

Secretary of the State File Number

6371

Regulation of the

Public Utilities Regulatory Authority
Concerning

Procedures Pertaining to Electric Public Service Companies for Private Power Producers, Private Power Providers, and Qualifying Facilities
Regulations adopted after July 1, 2013, become effective upon posting to the Connecticut eRegulations System, or at a later date if specified within the regulation.

Posted to the Connecticut eRegulations System on **February 2, 2023**

EFFECTIVE DATE
February 2, 2023

Approved by the Attorney General on
December 21, 2022

Approved by the Legislation Regulation Review Committee on
January 24, 2023

Electronic copy with agency head certification statement electronically submitted to and received by the Office of the Secretary of the State on
January 31, 2023

IMPORTANT NOTICE FOR CONNECTICUT STATE AGENCIES
This form should be used only for regulations first noticed on and after March 23, 2015.

Electronic Copy Certification Statement

(Submitted in accordance with the provisions of section 4-172 of the Connecticut General Statutes)

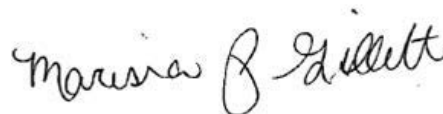
Regulation of the
Public Utilities Regulatory Authority
Concerning
**Procedures Pertaining to Electric Public Service Companies for Private Power
Producers, Private Power Providers, and Qualifying Facilities**

Approved by the Legislative Regulation Review Committee: **January 24, 2023**
eRegulations System Tracking Number: **PR2019-0028**

I hereby certify that the electronic copy of the above-referenced regulation submitted herewith to the Secretary of the State is a true and accurate copy of the regulation approved in accordance with sections 4-169 and 4-170 of the *Connecticut General Statutes*.

And I further certify that in accordance with the approval of Legislative Regulation Review Committee, all required technical corrections, page substitutions and deletions, if any, have been incorporated into said regulation.

In testimony whereof, I have hereunto
set my hand on **January 31, 2023**.



Marissa P. Gillett
Chairman
Public Utilities Regulatory Authority

State of Connecticut
Regulation of
Public Utilities Regulatory Authority
Concerning
Procedures Pertaining to Electric Public Service Companies for Private Power
Producers, Private Power Providers, and Qualifying Facilities

Section 1. Sections 16-243a-1 and 16-243a-2 of the Regulations of Connecticut State Agencies are amended to read as follows:

Sec. 16-243a-1. General rule and definitions

(a) General Rule

[These regulations] This section and section 16-243a-2 of the Regulations of Connecticut State Agencies establish procedures implementing [Section] section 16-243a of the Connecticut General Statutes [of Connecticut] concerning the purchase and sale of electricity between electric public service companies and private power producers or qualifying facilities, and [Connecticut General Statutes Section] section 16-243f of the Connecticut General Statutes concerning the manner in which capacity needs of electric public service companies may be met through the provision of electricity conservation and demand management measures by private power providers, [in addition to or in lieu of electricity generation resources.] The procedures shall apply to all private power producers, [not specifically exempted in Section 16-243a-7 of these regulations and to] all private power providers, and all qualifying facilities. Nothing in [these regulations] this section and section 16-243a-2 of the Regulations of Connecticut State Agencies shall be construed to preclude or restrain the company's short term management decisions made to improve the economics or reliability of its system or fuel mix through wholesale or retail supply or demand opportunities made in the operation of its franchise.

(b) Definitions

As used in this section and section 16-243a-2 of the Regulations of Connecticut State Agencies:

(1) "Authority" [and "Department" as used in these regulations, shall be as defined in Section] has the same meaning as provided in section 16-1 of the Connecticut General Statutes.

(2) "Electric [Public Service Company] public service company" [as used in these regulations, shall mean a "public service company" which provides electric service,] means an "electric distribution company" as defined in [Section] section 16-1 of the Connecticut General Statutes.

[(3) "Cogeneration Technology" as used in these regulations, shall be as defined in Section 16-1 of the Connecticut General Statutes.]

[(4) "Renewable Fuel Resources" as used in these regulations, shall be as defined in Section 16-1 of the Connecticut General Statutes.]

[(5) "Proxy Resource" as used in these regulations, shall be defined as that incremental resource, if any, identified as needed by the electric public service company after the public hearing and upon a finding by the Department pursuant to Section 16-243a-3 (b) of these regulations which but for the purchase from private power producers, such electric public service company would implement itself or purchase from another source.]

