

STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire d/b/a Eversource Energy
Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty
Unitil Energy Systems, Inc.

Petition for Waiver of Certain Provisions of the Puc 2200 Rules

Docket No. DE 23-XXX

JOINT UTILITIES' PETITION FOR WAIVER OF CERTAIN PROVISIONS OF THE
Puc 2200 RULES

Pursuant to N.H. Code Admin. Rules Puc 203.06, 2201.03(a) and 201.05, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”), Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (“Liberty”), and Unitil Energy Systems, Inc. (“Unitil”) (collectively, the “Joint Utilities”), hereby petition the New Hampshire Public Utilities Commission (the “Commission”) to grant temporary or permanent waivers of Puc 2205.16(d)(1) pursuant to Puc 201.05 and 2201.03(a). At this time, the Joint Utilities do not have billing system capability enabling them to comply with Puc 2205.16(d)(1). Accordingly, the Joint Utilities require either temporary waivers from that provision while the necessary implementation work is conducted or permanent waivers should the Commission determine that implementation costs, which would be borne by all customers, are not in the public interest. The Joint Utilities also seek clarification from the Commission regarding whether the references in both Puc 2204.02(a)(2) and Puc 2205.13(a)(7) to “usage data” means “consumption power delivered to customers and exports to the grid from customer generators in kWh for each reported interval”, which is only described in Puc 2203.02(d). Should the Commission interpret “usage data” in Puc 2204.02(a)(2) and Puc 2205.13(a)(7) to include exports to the grid from customer generators, Eversource would also

request a temporary rule waiver from providing such export data until that information can be provided upon completion of the necessary IT modifications. In support of this petition, the Joint Utilities offer the following information.

1. On October 5, 2022, the Commission adopted its Chapter 2200 Municipal and County Aggregation Rules (“Rules”) following a formal rulemaking process conducted in Docket No. DRM 21-142. The purpose of the Rules is to implement the provisions of RSA 53-E to provide for implementation and operation of community power aggregation (“CPA”) programs and CPA interactions with electric distribution utilities. *See* Puc 2201.01. The Rules became effective on October 12, 2022.

2. The Joint Utilities have been diligently supporting the implementation of RSA 53-E and the Rules so that CPAs in New Hampshire can successfully launch and begin serving their customers. In particular, the Joint Utilities have expended significant time and resources to implement process and system changes necessary to comply with the several reporting requirements in the Rules and have provided required data and other information to CPAs during their formative stages of development and plan implementation. Additionally, the Joint Utilities have made staff available to answer questions from CPAs, their agents, vendors and other representatives, and have met extensively with these parties to discuss implementation issues pertaining to these novel Rules and to find a near-term path forward. Notwithstanding these significant efforts to comply with both the letter and the spirit of the Rules, compliance with Puc 2205.16(d)(1) is not currently possible. There has also been some dispute over the degree to which individual net-metered customer export data needs to be provided, specifically, if such information is required by the Puc 2204.02(a)(2) and

Puc 2205.13(a)(7) references to “usage data.” The Joint Utilities seek guidance, and, as necessary, waivers from the Commission on both of these issues.

3. On a procedural note, the Joint Utilities note that they did try to raise concerns and engage on the potential implementation issues and the time and costs associated with those issues during the formal rulemaking process undertaken in Docket No. DRM 21-142, but because of the limited party process due to the rulemaking nature of that docket, the concerns were not taken up. In comments filed on March 14, 2022, the Joint Utilities made clear that requiring information be provided that “is not readily available through [their] systems . . . would require extensive, costly, and time-consuming adjustments to systems to make the information available,” as well as specifically highlighting that the “language in 2205.16(a) and (d) appears to demonstrate a fundamental misunderstanding of consolidated billing and the services the [Joint Utilities] can and do provide for consolidated billing for competitive suppliers of electricity in New Hampshire.” DRM 21-142, Joint Utility Comments at 2 (March 14, 2022). Likewise, in reply comments filed on March 28, 2022, the Joint Utilities asked the Commission to consider that any “additional functionality or services added to the [basic Core Functionality Approach proposed by the utilities as an alternative to the proposed (and later adopted) Rules] will take additional time as well as cost to implement.” DRM 21-142, Joint Utility Reply Comments at 1 (March 28, 2022); *See also* Transcript of March 7, 2022 Hearing, at pages 7-10.
4. Notwithstanding those cautionary statements, the Commission senior advisor’s *Summary of Comments and Reply Comments on Initial Proposal with Responses*, submitted on July 26, 2022, addresses nearly all of the issues raised by the Joint Utilities by relying on the assertion that “[t]he text . . . [is] nearly identical to the analogous rules contained in the

