

**BEFORE THE PUBLIC UTILITIES COMMISSION  
STATE OF NEW HAMPSHIRE**

**Docket No. DE 23-\_\_\_\_**

**COMMUNITY POWER COALITION OF NEW HAMPSHIRE**

**Complaint Against**

**Public Service Company of New Hampshire d/b/a Eversource Energy**

June 13, 2023

NOW COMES the Community Power Coalition of New Hampshire (CPCNH or the “Coalition”), a non-profit corporation operating as a governmental instrumentality of 34 subdivisions of the State of New Hampshire<sup>1</sup> pursuant to RSA 53-A and 53-E and COMPLAINS that Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or “PSNH”) is in violation of Puc 2200 administrative rules of the Public Utilities Commission and RSA 53-E and petitions the Commission for redress of the ongoing harm caused to the Coalition, its Members, and their prospective customers by Eversource’s lack of compliance with Puc 2200 and RSA 53-E.

This complaint petition is made pursuant to Puc 2205.12(a)<sup>2</sup> regarding Eversource’s omission of actions necessary to comply with the requirements of RSA 53-E and Puc 2200 rules and also

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<sup>1</sup> City of Lebanon, Town of Hanover, City of Nashua, Cheshire County, Town of Harrisville, Town of Exeter, Town of Rye, City of Dover, Town of Warner, Town of Walpole, Town of Plainfield, Town of Newmarket, Town of Enfield, Town of Durham, Town of Pembroke, Town of Hudson , Town of Webster, Town of New London, City of Portsmouth, Town of Peterborough, Town of Canterbury, Town of Wilmot, Town of Sugar Hill, Town of Hancock, Town of Westmoreland, Town of Shelburne, Town of Brentwood, Town of Boscawen, City of Berlin, Town of Randolph, Town of Lyme, Town of Rollinsford, Tow of Stratham, and Town of Newport.

<sup>2</sup> Puc 2205.12(a): “**The commission shall hear and decide complaints or disputes between committees, CPAs, and utilities, as well as complaints regarding a CPA’s or utility’s compliance with the requirements of RSA 53-E and these rules.**” [emphasis added]

A complementary complaint is being filed at the NH Department of Energy under its authority pursuant to RSA 365:1 regarding omissions of actions needed for Eversource to comply with Public Utilities Commission Order No. 22,919 (5/4/98), RSA 362-A:9, II, RSA 53-E:3, and RSA 374-F:3, XII(c) as well as the express intent of RSA 374-F. It is not clear that the Commission’s authority to hear and decide complaints extends to those concerning acts or omission of acts pursuant to other statutes and PUC orders, at least not in the first instance prior to escalation pursuant to RSA 365:4 by the Department or

regarding certain disputes between CPCNH and Eversource, all of which together substantially delayed the launch of the Coalition's power supply service for most of the month of April (thereby foregoing an estimated \$4,380,000 in NH ratepayer potential cost savings) and have foreclosed the Coalition's ability to serve Net Metered customers or to offer advanced rate structures (both of which the Coalition is capable of providing, as a power agency, having expended significant effort to contract for the requisite capabilities).

Eversource's non-compliance with the Puc 2200 rules<sup>3</sup>, RSA 53-E<sup>4</sup> and other statutes cited in the parallel complaint to the NH Department of Energy results in the Coalition's CPA default service<sup>5</sup> being treated in a number of discriminatory ways, small and large, that have the effect of giving an unfair advantage to utility default service counter to the purpose of RSA 53-E<sup>6</sup> and other related statutes as described in the complaint to the Dept. of Energy. The non-compliance, including imposing additional requirements beyond those authorized by Puc 2200 rules, RSA 53-E, tariffs, or otherwise, has created unnecessary burdens and delays in implementation of community power aggregations and made it impossible for Coalition CPAs to implement important features of their Electric Aggregation Plans that have been approved by their legislative body and the Commission, including in particular providing universal access that includes being able to service Net Metered

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complainant; hence the reason why a closely related and overlapping complaint is filed with the Department of Energy.

<sup>3</sup> Particular lack of compliance arises from Puc 2202.05 in the definition of CPA and its application to CPCNH as agent and supplier for Member communities, Puc 2202.05(f), Puc 2203.02(d), Puc 2204.02(a)(2), Puc 2204.02(d), Puc 2204.06, Puc 2205.01, Puc 2205.13(7), Puc 2205.15, and Puc 2205.16.

<sup>4</sup> Including in particular, RSA 53-E:4, V, 53-E:6, III(f), and 53-E:7, III, as well as RSA 362-A:9, III.

<sup>5</sup> RSA 374-F:2, I-a. states that “**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 under RSA 374-F:3, V or as an alternative [sic], by municipal or county aggregators under RSA 53-E.**” RSA 53-E:6, III(c) requires electric aggregations plans to detail “[r]ate 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.**” [emphasis added, BTW “alterative” can be defined as “tending to restore to health”]

<sup>6</sup> RSA 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.

customers pursuant to Puc 2205.15. Eversource should not be allowed to use its monopoly franchise on electric distribution services to systematically advantage its default service by not providing comparable meter data and rate and billing options to CPA default service that it provides to its own default and/or distribution service as expected by the relevant law and PUC order.