[(6)](3) "Private [Power Producer] power producer" [as used in these regulations, shall be as defined in Section] has the same meaning as provided in section 16-243b of the Connecticut

General Statutes.

[(7)](4) “Private [Power Production Facility] power production facility” [as used in these regulations, shall be as defined in Section] has the same meaning as provided in section 16-243b of the Connecticut General Statutes.

[(8)](5) “Private [Power Provider] power provider” [as used in these regulations, shall be as defined in Section] has the same meaning as provided in section 16-243b of the Connecticut General Statutes.

[(9)](6) “Electricity [Conservation or Demand Management Measures] conservation or demand management measures” [as used in these regulations, shall mean] means the provision by an electric public service company, directly or through private power providers, of equipment or services to conserve electricity, measured in British thermal units at the point of use, or to manage electric load.

[(10)](7) [“Electricity Conservation and Load Management Investments” as used in these regulations means any investments by electric public service companies in multi-year conservation and demand management measures designed to conserve electric energy or manage electric load.] “PURPA” means the Public Utilities Regulatory Policies Act of 1978, Public Law 95-617, which is codified at 16 USC 824a-3, as amended from time to time, and its implementing regulations, codified at 18 CFR 292, as amended from time to time.

(8) “Qualifying facility” has the same meaning as provided in 18 CFR 292.101(b)(1), as amended from time to time.

(9) “Avoided cost” has the same meaning as provided in section 16-243a of the Connecticut General Statutes.

Sec. 16-243a-2. [Utility filing requirements] Tariffs to be Maintained on File

[(a)] On or before April first of each even numbered calendar year, each electric public service company shall file the following information with the Department:

(1) A report of the status of all previously approved power purchase agreements with private power producers, including the current status of projects under construction, identification of projects in service, payments made, or proposed to be made, in each remaining year of each contract;

(2) A forecast of loads and resources including but not limited to existing supply options, conservation, load and demand management measures, facility requirements, re-powering or life extension, and bulk power purchases. This information must be consistent with the ten or twenty-year report of Annual Forecasts of Loads and Resources filed with the Connecticut Siting Council pursuant to Section 16-50r of the General Statutes of Connecticut;

(3) The long-term forecasts of energy prices for oil, natural gas and coal used for utility planning purposes in developing the information required in Sections 16-243a-2 (a) (2) and 16-243a-2 (b) (2) of these regulations; and

(4) A report on the comprehensive conservation and load management programs of the company including:

(A) The status of all electricity conservation and load management programs to which the company has made commitment for capital investments within the next ten years from the date of the report, including all conservation and load management programs planned for development within the next ten years;

(B) The effect of all existing and planned conservation and load management programs on the load, demand and resource requirements of the company for the next ten years, including a description of the program’s consistency with state energy policy;

(C) Documentation of the program elements, costs, implementation requirements, and fuel and energy savings objectives for each conservation and load management program filed pursuant to this

section for the next ten years;

(D) Documentation of fuel and energy savings achieved to date for each program; and

(E) A report of the status of all agreements between the company and private power providers, including the current status of conservation and demand services under contract but not yet operational, identification of such services currently being furnished under contract, and payments made, or proposed to be made, in each remaining year of each agreement.

(5) If the comprehensive conservation and load management program contains multi-year conservation and load management programs, the electric public service company shall file the following additional information:

(A) The expected annual cost of operating the program, the capital requirements for investment for each year of the program, and the anticipated savings of capacity and energy for each year of the program;

(B) Documentation as to the use of cash or energy credits to customers as part of the program; and

(C) Testimony regarding the requested premium above the most recently authorized rate of return requested by the electric public service company for each multi-year program requiring capital investment, the requested period of amortization, and the annual and cumulative amount requested to be recovered in rate base. Such information shall address each individual multi-year investment program as well as the cumulative effect of such programs.

