HB 315 might as well repeal the entire RSA 53-E chapter enabling community power aggregation as its details appear to be designed to make it impossible for any municipality or county to meet the new requirements of the law and ever achieve a successful start-up. Even if these poison pill problems were fixed HB 315 would drastically curtail municipal and county authority to help animate a retail market to offer customers more choices and innovative new services to save them money and help their communities accelerate the cost-effective integration of clean distributed energy resources by harnessing the power of competitive markets to benefit residential and commercial customers.

cb 1/24/2021

CHAPTER 53-E as it would be amended by 2021 HB 315

AGGREGATION OF ELECTRIC CUSTOMERS BY MUNICIPALITIES AND COUNTIES

53-E:1 Statement of Purpose. – The general court finds it to be in the public interest to allow municipalities and counties to aggregate retail electric customers, as necessary, to provide such customers access to competitive markets for supplies of electricity and related energy services. The general court finds that aggregation may provide small customers with similar opportunities to those available to larger customers in obtaining lower electric costs, reliable service, and secure energy supplies. The purpose of aggregation shall be to encourage voluntary, cost effective and innovative solutions to local needs with careful consideration of local conditions and opportunities.

Source. 1996, 192:2, eff. Aug. 2, 1996.

53-E:2 Definitions. –
In this chapter:
I. "Aggregation" means the grouping of retail electric customers to ~~provide,~~ broker~~,~~ or contract for ~~electric power supply and~~ energy services for such customers.
II. "Aggregator" means, unless the context indicates otherwise, a municipality or county that engages in aggregation of electric customers within its boundaries.
III. "Commission" means the public utilities commission.
IV. "Committee" means the electric aggregation committee established under RSA 53-E:6.
V. "County" means any county within the state.
V-a. "Energy services" means the provision of electric power supply solely or in combination with any or all of the services specified in RSA 53-E:3.
VI. "Municipality" means any city, town, unincorporated place, or village district within the state.

Source. 1996, 192:2, eff. Aug. 2, 1996. 2019, 316:1, eff. Oct. 1, 2019. [This applies to remaining sections unless otherwise noted. "2019, 316:1" refers to Chapter 316 NH Laws of 2019, SB 286]

53-E:3 Municipal and County Authorities. –
Any municipality or county may:
I. Aggregate the retail electric customers within its boundaries who do not opt out of or who consent to being included in an aggregation program.
II. (a) Enter into agreements ~~and provide~~ for energy services, specifically:
(1) The supply of electric power and capacity.
(2) Demand side management through utility or regional system operator administered management programs.
(3) Conservation through utility or regional system operator administered conservation and efficiency program.
(4) ~~Meter reading.~~
~~(5) Customer service.~~
~~(6) Other related services.~~

Commented [A1]: This deletion would require CPAs to contract out all services and preclude them from using their own generation sources, such as hydro owned by the City of Nashua, to supply their CPA, unless running it through a 3rd party contract, needlessly increasing costs.

Commented [A2]: This is to dramatically constrain what services CPAs can offer to the most basic of aggregation models, blocking the development of competition for a whole variety of services, even if provided by 3rd parties.

Commented [A3]: This is anti-market competition to an extreme. There is no good reason why demand side management (DSM), conservation, and energy efficiency services should be limited to utility monopolies and ISO-NE programs. Working with a broker, FEL, the City of Lebanon is saving tens of thousands of dollars by reducing the "capacity tag" and charges for our two largest loads, WTP and WWTP. This is not part of a utility or ISO-NE program. CPAs would be precluded from even contracting with a broker for such services, much less "providing" them.

Commented [A4]: Elimination of this 1996 language authorizing meter reading is designed to preclude CPAs from being able to access any customer meter data, regardless of who owns the meter or its purpose, even though 3rd parties routinely provide meter reading services now in a competitive market. A CPA wanting to provide independent monitoring services for renewable energy credit (REC) production could not do so, even by contract through 3rd parties, nor for customers participating in ISO-NE demand response programs that require metering beyond what the utilities offer, as competitive suppliers can and do now provide. This shuts down valuable customer choice options.
In proposed CPA rules regarding meters owned or used by the electric distribution utility this would only be realized by mutual agreement with the utility or by order of the Commission based on a finding that it is for the public good.