In support of this complaint the Coalitions states as follows:

## **1. Introduction and Overview**

- 1.1. The Coalition was formed by its municipal and county members to “jointly support the implementation and operation of their respective CPAs [Community Power Aggregations] and related energy programs” (JPA p. 2) and “to jointly exercise certain powers, privileges, and authorities granted to municipalities and counties pursuant to NH RSA 33-B, NH RSA 53-E, NH RSA 53-F, and NH RSA 374-D (and by reference NH RSA 33), all in accordance with NH RSA 53-A.
- 1.2. On March 6, 2023, CPCNH sent notice, via email, to the Commission, the NH Department of Energy (DOE), Office of the Consumer Advocate (OCA), and the 4 electric distribution utilities (EDUs) that ten CPCNH members<sup>7</sup> would commence CPA service no sooner than 45 days hence, pursuant to approved Electric Aggregations Plans (EAPs).
- 1.3. This notice of commencement of service was delayed by approximately 3-4 weeks due in large part to Eversource’s refusal, starting in late January, to recognize CPCNH as an appropriate counterparty in a supplier agreement with Eversource in order to proceed with EDI testing and other steps to launch CPA programs for the first time. Instead Eversource required, for a critical period of time, contrary to RSA 53-E and Puc 2200 rules as is detailed in Section 2, that a Competitive Electric Power Supplier (a “CEPS”) had to be the counterparty to a supplier agreement with Eversource in order to serve our or any other CPA or to complete EDI testing and enroll customers.
- 1.4. In November of 2022 CPCNH approached each of the 4 EDUs to set up meetings to introduce them to Calpine Energy Solutions, which the Coalition had selected through a

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<sup>7</sup> City of Lebanon, City of Nashua, Town of Enfield, Town of Exeter, Town of Hanover, Town of Harrisville, Town of Peterborough, Town of Plainfield, Town of Rye, and Town of Walpole.

competitive RFP to be our EDI vendor for the purpose of supporting our retail customer services including doing EDI enrollment and managing customer data. As we met with each of the EDUs we explained that CPCNH was preparing to launch services on an opt-out basis under the newly adopted Puc 2200 rules in the spring of 2023 and pursuant to PUC approved Electric Aggregation Plans (EAPs). We also explained that we were still in the process of completing a competitive solicitation for LSE services conducted by our portfolio manager and we would subsequently identify our LSE provider (after contractual arrangements were completed).

- 1.5. Because Eversource was suggesting imposing an excessively cumbersome and time consuming requirement that we complete EDI testing serially for each separate municipal CPA we would serving, potentially taking months, compared with the other EDUs that were not contemplating such time consuming requirements and repeat testing, the Coalition sent Eversource a 7 page letter on 11/25/22, attached as **Exhibit A**, explaining how we planned to operate consistent with RSA 53-E and Puc 2200 and how they should work with us to facilitate the Coalition and its launching members to comply with the law and rules.
- 1.6. In a call on December 8, 2022 CPCNH identified to Eversource counsel the fact that their current Supplier Agreement, written for CEPS and in accord with Puc 2000 rules, is in conflict with the more recent and specific provisions of RSA 53-E and Puc 2200 rules in very material and substantive ways and needed to be modified to apply to CPAs as Suppliers or CEPS serving CPAs as Suppliers. Eversource seemed to acknowledge such inconsistencies and the need to address them. CPCNH representatives on the call offered to suggest edits that would bring their supplier agreement into conformance with Puc 2200 rules.
- 1.7. On January 19, 2023 the Coalition provided to Eversource counsel a copy of their Supplier Agreement with suggested edits to bring it into conformity with the Puc 2200 rules, and in a few instances to be more consistent with other EDU supplier agreements, that would be suitable for the Coalition (or a CEPS serving CPAs) to execute as Supplier. A copy of that document is attached as **Exhibit B**. The transmittal email and subsequent chain of Eversource response and Coalition reply are attached as **Exhibit C**.

- 1.8. After first immediately responding with appreciation and a commitment to commence the review process immediately, Eversource subsequently responded one week later, reversing course and representing that they would not be modifying their Supplier Agreement without first updating their tariff and asserted that “the master supplier services agreement is between the utility and the registered competitive supplier who is providing the supply service”<sup>8</sup> such that CPCNH would have to work through a CEPS as the supplier of record with Eversource and that CEPS would also need to be the Load Serving Entity (LSE) with ISO New England to serve our CPA load.
- 1.9. Although other EDUs seemed more willing to enter into a supplier agreement with the Coalition and not require a CEPS as intermediary, the Coalition recognized that the time needed to argue this point would delay our ability to begin serving NH ratepayers with lower cost energy indefinitely, so we decided to shift gears. We worked with Calpine in arranging LSE service; our portfolio manager, Ascend Analytics, LLC; and our lockbox and banking services provider, River City Bank, to rework the design of our planned transactions and write significantly new contractual language to allow for transition of LSE services from one Calpine affiliate that was already registered as a CEPS (Champion Energy Services, LLC) to a new one that was under development as an LSE (Calpine Community Energy, LLC or CCE). CCE is the preferred LSE and became a NEPOOL member and ISO New England market participant as of 3/1/23, but also needed to register as a NH CEPS, to CPCNH as Supplier with CCE as contracted LSE provider, and to CPCNH itself as Supplier and LSE. We also determined that it would be impractical for CPCNH itself to enter into a Supplier Agreement with some EDUs while having to use a CEPS for Eversource. This work to change course due to Eversource’s requirements was complicated, challenging, and consumed several weeks of time, causing a 3-4-week delay to our launch schedule that unnecessarily increased the cost of Coalition member communities approximately \$4.4 million dollars in forgone rate savings and accumulation of reserve funds.

