



STATE OF CONNECTICUT

PUBLIC UTILITIES REGULATORY AUTHORITY

PUBLIC COMMENT AND RESPONSE REPORT

Prepared Pursuant to Conn. Gen. Stat. § 4-168(b)

Regarding

Amendments to

Conn. Agencies Regs. §§ 16-245-1 through 16-245-4, inclusive, and 16-245-6

On June 9, 2021, Marissa P. Gillett, Chairman, Public Utilities Regulatory Authority (Authority or PURA), published a notice of intent to amend Conn. Agencies Regs. §§ 16-245-1 through 16-245-4, inclusive, and 16-245-6. Pursuant to such notice, the Authority held a public hearing on June 29, 2021, at 11:00 a.m. The public comment period remained open until July 16, 2021, at 5:00 p.m. Subsequently, on January 2, 2024, Marissa P. Gillett, Chairman, PURA, published a second notice of intent to amend Conn. Agencies Reg. §§ 16-245-1 through 16-245-4, inclusive, and 16-245-6. The second public comment period remained open until February 2, 2024, at 5:00 p.m. The Authority is amending these regulations under the authority of Conn. Gen. Stat. § 16-245.

I. HEARING REPORT CONTENT

As required by Conn. Gen. Stat. § 4-168(b), this report describes the Authority's proposed regulations (Proposed Regulations), identifies principal reasons in support of and in opposition to the proposal, and summarizes and responds to all comments on the Proposed Regulations. A final recommended version of the text is attached hereto (Final Proposed Regulations), as is a copy of the hearing transcript and the written comments received.

II. SUMMARY OF PROPOSAL

The Authority is proposing to amend Conn. Agencies Regs. §§ 16-245-1 through 16-245-4, inclusive, and 16-245-6.

III. SUMMARY OF COMMENTS

The Authority received six written comments regarding the Proposed Regulations. All written comments submitted are summarized below with the Authority's responses. The following persons on behalf of their organizations submitted written comments to the Authority:

1. Florence Davis, Esq., Assistant General Counsel, Constellation NewEnergy, Inc, Florence.Davis@excelon.com, on behalf of Constellation NewEnergy, Inc. (Constellation)
2. Brian E. Calabrese, Esq., Robinson & Cole LLP, 280 Trumbull Street, Hartford, CT 06103-3597, bcalabrese@rc.com, on behalf of Direct Energy Services, LLC, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Energy Plus Holdings LLC, Independence Energy Group LLC, Reliant Energy Northeast LLC d/b/a NRG Home, Green Mountain Energy Company, and XOOM Energy Connecticut, LLC (collectively, NRG Retail Companies 1)
3. Lauren Bidra, Esq., and John S. Wright, Esq., Assistant Attorneys General, Office of the Attorney General, Ten Franklin Square, New Britain, CT 06051, lauren.bidra@ct.gov and john.wright.ct.gov, on behalf of William Tong, Attorney General for the State of Connecticut (OAG)
4. Andrew W. Minikowski, Esq., Staff Attorney 3, and John R. Viglione, Economist, Office of Consumer Counsel, Ten Franklin Square, New Britain, CT 06051, andrew.minikowski@ct.gov, on behalf of the Office of Consumer Counsel (OCC)
5. Alexander W. Judd, Esq., Day Pitney LLP, 242 Trumbull Street, Hartford, CT 06103, ajudd@daypitney.com, on behalf of Vistra Corp., the parent company for, and filing on behalf of, Ambit Northeast, LLC, Public Power, LLC, Viridian Energy, LLC, Everyday Energy, LLC d/b/a Energy Awards, and Connecticut Gas & Electric, (Vistra)
6. Joey Lee Miranda, Esq., Robinson & Cole LLP, 280 Trumbull Street, Hartford, CT 06103, jmiranda@rc.com, on behalf of Direct Energy Services, LLC, Direct Energy Business, LLC d/b/a NRG Business, NRG Business Marketing, LLC f/k/a Direct Energy Business Marketing, LLC, Energy Plus Holdings LLC, Independence Energy Group LLC, NRG Home licensed as Reliant Energy Northeast LLC, Green Mountain Energy Company, and XOOM Energy Connecticut, LLC (collectively, NRG Retail Companies 2)

A. STATEMENT OF PRINCIPAL REASONS IN SUPPORT OF THE AUTHORITY'S INTENDED ACTION

The purpose of the Proposed Regulations is to amend the Authority's existing regulations implementing Conn. Gen. Stat. § 16-245. The amendments update the regulations with the current name of the agency, Public Utilities Regulatory Authority, and revise regulations concerning the licensing of electric suppliers, post-licensing requirements, and security requirements. The substantive amendments are necessary and appropriate to address issues that the Authority has consistently encountered in its regulation of electric suppliers and to address changed circumstances that have arisen

since the initial adoption of the regulations in 1999 and since the last amendments to the regulations in 2004 and 2005.

The Proposed Regulations change the review cycle for electric supplier licenses from every five years to biennial. The Proposed Regulations also raise the fee for applications to become a licensed electric supplier and the fee for the periodic reviews conducted by the Authority.

In addition, the Proposed Regulations require electric suppliers to provide additional information to PURA and the public. For licensing, electric suppliers will be required to provide information on investigations by regulatory agencies and attorneys general in other states. After licensing, electric suppliers will be required to provide the Authority with responses to customer inquiries and complaints, and to provide specific information on their websites, including the electric supplier's official name and trade name(s), all PURA dockets specifically pertaining to the electric supplier, customer service contact information, PURA contact information, information concerning all generally available offers, renewable products, sources of renewable energy, standard contracts, and enrollment forms, and any other information deemed necessary by the Authority.

Additionally, electric suppliers will have to follow specific rules when posting to the Rate Board, including honoring all generation rates the electric supplier has posted to the Rate Board, self-reporting all generally available generation offers, ensuring generally available rates are all-inclusive, and cross-posting rates that appear on the electric supplier's own website. Electric suppliers will also have to follow specific rules when posting rates on their own website. These amendments will ensure the public receives all pertinent information to make decisions regarding electric suppliers.

Lastly, the Proposed Regulations change and generally increase security requirements according to a new schedule. The Authority will have the discretion to increase security if an electric supplier's forecast year load exceeds 1,500,000 MWh.

OCC strongly supports the Proposed Regulations. OCC Written Comments, July 16, 2021, p. 1. OCC asserts that the Proposed Regulations will provide consumers with "greater informational power" and authorize the Authority to take "clear action" when an electric supplier fails to adequately perform its obligations under Connecticut law. *Id.*, p. 2. OCC also highlights some of the benefits of the Proposed Regulations, including the requirement, as a condition of Connecticut licensure, that electric suppliers disclose all investigations or enforcement actions undertaken against the supplier by regulatory agencies or state attorneys general in other jurisdictions in which the supplier does business and the institution of a biennial license review proceeding in place of the current five-year review. *Id.*

OAG also generally supports the Proposed Regulations, noting that the amendments are necessary to address common issues in PURA's regulation of electric

suppliers since the regulations were last updated in 2005. OAG Written Comments, July 16, 2021, p. 1. OAG also commends the Authority's efforts to hold electric suppliers more accountable. Id.

B. STATEMENT OF THE PRINCIPAL CONSIDERATIONS IN OPPOSITION TO THE AUTHORITY'S INTENDED ACTION AND THE REASONS FOR ACCEPTING OR REJECTING SUCH CONSIDERATIONS

The Authority received the following comments regarding specific provisions in the Proposed Regulations:

1. Section 16-245-2 of the Proposed Regulations

Comment:

OAG recommends that the Authority modify § 16-245-2(b)(17) of the Proposed Regulations to include the requirement that electric suppliers attest to and describe reasonable cyber and data security practices, including for all third-party vendors they utilize who have access to customer information. OAG Written Comments, p. 1. OAG asserts that while § 16-245-2(b)(17) of the Proposed Regulations requires that electric supplier license applications include an attestation that the electric supplier "will not release customer information to any person," that is not enough. Id., p. 2. Accordingly, OAG contends that electric suppliers should be required to certify to PURA and the public that they maintain reasonable cyber and data security practices and ensure all their third-party vendors who have access to customer information do the same. Id. OAG also recommends that PURA amend § 16-245-2(f)(2) of the Proposed Regulations to require that electric suppliers, when they make a biennial license review compliance filing, provide the information required in Conn. Agencies Reg. § 16-245-2(b)(17), including an attestation to and description of reasonable cyber and data security practices, including for all third-party vendors they utilize who have access to customer information. Id., p. 2.

Authority Response:

In response to OAG's comment, the Authority is revising the Proposed Regulations by adding the requirement that electric suppliers attest to and describe reasonable cyber and data security practices, including for all third-party vendors they utilize who have access to customer information, in their application and biennial license review compliance filing.

Comment 2:

Constellation requests that the Authority maintain an updated listing of costs on PURA's website for application and license reviews since § 16-245-2(b)(1) and (f)(1) of the Proposed Regulations state that the costs may be updated through Authority decisions pursuant to the regulations. Constellation Written Comments, July 16, 2021, p. 1.

Authority Response:

The Authority appreciates Constellation's comment and will endeavor to keep PURA's website updated with the current fee information so the information is readily accessible to applicants and licensed electric suppliers.

Comment 3:

Vistra states that the January 1 filing date in § 16-245-2(f) of the Proposed Regulations for the license review compliance filing occurs at a time when most companies and government agencies are closed and employees that assist with preparation of these license review compliance filings may be out of the office in the weeks leading up to January 1 due to various holidays. Vistra Written Comments, July 16, 2021, p. 1. Accordingly, Vistra suggests that the license review compliance filing be due on January 31 of the review years. Id. Vistra also requests confirmation that the start date of April 15, 2022, for the biennial license reviews, along with the January due date, would mean that the first biennial filing would be due January 2023. Id.

Authority Response:

In response to Vistra's comment, the Authority is revising § 16-245-2(f) of the Proposed Regulations to require that the license review compliance filing be due on January 31, rather than January 1. The Authority is also revising § 16-245-2(f) of the Proposed Regulations by changing the start date of April 15, 2022, to April 15, 2025.

Comment 4:

Vistra requests that the Authority remove the "[a]ny other information the Authority deems necessary" requirement in § 16-245-2(f)(3) of the Proposed Regulations or define what these requirements may include and seek additional public comment regarding the requirements. Vistra Written Comments, p. 2. Vistra states that while it would prefer the requirement be removed completely, a reasonable compromise would be to adopt additional requirements in a decision that provides the necessary checks on the biennial license review process and provides suppliers the appropriate ability to comment and be notified of impending changes. Id.

Authority Response:

While it appreciates Vistra's comment, the Authority wants to ensure there is flexibility in the process. Accordingly, the Authority is not making any revisions to the Proposed Regulations in response to Vistra's comment. That said, any additional information the Authority deems necessary will be related to the electric supplier's technical, managerial, and financial capability to provide electric generation services. See Conn. Gen. Stat. § 16-245(c).

Comment 5:

NRG Retail Companies 1 believe the transition to a biennial licensing proceeding will impose an unwarranted and unnecessary administrative burden on electric suppliers,

which will contribute to additional financial and other resource costs. NRG Retail Companies 1 Written Comments, July 16, 2021, p. 2. Specifically, NRG Retail Companies 1 assert that reviewing licenses every two years instead of every five years will increase the number of license reviews for each electric supplier by two-and-one-half times. Id. Accordingly, NRG Retail Companies 1 urge the Authority to maintain the current five-year license review cycle. Id.