Commented [A5]: This deletion would preclude a CPA from even contracting for any customer service from their broker or supplier, much less provide any themselves. Apparently Eversource believes they should have a monopoly on all customer service, even related to electricity supply, which customer service they would charge CPAs for at monopoly rates. The electric distribution utility function is supposed to be limited to distribution functions, not generation supply, except as a provider of last resort (their default service).

Commented [A6]: This wipes out the possibly of doing a whole bunch of innovations and value added services, such as improving customer power factors to reduce costs and improve power quality, assisting customers with battery storage solutions or access to community solar, etc. etc.

CHAPTER 53-E as it would be amended by 2021 HB 315

~~(7)~~ The operation of energy efficiency and clean energy districts adopted by a municipality pursuant to RSA 53-F and as approved by the municipality's governing body.

(b) Such agreements may be entered into and such services may be provided by a single municipality or county, or by a group of such entities operating jointly pursuant to RSA 53-A.

53-E:3-a Municipal Aggregators Authorized. – Municipal aggregators of electricity load under this chapter, and municipalities operating municipal electric utilities under RSA 38, are expressly authorized to aggregate ~~other~~energy services as described in RSA 53-E:3~~commonly and regularly billed to customers~~. Municipalities may operate approved aggregation programs as self-supporting enterprise funds including the use of revenue bonds pursuant to RSA 33-B and RSA 374-D and loans from other municipal enterprise funds as may be approved by the governing body and the legislative body of the municipality. Any such loans from other municipal enterprise funds shall be used for purposes that have a clear nexus to the primary purposes of such other funds, such as generation, storage, or sale of power generated from sites, facilities, or resources that might otherwise be operated or produced by the other enterprise fund. Nothing in this chapter shall be deemed to limit the capacity of customers to select any service or combination of services offered by such municipal aggregators or to limit the municipality from combining billing for ~~any or all utility~~ energy services with other municipal services.

53-E:3-b Use of "Community Power" as a Name Reserved. – The use of the term "Community Power" following the name of a municipality or county shall be reserved for the exclusive use by such entity as a name for proposed or approved municipal or county aggregations. Aggregations operated jointly by a group of such entities pursuant to RSA 53-A may adopt an appropriate identifying name in conjunction with the term "Community Power" as a name.

Source. 2019, 316:3, eff. Oct. 1, 2019.

53-E:4 Regulation. –

I. An aggregator operating under this chapter shall not be considered a utility engaging in the wholesale purchase and resale of electric power and shall not be considered a municipal utility under RSA 38. ~~Providing electric power or energy services to aggregated customers within a municipality or county shall not be considered a wholesale utility transaction. However, a municipal or county aggregation may elect to participate in the ISO New England wholesale energy market as a load serving entity for the purpose of procuring or selling electrical energy or capacity on behalf of its participating retail electric customers, including itself.~~

II. The provision of aggregated electric power and energy services under this chapter shall be regulated by this chapter and any other applicable laws governing aggregated electric power and energy services in competitive electric markets.

III. Transmission and distribution services shall remain with the transmission and distribution utilities, who shall be paid for such services according to rate schedules approved by the applicable regulatory authority, which may include optional time varying rates for transmission and distribution services that may be offered by distribution utilities on a pilot or regular basis. An aggregator shall not be required to own any utility property or equipment to provide electric power and energy services to its customers.

IV. ~~For the purpose of obtaining interval meter data for load settlement, the provision of energy services, and near real-time customer access to such data, a municipal and county aggregator~~

Commented [A7]: This language and the language at the end of this paragraph has been in statute since 1996. This change is designed to block CPAs from even proposing to provide consolidated billing services as an alternative to the investor-owned utility monopoly. Texas, for example, opened consolidated billing to competition. Current language and CPA proposed rules only leaves the door open for CPAs to someday propose to do such in a litigated case at the PUC where the CPA would need to prove that it is for the public good (beneficial) to do so and it is fair to utility shareholders or other ratepayers.

Commented [A8]: See above.

Commented [A9]: This probably doesn't matter as other provisions in law and with ISO-NE cover this issue now. This language dates back to 1996 before other PUC & FERC rulings and other statutes addressed this.

Commented [A10]: This change, however, is very unreasonable. It precludes CPAs from being "load serving entities" (LSEs) and having a voice at the regional level. The Town of Hanover is already an LSE for its own accounts and is saving big $$ by doing so. Scores of municipal electric departments in New England are LSEs for supplying energy, much like CPAs should be able to do. They are quite successful at it and usually have lower and more stable rates that IOUs. There is no good reason CPAs should not also have this option, even if most choose to work with a broker and 3rd party supplier that is serves as their LSE.

