

# TITLE III

## TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

### Chapter 53-E

#### AGGREGATION OF ELECTRIC CUSTOMERS BY MUNICIPALITIES AND COUNTIES

##### Section 53-E:1

**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.

##### Section 53-E:2

###### **53-E:2 Definitions.** –

In this chapter:

- I. "Aggregation" means the grouping of retail electric customers to provide, broker, or contract for 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. 2021, 229:1, 2, eff. Oct. 25, 2021.

##### Section 53-E:3

###### **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.
  - (3) Conservation.
  - (4) Meter reading, with commission approval for meters owned or controlled by the electric distribution utilities

or used for load settlement.

(5) Customer service for aggregation provided services.

(6) Other related services.

(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.

**Source.** 1996, 192:2, eff. Aug. 2, 1996. 2019, 316:2, eff. Oct. 1, 2019. 2021, 229:3, eff. Oct. 25, 2021.

### **Section 53-E:3-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 energy services as described in RSA 53-E:3. 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 energy services with other municipal services.

**Source.** 1997, 298:20, eff. June 20, 1997. 2019, 316:2, eff. Oct. 1, 2019. 2021, 229:4, eff. Oct. 25, 2021.

### **Section 53-E:3-b**

**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.

### **Section 53-E:4**

#### **53-E:4 Regulation.** –

I. An aggregator operating under this chapter shall not be considered a public utility under RSA 362:2 and shall not be considered a municipal utility under RSA 38. 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 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. Such metering shall only be implemented subject to the commission finding it is in the public good, assuring that meters used for distribution tariff implementation remain under the control and majority ownership of the electric distribution utility, and otherwise approving 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 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.

**Source.** 1996, 192:2, eff. Aug. 2, 1996. 2019, 316:4, eff. Oct. 1, 2019. 2021, 229:5, 6, eff. Oct. 25, 2021.

## Section 53-E:5

**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, but shall not include any capitalized or operating costs of an aggregation program.

**Source.** 1996, 192:2, eff. Aug. 2, 1996. 2019, 316:4, eff. Oct. 1, 2019. 2021, 229:7, eff. Oct. 25, 2021.

## Section 53-E:6

### **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. A county plan may provide an aggregation program for all or a subset of municipalities within the county that request to participate by a majority vote of their respective governing bodies.

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.

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.

**Source.** 1996, 192:2, eff. Aug. 2, 1996. 2019, 316:4, eff. Oct. 1, 2019. 2021, 229:8, eff. Oct. 25, 2021.

## Section 53-E:7

### 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 aggregation program, to be approved by a majority of those present and voting.

II. Every electric aggregation plan and any revision of a plan to include an opt-out default service program shall be submitted to the commission, either before or after being submitted by the governing body to the legislative body for approval, to determine whether the plan conforms to the requirements of this chapter and applicable rules of the commission. The commission shall approve any plan submitted to it unless it finds that it does not meet the requirements of this chapter and other applicable rules and shall detail in writing addressed to the governing bodies of the municipalities or counties concerned, the specific respects in which the proposed plan substantially fails to meet the requirements of this chapter and applicable rules. Failure to disapprove a plan submitted hereunder within 60 days of its submission shall constitute approval thereof. A municipality or county may submit a plan that is revised to comply with applicable requirements at any time and start the review process over. Any plan submitted to the commission under this paragraph shall also be submitted on the same date to the office of the consumer advocate under RSA 363:28 and any electric distribution utility providing service within the jurisdiction of the municipality or county. The consumer advocate, utilities, and members of the public may file comments about such plans within the first 21 days of their submission. Commission review and approval of electric aggregation plans shall not require a contested case but shall allow time for submission and consideration of any such comments.

III. If the plan is adopted or once adopted is revised to include an opt-out service, the municipality or county shall mail written notification to each retail electric customer within the municipality or county service area. 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 electric customers taking distribution service within the municipality or county service area, and for such customers on utility provided default service, the account numbers and any other information necessary for successful enrollment in the aggregation. 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 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. 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.

