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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 2024-003, Complaint of the Consumer Advocate Concerning Town of Milford
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 Milford (“Town” or “Milford”) Community Power Aggregation Plan (“CAP” or “Plan”) approved by the Town’s legislative body on March 28, 2023.¹ The DOE initiated an expedited investigation due to exigent circumstances given that the Town of Milford 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 23-029, 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, 2024.² On February 13, 2024, the OCA filed identical complaints concerning Milford’s Community Power Plan with both the DOE and the PUC.³ 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

¹ According to the March 13, 2023 filing with the Public Utilities Commission, on February 27, 2023, the Town of Milford Community Power Plan was approved by the Milford Board of Selectman. Docket No. 23-029, tab 1.

² 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.

³ The OCA also filed complaints against the Towns of Jaffrey and New Boston. *See* Dockets DE No. 23-022 and DE No. 23-023 and CPT No. 2024-001 and CPT No. 2024-002.

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 closing, the Town asserted that the OCA’s complaint was “misleading by ignoring relevant information from the Community Power Plan and by taking information out of context and failing to account for the volatility in the marketplace.” On February 23, 2024, while the DOE’s and PUC’s Complaints were still 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 Milford’s CAP.

Page two of Milford’s Exhibit I of its CAP, approved by the Commission in Docket No. 23-029, states, “The program does not launch unless the program default is lower than the utility default rate.” 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 twenty (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, 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 the Plan must be read as a whole, and a single sentence should not be taken out of isolation. The Town further noted that it entered into an Energy Service Agreement (“ESA”) with First Point Power, LLC, on October 4, 2023, at a price of \$0.10968 per kWh for default service as compared to the Eversource default service rate of \$0.12582 per kWh, which was in effect for the six-month period ending January 31, 2024. “No information was available indicating what Eversource would set as its rate in December 2023.” Response at p. 1. It was only over two months later, after Milford signed the ESA, that Eversource announced its new default rate of \$0.08285 per kWh. *Id.*

In conducting its investigation and seeking to define “launch,” the Department reviewed the filings in CPT 2024-003, Docket No. 23-029, the CAP, and all relevant rules and laws. Although the Department considered the FAQ⁴ referenced by the OCA, this FAQ does not alter the plain text of the Plan. With this said, the Department encourages the Town to review this FAQ carefully and revise it considering the OCA’s concerns.

In determining whether the Town violated its CAP, the Department declines to accept the limited 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. 23-029. 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

⁴ <https://www.milford.nh.gov/community-power> at “Frequently Asked Questions.”

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. Further, 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 because at this point notification will have already been issued. Instead, launch must encompass the notification period envisioned by Puc 2204.04(b).

The DOE also rejects the OCA’s interpretation because the OCA’s complaint makes no mention of Exhibit II p. 1 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.

When the Town entered into the ESA with First Point Power, LLC, on October 4, 2023, it was offering a price of \$0.10968 per kWh for default service as compared to the Eversource default service rate of \$0.12582 per kWh. As highlighted in the Town’s Response, neither the Town nor the OCA could have predicted what Eversource’s default service rate would be for the six (6) month period beginning February 1, 2024. The Town also explained in its Response that after Eversource announced the proposed default rate effective February 1, 2024, it consulted and received guidance from its consulting team on how to proceed. The guidance received “was that the 20-month rate at \$.10968 per kWh is a competitive rate with Eversource because of the stability granted by its longer duration. Eversource cannot offer the same stability due to its rates changing every six months.”⁵ Response at p. 1.

The DOE finds that the OCA’s Complaint is unsupported and declines to adopt the OCA’s narrow definition of the term launch. The OCA provides no legal support for this narrow definition of launch. Instead, the DOE believes that launch refers to the process beginning when the ESA was signed, and subsequent notification is provided pursuant to Puc 2204.04(b). Therefore, the DOE finds that Milford is not violating its CAP where it states: “The program does not launch unless the program default is lower than the utility default rate.” Exhibit I at p. 2. 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 when the program launched there were savings. Although the Eversource default rate is higher

⁵ It is still clearly possible that the CAP will provide savings to Milford residents and businesses during the twenty (20) month period.

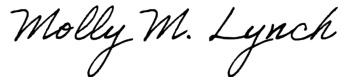
now, it is possible that the CAP will provide additional savings to Milford residents and businesses not yet known during the twenty (20) month term.

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
Lincoln Daley, Town Manager
John J. Ratigan, Esq.