COMMUNITY POWER COALITION OF NEW HAMPSHIRE
For communities, by communities.

c/o Sustainability Director
Town of Hanover,
41 S Main Street
Hanover, NH 03755

August 15, 2022

Daniel C Goldner, Chairman
New Hampshire Public Utilities Commission
21 South Fruit Street
Concord, NH 03301-2429

Re: DRM 21-142, Community Power Coalition of New Hampshire Petition for Rulemaking to Implement RSA 53-E for Community Power Aggregations

Suggestion for Conditional Approval Request on Final Proposal for Puc 2200 Municipal and County Aggregation Rules

Dear Chair Goldner,

The Community Power Coalition of New Hampshire (CPCNH) respectfully invites the Commission to consider making, or including with, a conditional approval request to the 8/18/22 Joint Legislative Committee on Administrative Rules (JLCAR) the simple additional phrase ***"unless otherwise provided by law"*** to Puc 2204.05 (d), so it reads as follows:

> "(d) A municipality or county that approves a final community power aggregation plan shall provide a mailing to all retail electric customers taking distribution service in the CPA service area***, unless otherwise provided by law,*** and shall hold a public information meeting within 15 days of the mailing . . . "

CPCNH first proposed this in our initial comments filed on 3/14/22 in DRM 21-142 at pp. 3-4 in anticipation that SB 265 might become law, which it did as of 7/26/22 as Chapter 129:1, NH Laws of 2022 (so called "session law"). The relevant text is as follows:

> "If the plan is adopted or once adopted is revised to include an opt-out alternative default service, the municipality or county shall mail written notification to each retail electric customer within the municipality or county ***service area where such opt-out service is to be provided. If an electric aggregation program or energy service is offered only on an opt-in basis, mailing of written notification to each retail electric customer within the municipality or county service area shall not be required. Municipalities and counties shall post public notice of aggregation programs.***"

Adding the phrase, ***"unless otherwise provided by law"*** to the corresponding rule simply recognizes that the specific exception for mailing to each retail customer provided for in Chapter 129:1, NH Laws of 2022 controls over any

conflicting language in the rule. As I understand it that will be the case whether the rule recognizes it or not, it just would be good to recognize in the rule that there might be a controlling exception to the rule in state law, as is the case now.

There is a quirky issue here to note though. Chapter 129:1, NH Laws of 2022 states that it amends RSA 53-E:7, II, as did SB 265 as introduced. But that is a mistake that I only noticed last week. SB 265 should have been amending RSA 53-E:7, **III**, not subparagraph **II**. I was the original author of the text of the bill as introduced. The Word file that I provided to Sen. Kahn, which I believe he in turn provided to legislative services, correctly references subparagraph III.

The bill as introduced references subparagraph II instead of III, probably a typo. However, this error was apparently not noticed by anyone throughout the legislative and enrolled bill process. Obviously the more recent enactment of a law controls over older language that is contradictory if the law, for instance amends the 2nd subparagraph of RSA 53-E:7 to be similar to, but with new text, as the 3rd subparagraph, however there is no indication of legislative intent to repeal the existing language in RSA 53-E:7, II, at least as it existed least prior to 7/26/22. So whether Chapter 129:1, NH Laws of 2022 amends by adding to or replacing RSA 53-E:7, II, or whether it is clear that it was actually intended to amend existing text that is in RSA 53-E:7, III and not repeal and replace subparagraph II, there is a minor conflict with proposed Puc 2204.05(d) which could be resolved within a conditional approval request that incorporates the words “unless otherwise provided by law,” which would seem to be true whether it is stated in the rule or not.

With regard to OLS Staff Attorney Reeve’s annotations to the rule on p. 13 suggesting the need for more detailed criteria as to what constitutes a determination that a proposal in an adjudicated proceeding is "for the public good" and "just and reasonable," the Coalition wholeheartedly concurs with the remarks the Consumer Advocate Don Kreis in his letter to JLCAR on 8/12/22, which I have attached hereto.