initial proposal developed through a stakeholder process by the DOE.”¹ While that statement on its face is true, it omits the fact that the stakeholder process was highly contested and the resulting proposed rules were not a consensus document. The statement also ignores the issues raised in the Joint Utility comments and leaves them unresolved. The DOE also identified issues likely to be contested, and the need to address them, when it noted in its original petition filed in Docket No. DRM 21-135 that, notwithstanding the stakeholder process that preceded that filing, “it is anticipated that various stakeholders may raise concerns and argue for further changes during the course of the formal rulemaking proceeding.”² Given the parameters of the formal rulemaking process under RSA 541-A and more limited opportunities for party input and participation, there was no procedural opportunity for the Joint Utilities to renew their valid concerns or to otherwise comment on the senior advisor’s *Summary of Comments and Reply Comments on Initial Proposal with Responses*. The result is that these issues that were consistently contested prior to and throughout the rulemaking have yet to be addressed and resolved, and now warrant further consideration in the context of whether and how to implement certain provisions of the Rules, given the totality of the circumstances, so that the Joint Utilities can be in compliance with the Rules and understand how to best move forward with implementation.³

¹ See Summary of Comments and Reply Comments on Initial Proposal with Responses (July 26, 2022), at page 29.

² See Department of Energy Petition for Rulemaking to Amend Puc 2000 rules to Include Community Power Aggregation Provisions, filed on October 25, 2021 in Docket DRM 21-135, at page 2.

³ In the closing of the reply comments in the rulemaking Docket No. DRM 21-142, the Joint Utilities stated “The rules to implement CPAs in New Hampshire have been the subject of a very lengthy process where there remain some differences of opinion on implementation and where certain technical or financial challenges exist. The Commission may wish to consider establishing a timeline for revising the rules following their implementation to determine whether adjustments are necessary to manage the costs and complexities generated by the program.”

5. The primary provision of the Rules for which at a minimum temporary waiver is requested is Puc 2205.16(d)(1), which directs utilities to provide usage data to a CPA, which in turn provides charges and credits for the utility to present on the customer bill.⁴ This is commonly referred to as “bill ready billing.” The Joint Utilities systems are presently not able to provide this “customized” complete billing service. All supply billing—whether from the utility or a competitive supplier—uses a pre-existing rate factor that is multiplied by the monthly metered usage for an account, sometimes called “rate-ready” billing. Neither the Joint Utilities’ billing systems or the New Hampshire electronic data interchange (“EDI”) standards are designed for this customized version of billing, and the system modifications combined with the necessary EDI changes would require tremendous effort and cost to implement. For this reason, the Joint Utilities respectfully request temporary waivers while this effort is undertaken and until bill-ready billing can be offered.
6. As detailed in the direct testimony of the Joint Utilities and supporting attachments, significant system upgrades, process changes, and EDI changes would be necessary for any of the Joint Utilities to implement the type of billing contemplated by Puc 2205.16(d)(1). The Joint Utilities have produced initial cost estimates for the work necessary to make the changes to offer this type of billing, and in total, offering custom complete billing would cost approximately, and likely more than, \$8.9 million statewide.⁵ The Joint Utilities had to include several assumptions when developing their estimates where Puc 2205.16(d)(1) did not provide sufficient detail; enabling them to (1) create

⁴ Under Puc 2205.16(d)(1), “[w]hen a CPA elects to utilize consolidated billing service for any customer, the CPA shall also elect to: (1) [c]alculate the charges or 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 . . .”

