, the more specific and recent legislation is determinative. In this case Chapter 229:9, NH Laws of 2021 (HB 315) was approved by Governor Sununu more than 2 months after Chapter 91, NH Laws of 2021 (HB 2) and became effective, in relevant part, on October 25, 2021, and quite specifically vests exclusive rule making authority over implementation of RSA 53-E in the Commission. Therefore, the Public Stakeholders believe it only makes sense that these rules should stand apart from the Puc 2000 rules which are now in their entirety or substantial part under the authority of new DOE, including the ability to readopt, reorganize and change references therein. Amending the existing Puc 2000 rules to address community power aggregations will only complicate and confuse which separate agency has authority over them and how they might be pulled apart in the near future to comply with the current statutory scheme as to which agency has adoption and enforcement duty and authority. This in turn could create questions around application and the legally binding effect of such rules.

All that being said, if the Commission determines that amending the Puc 2000 rules is more appropriate than adopting a new rules chapter, then there are other specific differences between the two proposals that the Commission may wish to consider in its initial proposal. To facilitate such consideration, we are submitting with this petition, in addition to a clean version of the proposed Puc 2200 rules for community power aggregations in Word and PDF format, a PDF version showing material additions or differences compared with the DOE proposal, along with comments that explain reasons for the differences. We are also submitting a PDF showing how RSA 53-E reads in its entirety as of 10/25/21 with the amendments from HB 315, since this update is not yet available on the state RSA website (www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-III-53-E.htm).

The most substantial difference between the two, other than organization, is the inclusion at the very end in our proposal of a provision setting a time limit of 90 days from adoption of the proposed Puc 2200 rules for each of the electric distribution utilities to file a proposal for a purchase of receivables (POR) program for review and approval by the Commission in an adjudicated proceeding. This may be a critical path item for some, if not all, community power aggregations to launch successfully. The requirement for utilities to propose and offer such POR programs, along with general parameters for such in RSA 53-E:9, II, were part of negotiation on the overall language for HB 315 in the House this past winter, which all of the participating utilities and other stakeholders agreed to and which was approved by the House and Senate on a broad bipartisan basis. Some of the competitive electric suppliers that might supply community power aggregations (CPAs) have already indicated that they are unlikely to bid on NH CPA loads absent a POR program, as the payment on past and current CPA receivables would be subordinate to almost all other utility receivables, and there is no opportunity to screen individual

customers based on their individual credit risk due to RSA 53-E:6, II.

RSA 53-E does not set any time frame within which utilities are to file their POR proposals and does not vest the Commission with the specific authority to initiate adjudicated proceedings for the development of POR proposals. Rather the statute gives the Commission authority to adopt rules to implement RSA 53-E, which logically would include the authority to set a time limit for utilities to file POR proposals with the Commission. Eversource and Unitil already operate POR programs with applicable tariff language in Massachusetts, so this should not be a difficult task. The statutory language was crafted to be generally consistent with how POR works in Massachusetts. The adoption of new administrative rules for CPAs seems likely to take 90 days or more from the time of initial proposal, so the utilities would have at least half a year from now to develop their proposals, which seems more than reasonable since the obligation to propose a POR program has been known as likely for more than 6 months already as the amendment to require POR proposals was voted ought to pass 18-0 in Committee last March. Furthermore, municipalities have been awaiting rules and utility accommodations necessary to implement community power aggregations for over 2 years now. Commission authority to adopt rules to implement RSA 53-E has existed since October 1, 2019 and the stakeholder process to collaboratively develop such rules began in early 2020, which this proposal, as well as the DOE proposal originate from, with more recent revisions to conform with HB 315.

WHEREFORE, the Public Stakeholders respectfully requests that the Commission:

- a. Grant the Public Stakeholders petition for the Commission to initiate a formal rulemaking proceeding to adopt rules to implement RSA 53-E; and
- b. Adopt the draft Initial Proposal for Puc 2200 rules submitted herewith as the Commission's Initial Proposal in that rulemaking proceeding.

December 1, 2021

Respectfully Submitted,

By: /s/ Clifton Below

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