Of course, all the minor editorial and clarification issues noted could also be addressed in a condition approval request. We will be urging JLCAR to promptly approve the PUC's final proposal, with or without a conditional approval request.

Pursuant to current Commission policy, this filing is being made electronically only, but is copied to the service list and OLS Administrative Rules staff.

Yours truly,

Clifton Below

Chair, CPCNH, (603) 448-5899, Clifton.Below@CPCNH.org

STATE OF NEW HAMPSHIRE

CONSUMER ADVOCATE
Donald M. Kreis

TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-1172

OFFICE OF THE CONSUMER ADVOCATE
21 S. Fruit St., Suite 18
Concord, N.H. 03301-2429

Website:
www.oca.nh.gov

August 12, 2022

Senator John Reagan
Chairman
Joint Legislative Committee on Administrative Rules
The State House
105 State Street
Concord, New Hampshire 03301 (VIA E-MAIL)

Re: JLCAR Meeting of August 18, 2022
Item No. 2022-14
Proposed Municipal and County Aggregation Rules of the Public Utilities Commission (Puc 2200)

Dear Chairman Reagan:

I am writing to you, and to your honorable colleagues of the Joint Legislative Committee on Administrative Rules ("JLCAR"), in my capacity as the state official who is tasked by statute (RSA 365:28) with advancing the interests of New Hampshire's residential utility customers before the Public Utilities Commission ("PUC" or "Commission") and elsewhere. I apologize for being unable to appear at your August 18 meeting personally to testify; regrettably, there is an important PUC hearing that I cannot miss.

The purpose of my letter is to urge the JLCAR on behalf of the state's residential electric utility customers, to grant swift approval to the proposed rules of the PUC concerning municipal aggregation as authorized pursuant to RSA 53-E. This is a critical time for electric customers across the Granite State and, therefore, **time is of the essence with respect to this particular set of rules**.

Eversource and Liberty both increased the price of their Default Energy Service to more than 22 cents per kilowatt-hour effective on August 1. The comparable rates for Unitil and the New Hampshire Electric Cooperative are somewhat lower, but still well in excess of electricity costs to which Granite Staters are typically accustomed. We estimate that **a typical residential customer of Eversource or Liberty is about to experience a 60 percent increase in their monthly electricity bill**.

No customer is obliged to take Default Energy Service from their utility; thanks to the Electric Industry Restructuring Act, first adopted in 1996, everyone is free to choose a non-regulated competitive energy supplier. This retail choice opportunity has worked out well for commercial and industrial customers over the years; most are sufficiently big to be desirable to competitive suppliers.

That has not been the case with residential electric customers, whose individual usage is insufficient to attract the serious interest of companies offering alternative to Default Energy Service. In other words, for lack of buying power, residential customers cannot access the kind of electricity "deals" that are available to big electric users. This is the case even though **our state's residential customers have paid dearly for the privilege of retail choice – in the form of hundreds of millions of dollars in stranded cost payments** to the utilities to make them whole for having been forced by the Restructuring Act to sell of their generation portfolios.

In my judgment, **Community Power Aggregation offers the first real hope** we have seen since 1996 of changing that situation. Essentially, the Community Power Aggregation model allows New Hampshire's cities and towns to pool the electricity buying power of their entire communities (or nearly so) in quest of cheaper and more flexible electricity service.

Community Power Aggregation has been authorized since the initial enactment of the Restructuring Act in 1996, but a change signed into law by Governor Sununu three years ago paves the way for these programs to be viable at last. The change was that municipalities may now offer Community Power Aggregation on an opt-out rather than an opt-in basis. In other words, although no customer can be required to participate in a Community Power Aggregation program, such a program can be designed so that customers must affirmatively indicate their wish to opt out.