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<sup>8</sup> Email from Jessica Chiavara to Clifton Below and Michael Postar, 1/26/23, attached hereto in **Exhibit C** as part of a chain of emails from 1/19 to 1/26/23.

- 1.10. Since the first of the year, as Eversource began to provide us with Puc 2204.02 anonymized individual customer data, we realized that they were not providing us with any negative usage data from Net Energy Metered (NEM) customers, only zeros in such months when those customers exported surplus power to the grid in excess of behind the meter consumptions, contrary to Puc 2204.02(a)(2), which requires the provision of monthly usage data, and Puc 2203.02(d) that requires that: “[a]ll customer usage data provided by the utility shall include consumption power delivered to customers and exports to the grid from customer generators in kWh for each reported interval.”
- 1.11. Upon further inquiry and in a conference call with counsel from Eversource, Liberty and Unitil on February 24, 2023 it became apparent that Eversource did not have any plans or means to provide CPAs with historic or ongoing negative usage data for NEM customers, contrary to the requirements of Puc 2203.02(d), Puc 2205.05(b), Puc 2205.13(a)(7), and Puc 2205.15.
- 1.12. In the same conference call on 2/24/23 Eversource confirmed that they were unable to indicate if, when, and how they will comply with Puc 2205.15(b) and RSA 362-A:9, II to account for NEM generation exported to the grid by CPA customer-generators “as a reduction to the CPA’s customers’ electricity supplier’s wholesale load obligation for energy supply as an LSE, net of any applicable line loss adjustments, as approved by the commission.” This obligation has existed since September 15, 2020 when Chapter 21, NH Laws of 2020, went into effect, almost three years ago.
- 1.13. Eversource has had a responsibility and obligation under New Hampshire law to provide competitive suppliers, through their EDI system or otherwise, with negative usage data for net metered customer-generators for a quarter of a century, since PUC Order No. 22,191 in DR 96-150 and [Chapter 261, NH Laws of 1998](#) became effective. This is discussed further under **Section 3** and in a complaint being filed with the Department of Energy regarding Eversource’s non-compliance with this law, among others, and the PUC Order pursuant to RSA365:1.
- 1.14. Eversource has also not provided Coalition members with interval data for large C&I customers whose load is settled with hourly meter data or time-of-use (TOU) customers as Puc 2204.02(a)(2) requires provision of usage data for “each reported interval.” Clearly

TOU customers have reported usage data for their TOU rate periods that Eversource applies differential distribution rates, if not supply rates.

- 1.15. Furthermore, Eversource has indicated that they do not intend to provide any TOU usage data for TOU rate customers as required under Puc 2205.13(a)(7), nor to identify such customers by a TOU rate class, such as R-OTOD, R-OTOD-2, G-OTOD, and EV-2 contrary to Puc 2205.13(a)(4).
- 1.16. Eversource has also indicated that they do not have the capability to allow CPAs to use their TOU rate structure to offer a TOU supply rate to TOU rate customers, as was called for in PUC Order No. 22,191 and as is implied in by Puc 2205.16(c)(2).
- 1.17. The effect of Eversource's non-compliance with Puc 2200 rules for which it has yet to seek a waiver, has been to make it impossible for CPCNH to enroll such customers successfully and to serve them responsibly. Thus, Eversource continues an effective 25-year monopoly on the provision of net metering and TOU rate options contrary to legislative intent in RSA 374-F, RSA 362-A:1, RSA 362-A:9, II, and RSA 53-E as detailed in **Sections 3-5** and CPCNH's complaint filed with the NH Department of Energy.
- 1.18. Contrary to the requirements of Puc 2205.13(a)(7) Eversource has indicated that they do not intend to provide CPCNH with hourly interval usage data for customers whose load is settled based on such data unless CPCNH (or our CEPS) subscribes to interval data service under their tariff, even as their supplier contract calls for the supplier to be "responsible for checking and ensuring the accuracy of all such data"<sup>9</sup> used for daily load estimation and settlement. This issue is further detailed in **Section 4** below.
- 1.19. In violation of Puc 2205.16(d)(1) Eversource has not enabled the CPA option to elect to "calculate charges and credits for electricity supply and services for the customer in accordance with the CPA's customer classes or rate structures, based upon customer usage data provided by the customer's utility, and provide such charges or credits to the utility for presentment on the customer's bill." Furthermore, Eversource has not indicated if and when they intend to comply with this rule. CPCNH did not receive a response to our written request for such explanation, along with other rule compliance issues, pursuant to

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<sup>9</sup> [Eversource Master Electric Supplier Agreement](#), Article VII, §F, p.12.

CPCNH's Data Requests – Set 1 issued to Eversource on 2/23/23 in DE 22-072 attached hereto as **Exhibit D**.