(b) If the forecast filed pursuant to Section 16-243a-2 (a) (2) of these regulations, adjusted to reflect the load effects of all conservation and load management programs meeting the requirements as identified in Section 16-243a-3 (d) of these regulations, identifies the need for additional capacity resources to meet electric load requirements during the first ten years of the forecast period, or if the electric public service company, within the next two years from the date of the forecast filing, plans on committing to add additional resources which could be avoided by the purchase either of power from a private power producer or of electricity conservation and demand management measures from a private power provider, or both, the electric public service company shall file the following information:

(1) Testimony regarding the amount, type, characteristics and justification for additional resources needed to meet its electric load requirements expected to be requested from private power producers and the amount, type, characteristics and justification for conservation and demand management measures to be purchased from private power providers;

(2) Testimony documenting the anticipated avoided costs of energy and capacity during the forecast period based on the proxy resource, assuming that the resource used as a proxy for avoided cost determination would have been implemented by the electric public service company but for the purchase of capacity or energy or both from private power producers and or private power providers;

(3) A map indicating load center concentrations, transmission limitations, and planned and proposed changes to the transmission system within the franchise area during the forecast period; and

(4) The company's proposed requests for proposals for the supply of additional capacity resources from private power producers and or for the supply of conservation and demand management measures from private power providers and the proposed manner of selection and criteria for weighting of factors to be used in evaluating proposals from private power producers and or private power providers. In addressing the weighting of factors, the company shall take into account the following criteria: price, including ratepayer impact; timing; quality of output; likelihood of project success; impact on utility system, including reliability, safety and fuel use; likely environmental impact and any other factors deemed appropriate by the department.

(c) If the electric public service company does not anticipate the need for additional capacity resources during the first ten years of the forecast period, it shall file supporting testimony to

demonstrate such finding, in addition to testimony as required by Sections 16-243a-2 (b) (2), 16-243a-2 (b) (3) and 16-243a-2 (d) of these regulations.

(d) Whether or not each electric public service company identifies a need for or commitment to obtain additional capacity resources within the time period as stated in Section 16-243a-2 (b) of these regulations, each electric public service company shall file the following information:

(1) A report of the status of all agreements between the electric public service company and private power providers, including the current status of conservation and demand management services under contract but not yet operational, identification of such services currently under contract, payments made, and payments proposed to be made in each remaining year of each agreement;

(2) Testimony regarding the amount, type and characteristics of conservation and demand management measures which the electric public service company plans to commit to in accordance with the company's electricity conservation and load management plan, and the anticipated impact on the company's demand and energy requirements, including peaks;

(3) Testimony regarding the amount, type and characteristics of conservation and demand management measures, apart from the company's own conservation and load management measures, which the company seeks to obtain from private power providers within two years of the date of the filing in order to meet the company's energy or capacity needs; and

(4) The proposed method for obtaining from private power providers the conservation or demand management measures identified in Section 16-243a-2 (d) (2) and Section 16-243a-2 (d) (3) of these regulations.

(e) On or before April first of each odd numbered calendar year, each electric public service company shall file the following information with the Department:

(1) A report of the status of all previously approved power purchase agreements with private power producers, including the current status of projects under construction, identification of projects in service, payments made, or proposed to be made, in each remaining year of each contract;

(2) A report of the status of all conservation and load management programs of the electric public service company and the status of all previously approved agreements for electricity conservation or demand management measures with private power providers, including the current status of program implementation and payments made or proposed to be made during each year of each agreement; and

(3) An update of the avoided energy cost based on the most recently authorized fossil fuel prices.]

(a) Not later than December 31, 2023, each electric public service company shall file with the Authority for review and approval three *pro forma* tariffs for the purchase of energy and capacity from private power producers and eligible qualifying facilities, from whom the electric public service company purchases energy or capacity or both pursuant to section 16-243a of the Connecticut General Statutes or 18 CFR 292.303, as amended from time to time. Collectively, the tariffs required under this section shall address each of the following types of transactions: (1) energy-only sales; (2) capacity-only sales; and (3) energy and capacity sales.

(b) Each tariff submitted pursuant to this section shall establish a process by which private power producers or qualifying facilities may elect to be compensated either:

(1) Based on avoided costs calculated at the time of delivery, or

(2) Based on avoided costs forecasted at the time an obligation to purchase arises pursuant to 18 CFR 292.303, as amended from time to time.

(c) Tariffs submitted pursuant to this section shall satisfy the following requirements, as applicable:

(1) Each tariff applicable to sales of capacity compensated at avoided costs calculated at the time of delivery shall include a method for calculating avoided costs based on the effective

wholesale capacity prices in New England for the relevant delivery years.