Authority Response:

While the Authority appreciates NRG Retail Companies 1's comments and recognizes that transitioning from an every five year to an every two year license review may increase costs for electric suppliers, the Authority finds that the current five year review cycle is protracted and that the more frequent two-year review will enable the Authority to respond to compliance issues more quickly as they arise and in turn will hopefully encourage electric suppliers to respond to such compliance issues more timely. Accordingly, the Authority is not making any revisions to the Proposed Regulations in response to NRG Retail Companies 1's comments.

Comment 6:

NRG Retail Companies 1 believe the proposed increase of the current initial license application and license review application fees to \$2,500 by the Authority in § 16-245-2(b)(1) and (f)(1), respectively, of the Proposed Regulations is excessive and unreasonable, especially considering comparative licensing fees in neighboring state jurisdictions. NRG Retail Companies 1 Written Comments, p. 3. According to NRG Retail Companies 1, the increase in the application fee could discourage suppliers operating in other markets from seeking to enter the Connecticut market. Id. In addition, NRG Retail Companies 1 assert that the increase in the license review application fee, which will now not only increase in amount but also be paid more frequently, is unreasonable, particularly because customers ultimately will bear these costs in the form of higher retail electric supply prices. Id., p. 4.

Moreover, NRG Retail Companies 1 assert the increase in application review fees is inconsistent with the statutory authorization for such a fee. Id. Specifically, while Conn. Gen. Stat. § 16-245 states that “[t]he application fee shall include the costs to investigate and administer the licensing procedure and shall be commensurate with the level of investigation necessary, as determined by regulations adopted by the Public Utilities Regulatory Authority,” the Authority’s Fiscal Note indicates that “[a]lthough the change in review cycle from every 5 years to biennial will increase the number of licenses reviewed each year, [the Authority] expects that the change in review cycle period will reduce the amount of time [Authority] staff expends on maintenance of supplier licensing dockets.” Id. (citations omitted). According to NRG Retail Companies 1, this incongruity is notable. Id. NRG Retail Companies 1 therefore urge the Authority to maintain the current filing fees for new electric supplier license applications and license review applications. Id.

Authority Response:

Conn. Gen. Stat. § 16-245(e) requires that the licensing fee “include the costs to investigate and administer the licensing procedure and shall be commensurate with the level of investigation necessary.” The Authority has not updated the amount of the licensing fee since at least 2005 and investigating and administering the licensing procedure requires the time and resources of Authority staff, accountants, and attorneys, which is reflected in the amendment to the licensing fee amount in § 16-245(b)(1) and (f)(1) of the Proposed Regulations. In addition, with respect the statement in the Fiscal Note that the increase in the Authority’s review of licenses each year is expected to reduce the amount of time spent on maintenance of supplier licensing dockets, the Authority is referring to a reduction in the need for large-scale investigations into an electric supplier’s multi-year practices, not a reduction in the amount of time spent on electric supplier license applications and biennial licensing reviews. Accordingly, the Authority is not making any revisions to the Proposed Regulations in response to NRG Retail Companies 1’s comments.

Comment 7:

NRG Retail Companies 2 urge the Authority to maintain the current five-year licensing review process. NRG Retail Companies 2 Written Comments, Feb. 2, 2024, p. 6. According to NRG Retail Companies 2, as a result of the creation of the Authority’s Office of Education, Outreach, and Enforcement (EOE) in 2020 and EOE’s ongoing activities, a more frequent two-year review process is no longer “protracted.” *Id.*, p. 3. Specifically, while licensing reviews used to take years to complete, NRG Retail Companies 2 assert that EOE is now able to complete them in a much shorter time frame. *Id.* In addition, NRG Retail Companies 2 assert that the number of electric suppliers has dropped from 59 electric suppliers in 2019 to 34 electric suppliers as of December 31, 2022, thereby reducing the number of licensing reviews conducted. *Id.*, p. 4. According to NRG Retail Companies 2, a two-year licensing review process is therefore no longer needed. NRG Retail Companies 2 Written Comments, pp. 3–4.

In addition, NRG Retail Companies 2 assert that the transition to a biennial licensing review process will impose an unwarranted and unnecessary burden on electric suppliers and the Authority. *Id.*, p. 5. Specifically, NRG Retail Companies 2 assert that reviewing electric supplier’s licenses every two years instead of five will increase the number of licensing reviews for each electric supplier by two- and one-half times. *Id.* According to NRG Retail Companies 2, since the two-year licensing review process is no longer needed, there is no need to impose these increased burdens. *Id.*, pp. 5–6.

Authority Response:

The Authority appreciates NRG Retail Companies 2’s comments but finds them misplaced. The Authority has not revised Conn. Agencies Regs. § 16-245-2 since 2004, which was only approximately four years after Connecticut “deregulated” its retail electric market. Therefore, while the creation of EOE has no doubt enabled the Authority to more timely review licensing applications and compliance filings, more frequent licensing

reviews of electric suppliers are needed. As stated in the Authority's response to Comment 5, *supra*, the current process of reviewing an electric supplier's license every five years allows for too much time in between license reviews. Reviewing an electric supplier's license every two years will enable the Authority to respond to compliance issues more quickly as they arise and in turn will hopefully encourage electric suppliers to respond to such compliance issues more timely. Accordingly, the Authority is not making any revisions to the Proposed Regulations in response to NRG Retail Companies 2's comments.

Comment 8:

NRG Retail Companies 2 assert that "a 2.5-fold increase in the initial application fee and a tenfold increase in the license review application fee are excessive and unreasonable." NRG Retail Companies 2 Written Comments, p. 6. NRG Retail Companies 2 also assert that the increase in the license review application is inconsistent with the statutory authorization for such a fee in Conn. Gen. Stat. § 16-245(e), which requires the fee to be commensurate with the level of investigation necessary. *Id.*, p. 7. In addition, NRG Retail Companies 2 assert that the increase in the license review application is compounded when coupled with the new requirement that electric suppliers submit license review applications every two years instead of every five. *Id.*, p. 8. Accordingly, NRG Retail Companies 2 "urge the Authority to modify the proposed application fees to accurately reflect the costs to investigate and administer the licensing procedure." *Id.*, p. 9 (citation omitted).

Authority Response:

See Authority Response to Comment 6, *supra*.

Comment 9:

NRG Retail Companies 2 oppose a requirement that electric suppliers submit a description of the applicant and the applicant's third-party agents' cyber and data security practices to the Authority because such a requirement would undermine those security practices. NRG Retail Companies 2 Written Comments, p. 12. Specifically, NRG Retail Companies 2 assert that by requiring the submission of this information, even if such information is submitted confidentially, the Authority is providing potential hackers with access to information the hackers can use to "undermine those protections and gain access to customer information as well as other confidential and proprietary information." *Id.*

NRG Retail Companies 2 also requests that the requirement that electric suppliers include a description of the electric supplier's third-party agents' cyber and data security practices be removed because third party vendors also do not want to share those practices with others. *Id.* Accordingly, the NRG Retail Companies 2 request that this requirement be removed before the Proposed Regulations are adopted in final and the required attestation be modified to read: "the applicant has reasonable cyber and data

security practices and requires its third-party agents to have reasonable cyber and data security practices.” Id.

Authority Response:

The Authority appreciates NRG Retail Companies 2’s comments and concerns regarding the cyber and data security requirements. However, the Authority is not making any revisions to the Proposed Regulations in response to NRG Retail Companies 2’s comments. The Authority has measures in place to ensure confidential information submitted to PURA remains confidential.

2. Section 16-245-3 of the Proposed Regulations

Comment 1:

Visra asserts that the requirement in § 16-245-3(d)(3) of the Proposed Regulations that “[a]ll generally available rates shall be all-inclusive rates” is inconsistent with the flexibility that allows electric suppliers to develop innovative offers and, with this innovation, more customer options that ultimately result in lower prices in a truly competitive marketplace. Visra Written Comments, p. 2. Visra states that customers will have fewer product offerings available to them, and those products that remain would likely have higher fixed kilowatt-hour (kWh) prices. Id. Eliminating the proposed all-inclusive requirement would allow customers to receive the benefit of innovative products both today and in the future. Id.

Visra is specifically concerned that some distributed generation projects use a recurring fee collected from customers, which supports the operation and maintenance of the project, and is necessarily a separate charge from a fixed price per kWh. Id., p. 3. Visra states that without the flexibility to develop products with charges other than just a fixed kWh amount, there may be fewer products that support the growth of renewable generation in Connecticut. Id. Visra also argues that the Rate Board and contract requirements adopted by the Authority provide sufficient transparency and notice of charges. Id. Accordingly, Visra recommends the following revision to the definition of “All-inclusive” in § 16-245-1(18) of the Proposed Regulations: “‘All-inclusive’ includes all generation-related costs or charges and any other charge that is expressly agreed to and clearly stated in the contract. No other charges can be added.” Id.

Authority Response:

In § 16-245-3(d)(3) of the Proposed Regulations, the Authority is merely codifying the requirement that generally available rates shall be all-inclusive rates. Specifically, in 2020, the Authority developed and implemented standards (Marketing Standards) relating to abusive switching practices, solicitations and renewals by electric suppliers, the hiring and training of sales representatives, and door-to-door sales and telemarketing practices by electric suppliers, pursuant to Conn. Gen. Stat. § 16-245o(l)(2). See Decision, May 6, 2020, Docket No. 14-07-20RE01, PURA Development and Implementation of Marketing Standards and Sales Practices by Electric Suppliers –

Revised Standards (Marketing Decision). In the Marketing Standards, the Authority defines “all-inclusive” to mean “a price that includes all generation-related costs or charges and that no other charges or costs can be added.” Marketing Decision, Ex. B, p. 2. Consistent with the Marketing Standards, the Authority is defining “all-inclusive” to mean “all generation-related costs or charges, such that no other charges can be added” in § 16-245-1 of the Proposed Regulations and requiring that “[a]ll generally available rates shall be all-inclusive rates” in § 16-245-3(d)(3) of the Proposed Regulations. Accordingly, since the Authority is merely codifying the requirement that generally available rates shall be all-inclusive rates, the Authority is not making any revisions to the Proposed Regulations in response to Vistra’s comments.

In addition, although the Authority appreciates electric suppliers’ efforts to effect the state’s renewable energy goals, the Authority has taken comprehensive steps to address those goals in other venues. In the Proposed Regulations, the Authority is, *inter alia*, addressing necessary customer protections to ensure customers have an understanding of all costs of contracting with an electric supplier.

Comment 2:

Vistra states that as it relates to § 16-245-3(a)(1) of the Proposed Regulations, the reports required by Conn. Gen. Stat. § 16-245p are now required annually based on legislation passed in 2005, and therefore Vistra requests that the Authority revise § 16-245-3(a)(1) of the Proposed Regulations to reflect that statutory change. Vistra Written Comments, p. 4. Specifically, Vistra recommends the following revision to § 16-245-3(a)(1) of the Proposed Regulations: “Any and all information requested by the Authority for the purpose of compiling annual disclosure reports required pursuant to section 16-245p of the Connecticut General Statutes.” *Id.*

Authority Response:

The Authority declines to replace “quarterly” with “annually” as requested by Vistra because Conn. Gen. Stat. § 16-245p does not require that the electric supplier submit the information to the Authority information annually. Rather, it requires electric suppliers to submit the information “at such times as the [A]uthority requires, not less than annually” Nevertheless, the Authority is revising § 16-245-3(a)(1) of the Proposed Regulations to remove “quarterly” from before disclosure reports as the Authority is required to make the information filed available to customers within 30 days after the Authority’s receipt of the information. Accordingly, § 16-245-3(a)(1) of the Proposed Regulations now states that it is a condition of continuing licensure for an electric supplier to provide “[a]ny and all information requested by the [department] Authority for the purpose of compiling [quarterly] disclosure reports required pursuant to section 16-245p of the Connecticut General Statutes.”