- 1.20. The cumulative effect of these rule violations is that the CPA programs launching through CPCNH are not able to successfully or responsibly enroll Eversource NEM customers at this time, denying substantial opportunities for rate savings and reserve accumulation for those customers and their CPAs, complicating the customer notification and enrollment process, frustrating and confusing many NEM customers who want to participate in their CPA programs, including many who have been instrumental in developing their EAPs, CPA programs and CPCNH itself.. **Exhibit E** is an email dated 2/23/23 to the legal counsel of the 3 investor-owned EDUs summarizing this highly problematic situation and asking them to help minimize ratepayer confusion and harm by flagging NEM and TOU rate customers, along with meter read cycle, in their Puc 2204.03 reports to CPCNH, even though not required by the rules, so we could avoid enrolling customers we could not properly serve at this time without requiring them to opt-out.. All 3 EDUs subsequently agreed to try to do so, with support from DOE staff, and did eventually succeed in providing us such lists prior to or soon after our commencing customer enrollments (but after most mailings had been sent), so we seemed to have been able to avoid enrolling NEM customers who haven't affirmatively opted in.
- 1.21. Eversource is also discriminating against Coalition default service compared to its own default service in prorating individual customer monthly loads across calendar months (on a per diem basis) so that monthly rates end up prorated between calendar months but will not do likewise for Coalition provided default service contrary to the intent of Puc 2205.16 and RSA 374-F:3, III, IV<sup>10</sup>, and VII. This complicates that correlation of cost and rates as physical hedges in the ISO-NE market (Internal Bilateral Transactions or IBTs) are traded in calendar month blocks which is why Eversource's billing system support rates based on calendar months with per diem proration of monthly load data that is not collected on a calendar basis. By not providing comparable rate structures and billing functionality that is used to serve their own default service load to competing CPA

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<sup>10</sup> "Non-discriminatory open access to the electric system for wholesale and retail transactions should be promoted."



alternative default service and CEPS suppliers, Eversource is creating discriminatory treatment of suppliers, contrary to the intent of RSA 374-F and RSA 53-E.

## 2. Eversource's Refusal to Enable CPA Suppliers

2.1. CPCNH's memorandum to Eversource of November 25, 2022 (**Exhibit A**), which was written following-up on initial discussions with the utility:

- ✈ Conveyed CPCNH's intention to launch CPA service in April 2023, with CPCNH serving as the electricity supplier for CPA customers, in conjunction with Calpine Energy Solutions, LLC as our EDI and customer service provider.
- ✈ Explained how Eversource's existing registration and testing requirements were designed for CEPS and, as such, failed to implement Puc 2200 rules.
- ✈ Cautioned that Eversource's continued non-compliance risked delaying CPCNH's April 2023 launch date — and that *"Too long of a delay, given the noticing requirements and market price dynamics, could actually foreclose CPCNH's ability to launch at any point in 2023."*
- ✈ Concluded by noting Eversource's *"standard supplier services agreement [does] not conform to the Puc 2200 rules for CPAs"* and requested resolution of this matter.

2.2. Shortly thereafter, in a December 8<sup>th</sup> call, CPCNH discussed with Eversource counsel how their current CEPS supplier agreement predates and conflicts with RSA 53-E and Puc 2200 rules in a number of material ways. CPCNH walked through specific examples during our meeting, and Eversource seemed to agree that the CEPs supplier agreement would need to be modified prior to CPCNH's execution on that basis. At the conclusion of the meeting, Chair Below agreed to work on a first draft, based upon redlining Eversource's Supplier Agreement for CEPS, with the goal of reaching agreement on a temporary contract that would permit CPCNH to launch on-schedule in April 2023.

2.3. On 1/19/23 CPCNH submitted to Eversource counsel a proposed Service Agreement for CPAs, reflecting the December discussion (**Exhibit B**) – and received an email in response, one week later, that contravened Eversource's prior indications. Specifically, Eversource counsel indicated that they, as well as Liberty and Unitil, would only modify their CEPS

Supplier Agreement for CPAs after the PUC approves a tariff amendment to conform with RSA 53-E and the Puc 2200 rules, for which no work has been done — foreclosing CPCNH’s ability to launch supply service as intended this Spring.

- 2.4. On a subsequent call, Eversource counsel agreed that RSA 53-E and the Puc 2200 rules will control any conflicting provisions of Eversource’s tariff and CEPS Supplier Agreement and indicated such a statement could be reduced to writing and inserted as a clause in any applicable supplier agreement, to function as a qualifier in anticipation of a wholly conforming supplier agreement, however that did not occur.
- 2.5. Eversource also questioned whether CPCNH could be the supplier in a supplier agreement, ostensibly because CPAs are specifically excluded from the definition of a CEPS.

✈ This again seemed to disavow and reverse Eversource’s prior representations, where we thought we had reached understanding: (i) by late-November that CPCNH would do so by relying upon contracted EDI and LSE service providers in the agreement — in the exact same manner that Eversource’s tariff<sup>11</sup> and CEPS supplier agreement allows a CEPS to do so<sup>12</sup> — and (ii) by mid-December that the CEPS supplier agreement clearly conflicted with Puc 2200 rules and would need to be updated for a CPA to execute.

✈ The Coalition contends that RSA 53-E and Puc 2200 allow CPAs (and their joint power agencies) to provide power supply services, including LSE services, which is why Puc 2200 rules allow a CPA to serve as a supplier independent of any CEPS. To cite two relevant examples here: Puc 2205.01 (c) expressly allows customers to be “*assigned to the load asset for one CEPS or the CPA serving as an LSE*”, provided that the CPA “*or its contracted service provider for customer enrollment... [a]pply to and successfully complete the testing required to use each utility’s EDI in the same manner and on the same terms as a CEPS*”, pursuant to 2204.06(b)(1). Puc 2205.03 concerning “Utility Services

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<sup>11</sup> Eversource Tariff NHPUC No. 10 at 31 under “Terms and Conditions for Energy Service Providers” at §1.b under “Obligations of Suppliers” provides that “[t]he Supplier . . . **must either be a member of NEPOOL or have an agreement in place with a NEPOOL member whereby the NEPOOL member agrees to take responsibility for all the NEPOOL load obligations**, including but not limited to losses and uplift costs, associated with supplying energy and capacity to the Customer’s delivery point.”

