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DEPARTMENT OF ENERGY

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**Transmitted via Email Only**

February 29, 2024

Michael Crouse, Esq.  
Office of the Consumer Advocate  
21 S. Fruit S., Suite 18  
Concord, NH 03301

Re: CPT 2024-001, Complaint of the Consumer Advocate Concerning Town of Jaffrey  
Community Power Aggregation Plan

Dear Attorney Crouse:

The Department of Energy (“DOE” or “Department”) has reviewed and investigated the Complaint submitted by the Office of the Consumer Advocate (“OCA”) concerning the Town of Jaffrey’s Community Power Aggregation Plan (“CAP” or “Plan”) approved by the Town’s legislative body on March 18, 2023. The DOE initiated an expedited investigation due to exigent circumstances given that the Town of Jaffrey (“Town” or “Jaffrey”) is commencing services pursuant to the Plan on or after February 20, 2024. Concluding this investigation, the Department has determined that the Complaint is unfounded. The Department will not bring a proceeding before the Public Utilities Commission (“PUC” or “Commission”) on its own motion. *See* RSA 53-E:7, X.

On November 16, 2023, in Docket No. DE 23-022, Standard Power provided official notification, pursuant to Puc 2204.04, that commencement of services pursuant to the CAP would begin on or after February 20, 2024.<sup>1</sup> On February 13, 2024, the OCA filed identical complaints concerning Jaffrey’s Community Power Plan with both the DOE and the PUC. The DOE forwarded the OCA’s complaint to the Town on February 13, 2024 and requested a response by February 23, 2024. On February 14, 2024, the PUC issued a procedural order in Docket No. DE 23-022 regarding the Complaint filed with the PUC, finding that since the complaint “represent[s] an initial complaint, the Commission takes no further action.” *See* RSA 53-E:7, X. On February 22, 2024, the Town responded to the DOE, disputing the charges made by the OCA and declining to make any changes to its CAP. In its Response, the Town also refused to delay or suspend the commencement of services. *Id.* In particular, the Town asserted that the OCA’s allegations were “misleading and invalid” and stated that it would commence service as scheduled. On February 23, 2024, while the DOE’s and PUC’s Complaints were still

<sup>1</sup> Enrollment and commencement of services begins for each resident and business in the community aggregation plan on the first meter read date on or after February 20, 2024.

pending, the OCA filed with the Commission a Motion for Expedited Orders on RSA 53-E Complaints, requesting that Commission commence an adjudicative proceeding and, in the interim, enter an emergency order suspending Jaffrey's CAP.

Page ten of Jaffrey's CAP, approved by the Commission in Docket No. 23-022, states, "At minimum, no bid will be accepted at a price higher than the utility default rate at the time of program launch, but the Town may specify stricter criteria." The crux of the OCA's Complaint is that the Town violated this statement by commencing services at a basic rate of \$0.10968 per kWh for 20 months which is higher than the now-applicable Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") default energy service rate of \$0.08285 per kWh, which is in effect for the six-month time period February 1, 2024 through July 31, 2024. DE 23-043, Order No. 26,920 (Dec. 21, 2023). While the OCA argues that launch means commencement of services, the Town argues that launch is a "process, not a singular point in time, that begins when the [Energy Service Agreement] ESA is signed." Response at p. 1. According to the Town's Response, the launch of the CAP began October 4, 2023 when the ESA was executed. The Town further noted that the ESA provided a price of \$0.10968 per kWh for default service as compared to the Eversource default service rate of \$0.12582 per kWh on October 4, 2023.

In conducting its investigation and seeking to define "launch," the Department reviewed the filings in CPT 2024-001, Docket No. 23-022, and the CAP and all relevant rules and laws. Although the Department considered the Opt-Out Letters, Slide Show Presentation, and Flyers submitted by the Town and the OCA, the Department determined that these were unnecessary to define the term launch and do not alter the Plan itself.<sup>2</sup>

In determining whether the Town violated its CAP, the Department declines to accept the definition of launch advocated by the OCA. The Department first notes that launch is not used in RSA 53-E, is not defined in rules, and is not used in the PUC orders in Docket No. 23-022. Instead, it is only employed once in the heading of Part Puc 2204 of the Commission's Administrative Rules Chapter Puc 2200, Municipal and County Aggregation Rules. Part Puc 2204 governs a process beginning with the submission of aggregation plans to the Commission for review and approval through provision of customer data, use of the electronic data interchange, and notification of commencement of service, to customer return to default service upon opting out – all without specifying any single point in that process that is specifically and solely the launch. Given this, the OCA fails to explain their limited definition of launch within the context of Part Puc 2204.