Comment 3:

Vistra requests that the Authority remove the requirement or better define the requirement in § 16-245-3(c) of the Proposed Regulations that provides for information to be posted on electric suppliers' websites including "[a]ny other information deemed necessary by the Authority." Vistra Written Comments, p. 3. Should the Authority retain the requirement, Vistra recommends that any additional website information be developed through a contested case to allow for appropriate process. Id., p. 4. Therefore, Vistra recommends the following revision to § 16-245-3(c) of the Proposed Regulations: "Any other information deemed necessary by the Authority as determined in a contested proceeding." Id.

Authority Response:

Conn. Gen. Stat. § 16-245p(b)(5) permits the Authority to require electric suppliers to submit "any other information the [A]uthority determines will assist customers in making informed decisions when choosing an electric supplier." While it appreciates Vistra's comment, the Authority wants to ensure there is flexibility in determining the content of websites, which include frequently changing media. Accordingly, the Authority is not making any revisions to the Proposed Regulations in response to Vistra's comment. That said, any additional information the Authority deems necessary will be related to assisting customers in making informed decisions regarding electric suppliers.

3. Section 16-245-4 of the Proposed Regulations**Comment 1:**

Given that § 16-245-4(a) of the Proposed Regulations provides, in part, that "[a]n electric supplier shall maintain an amount of security based on its Load served in the previous calendar year as indicated by the electric distribution company filings in the annual renewable portfolio standards docket," and further given that "each company's REC obligations for [renewable portfolio standards (RPS)] compliance are determined based on the Final Settlement Load data provided by the EDCs," Vistra asserts that defining a supplier's "Load" as reflected on the EDCs' final resettled load data as filed in the annual RPS docket will provide clarity as to the exact source of the data, and consistency for the load amounts used as between the RPS obligations and the security requirements. Vistra Written Comments, p. 4. According to Vista, as currently written, the definition of Load, which "shall not include line loss," may lead to confusion regarding the thresholds for the security as to whether to use pre-settlement load data as reported by the EDCs, which does not include line losses, or the post-settlement data used for RPS obligations. Id., p. 5.

Authority Response:

In response to Vistra's comment, the Authority is revising the Proposed Regulations by removing the definition of "Load" in § 16-245-1 of the Proposed Regulations and revising § 16-245-4(a) of the Proposed Regulations to require that an electric supplier maintain an amount of security based on the electric supplier's forecast

year load, which is the amount of the full load served by the electric supplier during the previous calendar year, as adjusted to account for changes in the type and quantity of customers to be served in the forecast year. This is consistent with the RPS regulation requirements. See Conn. Agencies Regs. § 16-245a-1(b)(1).

Additionally, the Authority revised § 16-245-4(a) of the Proposed Regulations by removing any reference to the RPS requirements as the requirement to maintain a security to cover the shortfalls in situations where electric suppliers amass large RPS obligations and file for bankruptcy or leave the market without meeting those RPS obligations is already in Conn. Agencies Regs. § 16-245a-1(b).

Comment 2:

Vistra opposes the provision in § 16-245-4(a) of the Proposed Regulations, which provides that “[n]otwithstanding this schedule, the Authority has the discretion to increase an electric supplier’s security as indicated by decision in the supplier’s licensing docket to accommodate a supplier’s renewable portfolio standards obligations in excess of 1,000,000 MWh,” as it puts an electric supplier in a uncertain position as the Authority has not defined or even described what may trigger this requirement. Vistra Written Comments, p. 5. Vistra asserts that the proposed increases to security amounts in the Proposed Regulations should adequately ensure electric supplier responsibility. Id. Therefore, Vistra requests that the Authority remove this provision from § 16-245-4(a) of the Proposed Regulations. Id. To the extent the Authority seeks a further increase, Vistra states the Authority should utilize the rulemaking process to provide all parties with notice and the opportunity to comment. Id.

Authority Response:

In response to Vistra’s comments, the Authority is revising § 16-245-4(a) of the Proposed Regulations to read as follows: “Notwithstanding this schedule, the Authority has the discretion to increase an electric supplier’s security as indicated by decision in the supplier’s licensing docket to accommodate a supplier’s annual load in excess of 1,500,000 MWh in increments of \$1 million per each additional 500,000 MWh of annual load.” This will provide electric suppliers with clarity regarding security responsibilities.

Additionally, the Authority revised § 16-245-4(a) of the Proposed Regulations by removing the any reference to the RPS requirements as the requirement to maintain a security to cover the shortfalls in situations where electric suppliers amass large RPS obligations and file for bankruptcy or leave the market without meeting those RPS obligations is already in Conn. Agencies Regs. § 16-245a-1(b).

Comment 3:

Vistra requests clarification that § 16-245-4(b) of the Proposed Regulations requiring electric suppliers to “submit necessary updates of security as a compliance filing in their most current licensing docket prior to April 15 of each calendar year” is based on the load reported in the October 15 RPS filing of the prior year. Vistra Written Comments,

p. 6. According to Vistra, this clarification will reduce any confusion as to whether electric suppliers are required to calculate security off of an estimate annual load before the EDCs make their supplier load filings on October 15 later in the same calendar year or, as Vistra believes, calculate security of the load reported by the EDCs as part of the prior calendar year's RPS filing. *Id.* Specifically, Vistra recommends the following revision to § 16-245-4(b) of the Proposed Regulations: "All suppliers shall submit necessary updates of security as a compliance filing in their most current licensing docket prior to April 15 of each calendar year based on the electric distribution company filings in the annual renewable portfolio standards docket filed in the previous year."

Authority Response:

In response to Vistra's comment, the Authority is revising § 16-245-4(b) of the Proposed Regulations to read as follows:

"All electric suppliers shall submit necessary updates of security as a compliance filing in their most current licensing docket on or before the date on which the electric supplier is required to submit its annual report pursuant to section 16-245a-1(a) of the Regulations of Connecticut State Agencies."

This will ensure consistency between the Proposed Regulations and Conn. Agencies Regs. § 16-245a-1, which is the regulation regarding RPS. Conn. Agencies Reg. § 16-245a-1 requires electric suppliers to submit their annual reports "on or before the date published by the Authority in its annual notice of the renewable energy portfolio compliance docket."

Additionally, the Authority is revising Conn. Agencies Regs. § 16-245-4(c) of the Proposed Regulation by removing any reference to the RPS requirements in the provision requiring maintenance of a security as the maintenance of a security to cover a supplier's RPS obligations is addressed in Conn. Agencies Regs. § 16-245a-1(b).

Comment 4:

Constellation suggests that there be one filing per year for the updates to security compliance filings required under the § 16-245-4(b) and (c) of the Proposed Regulation and that it be filed either with the filing required for the RPS filing or on April 15. Constellation Written Comments, p. 1. According to Constellation, the regulations appear duplicative.

Authority Response:

See Authority Response to Comment 3, *supra*.

Comment 5:

NRG Retail Companies 1 commented that the new security requirements in § 16-245-4(a)(2) are excessive. NRG Retail Companies Written Comments, p. 5. NRG Retail

Companies 1 also commented that the “formulaic nature of the proposed security regulation introduces an unnecessary level of complexity.” Id.

Authority Response:

While the Authority appreciates NRG Retail Companies 1’s comments, the Authority disagrees that the new security requirements in § 16-245-4(a)(2) are excessive. The amount of security required has not changed since at least 2005 and therefore is in need of an update to address changed conditions in the supplier market. Additionally, the Authority disagrees that the calculation of the security amount is complex as such amount is directly related to the amount of load served by electric supplier in the previous year. Accordingly, the Authority is not making any revisions to the Proposed Regulations in response to NRG Retail Companies 1’s comments.

Comment 6:

NRG Retail Companies 2 commented that the new security requirements are excessive and unjustified. NRG Retail Companies 2 Written Comments, p. 9. Specifically, NRG Retail Companies 2, citing to a Notice of Request for Written Comments from 2019, assert that when the Authority initially proposed increasing the security amount, PURA indicated it was increasing the security amount to ensure electric suppliers had the financial capability to satisfy both their financial and customer supply and RPS obligations. Id. (citation omitted). According to NRG Retail Companies 2, the Authority then added a financial security amount to its amendments to the RPS regulations, but kept the financial security requirement in the Proposed Regulations as a financial security in addition to the RPS financial security. Id., p. 10.

In addition, the NRG Retail Companies 2 recommend that the Authority adopt a financial security requirement like the three-tiered approach adopted by the New Hampshire Public Utilities Commission (NH Model) in place of the financial security requirement in the Proposed Regulations. Id., p. 11. According to NRG Retail Customers 2, the NH Model would double the current maximum security amount, avoid the complexity and administrative burden of the Proposed Regulation’s security requirement, and provide certainty as to the maximum amount a supplier may be required to post. Id.

Authority Response:

See Authority Response to Comment 5, supra.

IV. CONCLUSION

Based upon the written comments addressed in this Public Comment and Response Report, I recommend the proposed amendments to the Licensing Electric Supplier Regulations, first publicly noticed on June 9, 2021, and again on January 2, 2024, be revised as recommended herein, and that the Final Proposed Regulations be submitted by Marissa P. Gillett, Chairman of the Authority, for approval by the Attorney General and the Legislative Regulations Review Committee of the Connecticut General

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Assembly and, upon adoption, submitted to the Secretary of State for posting on the eRegulations system.



Kathryn Keenan
Staff Attorney
Office of Adjudications

February 14, 2024
Date

Attachments

**State of Connecticut
Regulation of
Public Utilities Regulatory
Authority Concerning
Licensing Electric
Suppliers**

Section 1. Section 16-245-1 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-245-1. Definitions

As used in sections 16-245-1 to 16-245a-2, inclusive, of the Regulations of Connecticut State Agencies:

(1) “All-inclusive” means all generation-related costs or charges, such that no other charges can be added;

(2) “Alternative compliance payment” means the payment required pursuant to section 16-245(k) or 16-244c(h)(1) of the Connecticut General Statutes for failure to meet the renewable energy portfolio standards;

[(2)] (3) “Applicant” means any person, as defined in section 16-1 of the Connecticut General Statutes, who applies for a license to become an electric supplier in this state pursuant to section 16-245 of the Connecticut General Statutes, and any municipal electric utility that applies, pursuant to section 16-245c of the Connecticut General Statutes, for a license to provide electric generation services to end use customers outside of its service area using the transmission or distribution system or facilities of an electric distribution company, as defined in section 16-1 of the Connecticut General Statutes;

[(3)] (4) “Authority” means the Public Utilities Regulatory Authority or its successor;

[(4)] (5) “Class I renewable energy source” has the same meaning as provided in section 16-1 of the Connecticut General Statutes;

[(5)] (6) “Class II renewable energy source” has the same meaning as provided in section 16-1 of the Connecticut General Statutes;

[(6)] (7) “Class III source” has the same meaning as provided in section 16-1 of the Connecticut General Statutes;

[(7)] (8) “Electric distribution company” has the same meaning as provided in section 16-1 of the Connecticut General Statutes;

[(8)] (9) “Electric supplier” has the same meaning as provided in section 16-1 of the Connecticut General Statutes;

(10) “Generally available rate” means a generation rate that is offered to all customers taking service under a rate tariff or a rate that is offered to a class of residential or business customers. Rates that are offered through an electric supplier’s internet website or are included on the Rate Board are deemed to be generally available;