(2) Each tariff applicable to sales of energy compensated at the avoided cost of energy calculated at the time of delivery shall include a methodology for calculating avoided costs based on real-time wholesale clearing prices for electricity at the time of delivery.

(3) Each tariff applicable to sales of energy compensated using a forecasted rate shall include a forecasting methodology for calculating per megawatt-hour energy prices at the time an obligation to purchase arises pursuant to PURPA based on forecasted day-ahead prices for each year of the prospective delivery term.

(4) Each tariff applicable to sales of capacity compensated using a forecasted rate shall include a forecasting methodology for calculating per kilowatt-month capacity prices at the time an obligation to purchase arises pursuant to PURPA based on forecasted capacity prices for each year of the prospective delivery term.

(5) Each tariff applicable to sales of capacity shall provide that the avoided cost for capacity purchased from a private power producer or qualifying facility that cannot offset the amount of capacity that the electric public service company is required to purchase for resource adequacy purposes, or is otherwise in excess of the electric public service company's capacity purchase obligation, shall be fixed at \$0.

(6) Each tariff shall provide a specific term of years. Private power producers and qualifying facilities providing both capacity and energy need not offer energy and capacity in concurrent periods.

(d) Each electric public service company shall file an annual report with the Authority, on or before the first of July, providing:

- (1) Updated avoided cost calculations,
- (2) Avoided cost forecasts,
- (3) Its need for electricity generating capacity,
- (4) How its capacity needs are met, and
- (5) Whether any need for capacity is not met.

(e) Pursuant to section 16-243f of the Connecticut General Statutes, if an electric public service company reports any need for capacity is not met, the Authority may hold a hearing to determine whether any need for unmet capacity may be met through electricity conservation and demand management measures by private power providers. If such need for unmet capacity may be met through electricity conservation and demand management measures by private power providers, the Authority may have each electric public service company submit a proposed tariff to procure unmet capacity from private power providers which includes a monitoring plan and evaluation plan for documenting the demand and energy savings achieved.

(f) In the event that PURPA is amended, each electric public service company shall, not later than six months after such amendment, submit to the Authority for review and approval (1) an analysis of whether such amendment requires modification of the *pro forma* tariffs and (2) revised *pro forma* tariffs for private power producers and qualifying facilities to address any such modification. Thereafter, the Authority shall determine whether modification is required.

(g) In the event that PURPA is repealed, existing PURPA tariffs shall be honored for the duration of the tariff term, but no new PURPA tariff shall be entered into after the date the PURPA program ends.

(h) In the event that section 16-243a of the Connecticut General Statutes is amended, each electric public service company shall, not later than six months after such amendment, submit to the Authority for review and approval (1) an analysis of whether such amendment requires modification of the *pro forma* tariffs and (2) revised *pro forma* tariffs for private power producers and qualifying facilities to

address any such modification. Thereafter, the Authority shall determine whether modification is required.

(i) In the event that section 16-243a of the Connecticut General Statutes is repealed, existing tariffs for private power producers shall be honored for the duration of the tariff term, but no new private power producer tariff shall be entered into after the date the private power producer program ends.

(j) In the event that section 16-243f of the Connecticut General Statutes is amended and no private power provider tariffs exist, the Authority may hold a hearing to determine if the electric public service companies shall take action to address the amendment. In the event that section 16-243f of the Connecticut General Statutes is amended and private power provider tariffs exist, each electric public service company shall, not later than six months after such amendment, submit to the Authority for review and approval (1) an analysis of whether such amendment requires modification of the private power provider tariff and (2) a revised private power provider tariff to address any such modification. Thereafter, the Authority shall determine whether modification is required.

(k) In the event that section 16-243f of the Connecticut General Statutes is repealed, existing tariffs for private power providers shall be honored for the duration of the tariff term, but no new private power provider tariff shall be entered into after the date the private power provider program ends.

(l) In the event that section 16-243a of the Connecticut General Statutes is repealed, section 16-243a-1 of the Regulations of Connecticut State Agencies and this section shall continue to be applicable insofar as they apply to the Authority's continued implementation of PURPA, in accordance with section 16-6b of the Connecticut General Statutes.

(m) In the event that PURPA and sections 16-243a and 16-243f of the Connecticut General Statutes are repealed, section 16-243a-1 of the Regulations of Connecticut State Agencies and this section shall cease to be applicable.