Commented [A11]: Eversource has resisting providing customers with access to interval metering for two decades, even though many value-added (cost-saving) rates could be provided with such, such as time-varying rates, or the ability to reduce costly "capacity tags." Current language only makes this a possibility by mutual agreement with the utility or by proving to the PUC that it is for the public good in a litigated case. Metering in not a natural monopoly as shown by Texas and even in NH where customers can provide their own meters, including interval meters, for Renewable Energy Credit production (RECs) that the utilities purchase.

~~may contribute to the cost of electric utility provided meter upgrades, jointly own revenue grade meters with an electric utility, or provide its own revenue grade electric meter, which would be in addition to a utility provided meter, subject to the commission finding in the public good and approval of the terms and conditions for such arrangements, including sharing or transfer of meter data from and to the electric distribution utility.~~

~~V. Municipal or county aggregations that supply power shall be treated as competitive electricity suppliers for the purpose of access to the electric distribution utility's electronic data interface and for ceasing operations.~~

~~VI. Municipal or county aggregations~~Aggregators shall be subject to RSA 363:38 as service providers and individual customer data shall be treated as confidential private information and shall not be subject to public disclosure under RSA 91-A. ~~An approved aggregation may use individual customer data to comply with the provisions of RSA 53-E:7, II and for research and development of potential new energy services to offer to customer participants.~~

53-E:5 Financial Responsibility. – Retail electric customers who choose not to participate in an aggregation program adopted under RSA 53-E:7 shall not be responsible for, and no entity shall require them to pay, any costs associated with such program, through taxes or otherwise except for electric power supply or energy services consumed directly by the municipality or county, ~~or incidental costs, which may include costs necessary to comply with the provisions of this chapter up to the time that the aggregation starts to produce revenue from participating customers~~.

53-E:6 Electric Aggregation Plan. –

I. The governing body of a municipality or county may form an electric aggregation committee to develop a plan for an aggregation program for its citizens. A municipality or county may join other municipalities or counties in developing such plans.

II. The plan shall provide universal access, reliability, and equitable treatment of all classes of customers subject to any differences arising from varying opportunities, tariffs, and arrangements between different electric distribution utilities in their respective franchise territories, and shall meet, at a minimum, the basic environmental and service standards established by the commission and other applicable agencies and laws concerning aggregated service.

III. The plan shall detail:

(a) The organizational structure of the program.

(b) Operation and funding.

(c) Rate setting and other costs to participants, including whether energy supply services are offered on an opt-in basis or on an opt-out basis as an alternative default service.

(d) The methods for entering and terminating agreements with other entities.

(e) The rights and responsibilities of program participants.

(f) ~~How net metered electricity exported to the distribution grid by program participants, including for group net metering, will be compensated and accounted for.~~

~~(g) How the program will ensure participants who are enrolled in the Electric Assistance Program administered by the commission will receive their discount.~~

~~(h)~~ Termination of the program.

Commented [A12]: This is to ensure utility monopoly on customer meter data and force CPAs to do everything through brokers and competitive electricity suppliers. However, brokers usually do not even have access to this data, so CPAs would be precluded from getting needed data for load forecasting to put their load out to bid and get the most competitive rates. Instead they may have to lock in with a single competitive supplier before they know what they are getting into.

Commented [A13]: This not only denies the possibility of innovation in providing customers with valuable new services and options but seems designed to make it impossible for CPAs to comply with the law, in effect repealing the whole chapter (RSA 53-E) as will be explained below. Customer names and addresses are required to do the required mailing to all customers. Customer account numbers are required to enroll customers. CPAs could be denied access to all those with this change in the law.

Commented [A14]: This would require communities to contract out ALL services and costs incurred before start-up. A town could not even print paper copies of a proposed aggregation plan to provide to voters who are considering whether to approve it, much less pay for a legal review of any proposed contracts to provide such services. It even raises a question as to whether any paid staff time could even be involved in considering whether to even work on developing an aggregation plan, much less have any legal review of proposed contracts with a broker or supplier before the program starts. So much for local control.