<sup>12</sup> Eversource’s “Electric Supplier Services Master Agreement” at ¶ IV, B (p. 2) provides that the “Supplier shall either: (i) be an ISO-NE Market Participant with an ISO-NE settlement account; or (ii) have an agreement in place with an ISO-NE Market Participant member whereby that member agrees to include the load to be served by the Supplier in its ISONE settlement account.”

to CPAs” provides that “*Electric distribution utilities shall provide services, including, if requested, passthrough or complete billing services to CPAs on the same terms and conditions and at the same rates and charges as apply to CEPS, except as otherwise provided by statute or under these rules.*” This rule clearly envisions a CPA, which by definition in Puc 2202.05 includes CPCNH, contracting directly with the utility for services such as billing services like those in Eversource’s Electricity Supplier Services Master Agreement.

- ✈ During the months of January and February Eversource did not allow CPCNH, through its contracted EDI vendor, Calpine Energy Solutions, to complete the testing required to use EDI services until CPCNH entered into a supplier agreement, while simultaneously not providing a supplier agreement that any entity OTHER than a CEPS can enter into.

2.6. RSA 53-E:2, V-a defines “energy services” as meaning “the provision of electric power supply . . .” RSA 53-E:3, II grants CPAs, including those operating jointly such as the Coalition, the authority to provide energy services including the “supply of electric power and capacity”.

2.7. Coalition Members that enter into the CPCNH Cost Sharing Agreement and Member Services Contract that is Exhibit C to the Cost Sharing Agreement<sup>13</sup>, contract for power supply with CPCNH in the context of a complete service bundle that includes EDI, LSE, and other services and each Member municipality and CPA served by CPCNH has no direct contractual relationship with the Coalition’s EDI, LSE, or Energy Portfolio Management service providers.

2.8. For all these reasons, CPCNH believes that a supplier contract suitable for execution by CPAs, should be made available for execution by CPCNH on behalf of its Members taking electricity supply services through the Coalition.

### **3. Additional Detail on Eversource’s non-compliance with Puc 2205.15(b), enabling service to NEM customers and Puc 2204.02 & 2205.13: Provision of NEM Delivered & Received Usage Data.**

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<sup>13</sup> The CPCNH Cost Sharing Agreement and Member Services Contract can be downloaded from this web address as a PDF: [https://www.cpcnh.org/files/ugd/202f2e\\_c0a8891755954c92a7dc60443b643710.pdf](https://www.cpcnh.org/files/ugd/202f2e_c0a8891755954c92a7dc60443b643710.pdf)

3.1. Eversource has not provided NEM delivered usage and received usage (import / export recorded meter data) pursuant to Puc 2204.02, (a)(2), and has only provided twelve (12) monthly kWh values for each account. While NEM indicators are included in Puc 2204.02 datasets, Eversource has provided a single aggregate kWh usage value per month for each account, regardless of NEM status. kWh values for these customers “zero out” but do not go negative for these customers; thus, Eversource appears to have only provided NEM delivered (consumption) usage data, and not NEM received usage data (excess generation exported to the grid and recorded over the course of the month).

Similarly, Eversource has indicated that it will not provide NEM delivered usage and received usage (import/export, positive/negative recorded meter data) pursuant to Puc 2205.13(a)(7), and instead intends to only provide twelve (12) kWh values for each account that will either be a positive number or zero.

- ⚡ Puc 2203.02(d) broadly requires that "All customer usage data provided by the utility shall include consumption power delivered to customers and exports to the grid from customer generators in kWh for each reported interval."
- ⚡ Puc 2204.02(a)(2) requires that Eversource provide: "The most recent 24 months of usage data in kWh for each reported interval if available, or 12 months otherwise."
- ⚡ Puc 2205.13(a)(7) requires Eversource to provide "usage data in kWh for each monthly interval for accounts reported in monthly intervals for load settlement, and for each hourly interval for accounts reported in hourly intervals for load settlement".
- ⚡ Additionally relevant here is that Puc 2205.15(a) requires Eversource to report "the generation output exported to the distribution system from CPA customers with customer-sited distributed generation . . . as a reduction to the CPA customers' electricity supplier's wholesale load obligation for energy supply as an LSE" pursuant to Puc 2205.15(b) and RSA 362-A:9, II.