Secondly, the OCA's conflation of launch with the Town's commencement of service is unjustified when read within the context of page 10 of the Town's CAP. The

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<sup>2</sup> The Department would encourage the Town to review its literature regarding its CAP carefully and correct any letters, flyers, or other online information that could be misleading or confusing.

CAP states “no bid will be accepted at a price higher than the utility default rate at the time of program launch.” The use of the word ‘bid’ here refers to the bids the Town received at the competitive bidding process for electricity rates, which occurred on or about October 4, 2023 when the ESA was executed. A competitive bidding process is a limited period of time, and the Town only had a short duration to accept or reject a bid. During this quick window, the Town selected a rate, that was less than the default service rate offered by Eversource at that time.<sup>3</sup> Further, during that limited time period the Town could not predict what Eversource’s default service rate would be for the six (6) month period beginning February 1, 2024. Therefore, interpreting launch to mean the enrollment of residents and businesses in the CAP and commencement of service is inconsistent with this CAP term because the bidding process, the launch, will have already ended when enrollment would commence.

The Department also notes that under Puc 2204.04(b), a community aggregation plan that will provide service during the first two (2) months of a utility’s default service period is required to provide notification of commencement of services ninety (90) days prior to the commencement of services. Given this definition, the term launch cannot mean only the narrow window of when enrollment in the CAP actually begins. Instead, launch must encompass the notification period envisioned by Puc 2204.04(b).

The DOE also rejects the OCA’s interpretation because, as highlighted by the Town, the OCA’s complaint makes no mention of Exhibit II of the CAP, which describes a customer notification and marketing process under the heading of “Program Launch.” It is true the CAP does not define the term “program launch” clearly, but despite this, Exhibit II clearly shows the Town’s view, as communicated to its customers, is that the launch is a process, which includes several steps.

The DOE accepts the Town’s view that launch of its community aggregation program is a process beginning with the ESA, and it finds that the Town is not in violation of its CAP. As the Town highlights in its Response to the OCA Complaint, the launch began on October 4, 2023, when the ESA, a contract, was signed with First Point Power, LLC, following a competitive bid process. The ESA set a rate of \$0.10958 per kWh for a twenty (20) month period, from March 2024 through November 2025. When the ESA was signed the Eversource default rate was \$0.12582 per kWh for the six-month period effective August 1, 2023 through January 31, 2024. Order No. 26,851 in Docket No. DE 23-043 (June 22, 2023). Given that First Point Power, LLC’s rate was lower than Eversource’s during the competitive bidding process, the DOE finds that the Town has adhered to its CAP where it stated, “At minimum, no bid will be accepted at a price higher than the utility default rate at the time of program launch, but the Town may specify stricter criteria.”<sup>4</sup>

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<sup>3</sup> It should also be noted that this rate was for a twenty (20) month period. At this time, neither party can foresee whether this twenty (20) month rate will in fact average out to be less than the Eversource’s cumulative default rate when compared to that same twenty (20) month period.

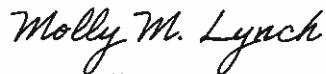
<sup>4</sup> The DOE has not reviewed the CAP extensively to ensure that it is in full compliance. The DOE is only analyzing whether the Town is in compliance with this statement: “At minimum, no bid will be accepted at

For all the reasons cited above, the DOE finds that the allegations raised in this Complaint are unsupported, and the Town's CAP and commencement of service does not violate any PUC order, any provisions of Puc 2200, or state statute. In addition, the Department declines to initiate a proceeding regarding this Complaint before the PUC.

The DOE has waived the filing of paper copies in this matter and this final decision is being sent electronically only.

If you are unsatisfied with the DOE's final disposition of this complaint, then pursuant to RSA 53-E:7, X you may petition the PUC to resolve the matter through an adjudicative proceeding.

Sincerely,



Molly M. Lynch  
Staff Attorney/Hearings Examiner

cc: David Shulock, General Counsel  
Rorie E. Patterson, Director of Administration  
Paul B. Dexter, Legal Director  
Amanda Noonan, Director of Consumer Services  
Jon R. Frederick, Town Manager

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