[(9)] (11) “ISO” means ISO – New England, Inc. and includes any successor organization thereto;

(12) “KWh” means kilowatt-hour;

[(10)] (13) “Municipal electric utility” means a municipal electric utility established under chapter 101 of the Connecticut General Statutes or any other electric utility owned, leased, maintained, operated, managed or controlled by any unit of local government under any general statute or any public or special act;

(14) “MWh” means megawatt-hour;

[(11)] (15) “NEPOOL” means the New England Power Pool and includes any successor organization thereto;

[(12)] (16) “NEPOOL GIS” means the generation information system and associated operating rules that govern the tracking of generation attributes, as approved by NEPOOL, and as amended from time to

time;

(17) “Offer” means the information provided to consumers for each product or record displayed on the Rate Board. This information includes, but is not limited to, the applicable electric distribution company tariff and customer class, term in billing cycles, rate, cancellation fee, enrollment fee, restrictions, and other product-specific information;

~~[(13)]~~ (18) “Participating municipal electric utility” has the same meaning as provided in section 16-1 of the Connecticut General Statutes;

(19) “Rate” means the all-inclusive cost per kWh for each generation offer;

(20) “Rate Board” means EnergizeCT.com or any other internet website managed by the Authority to better enable customers to compare pricing policies and charges among electric suppliers;

(21) “Rate Board database” means the database that stores the information for generally available rates and offers that are displayed on the Rate Board;

~~[(14)]~~ (22) “Security” means a bond, letter of credit, guarantee, or other appropriate financial instruments approved by the Authority from a creditworthy financial institution; [and]

(23) “Self-reporting” means the process followed by electric suppliers to upload to and manage generally available generation offers on the Rate Board; and

~~[(15)]~~ (24) “Total output or services” means an electric supplier’s or electric distribution company’s pool transmission facility load obligation data assignment in the NEPOOL GIS.

Sec. 2. Section 16-245-2 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-245-2. Scope of license. Application filing requirements. Periodic review

(a) At the discretion of the [department] Authority, the scope of any license may be restricted to the provision of service to a geographic area, the provision of service to a particular type of customer, a method of operation (e.g., generator, broker, marketer), or the services it offers (e.g., energy services, backup services). The scope of a license may be restricted based on the [department's] Authority’s assessment of the technical, managerial and financial capability of the applicant and the scope of service plan submitted by the applicant.

(b) Except as provided in subsection (e) of this section, an application for a license to become an electric supplier or participating municipal electric utility shall include a completed form prescribed by the [department] Authority and shall include the following items:

(1) An application fee in the amount of [~~\$ 1,000~~] \$ 2,500, made payable to the Treasurer of the State of Connecticut;

(2) A scope of service plan, which sets forth a description of the geographic area the applicant plans to serve, the type of customers to be served, a description of the applicant's proposed operations (e.g., generator and supplier of electric generation services; broker or marketer and supplier of electric generation services; or aggregator and supplier of electric generation services), and the services it plans to offer (e.g., energy services, backup services);

(3) Documentation demonstrating the applicant's technical, managerial and financial capability to provide electric generation services;

(4) The applicant's legal name, a description of the applicant's form of ownership, and the name of the state or jurisdiction where the applicant is organized or formed;

(5) The applicant's endorsed certificate of incorporation certified by the Connecticut Secretary of the State, a copy of the applicant's certificate of existence, a copy of the applicant's certificate of good standing, or other business registration on file with the Connecticut Secretary of the State; unless the applicant is a municipal electric utility, in which case the applicant shall include the municipality's authorization to apply to become a participating municipal electric utility, which may include, but shall not be limited to, a

resolution from its board of electrical commissioners, board of gas and electrical commissioners or town council;

(6) The address of the applicant's headquarters, the articles of incorporation filed with the state or jurisdiction in which the applicant is incorporated, and any bylaws and amendments thereto;

(7) The name, business address, and title of each officer and director, partner, or other similar officer, unless the applicant is a municipal electric utility, in which case the applicant shall include the name and business address of the manager, superintendent, or other designated person in charge of electric generation services, as defined in section 16-1 of the Connecticut General Statutes, and the name and business address of each member of its board of electrical commissioners or board of gas and electrical commissioners appointed pursuant to section 7-216 of the Connecticut General Statutes;

(8) The address of the applicant's principal office in this state, if any, or the address of the applicant's agent for service in this state. The application shall also include the name, address, telephone number, facsimile machine number, and e-mail address of the applicant's contact person for regulatory matters;

(9) Information about the applicant's corporate structure, including names and financial statements, as appropriate, concerning corporate affiliates. If the applicant is a holding company or the subsidiary of a holding company, a graphical depiction of the organization shall also be provided;

(10) A summary of any history of bankruptcy, dissolution, merger, or acquisition of the applicant in the two calendar years immediately preceding the application;

(11) An exhibit indicating whether the applicant or any of the applicant's corporate affiliates or officers have been or are currently under investigation, either in this state or in another state or jurisdiction for violation of any consumer protection law or regulation, and whether the applicant or any of the applicant's corporate affiliates or officers have been fined, been sanctioned, [or] been otherwise penalized, or entered into a settlement agreement for an alleged violation, either in this state or in another state or jurisdiction for violation of any consumer protection law or regulation;

(12) The applicant's toll-free telephone number for customer service and address for customer complaints;

(13) A copy of the applicant's standard service contract or contracts for both residential and business or commercial customers;

(14) Unless addressed in the applicant's standard service contract or contracts, the applicant's customer service plan, which shall consist of the applicant's customer security deposit procedures and requirements, customer complaint handling and dispute resolution procedures, customer termination procedures, customer rights and responsibilities, and customer information and disclosure procedures;

(15) The applicant's Federal Employer Identification Number;

(16) A declaration that the applicant agrees to cooperate with the [department] Authority, the ISO, the electric distribution companies, and other electric suppliers in the event of an emergency condition that may jeopardize the safety and reliability of electric service in accordance with emergency plans and other procedures as may be determined appropriate by the [department] Authority;

(17) An attestation that the applicant will not release customer information to any person, as that term is defined in section 16-1 of the Connecticut General Statutes, unless the customer signs a release, the form for which shall be made available by the [department] Authority, and that the applicant and the applicant's third party agents have reasonable cyber and data security practices, including a description of the applicant's and the third party agents' cyber and data security practices. For purposes of this subdivision, "customer information" means customer-specific information which the electric supplier acquired or developed in the course of providing electric generation services and includes, but is not limited to, information that relates to the quantity, time of use, type and destination of electric service, information contained in electric service bills and other data specific to an electric supplier customer;

(18) Documentation demonstrating that the applicant maintains security as required pursuant to section

16-245-4 of the Regulations of Connecticut State Agencies;

[(19)] (19) If the applicant maintains security in an amount less than \$ 250,000 pursuant to section 16-245-4(a) of the Regulations of Connecticut State Agencies, a twelve month estimate of the applicant's gross receipts from the sale of electric generation services in Connecticut;

[(20)] (19) A twelve month estimate of the expected total [electric generation] load to be served in Connecticut by the applicant;

[(21)] (20) If the applicant is a publicly owned company, a copy of the applicant's two most recent annual reports to stockholders, annual returns or summary financial statements, including filings made with the securities and exchange commission such as 10-K or 10-Q and 8-K filings and audited financial statements; if the applicant is a privately owned company, a copy of the company's two most recent federal income tax returns;

[(22)] (21) Information regarding the status of the applicant's operations in other states, including investigations by regulatory agencies or attorneys general in other states, whether the investigations are current or settled, and if settled, the outcome, and any decisions or orders granting or denying the applicant authority to sell electricity in another state; [and]

[(23)] (22) An affidavit certifying under penalty of false statement that all statements made in the application are true and complete; [.] and

(23) Any other information the Authority deems necessary.

(c) An application to expand the scope of an electric supplier's license shall include the information required in subsections (b)(2) and (b)(3), and subsections (b)(18) to (b)(23), inclusive.

(d) An applicant shall amend its application while the application is pending if substantial changes occur regarding the information provided in the application within ten days of any such change.

(e) Subsections (b)(6), (b)(9), (b)(10), and [(b)(21)] (b)(20) of this section shall not apply to any applicant to become a participating municipal electric utility.

(f) [Any license to supply electricity in this state shall be subject to a periodic review which shall occur every five (5) years after the date on which the license was issued or was last reviewed. Not less than forty-five (45) days before the five year anniversary of the date on which the license was issued or was last reviewed.] Beginning on April 15, 2025, the Authority shall conduct biennial proceedings to review certain aspects of all electric supplier licenses. Not later than January 31 of each year of the biennial review, an electric supplier shall file with the [department] Authority a license review [application] compliance filing, which shall include the following:

(1) A fee in the amount of [\$ 250] \$ 2,500 made payable to the Treasurer of the State of Connecticut; [.]

(2) Information required in subsections (b)(6), (b)(9), (b)(10), (b)(12), (b)(17), and [(b)(21)] (b)(20) of this section; and

(3) [An update of any information previously filed pursuant to subsection (b) of this section that has changed since the date on which the license was issued or was last reviewed.] Any other information the Authority deems necessary.

Not more than ninety days after receiving the license review compliance filing, the Authority shall notify the electric supplier whether the license review compliance filing is complete or whether the applicant must submit additional information. The Authority shall respond to a license review compliance filing not more than ninety days after notifying the electric supplier that the license review compliance filing is complete.

(g) An electric supplier shall:

(1) Maintain all records of customer complaints for a minimum of three [(3)] years from the date of complaint;

(2) Make customer complaint records available to the [department] Authority upon its request;

(3) Cooperate with the [department] Authority in its investigations of consumer complaints and comply

with any resulting orders; and

(4) Notify the [department] Authority within ten days of any changes to the regulatory contact information and customer service plan filed pursuant to subsections (b)(8) and (b)(14) of this section.

Sec. 3. Section 16-245-3 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-245-3. Post-licensing requirements

(a) In addition to the conditions described in subsection (g) of section 16-245 of the Connecticut General Statutes, it shall be a condition of continuing licensure for an electric supplier to provide:

(1) Any and all information requested by the [department] Authority for the purpose of compiling [quarterly] disclosure reports required pursuant to section 16-245p of the Connecticut General Statutes;

(2) Any and all information requested by the [department] Authority in its implementation of section 16-245x of the Connecticut General Statutes; [and]

(3) [Any and all information that the electric supplier is required to provide pursuant to section 16-245y(b) of the Connecticut General Statutes.] Accurate renewable energy portfolio standards compliance filings in the form prescribed by the Authority in section 16-245a-1 of the Regulations of Connecticut State Agencies;

(4) Not later than October 1 of each year, any and all information that the electric supplier is required to provide pursuant to section 16-245y(b) of the Connecticut General Statutes; and

(5) Responses to customer inquiries or complaints provided by the Authority within five business days of receipt or within a time period prescribed by the Authority in a decision.

(b) Not less than twenty [(20)] days before an electric supplier executes its first contract for the sale of electric generation services to an end user, the electric supplier shall file with the [department] Authority an affidavit attesting to the electric supplier's capability to exchange data necessary for the establishment and maintenance of a customer's account with the electric distribution company or companies serving the area or areas the electric supplier intends to serve. The affidavit shall attest to the successful completion of a "test run" between the electric supplier's computer systems and the electric distribution company's or companies' computer systems. The electric supplier shall serve such affidavit on the electric distribution company or companies serving the area or areas the electric supplier intends to serve. For purposes of this [subdivision] subsection, "test run" shall mean an exchange of data necessary to establish and maintain a customer's account, including, but not limited to, account administration, usage and billing, and payments and adjustments. The affidavit shall create a rebuttable presumption that the electric supplier is capable of electronically exchanging data necessary for the establishment and maintenance of a customer's account with the electric distribution company or companies serving the area or areas the electric supplier intends to serve.

