

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

DRM 16-853

RULEMAKING

**New Hampshire Code of Administrative Rules
Puc 2000 - Competitive Electric Power Suppliers and Aggregator Rules**

COMMENTS OF THE CITY OF LEBANON ON THE PROPOSED RULES

The City of Lebanon (“City”) hereby submits these Comments pursuant to the Order of Notice issued December 27, 2016 and supplemented on January 20, 2017, in the above referenced rulemaking. The City is concerned that a number of provisions in the proposed rules reach beyond or are contrary to legislative intent or are contrary to the public interest due to lack of clarity in implementation or are overly burdensome. With regard to Governor Sununu’s 1/5/17 guidance on pending rules for which the PUC has sought comment, the City believes that a number of the proposed regulations are not supported by a clear need (3a), that the costs of the regulation are likely to exceed the benefits (3b), and/or that they are not the least restrictive or intrusive to fulfill the needs addressed and would unduly burden the State’s citizens and businesses and would have an unreasonably adverse effect on the State’s competitive business environment (3d). Before addressing specific proposed regulations some context with regard to the City’s interests in the rules are in order.

As you may know the City is an active member in the grid modernization working group in IR 15-296 and in an intervenor in DE 16-576 concerning the development of alternative net metering tariffs. In the City’s direct testimony in DE 16-576, prepared by City Councilor Clifton Below the City has proposed a net metering pilot using real time pricing for energy rates.¹ As noted on lines 211-214 of that testimony “the Lebanon City Council voted unanimously on Oct. 5th to designate the Lebanon Energy Advisory Committee (upon LEAC’s recommendation) as Lebanon’s Electric Aggregation Committee pursuant to RSA 53-E:6, I to develop a plan for an aggregation program, subject to future approval by the Council.” RSA 53-E provides that municipalities and counties may act as aggregators for electric customers within their boundaries

¹ https://www.puc.nh.gov/Regulatory/Docketbk/2016/16-576/TESTIMONY/16-576_2016-10-24_LEBANON_DTESTIMONY_C_BELOW.PDF

who choose to participate in the aggregation. The statute spells out various authorized activities of a municipal aggregator, how an aggregation plan is to be developed and approved by the governing body, and how citizens are to be notified of the plan. The plan is to address, among other things: “(c) [r]ate setting and other costs to participants” and “(e) [t]he rights and responsibilities of program participants. (RSA 55-E:6.) RSA 55-E:4 concerning regulation states that “[a]n aggregator operating under the provisions of this chapter shall not be considered a utility engaging in the wholesale purchase and resale of electric power. Providing electric power or energy services to aggregated customers within a municipality or county shall not be considered a wholesale utility transaction.” The statute also makes clear that municipal aggregators can “provide electric power and energy services to its customers.”²

Elsewhere New Hampshire statutes make clear that municipalities, without becoming municipal utilities pursuant to RSA 38³, have the authority to acquire, develop, finance, own and operate certain “small scale power facilities.”⁴ RSA 374-E:2 states that “It is in the public interest and it is the policy of the state to encourage its municipalities to pursue their independent development of electric power and the financing of small scale power facilities for the production of electric power.” We further note that RSA 374-D:2 concerning “powers” of municipal owners or operators of small scale power facilities (including those where the municipal contracts with others for the operation thereof), provides that “[p]ower produced by such facilities may be transmitted and distributed by a municipality to any user of power or to any public utility, at such price and on such terms and conditions as may be agreed to by the governing board.”

The City is cognizant of the fact that some of the new proposed rules were developed pursuant to the recently enacted RSA 374-F:4-b “Ratepayer Protection” section of New Hampshire’s Electric Utility Restructuring act whose purpose⁵ starts out as stating (with emphasis added):

The most compelling reason to restructure the New Hampshire electric utility industry is to reduce costs for all consumers of electricity by harnessing the power of competitive markets. The overall public policy goal of restructuring is to develop a more efficient industry structure and regulatory framework that results in a more productive economy by reducing costs to consumers while maintaining safe and reliable electric service with minimum adverse impacts on the

² RSA 55-E:4, III: “An aggregator shall not be required to own any utility property or equipment to provide electric power and energy services to its customers.”

³ See RSA 38:32

⁴ See RSA 33:6-b, RSA 33-B:1, RSA 374-D:1, IV, and Chapter 374-E.

⁵ RSA 374-F:1, I

environment. Increased customer choice and the development of competitive markets for wholesale and retail electricity services are key elements in a restructured industry.

RSA 374-F:1, III goes on to provide certain policy principles that are intended to guide the Commission's regulation of a restructured electric utility industry, the second one of which concerning customer choice states that "[c]ustomers should be able to choose among options such . . . real time pricing, and generation sources," It is within the context of the statutory intent of all these statutes and the authorities granted to municipalities that the City comments on the proposed rules.

Our first concern is the definition of aggregator under proposed Puc 2002.02. The City realizes that while this definition comes from existing rules, it may not fully encompass municipal or county aggregation pursuant to RSA 53-E. While the City's municipal aggregation plan might involve working with a third party aggregator or competitive electric power supplier (CEPS), the various authorities granted by statute do not require such and certainly appear to allow a municipality to make direct retail provision of electric supply from sources owned or operated by, or under contract with, the municipality to members of the aggregation without necessarily involving a CEPS.⁶ This definition might be clearer if it specifically recognized this specific form of aggregator and how it might deviate from the provision that "an aggregator does not take ownership of the electricity" such as by adding "except a municipal aggregator may."