Commented [A15]: This is something proposed CPAs have to plan for and take in to account. Apparently Eversource now wants a monopoly on providing net metering, even though RSA 362-A:9, II regarding net metering provides that: "municipal or county aggregators under RSA 53-E may determine the terms, conditions, and prices under which they agree to provide generation supply to and credit, as an offset to supply, or purchase the generation output exported to the distribution grid from eligible customer-generators. The commission may require appropriate disclosure of such terms, conditions, and prices or credits." But apparently Eversource doesn't think aggregation plans should have to plan for this.

Commented [A16]: This is a low-income consumer protection provision specifically requested by the PUC in 2019. Currently the EAP discount would only be available if the are billed for their CPA charges through electric utility, so an EAP should consider that. Someday it may be possible to provide this discount with separate billing, but that is not the case today. Why Eversource wants this repealed is a complete mystery. Maybe they want a CPA to launch with separate billing and piss off low-income customers that lose their discount to discredit CPAs and reinforce their monopoly.

IV. The committee shall approve a final plan which the committee determines is in the best, long-term interest of the municipality or county and the ratepayers.
V. The committee shall solicit public input in the planning process and shall hold public hearings.

53-E:7 Aggregation Program. –

I. The governing body of a municipality or county may submit to its legislative body for adoption a final plan for an aggregation program or any revision to include an opt-out default service program, to be approved by a majority of those present and voting.

II. Once adopted, or upon revision following adoption, the plan shall be submitted to the commission for review and the commission shall determine whether the plan conforms to the requirements of this chapter and whether the plan imposes undue risk on non-participants.

III. 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 based upon the addresses in public records of the municipality or county for such customers. ~~To enable such mailed notification and notwithstanding RSA 363:38, after an aggregation plan is duly approved the electric distribution utility or utilities serving an adopting municipality or county shall provide to such municipality or county a current list of the names and mailing addresses of all their electric customers taking distribution service within the municipality or county.~~ Notification shall include a description of the aggregation program, the implications to the municipality or county, and the rights and responsibilities that the participants will have under the program, and if provided on an opt-out basis, the fixed rate or charges that will apply. No retail electric customer shall be included in a program in which the customer does not know all of the rates or charges the customer may be subject to at least 30 days in advance of the customer's application and has the option, for a period of not less than 30 days from the date of the mailing, to opt out of being enrolled in such program, unless the customer affirmatively responds to the notification or requests in writing to be included in the program.

IV~~II~~. Within 15 days after notification of the plan has been sent to retail electric customers in the service area, a public information meeting to answer questions on the program shall be held.

~~I~~V. Services proposed to be offered by or through the aggregation shall be on an opt-in basis unless the approved aggregation plan explicitly creates an opt-out ~~alternative default energy~~ service program where the rate or price is known at least 30 days in advance of its application and, for a period of not less than 30 days from the date notification is mailed, the customer has the opportunity to opt out of being enrolled in such program, by return postcard, website, or such additional means as may be provided. Customers who are on default service provided by an electric distribution utility shall be automatically enrolled in an aggregation provided alternative default service if they do not elect to opt out. Customers opting out will ~~instead~~ remain on default service. Customers taking energy service from a competitive electricity supplier shall not be automatically enrolled in any aggregation program, but may voluntarily opt in. A ~~N~~new customer~~s~~ to the electric distribution utility after the notification mailing required by paragraph II~~I~~ shall initially be enrolled in utility provided default service unless the customer has relocated

Commented [A17]: This would be a new requirement for the PUC to review and approve electric aggregation plans adding to the PUC's already heavy workload. The phrase "whether the plan imposes undue risk on non-participants" would almost certainly trigger an adjudicated proceeding in which the electric utilities could intervene and oppose the plan, at ratepayer expense, while towns could not spend any taxpayer dollars to support their case, not even to print the document for filing, much less pay for a lawyer or staff, or even the travel expense of a volunteer to represent them before the PUC. Written testimony might be required, and the utility could serve time consuming discovery on the community. This PUC case could drag out for a year or more.

Any tweak in the plan required by the PUC would require the plan to return to the legislative body for approval, which for town meetings could delay final approval up to 2 years. In the informal rule development process Eversource argued that CPAs should only launch on the utility's default procurement timetable (during only August or February) and they would have to lock into the rate they would offer at launch before they even knew the new utility default service rate they would be competing with. This is set up for failure and backlash if rates are increased in an opt-out program. Proposed CPA rules would provide plenty of notice and milestones so the utility and default service bidders could take in account the "risk" of departing CPA load and adjust accordingly in a very liquid market.