**To comply with Puc 2203.02(d), Eversource must provide both delivered usage and received usage for NEM customer-generators pursuant to requests for “usage data” submitted under Puc 2204.02 and in Puc 2205.13 reports.**

- 3.2. In its response to the Town of Harrisville’s complaint in DE 23-047, Eversource argues that “Puc 2203.02(d) does not indicate that it applies outside the aggregated data supplied under Puc 2203.02” as the reason why they have not otherwise provided it where usage is otherwise required to be reported.<sup>14</sup> However, there is no other criteria set forth in the Puc 2200 rules detailing what is to be considered as part of “usage” data and there is no language in this particular rule that limits its application to Puc 2203.02 unlike other nearby subparagraphs such as (e) where it is limited to data “in response to a request made pursuant to (a) above” or (f) that is in reference to “monthly usage data required to be provided pursuant to (b)(11) above. Like subparagraph (c) before it that give meaning to the phrase “customer rate class” Puc 2203.02(d) simply provides additional meaning and clarity to the phrase “customer usage data” in the context of the first section of the rule where the term is used. No subsequent provision indicates otherwise.
- 3.3. CPCNH incorporates the arguments presented in the Town of Harrisville’s reply to Eversource’s 5/1 Response to Harrisville’s complaint, including CPCNH’s attached letter of May 8, 2023, in DE 23-047 as **Exhibit F** to this complaint.
- 3.4. Eversource’s obligation to enable CPAs to serve net metered customers by providing positive and negative usage data must be viewed in light of the overall statutory scheme, looking at statutory language and regulations as a whole, not merely “isolated words or phrases.” *In the Matter of Maves & Moore*, 166 N.H. 564, 566-67, 101 A.3d 101 (2014). The relevant statutes here, RSA 362-A:1 and 9, including in the context of RSA 374-F, should not be read in isolation but in the context of the overall purpose and effect of RSA 53-E and the Puc 2200 rules as read in their entirety. *See, e.g., Appeal of N. New Eng. Tel. Operations, LLC*, 165 N.H. 267, 271 (2013) (legislative intent to be determined from words of the statute considered as a whole; statutes to be interpreted not in isolation but in the context of overall statutory scheme); *Appeal of Pennichuck Water Works*, 160 N.H. 18, 27 (2010) (various statutory provisions to be construed harmoniously insofar as reasonably possible); *Chase v. Ameriquest Mortgage Co.*, 155 N.H. 19, 22 (2007) (statutes to be construed in harmony with the overall statutory scheme). RSA 53-E, provides community power aggregators (“CPA”) with the power to determine the terms, conditions,

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<sup>14</sup> [23-047\\_2023-05-01\\_EVERSOURCE\\_RESPONSE-HARRISVILLE-COMPLAINT.PDF](#) at 5.

and prices under which they will supply generation and credit or purchase generation output exported to the distribution grid. Specifically, RSA 53-E:6 provides that municipalities or counties may develop a plan for an aggregation program for its citizens to provide universal access and reliability for all classes of customers. RSA 53-E:6 III (f) states that such plan shall detail how net metered electricity exported to the distribution grid by program participants, including for group net metering, will be compensated, and accounted for.<sup>15</sup>

The state has required incumbent distribution utilities to facilitate net metering through community aggregation. The state understands that sales of energy is an integral part of encouraging the development of renewable resources. In fact, RSA 362-A:1 states that these goals should be pursued in a competitive environment where small customers can participate in the energy market and municipal aggregators can incentivize such participation by developing pricing, terms, and conditions for the sale of energy that foster a welcoming environment for renewable resource development.

Pursuant to this requirement, the legislature provides municipal aggregators with the authority to develop aggregation plans to detail the accessible, reliable, and equitable provision of generation across all customer classes, and subsequently vested in utilities the obligation to provide the names, mailing addresses, “and any other information necessary for successful enrollment in the aggregation”<sup>16</sup> for all electric customers taking utility default service in a municipal aggregator’s service area, excluding those who opt-out of CPA alternative default service. Puc 2205.05 (b) likewise requires that Eversource make available “any other information necessary for successful enrollment” of new default service customers. NEM customers cannot be successfully enrolled in a CPA, absent the ongoing provision of net metering usage data (both positive and negative) because they cannot be served consistent with Commission approved Electric Aggregation Plans or statutory authorities and obligations. Doing so would likely incur

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<sup>15</sup> The inclusion of this requirement for electric aggregation plans supports the conclusion that that data regarding the amount of net metered electricity being exported to the distribution grid by program participants is both important and necessary for the provision of “universal access, reliability, and equitable treatment” of all classes of customers as described in RSA 53-E:6 II.

<sup>16</sup> RSA 53-E:7, III

substantial financial harm to many NEM customers contrary to the purposes of RSA 53-E, 362-A, and 374-F.

3.5. Furthermore, the Puc 2200 rules call for the provision and inclusion of data concerning net metered customers each step of the way to plan for, launch, and operate Community Power Aggregation services that include net metered customers:

3.5.1. The very first request for aggregated usage data to help a community plan their aggregation includes NEM information per Puc 2203.02(b)(1) and (3) and Puc 2003.02(d).

3.5.2. The request for Anonymized Customer-Specific Information that comes after PUC approval of final electric aggregation plan includes NEM data in Puc 2204.02(a)(4) – (8) as CPAs prepare to implement their program, procure power and set rates.

3.5.3. And then a CPA’s ongoing access to information about their customers includes data from NEM customers in Puc 2205.13(a)(7) and 9, as well as additional NEM information if known and readily available pursuant to Puc 2205.13(b)(7-9).

It’s clear that including this NEM data sharing in the rules is to enable CPA and CEPS to serve NEM customers pursuant to their authority to do so as expressed in RSA 362-A:9, II; RSA 53-E:6, III(f) and as expressly provided by Puc 2205.15. Eversource as the exclusive holder of such NEM usage data has an essential role and responsibility in sharing it in a nondiscriminatory manner to CPAs and CEPS and not just monopolize it for their own default supply service.

