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March 14, 2022

New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, New Hampshire 03301

Re: Docket No. DRM 21-142  
Community Power Coalition of New Hampshire  
Rulemaking in re RSA 53-E Community Power Aggregation

To the Commission:

Please treat this letter as the comments of the Office of the Consumer Advocate (“OCA”) in support of the initial rulemaking proposal approved in the above-referenced docket on January 10, 2022. As you know, the OCA represents the interests of the state’s residential utility customers, including members of the New Hampshire Electric Cooperative.

The OCA urges the Commission to approve its initial proposal expeditiously. We were honored to be among the petitioners that triggered this proceeding via the petition filed on December 1, 2021 that included what the Commission ultimately adopted as its initial proposal.

As the Commission is aware, the agency has received and then rejected without prejudice several proposed municipal aggregation plans. *See* Order No. 26,563 (Jan. 7, 2022) in Docket No. DE 21-136; (Town of Hanover); Order No. 26,571 (Feb. 8, 2022) in Docket No. DE 21-143 (City of Lebanon); and Order No. 26,572 (Jan. 26, 2022) in Docket N. DE 21-141 (Town of Harrisville). Although these determinations reflected an understandable interest in not proceeding with aggregation initiatives prior to the adoption of rules, it is clear that New Hampshire municipalities – including but not limited to those in the Community Power Coalition of New Hampshire – are ready and eager to move forward.

And well they should be eager. As I have now stated on numerous occasions, the financial benefits of electric industry restructuring – for which residential customers have paid dearly thanks to the stranded cost recovery authorized by the Restructuring Act (RSA 374-F) and related provisions – have largely if not entirely eluded the residential class. This is because small customers, acquired individually, are of interest mainly to those nonregulated retail electricity suppliers that operate in the benthic stratum of the energy marketplace.

There is, of course, no *guarantee* that residential customers participating in municipal aggregation on an opt-out basis will fare any better. But there is every prospect that they will.

As data in support of this spirit of optimism, and consistent with my belief that history is always the key insight in any public policy discussion, I recommend an article recently published in the journal *Energy Research and Social Science* and written by Professor David Hsu of the Department of Urban Studies and Planning at the Massachusetts Institute of Technology.<sup>1</sup> Professor Hsu describes the extraordinary history of the Cape Light Compact as the pioneer effort when it comes to post-restructuring municipal aggregation. Notably for present purposes, Hsu also focuses on California, where municipal aggregation programs are now available to 27 percent of the state’s population. “The larger and long-running CCAs have established themselves as investment-grade counter-parties for long-term contracts to build new clean energy resources,” Professor Hsu reports at page 8 of his article.

In the wake of the recent public comment hearing in this proceeding, and as the result of various informal conversations, it is the understanding of the OCA that utilities have concerns about the cost and complexity of modifications to billing and other back-office systems that will be required to accommodate community power aggregation in compliance with the initially proposed rules. These concerns are legitimate.

But, as the Commission ponders those concerns, it should bear in mind that when the General Court embraced industry restructuring, initially in 1996 and via amendments thereafter, the Legislature envisioned a situation in which few customers would in the long run be reliant on their incumbent utility for default energy service. This is implicit in the statutory definition of “default service” as electric supply “available to retail customers who are otherwise without an electricity supplier . . . or as an alternative . . . municipal or county aggregators under RSA 53-E.” RSA 374-F:2, I-a; *see also* RSA 374-F:3, V(c) (describing default service as “a safety net” and explicitly authorizing the Commission to “implement measures to discourage misuse, *or long-term use*, of default service”) (emphasis added). The rules applicable to community power aggregation, therefore, should not use utility-incurred costs as an excuse to retard the development of such aggregation; the resulting recoverable costs should be treated as incremental to the hundreds of millions of dollars already paid by consumers via stranded cost charges. This is particularly true given the longstanding habit that investor-owned utilities have of exaggerating the cost of changing their automated systems and the feasibility of such improvements.

As an early adopter of both electric industry restructuring and municipal aggregation, New Hampshire has long been perceived as a national leader when it comes to moving beyond what was once a natural monopoly toward a policy of “harnessing the power of competitive markets.” RSA 374-F:1, I (also characterizing “[i]ncreased customer choice” as a “key element[.]” of restructuring). To the extent our state has lagged behind other restructured jurisdictions it is the fault of the regulated rather than that of the regulators or the lawmakers. Twenty-six years after the initial policy determinations, it is obvious that community power aggregation is critical if we are to secure the benefits of restructuring to residential customers.

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<sup>1</sup> *See* David Hsu, “Straight out of Cape Cod: The origin of community choice aggregation and its spread to other states,” [Energy Research & Social Science 86 \(2022\) 102393](#).

In other words, as Professor Hsu observed at the conclusion of his article, community power aggregation

has fulfilled its original intention of providing an alternative path to build local knowledge, expertise, and capacity in the energy system while avoiding direct confrontations with utilities over municipalization. Features such as local democratic control of energy, the desire for cleaner sources of energy, combined with organizing at the municipal level, have all proven to be effective and are likely to continue to be so in the future. How CCAs mature, function, and compete within the larger energy system remains to be seen.

Hsu, *supra*, at 8. Via this rulemaking, the Commission should do its utmost to assure that community power aggregation matures, functions, and competes successfully.

Thank you for the opportunity to provide these comments. Please do not hesitate to contact me if there are any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Donald M. Kreis', written in a cursive style.

Donald M. Kreis  
Consumer Advocate

cc: Service List