⁵ See Joint Utility testimony at 21-22.

adequate functionality without impeding the ordinary course of utility operations, (2) navigate barriers to implementation by resolving untenable uncertainties, and (3) to be able to get just an approximate cost. The Joint Utilities made these assumptions and designed a corresponding service agreement for any CPA electing to use bill-ready billing to reasonably reflect the functionality represented in Puc 2205.16(d)(1), while also mitigating unreasonable risk to the Joint Utilities and customers.⁶ If these assumptions are modified to add any further complexity, the costs will surely rise accordingly.⁷

7. Bill-ready billing creates a situation where an unregulated entity could control when utility bills are issued. Delaying bill issuance creates risks and uncertainties, detailed in the direct testimony of the Joint Utilities and the supporting attachments, which the Joint Utilities have tried to mitigate as much as possible. However, any CPA that elects to use bill-ready billing will require the Joint Utilities to hold the bill for three business days. If the CPA fails to provide the requisite charges and credits for presentment on the customer bill within those three days, the customer bill will be issued without supply charges for that billing period. Both the delay and the possible issuance of bills without supply charges raise numerous issues, addressed in detail in direct testimony of the Joint Utilities, but the proposal the Joint Utilities have put forward minimizes customer and utility risks and rule conflicts to the greatest extent possible.
8. Because of the potential conflicts with the New Hampshire Department of Energy's ("DOE's") Puc 1200 rules, the Joint Utilities request the Commission's review and resolution. If bill-ready billing is implemented, there are potential conflicts with the Puc

⁶ Joint Utility testimony at 18-20.

⁷ *Id.* at 20.

1200 rules that have not been addressed. For example, Puc 2205.16(d)(1) specifically allows CPAs to provide “credits and charges,” without qualification. But this information, is insufficient for purposes of Puc 1203.06(b)(6), which requires, at a minimum for utilities providing metered service, not only the charges, but “[a]ll factors necessary to compute the charges.” Moreover, if supply charges are not included on a customer bill for a given billing period this risks potential conflicts with Puc 1203.06(b)(4) and (7), which require on each customer bill: any applicable penalty date, and; the charges, respectively.

The Joint Utilities cannot provide supply charges without the CPA supplying them, but holding bills indefinitely until the CPA provides its charges is an untenable option, and therefore the “bill-ready” provision of Puc 2205.16(d)(1) potentially conflicts with Puc 1203.06(b)(7).⁸ Without the supply charges for a given billing period it also will be difficult, if not impossible, to ascertain a penalty date for charges that have not yet been provided, in conflict with Puc 1203.06(4). The Joint Utilities have been unable to find a resolution to the inter-agency conflicts among the Commission’s Rules and the DOE’s Puc 1200 rules and look to the Commission for guidance on this issue.

9. For the reasons discussed above, and supported by the pre-filed testimony and attachments of the subject matter experts from each of the Joint Utilities, the Joint Utilities require temporary waivers from Puc 2205.16(d)(1) until all necessary implementation work that arises out of this matter is complete, unless the Commission should find that the total costs of implementation plus the attendant risks to customers and the Joint Utilities are not in the

⁸ The Joint Utilities also considered providing estimated supply charges should the CPA fail to provide charges within the three-day window, but this option is more problematic than issuing the bills with no supply charges whatsoever. For more detail, please see the direct testimony of the Joint Utilities at 26-27.

public interest, in which case the Joint Utilities would require a permanent waiver from this provision. Under Puc 201.05, the Commission must waive the provisions of any of its rules, except where precluded by statute, if it finds that the waiver serves the public interest, and will not disrupt the orderly and efficient resolution of matters before the Commission. In determining the “public interest,” the Commission must waive a rule if either (1) compliance with the rule would be onerous or inapplicable given the circumstances of the affected person, or (2) the purpose of the rule would be satisfied by an alternative method proposed.⁹