(n) The Authority may, in its discretion, call for additional public hearings or reporting relating to PURPA, private power producers, or private power providers as it deems appropriate.

Sec. 2. Section 16-19d-2 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-19d-2. Application for determination of eligibility

(a) (1) Each gas or electric company that seeks to recover costs under section 16-19d (b) of the Connecticut General Statutes shall file an application with the [Department of Public Utility Control] Public Utilities Regulatory Authority requesting a determination of eligibility for recovery of the reasonable expenditures incurred in the promotion or marketing of efficient gas and electric equipment. A company may request that the filing be included as part of a company's rate proceeding under section 16-19 (a) of the Connecticut General Statutes provided that, in order to make such request, the company shall waive the one hundred and twenty day time requirement set forth in section 16-19d-3 (a) of the Regulations of Connecticut State Agencies.

(2) No such application shall be required if a cost is to be incurred after having been included in [an electric company's conservation and load management plan reviewed and approved by the Department pursuant to section 16-243a-3 (d), or] a gas company's conservation and load management plan reviewed and approved by the [Department] Authority pursuant to section 16a-49-3 (a) of the Regulations of Connecticut State Agencies.

(b) Each application shall contain sufficient testimony and data documenting all of the following:

(1) the equipment to be promoted [and/or] or marketed is (A) efficient and (B) the use of such equipment and the proposed amount to be budgeted for promotion [and] or marketing would provide net economic benefit to the company's customers. In support of the net economic benefit criterion, the company shall provide specific data demonstrating:

- (i) the ratepayers or customer group(s) targeted by the proposed promotion or marketing;
 - (ii) the anticipated impact of such promotional or marketing program on the electric or gas company's demand and energy requirements;
 - (iii) the projected incremental impact on rates and bills to the company's customers, including non-participants in the promoted measures;
- (2) that the use and promotion of the equipment is consistent with [State] the state's conservation and energy policy;
- (3) that the use and promotion of the equipment is consistent with integrated resource planning principles and with other demand or supply options as identified in the company's least cost integrated resource plan;
- (4) that the promotion or marketing of the equipment does not have as its primary purpose the promotion of one fuel over another. In support, the company shall provide documentation establishing to the satisfaction of the [Department] Authority that such promotion or marketing is designed primarily to promote the replacement of existing equipment with more energy efficient equipment, or to install efficient equipment in new construction.

Sec. 3. Sections 16-243a-3 to 16-243a-7, inclusive, of the Regulations of Connecticut State Agencies are repealed.

R-39 Rev. 02/2012

Statement of Purpose

The purpose of the proposed regulations is to revise the Authority's existing regulations that implement Conn. Gen. Stat. §§ 16-243a and 16-243f and PURPA. The proposed regulations replace outdated regulations relating to PURA's oversight of the purchase and sale of energy and capacity from private power producers, private power providers, and qualifying facilities with an approach that complies with federal requirements, is more flexible, and is more closely aligned with current state policy objectives and electricity market structures and conditions. The current regulations are outdated, because they were originally drafted and enacted prior to deregulation of the electric industry in Connecticut in 1998 and have not been updated to reflect the significant changes in the electric industry since that time, including the development of open access transmission, competitive wholesale electricity markets, and competitive procurement processes to achieve state policies and environmental goals.

The proposed regulations will establish a tariff framework that would enable PURA to require and accommodate in a timely manner changes in state policies or the federal PURPA scheme through tariff revisions rather than through lengthy processes to revise its regulations. The ability to act swiftly in light of federal law changes is important given that failure to comply with federal directives could subject PURA to potential litigation for failure to act. The importance of adopting the proposed regulations, which intentionally build-in flexibility, is greater than ever. The Federal Energy Regulatory Commission (FERC) recently announced changes to its PURPA regulations, which impact how states implement the PURPA scheme. With federal changes and a set of state regulations that is already outdated, PURA will best position itself for the future by adopting the proposed tariff framework now. Additionally, the proposal, and the resulting tariff requirements, will provide clarity to the regulated community.

The proposed regulations will amend Conn. Agencies Regs. §§ 16-243a-1 and 16-243a-2, repeal outdated sections at Conn. Agencies Regs. §§ 16-243a-3 to 16-243a-7, and amend a reference to a repealed section.