The language of proposed Puc 2002.08 defining CEPS, would be clearer and more complete if the last sentence was amended to read; "The term does not include any utility or any municipal or county corporation operating within its corporate limits or a municipal aggregation jointly operated by more than one municipality operating with the boundaries of the participating municipalities." This would recognize the fact that RSA 53-E expressly permits multi-town or county aggregations. (See RSA 53-E:3, II(b) and RSA 53-E:6, I.)

Proposed Puc 2003.05 (a) regarding registration of aggregators would be clearer if the words "such as a municipality acting on behalf of its citizens" instead said "including a municipality acting as an aggregator pursuant to RSA 53-E". In context the following provision of Puc 2003.05(b) appears to only require such aggregators to register and not otherwise be subject to

⁶ See also RSA 362-A:2-a, concerning direct retail sales by a limited producer of electrical energy, that provides a separate source of authority that could be used by a municipality to make direct retail sales from a generating source owned or operated by it.

the provision of the Puc 2000 rules. If this is correct and would clearly apply to a municipal aggregators pursuant to RSA 43-E as suggest be clarified, even they are also supplying or contracting for the supply of power, such as through direct participation in the wholesale market, then some of the City's concerns about the rules are ameliorated but others remain to the extent the City may contract with a CEPS for some or all services provided under a municipal aggregation plan.

Proposed Puc 2004.03(b)-(f) regarding variable price disclosures by suppliers would effectively make real time pricing impossible to offer, contrary to statute, and are unnecessary and overly burdensome to meet the requirement of RSA 374-F:4-b, IV that requires that the nature of variable rates be disclosed in a form approved by the commission. By their nature real time prices, linked to the wholesale market, are not know, and cannot be predicted with any precision, in advance of when they are incurred. Some elements of real time prices, such as some of the ancillary service charges, may not be known or may be subject to correction after the fact. A real time pricing offering, with no hedging so as to minimize costs, should be allowed to pass through any adjustments in wholesale prices made by ISO-NE, without time limits on disclosure. These and some of the following referenced proposed rules seem to be a solution in search of a problem, considering that variable price products have simply not been particularly available to small customers in New Hampshire, even though large C&I customers have ready access to them. Examples of the types of disclosures concerning real time or day ahead products being offered to residential consumers can be found at: <http://www.elevateenergy.org/home-savings/comed-rrtp/>, <https://hourlypricing.comed.com/>, and <https://www.powersmartpricing.org/>.

Proposed Puc 2004.03(i) is excessively burdensome and could be misleading. Part of the stated purpose of RSA 53-E is to allow small customers access to competitive options that larger customers may have. Requirements not called for by statute that impose significant additional to offer such products to small customers that are not required to serve large customers are an impediment to opening up these choices to small customers.

Proposed Puc 2004.03(j) and (k) also impose conditions of service/offering not imposed on large customers and thus serve to limit potential offerings, innovation, and choices to small customers contrary to statute. For example, large C&I customer today can enter into a contract for differences through a PPA and CEPS whereby they agree to buy the output of a renewable

generator at a fixed price for a period of time. Such contracts may be necessary to secure financing for development of the project. In a contract for differences there is variable price component. For example the output from a facility remote from the customer's premises may be credited at real time prices and the customer may be charged for their consumption at real time prices, with any difference between the fixed PPA rate and the real time credits and charges being made up (or credited) to the customer. This regulation would appear to prohibit such. It would also seems to preclude innovative community solar offerings whereby a customer actually owns PV panels at a remote site, such as is done by Green Mountain Community Solar, <http://gmsolar.us/>, and as is contemplated to be possible in Lebanon's proposed municipal aggregation RTP net metering pilot in DE 16-576, if there is any variable rate components, such as in a contract for differences.

The provisions of Puc 2004.06(a)(6) requiring all billing determinates, broken down by time of use, to be issued within 5 calendar days of usage data being received, may not be feasible for a real time pricing product as ISO-NE may not have generated final prices for all such determinates within such 5 days and thus the rule would be against the public interest.

Futhermore, showing all the determinates by hour, such as can be seen in ISO-NE's wholesale load cost reports⁷, for hourly RTP would generate about 720 lines of data per month, while RTP based on the 5 minute settlement interval would generate about 8,640 lines of data. Assuming 50 lines of data per pages, that would create about a 173 page bill. To the extent the rule may be applied to require that be provided in paper, if that is the small customer's preferred method of notification, would make such an offering cost prohibitive and completely impractical. The proposed rules should make it clear that such billing detail only be accessible to customers, such as through a web portal or possibly email by request. To the extent a paper bill is required it should only be required to summarize such data in a format than can fit on a page or two. If not, these proposed regulations would be excessive, unnecessary and contrary to statutory intent.

Finally the City would not that the prohibition in proposed Puc 2004.11(e) on door to door marketing seems to not be required by any law and is again a solution in search of a problem and overly burdensome on the development of competitive options in the retail electricity market.

⁷ Available at <https://www.iso-ne.com/isoexpress/web/reports/load-and-demand/-/tree/hourly-wholesale-load-cost-report>.