Municipalities around New Hampshire are chomping at the bit to give Community Power Aggregation a go. I am particularly enthusiastic about the Community Power Coalition of New Hampshire, a consortium of municipalities that plan to buy wholesale electricity together, thus making their market 'clout' even more formidable. **But, to date, the PUC has rebuffed every Community Power Aggregation plan it has received**, without prejudice, pending the adoption of the proposed Puc 2200 rules that are before you for approval on August 18.

These rules have been three long years in the making, the product of a laborious stakeholder engagement process. They could not come before you at a more urgent and fortuitous juncture, because the prospect of Community Power Aggregation offers **a lifeline to people as they suffer with bills from electric utilities** that will pose a real affordability challenge to thousands of Granite Staters.

I have reviewed the annotations of the proposed rules transmitted to you by the Administrative Rules Division of the Office of Legislative Services. It appears that most of the concerns are of a minor editorial nature that can be easily addressed and quickly accepted by the PUC. The only possible exception concerns proposed rule Puc 2205.14 (appearing at pages 12-13 of the annotated version of the Fixed Text dated July 27, 2022).

The Administrative Rules Division is concerned with the PUC's proposed use of the phrases **"just and reasonable"** and **"for the public good"** as standards for determining when a municipality through its aggregation program may perform its own meter readings (as opposed to relying on the utility to do so). According to the Administrative Rules Division, it is "unclear how the commission will determine that an agreement's terms and conditions are 'just and reasonable' and 'for the public good.'"

I respectfully request that the JLCAR forbear from using its authority to require the PUC to promulgate more specific approval criteria**. "Just and reasonable"** as well as **"for the public good"** are **familiar and well-worn legal terms of art in the field of public utilities** here in New Hampshire. *See* RSA 374:1 ("Every public utility shall furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable"); RSA 374:30, I (utility ownership changes must be "for the public good"); RSA 378:7 (prohibiting utility rates that are "unjust and unreasonable"). These standards are more than a century old, comport with similar language adopted in almost every jurisdiction (including the federal government), and carry with them a **vast body of reported PUC decisions and New Hampshire Supreme Court opinions** illuminating the meaning of the phrases. In my somewhat learned opinion, the General Court adopted these phrases, and have left them undisturbed for so long, out of a sense that utility regulators must bring expertise to bear on complicated matters such that a fairly high degree of legislative and judicial deference is appropriate.

In these circumstances, it is understandable that **no stakeholder – particularly no public utility – expressed any concern** with these two phrases as the proposed rules were under consideration by the PUC. Presumably they take comfort, as you should as well, in the existence of five specific types of meter-reading initiatives aggregation programs may adopt under paragraph (a) of the proposed rule. These five enumerated items operate, in effect, as specific standards for what should be expected to gain approval from the Commission.

I do not know why the Commission opted to include the phrases "just and reasonable" and "for the public good" in the provision governing meter reading by Community Power Aggregation programs. But I strongly suspect it is an acknowledgment that **electricity meters and their capabilities are evolving rapidly. That evolution is extremely favorable to customers** and I am therefore comfortable with the considerable degree of discretion to be lodged in the PUC with respect to this important aspect of Community Power Aggregation.

To those who might reasonably disagree with my analysis on behalf of the state's residential electric customers, I would respectfully request not letting the perfect become the enemy of the good. In this instance, as I have already noted, the "good" would be the expeditious **launch of Community Power Aggregation plans around the state at a time when rate relief for residential electric customers is sorely and desperately needed**. Delaying the adoption of these rules will make the coming winter longer and darker for too many people across our state.

Thank you for considering the views of the Consumer Advocate. I again apologize for my inability to testify personally before the JLCAR on such an important set of rules. Please do not hesitate to contact me (donald.m.kreis@oca.nh.gov or 603.271.1174) if I can be of assistance to any member of the JLCAR on this critical proposal from the Public Utilities Commission.

Sincerely,

Donald M. Kreis
Consumer Advocate

cc: Kim Reeve, Esq., Administrative Rules Division
Eric Wind, Esq., Public Utilities Commission