(c) [Not later than October 15 of each year, an electric supplier shall submit to the department the following information:

(1) If the supplier has elected to maintain security based on a percentage of its gross receipts, the amount of the electric supplier's gross receipts from the sale of electric generation services in the previous twelve months;

(2) An estimate of the expected electric generation load to be served by the electric supplier in the next twelve months; and

(3) an affidavit attesting that the electric supplier is subject to chapters 208, 212, 212a and 219 of the Connecticut General Statutes, as applicable, and shall pay all taxes that it is subject to in this state.] An electric supplier shall maintain its internet website to include the following:

(1) The electric supplier's official name and trade name or names, if any;

(2) All Authority docket numbers and titles pertaining specifically to the electric supplier to show its

regulatory history in Connecticut, including all licensing and review dockets and history of dockets of companies acquired through mergers or license transfers, and all Authority investigation dockets that have been concluded;

(3) Customer service contact information, including a phone number at which a live company representative (not an answering service) shall be available during normal business hours;

(4) Authority contact information;

(5) Information concerning all generally available offers, renewable products, and information about the source of renewable energy (e.g., renewable energy certificates), standard contracts, and enrollment forms; and

(6) Any other information which the Authority deems necessary.

(d) [For purposes of this subsection, "aggregated customer" shall mean a customer who is gathered by an electric aggregator, as defined in section 16-1 of the Connecticut General Statutes, for the purchase of electric generation services from an electric supplier. Not more than sixty days (60) after an aggregated customer contracts with an electric supplier, and not more than sixty days after any renewal, extension or modification of such contract, the electric aggregator shall issue to the aggregated customer a notice containing the following information:

(1) The name, address and toll-free customer service telephone number of the electric supplier that provides electric generation services under its aggregation offer; and

(2) The rate for electric generation services stated in its aggregation offer, or a description of how electric generation services are charged to customers under its aggregation offer.] All electric suppliers shall abide by the following when posting to the Rate Board:

(1) An electric supplier shall honor all generation rates the electric supplier has posted to the Rate Board;

(2) An electric supplier shall self-report all generally available generation offers to the Rate Board following a process established by the Authority;

(3) All generally available rates shall be all-inclusive rates;

(4) An electric supplier shall follow standardized language issued by the Authority when self-reporting;

(5) Rates that appear on an electric supplier's internet website shall be posted to the Rate Board, thereby aligning these resources;

(6) Rates entered into the Rate Board database cannot exceed five decimal places, e.g., \$0.00000, but will be displayed on the Rate Board in cents per kWh, rounded to two decimal places; and

(7) Each offer that is self-reported to the Rate Board database is considered a regulatory compliance filing.

(e) Regarding rates or offers posted to an electric supplier's internet website:

(1) All electric suppliers shall honor all rates and offers posted to their respective internet websites; and

(2) All rates and offers posted to an electric supplier's internet website including a claim of savings shall include a clear and conspicuous disclosure of how the savings will be calculated and what the electric supplier will do if the savings are not realized, together with any time or other limitations the electric supplier may impose.

(f) For purposes of this subsection, "aggregated customer" shall mean a customer who is assisted by an electric aggregator, as defined in section 16-1 of the Connecticut General Statutes, in the purchase of electric generation services from an electric supplier. Not less than forty-five days before an aggregated customer contracts with an electric supplier, and not more than sixty before after any renewal, extension, or modification of such contract, the electric aggregator shall issue to the aggregated customer a notice containing the following information:

(1) The name, address, email address, and toll-free customer service telephone number of the electric supplier that provides electric generation services under the aggregation offer; and

(2) The rate for electric generation services stated in the aggregation offer, or a description of how

electric generation services are charged to customers under the aggregation offer.

Sec. 4. Section 16-245-4 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-245-4. Security

(a) (1) [An] In addition to the security required by section 16-245a-1(b) of the Regulations of Connecticut State Agencies, each electric supplier shall maintain security in an amount that will ensure its financial responsibility and its supply of electricity to end use customers in accordance with contracts, agreements, or arrangements. [An electric supplier may elect to maintain security in the amount of \$250,000 or five per cent of its estimated gross receipts for its first full year of operation. Such] The security shall:

(A) [name] Name the [department] Authority as obligee; and

(B) Be continuous without an expiration date during the term of the electric supplier's license and shall be revised annually as required pursuant to subsection (b) of this section. [Failure to pay the full amount of taxes or assessments due, or failure to supply electricity or other services in accordance with contracts, agreements, or arrangements may cause payments to be made under the security.]

(2) An electric supplier shall maintain an amount of security based on its forecast year load in accordance with the following schedule. The forecast year load shall be the amount of the full load served by the electric supplier during the previous calendar year, as adjusted to account for changes in the type and quantity of customers to be served in the forecast year.

(A) Up to 100,000 MWh: \$ 250,000;

(B) 100,001 MWh to 499,999 MWh: \$ 500,000;

(C) 500,000 MWh to 99,999 MWh: \$1 million; and

(D) 1,000,000 to 1,500,000 MWh: \$2 million.

An electric supplier may elect to maintain continuous security in an amount greater than indicated in the schedule. Notwithstanding this schedule, the Authority has the discretion to increase an electric supplier's security as indicated by a decision in the electric supplier's licensing docket to accommodate an electric supplier's forecast year load in excess of 1,500,000 MWh in increments of one million dollars per each additional 500,000 MWh of annual load.

(b) [Security based on an electric supplier's gross receipts shall be subject to annual adjustment. The department may require an increase in the amount of the security if the electric supplier's annual gross receipts increase more than ten percent from the gross receipts amount previously used by the department to determine the level of security required, except in no event shall the department require security in excess of \$250,000.] All electric suppliers shall submit necessary updates of security as a compliance filing in their most current licensing docket on or before the date on which the electric supplier is required to submit its annual report pursuant to section 16-245a-1(a) of the Regulations of Connecticut State Agencies. Said compliance filings shall include a cover letter that identifies the electric supplier's name, licensing docket number, and licensing docket title. The Authority shall update the schedule of security set forth in subsection (a) of this section as necessary and shall issue any updates in a decision. Any electric supplier serving in its first year licensed in Connecticut shall post the minimum security and shall adjust the security accordingly each subsequent year based on the electric supplier's forecast year load.

(c)[An electric supplier that petitions the department to expand the authority granted in its license shall maintain security in an amount that will ensure its financial responsibility and its supply of electricity to end use customers in accordance with contracts, agreements or arrangements, and may elect to maintain security in the amount of \$250,000 or five per cent of the electric supplier's estimated gross receipts for its first full year of expanded operation. The security shall be subject to annual adjustment by the department pursuant to subsection (b) of this section.] The amount of security maintained to comply with this section may be satisfied by (1) adding the amount of security required by this section to the security the electric

supplier uses to comply with the security requirements of section 16-245a-1(b) of the Regulations of Connecticut State Agencies, or (2) maintaining a separate security in the amount required by this section.

Sec. 5. Section 16-245-6 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-245-6. Enforcement

In determining the appropriate sanction for violation of any licensing requirement, the [department] Authority shall consider the following:

- (1) The appropriateness of the sanction or fine to the size of the business of the person charged;
- (2) The gravity of the violation;
- (3) The number of past violations by the person charged;
- (4) The good faith effort to achieve compliance;
- (5) The proposed programs and procedures to ensure compliance in the future; and
- (6) Such other factors deemed appropriate and material to the particular circumstances of the violation.

Statement of Purpose

The purpose of the proposed regulations is to revise the Public Utilities Regulatory Authority's (Authority or PURA) existing regulations implementing Conn. Gen. Stat. § 16-245. The amendments update the regulations with the current name of the agency, Public Utilities Regulatory Authority, and revise regulations concerning the licensing of electric suppliers, post-licensing requirements, and security requirements. The substantive amendments are necessary and appropriate to address issues that the Authority has consistently encountered in its regulation of electric suppliers and to address changed circumstances that have arisen since the initial adoption of the regulations in 1999 and since the last amendments to the regulations in 2004 and 2005.

The proposed amendments change the review cycle for electric supplier licenses from every 5 years to biennial. The proposed amendments also raise the fee for applications to become a licensed electric supplier and the fee for the periodic reviews conducted by the Authority.

In addition, the proposed amendments require electric suppliers to provide additional information to PURA and the public. For licensing, electric suppliers will be required to provide information on investigations by regulatory agencies and attorneys general in other states. After licensing, electric suppliers will be required to provide the Authority with responses to customer inquiries or complaints, and to provide specific information on their websites, including the electric supplier's official name and trade name or names, all PURA dockets specifically pertaining to the electric supplier, customer service contact information, PURA contact information, information concerning all generally available offers, renewable products, sources of renewable energy, standard contracts, enrollment forms, and any other information deemed necessary by the Authority. Additionally, electric suppliers will have to follow specific rules when posting to the Rate Board, including honoring all generation rates the supplier has posted to the Rate Board, self-reporting all generally available generation offers, ensuring generally available rates are all-inclusive, and cross-posting rates that appear on the electric supplier's own website. Electric suppliers will also have to follow specific rules when posting rates to their own website. These amendments will ensure the public is receiving all pertinent information to make decisions regarding electric suppliers.

The proposed amendments change and generally increase security requirements according to a new schedule. The Authority will have the discretion to increase security if an electric supplier's forecast year load exceeds 1,500,000 MWh.

The proposed regulations will amend sections 16-245-1 to 16-245-4, inclusive, and 16-245-6 of the Regulations of Connecticut State Agencies.

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COPY**

DOCKET NO. 19-10-41

REGULATIONS FOR ELECTRIC SUPPLIER LICENSING

**PUBLIC COMMENT SESSION:
HELD ON JUNE 29, 2021
AT 11:01 a.m.
VIA ZOOM MEETING/TELECONFERENCE**

**HELD BEFORE:
CHAIRMAN MARISSA GILLETT
COMMISSIONER MICHAEL CARON**

Reporter: Theresa Bergstrand, CSR #406

A P P E A R A N C E S

PURA Meeting Host:
Tiffany Tisler, Esq.

OFFICE OF CONSUMER COUNSEL:
Andrew Minikowski, Esq.

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1 (The hearing commenced at 11:01 a.m.)

2
3 CHAIRMAN GILLETT: Okay. Good morning, everyone
4 and welcome to Docket Number 19-10-41. My name is
5 Chairman Marissa Gillett, and I am joined today
6 virtually by my colleague, Commissioner Michael Caron,
7 as well as a number of Authority Staff.

8 We are here this morning for the Public Comment
9 Hearing regarding the proposed Electric Supplier
10 Regulations, Electric Supplier Licensing Regulations,
11 that is. So I'll open with a brief Statement of Purpose
12 and a summary of next steps, and then we will open the
13 floor for any stakeholders who would like to register
14 public comment in this matter. And you can get in the
15 cue to do so by using the raise hand feature of Zoom,
16 and I will call on you when we get to that opportunity.

17 So just as a reminder, the Statement of Purpose is
18 the reason that we are here for the Public Comment
19 Hearing this morning, is to revise the Authority's
20 existing regulations which implement Connecticut General
21 Statutes Section 16-245. Some substantive amendments
22 are necessary and appropriate to address issues that the
23 Authority has consistently encountered in its regulation
24 of electric suppliers, and also to address changed
25 circumstances that have arisen since the initial

1 adoption of these regulations in 1999, and since the
2 last amendment to those regulations were made in 2004
3 and 2005.