#### **4. Eversource has not provided Interval Metered Data as required by Puc 2204.02 & 2205.13:**

4.1. CPCNH has confirmed that Eversource **will not** provide interval usage data, and instead only provides total kWh usage data aggregated by month, in response to requests submitted pursuant to Puc 2204.02 (for information provided to CPAs prior to initiation of supply service) and in Puc 2205.13 reports (provided to operational CPAs for each account enrolled in supply service). This is non-compliant with Puc 2200 rules:

✈ Puc 2204.02, (a)(2) requires that Eversource provide: *“The most recent 24 months of usage data in kWh for each reported interval if available, or 12 months otherwise.”*



- ✈ Puc 2205.13(a)(7) requires Eversource to provide “usage data in kWh for each monthly interval for accounts reported in monthly intervals for load settlement, and for each hourly interval for accounts reported in hourly intervals for load settlement”.
- ✈ Also relevant here is that Puc 2203.02 (d) broadly requires that: “[a]ll customer usage data provided by the utility shall include consumption power delivered to the customers and exports to the grid from customer generators in kWh for each reported interval.”

4.2. Eversource should provide usage data to CPAs:

- ✈ In 2204.02 reports: at the level of granularity reported to the utility, which may be in (i) monthly total kWh, or (ii) by on-peak and off-peak Time-of-Use period (for accounts in Utility Rate Classes R-OTOD, R-OTOD-2, and G-OTOD), or (iii) in 30-minute periods for interval usage meters (for larger customers, typically, on Utility Rate Classes GV, LG, and B)<sup>17</sup> — including any exports to the grid for customer-generators in these groups of customers.
- ✈ In 2205.13 reports: at an hourly level of granularity for every customer whose load is settled based on interval metered data — including any exports to the grid for any such customer that is also a customer-generator.

4.3. Note that absent provision of this data in 2204.02 reports — which are available to CPAs prior to launch — CPAs are unable to accurately forecast load, procure power, and set rates for the large customers settled on interval usage data, and would be unable to accurately set Time-of-Use rates for TOU customers.

## **5. Eversource in Not Supporting Time-of-Use Rates for Complete Consolidated Billing & Implementation of Passthrough Consolidated Billing as required by Puc 2205.16.**

5.1. CPCNH has received confirmation that Eversource **will not** support complete consolidated billing for CPA supply rates that vary by TOU period, pursuant to Puc

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<sup>17</sup> Eversource’s Electric Supplier Services Master Agreement (i) commits the utility to “*provide the following [interval data reporting] services which are limited to Customers who are receiving service under the Company’s Primary General Delivery Service Rate GV, Large General Delivery Service Rate LG and Backup Delivery Service Rate B*” and (ii) provides that “*All time interval data will be provided in 30 minute intervals.*” Supplier Agreement, D (p.10): [https://www.eversource.com/content/docs/default-source/doing-business/electric-supplier-master-agreement.pdf?sfvrsn=89eba589\\_6](https://www.eversource.com/content/docs/default-source/doing-business/electric-supplier-master-agreement.pdf?sfvrsn=89eba589_6)



2205.16(a)(2) — even if the CPA’s TOU rate is based on the same 2-part on-peak and off-peak periods as Eversource’s TOU rate (for distribution components of customer bills), which the CPA would provide to Eversource in advance of enrolling customers pursuant to Puc 2205.16(d)(2).

5.2. Eversource has not explained why its billing system is incapable of providing customers on CPA-provided default service with the same pricing options available to customers on utility-provided default service.

5.3. Eversource has also not provided a timeline to implement the functionality required pursuant to Puc 2205.16(d)(1), which would allow CPAs to independently calculate the amount owed by TOU customers, and transmit the data to Eversource for presentation on the consolidated bill issued by the utility to the TOU customer (passthrough consolidated billing services)

## **6. Eversource has not Correctly Reported Combined Rate Group Reporting Pursuant to Puc 2203.02 & 2204.02.**

6.1. CPCNH has confirmed that Eversource has not adhered to Puc 2203.02 requirements regarding the anonymization and reporting of combined rate group usage data.

6.2. Pursuant to Puc 2203.02(f)(1) through (3), a rate group that would ordinarily be reported on its own – pursuant to Puc 2203.02(c) – must be combined with the “*most similar rate class or classes*” and then “*reported as the combined rate classes*” by the utility if any one or more of the four screening criteria listed below apply:<sup>18</sup>

- ⚡ If there are “*fewer than 4 distinct customers... in any one non-residential customer rate class reporting group*”
- ⚡ If there is “*any one customer [that] comprises 50% or more of the total usage in any one non-residential customer rate class reporting group*”
- ⚡ There are “*fewer than 10 distinct customers in any one residential rate class reporting group*”

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<sup>18</sup> Puc 2203.02(f)(4) imposes additional anonymization requirements not listed here (generally anticipated to apply in only a small number of contingencies).

⚡ If there are “fewer than 4 distinct non-residential customers or fewer than 10 distinct residential customers”.

6.3. Below are explanations detailing two select examples demonstrating how Eversource has not adhered to Puc 2203.02 requirements regarding the anonymization and/or reporting of combined rate group usage data:

6.3.1. Enfield has received 2203.02 and 2204.02 datasets:

- ⚡ Enfield’s 2204.03 dataset shows records for only customers in rate group R, whereas Enfield’s 2204.02 dataset subsequently revealed records for customers in rate group G (who are commercial customers) in addition to R (residential).
- ⚡ CPCNH’s analysis indicates that Eversource correctly combined customers in rate groups R and G, pursuant to Puc 2203.02(f)(1), but then reported the combined rate groups as “R” in the Puc 2203.02 dataset to Enfield.
- ⚡ This is non-compliant with the Puc 2203.02(f) that requires Eversource to report this data “as the combined rate classes”.
- ⚡ Eversource should have clearly reported this information as “Combined Classes: R & G”, for example, instead of mis-reporting the data as being only for rate group R – which leads to the incorrect assumption that there are only residential customers taking service in the prospective CPA’s service territory.