IMPORTANT NOTICE FOR CONNECTICUT STATE AGENCIES

This form is to be used for proposed permanent and technical amendment regulations only and must be completed in full.

AGENCY CERTIFICATION**Public Utilities Regulatory Authority**

Proposed Regulation Concerning

Procedures Pertaining to Electric Public Service Companies for Private Power**Producers, Private Power Providers, and Qualifying Facilities**eRegulations System Tracking Number **PR2019-028****I hereby certify the following:**

(1) The above-referenced **regulation** is proposed pursuant to the following statutory authority or authorities: **Conn. Gen. Stat. §§ 16-243a and 16-243f**

For technical amendment regulations proposed without a comment period, complete #2 below, then skip to #8.

(2) As permitted by Section 4-168(h) of the *Connecticut General Statutes*, the agency elected to proceed without prior notice or hearing and posted the text of the proposed technical amendment regulation on eRegulations System website on **<<select and enter the date of posting>>**.

For all other non-emergency proposed regulations, complete #3 - #7 below, then complete #8)

(3) The agency posted notice of intent with a specified comment period of not less than 30 days to the eRegulations System website on **June 11, 2021**.

(4) *(Complete one)* No public hearing held or was required to be held. **OR** One or more public hearings were held on: **June 25, 2021**.

(5) The agency posted notice of decision to move forward with the proposed regulation to the eRegulations System website on **March 30, 2022**.

(6) *(Complete one)* No comments were received. **OR** Comments were received and the agency posted the statements specified in subdivisions (1) and (2) of CGS Section 4-168(e) to the eRegulations System website on **March 30, 2022**.

(7) The final wording of the proposed regulation was posted to the eRegulations System website on **November 21, 2022**.

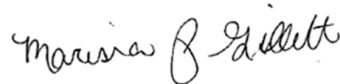
(8) Subsequent to approval for legal sufficiency by the Attorney General and approval by the Legislative Regulation Review Committee, **the final regulation shall be effective**

(Check one and complete as applicable)

When posted to the eRegulations System website by the Secretary of the State.

OR On _____

(Date must be a specific calendar date not less than 11 days after submission to the Secretary of the State)



Chairman

11/21/2022

SIGNED*(Head of Board, Agency or Commission,
or duly authorized deputy)*

OFFICIAL TITLE

DATE

**OFFICE OF THE ATTORNEY GENERAL
REGULATION CERTIFICATION**

Agency: Connecticut Public Utilities Regulatory Authority

REGULATION NUMBER PR2019-028

This Regulation is hereby APPROVED by the Attorney General as to legal sufficiency in accordance with Connecticut General Statutes § 4-169.

DATE: 12/21/2022

Signed: /s/ Philip Miller

***Philip Miller
Deputy Associate Attorney General and
Section Chief for the Financial and Revenue
Services Section Duly Authorized***

The Connecticut General Assembly

Legislative Regulation Review Committee

Senator John Kissel
Senate Chair



Representative Lucy Dathan
House Chair

Official Record of Committee Action

January 24, 2023

Agency: Public Utilities Regulatory Authority
Description: Private Power Producers, Private Power Providers, and Qualifying Facilities
LRRC Regulation Number: 2022-014A
eRegulation Tracking Number: PR2019-028

The above-referenced regulation has been

Approved with Technical Corrections

by the Legislative Regulation Review Committee in accordance with CGS Section 4-170.

Catherine M. Thomas
Committee Administrator



State of Connecticut
Office of the Secretary of the State

Confirmation of Electronic Submission

Re: Regulation of the Public Utilities Regulatory Authority concerning
Procedures Pertaining to Electric Public Service Companies for Private
Power Producers, Private Power Providers, and Qualifying Facilities
eRegulations System Tracking Number PR2019-028
Legislative Regulation Review Committee Docket Number 2022-014A

The above-referenced regulation was electronically submitted to the Office of the Secretary of the State in accordance with Connecticut General Statutes Section 4-172 on January 31, 2023.

Said regulation is assigned Secretary of the State File Number 6371.

The effective date of this regulation is February 2, 2023.

A handwritten signature in blue ink, appearing to read "Stephanie Thomas".

Stephanie Thomas
Secretary of the State
February 2, 2023

By:

/s/ Christopher R. Drake
Christopher R. Drake
Director, Business Services
Division