4 The proposed amendments cover a number of areas,
5 including linking the security to a supplier's renewable
6 portfolio standards; increasing security requirements on
7 a new schedule; requiring the provision of additional
8 information; changing the review cycle from every five
9 years to biennial and raising the application fee.

10 So that Statement of Purpose is available on the
11 screen. Additionally, we will provide the opportunity
12 for written comment, in addition to the verbal comment
13 opportunity this morning. If you would like to provide
14 written comments on the proposed regulations pending
15 before the Authority, those written comments are due by
16 5:00 p.m. on July 16th. You can file written comments
17 for the Authority's consideration in one of three ways,
18 which are shown on the screen. There is an
19 E-Regulations system in place for, on behalf of the
20 State, so please use the tracking number shown on the
21 screen, PR2020-007, to provide comment on the
22 regulations that are before us. You can also e-mail
23 your comments to the Executive Secretary, or submit them
24 by regular mail. All comments should reference both
25 this docket number, 19-10-41, and E-Regulations tracking

1 number, please.

2 So with that, again, the purpose of today's hearing
3 is to receive public comment into the record. So if you
4 would like to register public comment specific to the
5 regulations that are pending before us, please use the
6 raise hand feature and I will recognize you.

7
8 (Whereupon a pause was taken to allow an
9 opportunity for members of the public to request
10 to make public comment.)

11
12 CHAIRMAN GILLETT: Okay. I just want to state one
13 more time before we adjourn, if you would like to make
14 public comment regarding the pending regulations, if you
15 can't find the raise your hand function, please also
16 feel free to take yourself off mute and turn on your
17 video and I can call on you that way, as well.

18
19 (Whereupon pause was taken to allow for requests
20 for public comment.)

21
22 CHAIRMAN GILLETT: Okay. Commissioner Caron, I
23 don't believe we have any takers, so --

24 COMMISSIONER CARON: I would say we are on the
25 right track.

1 **CHAIRMAN GILLETT:** Okay. Then I want to thank
2 everyone for attending this morning. If you would like
3 to register written comment, once again, those are due
4 by 5:00 p.m. on July 16th. So thank you for your
5 attendance the morning. We are adjourned.

6
7 (Whereupon the hearing was adjourned at 11:06
8 a.m.)
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STATE OF CONNECTICUT

I, THERESA BERGSTRAND, a Certified Professional Reporter/Commissioner within and for the State of Connecticut, do hereby certify that I took the Administrative Proceeding via Zoom Meeting Teleconference on June 29, 2021, in RE Docket Number 19-10-41 REGULATIONS FOR ELECTRIC SUPPLIER LICENSING.

I further certify that the within testimony was taken by me stenographically and reduced to typewritten form under my direction by means of computer assisted transcription; and I further certify that said deposition is a true record of the testimony given by said witness.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

WITNESS my hand and seal the 29th day of June, 2021.

Theresa Bergstrand

Theresa Bergstrand, CSR.
My commission expires 3/31/2026



July 16, 2021

Via Electronic Mail

Public Utilities Regulatory Authority
Jeffrey R. Gaudiosi, Esq.
Executive Secretary
Ten Franklin Square
New Britain, CT 06051

**Re: Docket No. 19-10-41 – Regulations for Electric Supplier Licensing
eRegulations Tracking PR2020-007**

Dear Mr. Gaudiosi:

Pursuant to the Public Utilities Regulatory Authority’s (the “Authority”) Notice of Intent and Public Comment Period issued June 9, 2021 in the above-referenced docket, Constellation NewEnergy, Inc. (“Constellation” or the “Company”) submits these Comments on the Proposed Regulations issued by the Authority, also on June 9, 2021 in the above-referenced docket.

Constellation appreciates the Authority’s efforts in revising regulations to provide both the Authority and consumers with greater and more consistent information, as well as to address issues encountered by the Authority when regulating electric suppliers. Constellation has a few minor comments on the Proposed Regulations, as set forth below.

Cost of Application and License Review:

The proposed regulations would increase the cost of license reviews from \$1,000 to \$2,500 and the cost of license reviews from \$250 to \$2500, and in each case notes that such amount “may be updated by the Authority in its decisions.” Although Constellation appreciates the escalating costs faced by the Authority and the desire for flexibility in raising fees in the future, we would request that the Authority maintain an updated listing of such fees on its website. That may not need to be specified in the regulations as long as the Authority ensures that current fee information is readily accessible to applicants and licensed suppliers.

Timing of Filings Regarding Security:

We note the filings required in proposed Conn. Agencies Regs. § 16-245-4(b) and (c) with respect to security updates appear duplicative and would suggest that there be one such filing per year, with the renewable portfolio standards filing on or April 15.

Jeffrey R. Gaudiosi, Esq.
Executive Secretary
Page 2

Please contact me at Florence.Davis@exeloncorp.com if you have any questions or need further information.

Regards,

/s/

Florence Davis
Assistant General Counsel

cc: Gretchen Fuhr, Senior Manager, State Governmental Affairs



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and West Virginia

Via Electronic Filing and Electronic Mail

July 16, 2021

Jeffrey R. Gaudiosi, Esq.
Executive Secretary
Public Utilities Regulatory Authority
10 Franklin Square
New Britain, CT 06051
PURA.ExecutiveSecretary@ct.gov

**Re: Docket No. 19-10-41: Regulations for Electric Supplier Licensing
eRegulations Tracking PR2020-007**

Dear Mr. Gaudiosi:

In response to the Public Utilities Regulatory Authority's ("Authority") Notice of Intent and Public Comment Period dated June 9, 2021 ("Notice") seeking written comments in the above-referenced proceeding on proposed significant changes to regulations governing supplier licensing, post-licensing, and security requirements, Direct Energy Services, LLC; Direct Energy Business, LLC; Direct Energy Business Marketing, LLC; Energy Plus Holdings LLC; Independence Energy Group LLC; Reliant Energy Northeast LLC d/b/a NRG Home; Green Mountain Energy Company; and XOOM Energy Connecticut, LLC (collectively, "NRG Retail Companies" or "NRG") hereby submit limited written comments.

As an initial matter, NRG supports the current electric supplier licensing regulations (Regulations of Connecticut State Agencies section 16-245-1 *et seq.*) and appreciates the Authority's thoughtful consideration of proposed changes to those regulations. However, NRG respectfully requests that the Authority consider the effects of the proposed changes (Tracking No. PR2020-007, the "Proposed Regulations"), specifically the incremental financial and administrative effects and, before adopting final regulations, make revisions to reduce those overall impacts.

Jeffrey R. Gaudiosi, Esq.

July 16, 2021

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Each of the individual changes within the Proposed Regulations may be viewed as modest or without material impact or consequence. However, collectively, the Proposed Regulations will impose new and significant cost increases on competitive electric suppliers operating in the state. The cost burdens associated with regulatory compliance of these proposed administrative and financial requirements will add to the electric suppliers' overall costs of doing business in the state. These increased costs will be borne by consumers in the prices they pay for retail electric supply. Accordingly, NRG urges the Authority to recognize the fiscal impact effect of imposing these incremental costs on the competitive electricity market and ultimately consumers and to make changes to reduce those effects.

Most notably, NRG has identified the following three (3) primary areas of concerns:

1. Part (f) of Section 16-245-2. Scope of license. Application Filing requirements. Periodic Review of the Proposed Regulations would require that beginning on April 15, 2022, the Authority conduct biennial proceedings to review certain aspects of all electric supplier licenses, based on compliance filings submitted by electric suppliers. However, currently, electric supplier licenses are subject to review "every five (5) years after the date on which the license was issued or was last reviewed."¹ NRG believes the transition to a biennial licensing proceeding will impose an unwarranted and unnecessary administrative burden on retail electricity suppliers; thus, contributing to additional financial and other resource costs. Specifically, reviewing licenses every two (2) years instead of every five (5) years will increase the number of license reviews for each electric supplier by two-and-one-half times. Thus, over a ten-year period, for example, under the Proposed Regulations, an electric supplier would be required to submit, and the Authority would review, five (5) license review applications (instead of two (2) license review applications under the current regulations). These additional reviews will burden electric suppliers and the Authority. Indeed, to complete them, increases in staffing levels or comparable external support may be required, with attendant cost.² Further, the effort and expense of license reviews could be even more significant if any suppliers avail

¹ Conn. State Agency Regs. § 16-245-2(f).

² The Authority's Fiscal Note states that "[a]lthough the change in review cycle from every 5 years to biennial will increase the number of licenses reviewed each year, [the Authority] expects that the change in review cycle period will reduce the amount of time [Authority] staff expends on maintenance of supplier licensing dockets." NRG submits that it is unreasonable to conclude that increasing the number of license reviews will decrease the amount of time spent on maintaining supplier licensing dockets. More license reviews will require more work. Indeed, collectively, the NRG Retail Companies have submitted several license review applications to the Authority since December 2019. While some efficiencies may have been gained through the process of submitting multiple applications, completing each additional application required additional effort and resources. Accomplishing the additional work required by the proposed increased number of license reviews with "no change in existing staffing or other resources," as the Authority plans to do (*see* Fiscal Note), likely would require shifting existing staffing and other resources from other tasks that are currently being performed.

Jeffrey R. Gaudiosi, Esq.

July 16, 2021

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themselves of the full array of procedural rights available under the Uniform Administrative Procedure Act, Connecticut General Statutes section 4-166 *et seq.*³ Accordingly and to avoid such increased burdens, NRG urges the Authority to maintain the current five-year license review cycle.

2. Subpart (b) (1) of Section 16-245-2. Scope of license. Application Filing requirements. Periodic Review of the Proposed Regulations would require, for initial electric supplier license applications, “a fee in the amount of \$2,500 or other amount updated by the Authority in its decisions, made payable to the Treasurer of the State of Connecticut.” The current filing fee for an initial license application is \$1,000.⁴ In addition, Subpart (f) (1) the Proposed Regulations initially sets the fee at \$2,500 for electric supplier license reviews; the current filing fee for a license review application is only \$250.⁵

Under the Proposed Regulations, the initial license application fee would increase two-and-one-half times (from \$1,000 to \$2,500). NRG believes this proposed increase of the current initial license application fee by the Authority to be excessive and unreasonable, especially considering comparative licensing fees in neighboring state jurisdictions. The Massachusetts Department of Public Utilities filing fee is \$100;⁶ the New Hampshire Public Utilities Commission application fee is \$250;⁷ the Maine Public Utilities Commission application fee is \$100;⁸ and the Rhode Island Division of Public Utilities and Carriers filing fee is \$100.⁹ Connecticut’s \$1,000 initial application fee is already markedly higher than any of those fees and is, thus, an outlier in the region. The proposed increase in the initial application fee would make Connecticut’s initial application fee even more anomalous and could discourage suppliers operating in other markets from seeking to enter the Connecticut market. This could make the Connecticut competitive supply market less vibrant and decrease its value to electricity consumers shopping for competitive retail supply rates. Accordingly, NRG urges the Authority to maintain the current \$1,000 filing fee for new electric supplier license applications.

Further, under the Proposed Regulations, the review application fee would increase *ten times* (from \$250 to \$2,500). Moreover, because, under the Proposed Regulations, license review applications would be due more frequently, licensed suppliers would be required

³ See, e.g., Conn. Gen. Stat. §§ 4-166 *et seq.*

⁴ Conn. State Agency Regs. § 16-245-2(b)(1).

⁵ Conn. State Agency Regs. § 16-245-2(b)(19).