10. In consideration of the substantial commitment of time and resources necessary to achieve compliance with Puc 2205.16(d)(1) and the inability of any of the Joint Utilities to comply with that provision at this time, the Joint Utilities submit that the public interest would be served by granting the requested waivers pursuant to Puc 201.05. Notably, the substantial costs of billing and EDI system modifications necessary to achieve such compliance would be recovered from all utility customers, whether or not they participate in CPA programs. This raises significant cost-shifting and cross-subsidization issues because no benefits whatsoever inure to non-CPA customers, and there is a likelihood that not all CPAs avail themselves of “bill-ready” billing, as it is not required for the launch and operation of a CPA. The Joint Utilities further note that, under RSA 53-E:7, X, “to the extent authorities granted to [CPAs] . . . materially affect the interests of electric distribution utilities and their customers, [the Commission must] reasonably balance such interests with those of municipalities and counties for the public good . . .” That required balancing of interests

⁹ See Puc 201.05(b).

should account not only for the costs, but also the fact that this non-essential functionality benefits few but imposes costs on everyone. Moreover, the extent of the benefits for the customers that will be billed using “bill-ready” billing is speculative; the only certain beneficiaries are those CPAs that will elect to use this functionality.

11. Temporary waiver of Puc 2205.16(d)(1) as requested herein is also warranted because it would not “disrupt the orderly and efficient resolution of matters before the commission.”¹⁰ The unavailability of bill-ready billing functionality at this time does not impede the submission and approval of any CPA plan, nor does it interfere with any of the Joint Utilities’ ability to comply with any other requirement of the Rules. Moreover, municipalities and counties can successfully develop and launch aggregations without this functionality.
12. As a second matter, the Joint Utilities seek clarification from the Commission as to whether the language in Puc 2203.02(d) 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” should be extrapolated and apply as a definition for “usage data” used elsewhere in the Rules, specifically in Puc 2204.02(a)(2) and Puc 2205.13(a)(7). The Joint Utilities interpret Puc 2203.02(d) to apply *only* to the information required to be provided under the corresponding subparts of Puc 2203.02 and not generally applicable to any other reporting requirements in the Rules, because Puc 2203.02(d) is not a definition and “usage data” as described in Puc 2203.02(d) does not appear in the definitions section. However, the Joint Utilities understand that certain CPA

¹⁰ Puc 201.05(a)(2).

stakeholders believe that the utilities are obligated under the Rules to provide export data from customer generators in the Puc 2204.02(a)(2) and Puc 2205.13(a)(7) reports.¹¹

13. The Joint Utilities' interpretation is further supported by the fact that each reporting provision in the Rules contains a discrete, itemized list of the information required to comply with that provision. None of those provisions contain any words such as "including," to indicate that additional information other than what is listed could possibly be included, nor are there any cross references in any reporting provision to any other provision in the Rules. It is not reasonable to assume that because a term is used in one rule, that term means the same thing when it appears elsewhere (unless it is a definition). In Puc 2203.02, subsection 2203.02(d) specifically says that usage data for purposes of that rule will include information on exports. By contrast, Puc 2204.02(a)(2) and Puc 2205.13(a)(7) cover "usage data" and do not specify exports are included. The negative-implication canon of statutory interpretation states that the expression of one thing implies the exclusion of others. *Antonin Scalia and Bryan A. Garner, Reading Law: The Interpretation of Legal Texts* (2012). Additionally, the omitted-case canon of statutory construction holds that nothing is to be added to what the text states or reasonably implies: a matter not covered is to be treated as not covered. *Id.* Put another way, if language is used in one place but not another, the omission was intentional and is intended to convey a difference. Since the New Hampshire Supreme Court treats rules as statutes when it reviews them, the same logic applies here. *Appeal of New Hampshire Dep't of Env't Servs.*, 173 N.H. 282, 292 (2020) (internal citation omitted). Further, Puc 2203.02 applies to the