V. Services proposed to be offered by or through the aggregation shall be on an opt-in basis unless the adopted 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 enrolled by the aggregator in an aggregation provided alternative default service if they do not elect to opt out. Customers opting out will instead remain on utility provided default service. Customers taking energy service from a competitive electricity supplier shall not be enrolled in any aggregation program, unless they voluntarily opt in.

VI. New customers to the electric distribution utility after the notification mailing required by paragraph III shall initially be enrolled in utility provided default service unless the customer has relocated within a single utility's service area and is continuing service with a competitive supplier or a municipal or county aggregation program. Upon request of an aggregator, but not more frequently than monthly and notwithstanding RSA 363:38, the utility shall make available to each operating municipal aggregation, or county aggregation where there is no municipal aggregation, the names, account numbers, mailing addresses, and any other information necessary for

successful enrollment in the aggregation of customers that are new to or then currently on electric distribution utility provided default service after they have provided the customer list for the initial customer mailing required by paragraph III and that are located within the aggregation service area. The aggregation shall periodically mail a written notification to such new customers that have not previously opted out of the aggregator's service and shall enroll them in the aggregation consistent with the opt-in or opt-out requirements of this paragraph and paragraph III.

VII. 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.

VIII. Customers enrolled in a municipal- or county-provided default service shall be free to elect to transfer 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. No such customer shall be required to pay any exit fee or charge for such transfer. Customers requesting transfer of supply service upon dates other than on the next available regular meter reading date may be charged an off-cycle meter reading and billing charge. Upon request of the customer the aggregator shall transfer the customer back to utility provided default service.

IX. 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. In all cases the establishment of an opt-out default service program shall be approved as provided in paragraphs I, II, and IV.

X. The commission shall adopt rules, under RSA 541-A, to implement this chapter and, to the extent authorities granted to municipalities and counties by this chapter materially affect the interests of electric distribution utilities and their customers, to reasonably balance such interests with those of municipalities and counties for the public good, which may also be done through adjudicative proceedings to the extent specified or not addressed in rules. Such rules shall include but not be limited to rules governing the relationship between municipal and county aggregators and distribution utilities, metering, billing, access to customer data for planning and operation of aggregations, 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.

**Source.** 1996, 192:2, eff. Aug. 2, 1996. 2019, 316:4, eff. Oct. 1, 2019. 2021, 229:9, eff. Oct. 25, 2021.

## Section 53-E:8

**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.

## Section 53-E:9

### **53-E:9 Billing Arrangements.** –

I. For purposes of this section the term "supplier" shall mean an aggregator functioning as a load serving entity under this chapter or a competitive electricity supplier serving an aggregation under this chapter. The term shall also include competitive electricity suppliers generally to the extent and for such customer rate classes as the commission finds, after notice and hearing, that it is for the public good. Such a determination shall be on a utility-specific basis, if proposed and assented to by the utility.

II. Each electric distribution utility shall propose to the commission for review and approval a program for the purchase of receivables of the supplier in which the utility shall pay in a timely manner the amounts due such suppliers from customers for electricity supply and related services less a discount percentage rate equal to the utility's actual uncollectible rate, adjusted to recover capitalized and operating costs specific to the implementation and operation of the purchase of receivables program, including working capital. Additionally, such discount rate adjustments shall include a pro rata share of the cost of administering collection efforts such that the utility's participation in the purchase of receivables program shall not require the utility or non-participating consumers to assume any costs arising from its use. Such pro rata costs must include, but not be

limited to, any increases in the utility's bad debt write-offs attributable to participants in the purchase of receivables program, as approved by the commission. However, the allocation of costs arising from different rate components and determination of the uncollectible rate shall be equitably allocated between such suppliers, utility provided default service, and other utility charges that are a part of consolidated billing by the utility as approved by the commission. The discount percentage rate shall be subject to periodic adjustment as approved by the commission.

**Source.** 2021, 229:10, eff. Oct. 25, 2021.