⁶ See 220 CMR 11.05(2)(c).

⁷ See Puc 2003.01(b)(3).

⁸ See 65-407-305 Me. Code R. §2(D)(5).

⁹ See 815-RICR-30-05-1.3(D).

Jeffrey R. Gaudiosi, Esq.

July 16, 2021

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to pay such fees more frequently. For example, under the current regulations, over a ten-year period, a licensed supplier would be required to file two (2) license review applications, each with a \$250 fee, and, thus, pay a total of \$500 in application fees. However, under the Proposed Regulations, over a ten-year period, a licensed supplier would be required to file five (5) license review applications, each with a \$2,500 fee resulting in a total of \$12,500 in application fees—*twenty-five times* the current amount. Imposing such increased financial burdens on licensed suppliers is unreasonable, particularly because customers ultimately will bear these costs in the form of higher retail electric supply prices. Furthermore, such a high license review fee would be exponentially higher than that of other states and, thus, an outlier in the region.¹⁰ Accordingly, NRG urges the Authority to maintain the current \$250 filing fee for license review applications.

Moreover, a ten (10) time increase in the license review application fee is inconsistent with the statutory authorization for such a fee. Pursuant to Connecticut General Statutes section 16-245: “The application fee shall include the costs to investigate and administer the licensing procedure and *shall be commensurate* with the level of investigation necessary, as determined by regulations adopted by the Public Utilities Regulatory Authority.”¹¹ However, the Authority’s Fiscal Note specifically indicates: “Although the change in review cycle from every 5 years to biennial will increase the number of licenses reviewed each year, [the Authority] expects that the change in review cycle period will *reduce the amount of time* [Authority] staff expends on maintenance of supplier licensing dockets.”¹² This incongruity is notable.

3. Part (a) of Section 16-245-4. Security of the Proposed Regulations provides:

An electric supplier shall maintain an amount of security based on its Load served in the previous calendar year as indicated by the electric distribution company filings in the annual renewable portfolio standards docket or other means indicated by the Authority, according to the following schedule:

Annual Load up to 100,000 MWh: \$250,000

Annual Load 100,001 MWh to 499,999 MWh: \$500,000

¹⁰ See 220 CMR 11.05(2)(c) (\$100 annual filing fee in Massachusetts); New Hampshire Competitive Electric Power Supplier Application Form, [https://www.puc.nh.gov/Electric/Suppliers_and_Aggregator_forms/CEPS%20Registration%20Form%20z14%20pw%20\(2\).pdf](https://www.puc.nh.gov/Electric/Suppliers_and_Aggregator_forms/CEPS%20Registration%20Form%20z14%20pw%20(2).pdf) (Rev. Feb. 8, 2018) (last visited Jul. 16, 2021), at 7 (“Note that there is no fee for a renewal application.”); 815-RICR-30-05-1.3(D) (\$100 filing fee for annual renewal applications in Rhode Island).

¹¹ Conn. Gen. Stat. § 16-245(e) (emphasis added).

¹² Fiscal Note (emphasis added).

Jeffrey R. Gaudiosi, Esq.

July 16, 2021

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Annual Load 500,000 MWh to 1,000,000 MWh: \$1 million

Annual Load > 1,000,000 MWh: \$2 million

A supplier may elect to maintain continuous security in an amount greater than indicated in the schedule. Notwithstanding this schedule, the Authority has the discretion to increase an electric supplier's security as indicated by decision in the supplier's licensing docket to accommodate a supplier's renewable portfolio standards obligations in excess of 1,000,000 MWh.

Under the current regulation, an electric supplier may elect to maintain security based on a percentage of estimated gross receipts up to a maximum of \$250,000.¹³ Under the Proposed Regulations, \$250,000 is the minimum and there is no set maximum.¹⁴ NRG believes the proposed new security requirements are excessive. In addition, the formulaic nature of the proposed security regulation introduces an unnecessary level of complexity. In the alternative, NRG recommends a well-designed financial security requirement like the one adopted by the New Hampshire Public Utilities Commission that establishes a reasonable three-tier approach as follows:

The financial security instrument . . . shall . . .

(2) Be in an amount equal to the greater of:

a. \$100,000; or

b. 25% of the [supplier]'s actual gross revenue in New Hampshire for the preceding full year of operation, not including revenue from the provision of default service, for any year after the [supplier]'s first full year of operation;

(3) Not exceed \$500,000, notwithstanding (2) above.¹⁵

If adopted in Connecticut, the New Hampshire model would double the current maximum security amount, avoid the complexity of and administrative burden associated with the formulaic model in the Proposed Regulations, and provide certainty as to the maximum amount a

¹³ See Conn. State Agency Regs. § 16-245-4.

¹⁴ Proposed Regulations § 16-245-4(a) ("Notwithstanding this schedule, the Authority has the discretion to increase an electric supplier's security as indicated by decision in the supplier's licensing docket to accommodate a supplier's renewable portfolio standards obligations in excess of 1,000,000 MWh.").

¹⁵ Puc 2003.03(a)(2), (3).

Jeffrey R. Gaudiosi, Esq.

July 16, 2021

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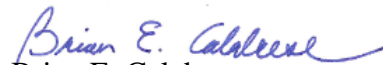
supplier may be required to post. Accordingly, NRG urges the Authority consider the merits and administrative ease of the New Hampshire model.

Finally, before adopting the Proposed Regulations, the Authority should revise them to avoid imposing substantial additional costs and burdens on electric suppliers and their customers. As noted above, the Authority's Proposed Regulations have cost impacts and consequences that will directly contribute to level of competitive pricing available to the state's electricity consumers. Instead, the Authority should seek to streamline existing requirements to enhance Connecticut's retail electric supply market. NRG appreciates the Authority's thoughtful consideration of these comments.

I certify that a copy hereof has been sent to all participants of record identified on the Authority's service list for Docket No. 19-10-41. In accordance with the Notice, I am submitting these comments through the eRegulations System and via electronic mail.¹⁶

Please do not hesitate to contact me if you have any questions or require additional information. Thank you.

Sincerely,



Brian E. Calabrese

Copy to: Docket No. 19-10-41 Service List

¹⁶ See Notice, at 3.



OFFICE OF THE ATTORNEY GENERAL
CONNECTICUT

LAUREN BIDRA
ASSISTANT ATTORNEY GENERAL

Phone: 860-827-2603
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July 16, 2021

By Email

Mr. Jeffrey R. Gaudiosi, Esq.
Executive Secretary
Public Utilities Regulatory Authority
10 Franklin Square
New Britain, Connecticut 06051

Re: Docket No. 19-10-41, *Regulations for Electric Supplier Licensing*

Dear Mr. Gaudiosi:

William Tong, Attorney General for the State of Connecticut, hereby submits these Written Comments in the above-referenced proceeding. With the recommendations below to promote transparency and protect sensitive customer information, the Attorney General generally supports the proposed regulations that the Public Utilities Regulatory Authority (“PURA” or “Authority”) issued on June 9, 2021 revising the existing regulations implementing General Statutes of Connecticut (“Conn. Gen. Stat.”) § 16-245.

The proposed amendments to the Regulations of Connecticut State Agencies §§ 16-245-1 to 16-245-4 and 16-245-6 are necessary to address common issues in PURA’s regulation of electric suppliers since the regulations were last updated in 2005. The amendments in the proposed regulations change the review cycle for electric suppliers from every five years to biennial as well as raise the fee for applications to become an electric supplier and the fee for biennial reviews. Importantly, the amendments in the proposed regulations require electric suppliers to provide additional information to PURA and the public. The Attorney General commends the Authority’s efforts to hold electric suppliers more accountable through these proposed regulations.

The Attorney General respectfully recommends that PURA amend two main aspects of the proposed regulations. First, PURA should modify Section 16-245-2(b)(17) to include that electric suppliers shall attest to and describe reasonable cyber and data security practices, including for all third-party vendors they utilize who have access to customer information. As drafted, Section 16-245-2(b)(17) requires that electric supplier license applications include an attestation that the electric supplier “will not release customer information to any person.” “Customer information” is defined in the regulation as “customer-specific information which the electric supplier acquired or developed in the course of providing electric generation services and includes, but is not limited to, information

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New Britain, Connecticut 06051

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July 16, 2021

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that relates to the quantity, time of use, type, and destination of electric service, information contained in electric service bills, and other data specific to an electric supplier customer[.]”

For several years the Attorney General has received consumer complaints demonstrating that scammers have access to sensitive customer information such as utility account numbers, which is used to make utility-related scams appear to be legitimate. Complainants have lost hundreds, and even thousands, of dollars to fraudsters impersonating the utilities. A supplier’s attestation that it will not release customer information in the proposed regulation as drafted is simply not enough. With the prevalence of sophisticated utility-related scams perpetrated through online means, electric suppliers and the vendors they utilize must vigilantly protect the customer information they acquire through the electric supplier’s license to sell electric generation services in Connecticut. Accordingly, electric suppliers should be required to certify to PURA and the public that they maintain reasonable cyber and data security practices and ensure all their third-party vendors who have access to customer information do the same. The Attorney General therefore urges PURA to amend Section 16-245-2(b)(17) to require that electric suppliers attest to and describe reasonable cyber and data security practices when applying for a license and also in their biennial review compliance filing pursuant to Section 16-245-2(f)(2), which is addressed below.

Second, while the Attorney General appreciates that PURA implemented his suggestion in his December 12, 2019 Written Comments in this docket that Section 16-245-2(b)(21) mandate that electric suppliers disclose information regarding investigations by state Attorneys General when applying for an electric supplier license in Connecticut, this information must also be refreshed when electric suppliers make a biennial license review compliance filing. Thus, the Attorney General recommends that PURA amend Section 16-245-2(f)(2) to mandate that electric suppliers provide information required in subsections (b)(11) and (b)(21) when making a biennial license review compliance filing. Updated information related to regulatory and state Attorney General investigations of suppliers and their affiliates in other states will promote transparency about suppliers’ business practices as well as assist the Authority in regulating and the public in evaluating electric suppliers. In addition, the Attorney General recommends that PURA amend Section 16-245-2(f)(2) to mandate that when an electric supplier makes a biennial license review compliance filing, it provide information required in subsection (b)(17) including an attestation to and description of reasonable cyber and data security practices for the supplier and all third-party vendors it utilizes who have access to customer information.

The Attorney General appreciates the opportunity to provide Written Comments in this proceeding.

July 16, 2021

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Respectfully Submitted,

WILLIAM TONG
ATTORNEY GENERAL
STATE OF CONNECTICUT

BY: Lauren H. Bidra
Lauren H. Bidra
John S. Wright
Assistant Attorneys General
Attorney General's Office
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Service is certified to all Participants
on this agency's service list.

Lauren H. Bidra
Lauren H. Bidra
Commissioner of the Superior Court

market in Connecticut has undergone significant change, as has the Authority's oversight and enforcement of it. The Authority's proposed amendments take this reality into account and impose changes that would require increased transparency and accountability from third-party suppliers to consumers, the Authority, and other relevant state agencies. As such, these amendments will provide consumers will greater informational power and permit the Authority to take clear action when a third-party supplier fails to adequately perform its obligations under Connecticut law.

Although more fully set forth in its prior Written Comments in this docket, OCC briefly takes this opportunity to highlight some of the benefits that the Authority's proposed regulatory amendments will realize. First, the amendments require, as a condition of Connecticut licensure, that third-party suppliers disclose all investigations or enforcement actions undertaken against the third-party supplier by regulatory agencies or state attorneys general in other jurisdictions in which the third-party supplier does business. In OCC's experience, problematic marketing activities or lackluster efforts at regulatory compliance by third-party suppliers in Connecticut are often presaged or simultaneously occurring in the other markets in which the third-party supplier conducts business. Mandatory disclosure of such information will permit the Authority, OCC, the Attorney General, and other stakeholders with early and ample opportunity to identify problems before they become pronounced in Connecticut.