¹¹ See Town of Harrisville Reply to Eversource's 5/1/2023 Response to Complaint, Docket No. DE 23-047 <https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-047.html>, at Tab 13 (May 8, 2023).

aggregated information of all customers in a municipality, while Puc 2204.02(a) and Puc 2205.13(a)(7) are concerned with the specific information of individual default service customers. Thus, Puc 2203.02(d) and the latter two provisions relate to different groups of customers. Moreover, Puc 2203.02 is permissive (the CPA "may request aggregated usage information"), but Puc 2204.02(a) and Puc 2205.13(a)(7) are mandatory, further suggesting different application and treatment. To receive clarity on compliance obligations within the Rules, the Joint Utilities respectfully request the Commission's interpretation of the applicability of Puc 2203.02(d) regarding the provision of customer generator export data.

14. While Liberty and Unitil have been able to provide export data despite the lack of clarity on this matter, Eversource's systems are currently incapable of providing such data. Eversource estimates this work will cost approximately \$40,000 and take three months to complete. Due to the low cost to complete this work, Eversource is already beginning to get this effort underway. However, clarity regarding the interpretation of Puc 2203.02(d) in relation to Puc 2204.02(a)(2) and Puc 2205.13(a)(7) is still respectfully sought from the Commission by the Joint Utilities. Should the Commission interpret Puc 2203.02(d)'s definition of usage data to apply to Puc 2204.02(a)(2) and Puc 2205.13(a)(7), Eversource will need a temporary waiver from those provisions as far as they apply to export data until the work necessary to provide that data in those reports is complete.

15. The Joint Utilities also request, as detailed in the direct testimony accompanying this petition, that the costs for the proposed bill-ready solution and all other incremental costs to implement the Rules be recovered through a new annual reconciling rate mechanism that accounts for any Commission-mandated costs. This is the most administratively efficient process for the Department of Energy and the Commission to review and

determine the prudence of costs incurred while also providing timely recovery for costs created by a state action outside a utility's control, therefore balancing the interests of the Joint Utilities and their customers. Absent a dedicated recovery mechanism, the Joint Utilities would need a regulatory asset designated for complete recovery of implementation costs for the Rules. Without either a recovery mechanism or a regulatory asset, recovery of the full costs of this mandate will not be possible, which could constitute an unconstitutional taking of utility property without just compensation. *Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 690 (1923).

16. While the Joint Utilities are currently unaware of any additional waivers which they may need to seek, it may prove necessary to request additional waivers from the Rules in the future. The Joint Utilities therefore reserve the right to file any such further waiver requests when warranted.

WHEREFORE, the Joint Utilities respectfully request that the Commission:

- A. Temporarily or permanently waive, consistent with Puc 201.05 and Puc 2201.03(a), the requirements of Puc 2205.16(d)(1), as described above, as it applies to any municipal or county aggregation plan within any of the Joint Utilities' service territories;
- B. Alternatively, should the Commission decide to implement bill-ready billing, require that CPAs that utilize bill-ready billing comply, at a minimum, with Puc 1203.06(b);
- C. Authorize a reconciling rate mechanism that allows for the recovery of all prudently-incurred, incremental costs associated with the Joint Utilities' implementation of the Puc 2200 rules, or in the alternative authorize deferred accounting treatment for recovery in each of the Joint Utilities' next rate cases;
- D. Temporarily waive the provisions of Puc 2204.02(a)(2) and Puc 2205.13(a)(7) for Eversource as they apply to net metered customer export data until Eversource completes the work necessary to provide that data, only should the Commission interpret those provisions to include a requirement to provide such data; and
- E. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

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



Dated: June 14, 2023

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.



Date: June 14, 2023

Jessica A. Chiavara