This is contrary to the purpose statement of the chapter to enable CPAs to provide "small customers with similar opportunities to those available to larger customers in obtaining lower electric costs". Large customers are free to switch between competitive supply and default service at any time. They do so to take advantage of market opportunities. No other state has restrictions like those Eversource argued for in the informal rules discussion at the PUC.

This provision is also contrary to the Restructuring Policy Principle at RSA 374-F:3, X, calling for the PUC to "make regulation more efficient and to enable competitors to adapt to changes in the market in a timely manner. The market framework for competitive electric service should,move deliberately to replace traditional planning mechanisms with market driven choice as the means of supplying resource needs."

Commented [A18]: This is really over the top – a very potent and fatal poison pill that would make it impossible for any CPA to launch, and unlike any limitation in any other state. The CPA is required to mail each retail electric customer within their community notice before launching but can only do so with addresses within their own database. Municipalities and counties do not know the names of all the utility's customers, much less their mailing addresses (think residential and commercial tenants with their own accounts). Even the addresses for property tax bills (that counties don't have) would be inadequate because the person or entity on the electric account may be different from that on tax bills.

Commented [A19]: Again, Eversource wants to claim a monopoly on the provision of default energy service.

within a single utility's service area and is continuing service with a competitive electricity supplier. ~~given a choice of enrolling in utility provided default service or aggregation provided default service, where such exists~~. ~~New customers shall be informed of pricing for each when they apply for service. Such new customers may also enroll with a competitive electricity supplier.~~ On a recurring basis, but not more frequently than monthly, an aggregation may request, and the utility will provide, a list of customers within the aggregation's territory who are not enrolled with a competitive electricity supplier for the aggregation to use in identifying any new customers. New customers identified from such list ~~who do not make such a choice~~ shall be enrolled in the aggregation in the aggregation program, unless the customer opts-out of the aggregation ~~default service of any geographically appropriate approved aggregation, or, if none exists, the utility provided default service~~. Municipal aggregations shall take priority or precedence over any county aggregations and each such aggregation shall be responsible for assuring that customers are enrolled with the correct aggregation. Customers ~~automatically~~ enrolled in a municipal or county provided ~~default~~energy services shall be free to elect to return to utility provided default service or to transfer to a competitive electricity supplier with adequate notice in advance of the next regular meter reading by the distribution utility, in the same manner as if they were on utility provided default service or as approved by the commission.

VI. Once adopted, an aggregation plan and program may be amended and modified from time to time as provided by the governing body of the municipality or county and approved by the commission. In all cases the establishment of an opt-out default service program shall be approved as provided in paragraph I.

VII. The commission ~~may~~ shall adopt rules, under RSA 541-A, to implement this chapter, including but not limited to rules governing the relationship between municipal or county aggregators and distribution utilities, metering, notice of the commencement or termination of aggregation services and products, and the reestablishment of a municipal or county aggregation that has substantially ceased to provide services. Where the commission has adopted rules in conformity with this chapter, complaints to and proceedings before the commission shall not be subject to RSA 541-A:29 or RSA 541-A:29-a.

53-E:8 Other Aggregators. – Nothing in this chapter shall preclude private aggregators from operating in service areas served by municipal or county aggregators.

Source. 1996, 192:2, eff. Aug. 2, 1996.

53-E:9 Billing Arrangements. – Each electric distribution utility shall offer to bill customers on behalf of competitive electric power suppliers and to pay such suppliers in a timely manner the amounts due such suppliers from customers for generation services, less a percentage of such amounts that reflects uncollectible bills and overdue payments, as approved by the commission.

Commented [A20]: This part is generally okay, though it is only needed because the utilities don't want to change their systems to make new customer enrollment in an opt-out CPA automatic. They want to continue to enroll new customers in utility provided default service until the CPA initiates an opt-out transfer. Not ideal, but we can live with that to help utilities avoid the cost of changing their software.

Commented [A21]: This is okay.

Commented [A22]: This would require any amendment to an electric aggregation program to be approved by the Public Utilities Commission, unnecessarily adding to their work load, likely resulting in the opening of an adjudicated case that the utility can intervene in and drag out for many months, even for years, especially since any tweak required by the PUC would necessitate taking the plan back to the legislative body – the next town meeting for towns with such.

Commented [A23]: Generally something like this could actually be helpful as some provision along these lines is needed, usually known as a Purchase of Receivables (POR) program, but there is no requirement that CPAs be treated comparably to utility provided default service, so some work is needed on this language.