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Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 S. Fruit St, Suite 10  
Concord, NH 03301

## DRM 21-142: CHAPTER PUC 2200 MUNICIPAL AND COUNTY AGGREGATION RULES

Dear Commissioners,

We are writing to provide recommendations to the proposed aggregation rules which we believe are critical to an efficiently operating program. Axsess Energy Group was established in 2003 and has operated since then in assisting clients throughout New England to navigate the complexities of deregulated markets. Additionally, Axsess personnel have experience in regulated and unregulated markets going back to the late 1980s and have been involved since the beginning of retail open access and deregulation.

Our comments focus specifically on the concept of “opt-out” vs. “opt-in” programs. We believe the “opt-in” methodology should be the only approach used for all customer classes, but at a minimum for non-residential accounts.

### Puc 2204.05 Notification of CPA Service Rates and Customer Enrollment:

As proposed, this rule allows the CPA to use either an “opt-out” or “opt-in” process for customers to express their participation desire in the community aggregation plan. We believe it is important to require the customer to pro-actively provide their unequivocal interest in participating in the community aggregation plan. Our opinion is based on 3 simple points: i) participation should be based on a pro-active decision by each customer, ii) the “opt-out” approach can cause customer confusion, increase the chance that accounts are placed under contracts that the customer does not desire and increase the chance that erroneous customer enrollments and de-enrollments occur which can have very significant economic impacts on customer accounts, iii) program success should not depend on a non-response from the customer.

At Axsess’ core is its strong belief in open access markets and choice for customers. The concept of providing choice, customization and optionality are cornerstones of our mission. We spend every day evaluating markets and assisting energy users in managing their requirements. However, the concept of a non-response, inherent in the opt-out process, being used as affirmation of interest and consent seems counterintuitive. In fact, we’re not sure it exists in any other market. The rationale for an opt-out approach has been that it provides more efficiency to the sign-up and enrollment process. We don’t believe that is a strong enough justification and with available technology does not even provide the assumed efficiencies. As with all other purchasing decisions, it is our opinion that each customer be required to pro-actively choose to participate. The requirement to proactively participate better aligns the customer’s interests and provides better evidence that the customer has consciously made the choice.

In addition to the benefits of pro-active participation, the requirement to opt-in also reduces the chance that a customer ends up in a contract they have no interest in and reduces the chances for erroneous enrollments, drops, etc. We have experienced situations where customers have signed 3<sup>rd</sup> party supply agreements and then have been switched to a municipal aggregation program serving the town where the customer's facility is located. Details of agreements between customers and 3<sup>rd</sup> party suppliers are private and unknown to the utilities and CPA. This fact opens up the potential for erroneous enrollments. We understand the programs attempt to safeguard against this, but it is inevitable that erroneous switches happen and these can be costly. Inadvertent "slamming" can, and does, happen and often may be caused by the lag of the most current information between utility and supplier. So, as an example, a supplier (or aggregator) may receive from the utility a list of accounts on default service, however, by the time an enrollment is to be submitted the status of the account's supplier service may have changed. The utility has no transparency into what the owner of the account wants or what the agreements they may have signed, they simply know they have received a request to enroll the account. So the probability for a slamming type enrollment to happen, albeit inadvertent, is elevated. As energy prices go higher the potential exposure to a customer, especially non-residential, can be very high. It seems quite reasonable that to minimize these problems that a customer must proactively participate. This approach brings the customer into the process and is simply a much more logical way to administer the program.

An opt-in process, especially for the commercial customers, alleviates the issue of a customer switching from default service to a 3<sup>rd</sup> party supplier in the window of time that the utility provides the CPA with a "current" list of customers on default service and the CPA's enrollment of the customer. We have witnessed many instances where a commercial customer is monitoring for a market opportunity to buy or has contracted with a 3<sup>rd</sup> party supplier for a start date in the future only to have to unwind the CPA's enrollment because the best information the CPA had was that the customer was on default service. In these instances, the customer has to be acutely attentive to avoid possible early termination fees levied by the 3<sup>rd</sup> party supplier for the billing cycles unwittingly spent with the CPA.

Finally, the success of the program should not rely on a non-response to a "Notification" mailing to which many customers generally don't pay much attention. We all know the deluge of mass market mailings has, for many, created somewhat of a tone deafness that increases the chance of not seeing or understanding the program details and resulting in simply being enrolled by default. For commercial customers this is even more magnified since in addition to the general tone deafness to mass market mailings, notifications are sent to the customer's service address. It is increasingly common that there are no decision makers at the service address and the business owner or manager never sees the Notification and miss the opportunity to opt-out. This also can contribute to erroneous enrollments happening.

An opt-in process may require slightly more up-front effort by the CPA, its consultants, lawyers and potential suppliers however, we contend that the overall program management effort is less and potentially damaging errors are minimized. If the motivation is to provide customers with more choice and a say in that choice, than it may take several initial outreach efforts to inform the customers of their options and provide evidence that participating in the CPA may align with the customer's interests. If

aligned, the customer should be more than happy to opt-in. This up-front effort will pay dividends downstream with less problems and happier, better-informed customers.

## Puc 2205.04 County CPAs That Contain Municipalities with Adopted or Planned CPAs

Rule 2205.04 allows for aggregation programs to be offered at the county level, as well as at the municipal level. We believe the ability to have overlapping county and municipal programs may add further confusion. However in the spirit of choice and optionality, having both may provide more value to a wider group of customers. In order to best manage such overlapping programs it seems intuitive to utilize an opt-in approach to greatly decrease the confusion that may arise. And in fact, this particular proposed rule could potentially be simplified if a pro-active customer choice is required.

## Puc 2205.05 New Utility Service Customers

Contrary to the proposed process in PUC 2205.05, and consistent with reasoning provided above a new utility service customer should be provided notice to “opt-in” to a CPA’s program, not opt-out, irrespective of the final approval of Puc 2204.05.

Although public participation is encouraged in proceedings that may affect them, the fact is only on rare occasion do end-use customers participate. And when the public does participate, nuances such as opt-in vs. opt-out may not be fully comprehended. We strongly believe if customers were given the choice, with proper details explained, of opt-in vs. opt-out, the overwhelming response would be use opt-in, reflecting the desire of most to have a voice in decisions that impact them directly. With or without public participation in crafting the rules of a community aggregation plan, it’s incumbent upon those who oversee and protect the consumer to codify rules that are favorable for the consumer.

We strongly encourage the PUC to require all aggregation programs to be “opt-in” in order to allow the customer to pro-actively choose and participate. This approach is in the best interest of the customer and ultimately the success of the program.

Respectfully,



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Axsess Energy Group