6.3.2. Canterbury has only received a 2203.02 dataset since Puc 2200 rules went into effect but was previously given a dataset from Eversource containing rate group level data, allowing comparison between the two for this compliance evaluation:

- ⚡ Canterbury’s Puc 2203.02 dataset only showed records for customers in rate group R; however, based on the dataset received before Puc 2200 rules went into effect, Canterbury knew it also should contain rate group G customers.
- ⚡ Eversource was asked via email to verify and clarify this compliance violation. Eversource responded with the following explanation (emphasis added):

*“It can be confirmed that there are small commercial and streetlighting accounts in Canterbury. However, based on the Chapter Puc 2200 Municipal and County Aggregation Rules, the rate classes must be combined of the most similar rate classes when there are fewer than four (4) distinct customers comprising of 50% or more total usage and / or less than 4 distinct customers . . . Based on the Puc Rules, the rate*

*classes were reported as combined rate classes leaving only the residential rate as listed in column A [of the Puc 2203.02 dataset provided to Canterbury] ...”*

~ Eversource failed to comply with Puc 2203.02(f), in two ways here:

- i. First, Puc 2203.02(f)(1) requires Eversource to combine rate groups if there are fewer than 4 (four) distinct customers – or if **any one (1)** customer comprises 50% or more of the total usage – in any one non-residential customer rate class reporting group.

Eversource has apparently combined rate groups R and G because the aggregated usage of the largest 4 customers in rate group G is more than 50% of total usage in rate group G – whereas what should have done was divide the usage of the single largest customer in rate G by the usage of all customers in rate group G.

If the result was less than 50%, Eversource should **not** have subsequently combined rate groups R and G for reporting purposes.

- ii. Second, Eversource violated Puc 2203.02(f) by reporting combined rate groups R and G as only rate group R.

Puc 2203.02(f) requires Eversource to clearly identify data representing multiple rate groups by reporting it “*as the combined rate classes*”.

Instead, Eversource reported combined rate groups R and G as a single rate group – rate group R. Reporting combined rate groups using the identical code given to any one of the rate groups in question is clearly non-compliant. (It also risks misinforming decision-makers, including projecting load shape for power procurement, as was previously explained in regard to Enfield.)

- 6.4. Based on these and other similar instances of noncompliance CPCNH has identified, Eversource should review the protocols put in place to govern its compliance with Puc 2203.02(f) anonymization and reporting requirements.
- 6.5. CPCNH also requests that Eversource review its protocols governing the similar (but not identical) anonymization and reporting requirements applicable to information provided pursuant to Puc 2204.02 – because similar issues of noncompliance regarding Puc 2204.02

datasets cannot be independently analyzed and identified by CPCNH (or any other entity, without access to the underlying individual customer data in Eversource’s possession).

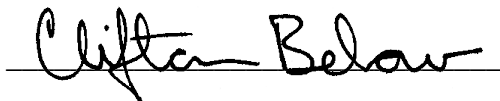
- 6.6. Subsequently, Eversource should revise and re-issue any Puc 2203.02 and/or Puc 2204.02 datasets found to have combined rate groups and/or reported combined rate groups as a single rate group in violation of applicable rules.

## 7. CONCLUSION

The acts and omissions of Eversource complained of herein demonstrate how Eversource has lagged in preparing to serve the emerging needs of its customers and implement policies of the state in their role as a state franchised monopoly owner and operator of the distribution system. New Hampshire has worked to incentivize small scale, renewable power generation for decades, having first passed RSA 362-A:1 in 1978. New Hampshire helped lead the nation in setting policy to promote customer choice and the use of competitive markets to lower costs and drive innovation. Thus far Eversource has not been responsive to the evolving needs of electric customers by maintaining information systems capable of providing essential net metering, time-of-use, and interval data on a comparable basis to their rate structures and billing system functionality.

The PUC can act to resolve these complaints through an order in an adjudicated proceeding pursuant to Puc 2205.12, Puc 202.01(f), Puc 204, and RSA 53-E:7 X.

*Community Power Coalition of New Hampshire*



*by CPCNH Chair Clifton Below*

## LIST of EXHIBITS:

EXHIBIT A – 11/25/22 Letter from CPCNH to Eversource .....	Bates page <b>21</b>
EXHIBIT B – 1/19/23 CPCNH suggested edits to Eversource Supplier Agreement to conform with RSA 53-E and Chapter Puc 2200 .....	<b>30</b>
EXHIBIT C – Email Chain from 1/19/23 to 1/26/23 between CPCNH and Eversource .....	<b>55</b>
EXHIBIT D – 2/23/23 Data Request to Eversource from CPCNH in DE 22-072 .....	<b>58</b>
EXHIBIT E – Email 2/23/23 CPCNH to EDUs re: rules compliance .....	<b>61</b>
EXHIBIT F – Town of Harrisville Reply to Eversource Response in DE 23-047 .....	<b>63</b>