Second, the proposed amendments institute a biennial license review proceeding in place of the current review that is only conducted every five years. More frequent review of third-party suppliers' regulatory compliance will not only encourage greater attempts at corporate compliance and transparency but allow the Authority to take much more immediate action when problems do arise. Third, the proposed amendments would require third-party suppliers to

provide greater information about their rate and product offerings on their company websites and the EnergizeCT rate board. Many consumers attempting to navigate the deregulated electricity supply market come away confused or in receipt of erroneous information about the actual products available. OCC stands in steadfast support of providing greater quantities of information to consumers in the places they will likely look when seeking a third-party electric supply offer.

In sum, OCC thanks the Authority for its initiative and effort in proposing these amendments to its electric supplier licensing regulations. As the third-party electric supply market continues to evolve, so must the regulations governing it. The Authority's proposed amendments make great progress in modernizing the relevant regulations and bringing them into accord with the realities of the current Connecticut market. As such, they command OCC's full support.

Respectfully submitted,

STATE OF CONNECTICUT
OFFICE OF CONSUMER COUNSEL

RICHARD E. SOBOLEWSKI
ACTING CONSUMER COUNSEL

By: /s/ Andrew W. Minikowski

Andrew W. Minikowski, Esq.
Staff Attorney III
John R. Viglione
Economist

CERTIFICATE OF SERVICE

I do hereby certify that on this day the foregoing document was filed with the Public Utilities Regulatory Authority, and copies thereof were served upon each person designated on the official service list in this proceeding in accordance with R.C.S.A. § 16-1-15.

Dated at New Britain, Connecticut this 16th Day of July, 2021.

/s/ Andrew W. Minikowski

Andrew W. Minikowski, Esq.
Commissioner of the Superior Court



BOSTON CONNECTICUT FLORIDA NEW JERSEY NEW YORK PROVIDENCE WASHINGTON, DC

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Attorney at Law

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Via Electronic Filing¹ and E-Mail (PURA.ExecutiveSecretary@ct.gov)

July 16, 2021

Jeffrey R. Gaudiosi, Esq.
Executive Secretary
Public Utilities Regulatory Authority
10 Franklin Square
New Britain, CT 06051

Re: Docket No. 19-10-41: Regulations for Electric Supplier Licensing

Dear Mr. Gaudiosi:

Pursuant to the Public Utilities Regulatory Authority's ("Authority") June 9, 2021 Notice of Intent and Public Comment Period ("Notice") in the above referenced proceeding, Vistra Corp.² ("Vistra") hereby submits the below written comments on the Authority's proposed revisions ("Revisions") to Regulations of Connecticut State Agencies ("Conn. Agencies Regs.") §§ 16-245-1 to 16-245-4, inclusive, and § 16-245-6. Vistra generally supports the Authority's Revisions and provides the below comments and requests for clarification to assist the Authority in this process.

Conn. Agencies Regs. § 16-245-2 – Biennial Review

The Revisions to Conn. Agencies Regs. § 16-245-2(f) propose to replace the current five-year review process beginning on April 15, 2022 with "biennial proceedings to review certain aspects of all electric supplier licenses." This will require suppliers to file a "license review compliance filing" not later than January 1 of each year of the biennial review. Vistra does not oppose the switch to a biennial license review filing, but it would note that most companies and government agencies are closed on January 1 and employees that assist with preparation of these license review compliance filings may be out of the office in the weeks leading up to January 1 due to various holidays. To reduce the number of motions requesting additional time and in order to receive the most accurate and complete information, Vistra suggests that the license review compliance filing be due on January 31 of the review years. Vistra also requests confirmation that the start date of April 15, 2022 for these biennial license reviews, along with a January due date, would mean that the first biennial review filing would be due January 2023.

¹ Pursuant to the Undocketed Motion to Temporarily Suspend Filing Paper Copies (Jun. 19, 2020), this filing is being submitted by electronic copy only, with a paper copy to delivered or mailed according to a subsequent determination by the Authority.

² Vistra Corp. is the parent company for, and filing on behalf of, Connecticut licensed suppliers Ambit Northeast, LLC, Public Power, LLC, Viridian Energy, LLC, Everyday Energy, LLC d/b/a Energy Rewards, and Connecticut Gas & Electric, Inc.



Jeffrey R. Gaudiosi, Esq.
 July 16, 2021
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Therefore, Vistra recommends the following revision to Conn. Agencies Regs. § 16-245-2(f):

Current proposal: Not later than January 1 of each year of the biennial review, an electric supplier shall file with the Authority a license review compliance filing...

Vistra's recommended language: Not later than January 31 of each year of the biennial review, an electric supplier shall file with the Authority a license review compliance filing...

Vistra additionally notes that the Revisions to Conn. Agencies Regs. § 16-245-2(f) with regard to the license review compliance filing require “[a]ny other information the Authority deems necessary.” Vistra requests that the Authority remove this requirement or define what these requirements may include and re-issue the Revisions for comment. In the alternative, should the Authority decide to retain this requirement, Vistra recommends that any additional biennial license review information be developed through a contested case, to allow for appropriate process. The Authority has used a similar concept in several other places in its Revisions. For instance, in Conn. Agencies Regs. § 16-245-2(b)(1) and (f)(1) the license application and license review fees, respectively, can be updated in a decision, and in Conn. Agencies Regs. § 16-245-3(a)(6) the time period in which a supplier must respond to customer complaints can be prescribed in a decision. Vistra understands that the Authority is seeking the flexibility to fully evaluate a supplier’s biennial license review filing; however, this unfettered discretion must be met by regulatory consistency. To that end, while Vistra would prefer such an open ended requirement be removed completely, a reasonable compromise would be to adopt additional requirements in a decision that provides the necessary checks on the biennial license review process and provides suppliers the appropriate ability to comment and be notified of impending changes, while at the same time providing the Authority a more nimble process as compared to a rulemaking.

Therefore, Vistra recommends the following revision to Conn. Agencies Regs. § 16-245-2(f)(3):

Current proposal: Any other information the Authority deems necessary.

Vistra's recommended language: Any other information the Authority deems necessary as determined in a contested proceeding.

Conn. Agencies Regs. § 16-245-3 – All-inclusive Rates

The Revisions to Conn. Agencies Regs. § 16-245-3(d)(3) provide that “[a]ll generally available rates shall be all-inclusive rates.” As currently proposed, the Revisions define “all-inclusive” rates to include “all generation-related costs or charges and that no other charges can be added.” Conn. Agencies Regs. § 16-245-1(18). Vistra believes that the proposed requirement is inconsistent with the flexibility that allows suppliers to develop innovative offers and, with this innovation, more customer options that ultimately result in lower prices in a truly competitive marketplace.

Adopting regulations that require all charges be included in the price per kWh limits suppliers’ flexibility to develop innovative offers, including those that further Connecticut’s clean energy goals. As a result, customers have fewer product offerings available to them, and those products that remain would likely have higher fixed kWh prices. Eliminating the proposed all-inclusive requirement would allow customers to receive the benefit of innovative products both today and in the future.



Jeffrey R. Gaudiosi, Esq.

July 16, 2021

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Given the growth of distributed generation in Connecticut, it is likely that suppliers will be or are already developing products that capture the benefits of renewable energy for customers that may not be able to generate on-site. A key element to these distributed generation projects is often a recurring fee collected from customers, which supports the operation and maintenance of the project, and is necessarily a separate charge from a fixed price per kWh. Without the flexibility to develop products with charges other than just a fixed kWh amount, customers will have fewer options available to them, including fewer products that support the growth of renewable generation in Connecticut.

Furthermore, between the design of the Rate Board and the various contract requirements the Authority has adopted, the customer is provided transparency through multiple notices of any charges other than the fixed price per kWh amount prior to enrolling in a product plan. Specifically, the Rate Board has columns for both “Plan Description” and “Other Information.”³ These columns provide price transparency and valuable information to the customer, prior to enrollment, regarding other charges the customer can expect, including recurring and other types of fees. The Rate Board also allows customers to filter out and remove plans with an enrollment fee or monthly fee should the customer not be interested in those offers. Moreover, the Authority has previously required that certain customer contracts, including residential contracts, include language on the first page describing “all applicable fees, if any, and if any fees are variable, [the] contract must clearly state the circumstances and/or dates when those fees will change and what the new fees will be...”⁴

Given the existing consumer protections that provide upfront notice and transparency, and Vistra’s proposed revision below that would require the customer to explicitly agree to the charges, Vistra encourages the Authority to remove the requirement that Rate Board prices be all-inclusive. This is consistent with the Authority’s current Rate Board design, features and product offerings, and will allow the competitive retail market in Connecticut to continue to generate new and innovative products for customers.

Therefore, Vistra recommends the following revision to the definition of “All-inclusive” in Conn. Agencies Regs. § 16-245-1(18):

Current proposal: “All-inclusive” includes all generation-related costs or charges, such that no other charges can be added.

Vistra’s recommended language: “All-inclusive” includes all generation-related costs or charges and any other charge that is expressly agreed to and clearly stated in the contract. No other charges can be added.

Vistra notes that the Revisions in Conn. Agencies Regs. § 16-245-3(c) with regard to information that must be placed on suppliers’ websites require “[a]ny other information deemed necessary by the Authority.” For the reasons described above related to a similar provision for the biennial review process, Vistra requests that the Authority remove this requirement or better define what these requirements may include, and re-issue the Revisions for comment. Should the Authority decide to retain the Revision, Vistra recommends that any additional website information be developed through a contested case to allow for appropriate process.

³ See <https://www.energizect.com/compare-energy-suppliers>.

⁴ Docket No. 13-07-18, *PURA Establishment of Rules for Electric Suppliers and EDCs Concerning Operations and Marketing in the Electric Retail Market*, Decision (Nov. 5, 2015), at 28



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Therefore, Vistra recommends the following revision to Conn. Agencies Regs. § 16-245-3(c)(6):

Current proposal: Any other information deemed necessary by the Authority.

Vistra’s recommended language: Any other information deemed necessary by the Authority as determined in a contested proceeding.

Finally, Vistra points out, as it relates to Conn. Agencies Regs. § 16-245-3, that the reports required by 16-245p of the Connecticut General Statutes are now required annually based on legislation passed in 2005⁵ and would request that the Authority amend Conn. Agencies Regs. § 16-245-3(a)(1) to reflect that statutory change.

Therefore, Vistra recommends the following revision to Conn. Agencies Regs. § 16-245-3(a)(1):

Current proposal: Any and all information requested by the Authority for the purpose of compiling quarterly disclosure reports required pursuant to section 16-245p of the Connecticut General Statutes.

Vistra’s recommended language: Any and all information requested by the Authority for the purpose of compiling annual disclosure reports required pursuant to section 16-245p of the Connecticut General Statutes.

Conn. Agencies Regs. § 16-245-4 - Security

The Revisions to Conn. Agencies Regs. § 16-245-4 update the security requirements applicable to suppliers. The Revision to Conn. Agencies Regs. § 16-245-4(a) provides in part that “[a]n electric supplier shall maintain an amount of security based on its Load served in the previous calendar year as indicated by the electric distribution company filings in the annual renewable portfolio standards docket”.

Vistra recommends for clarity that the definition of “Load” in Conn. Agencies Regs. § 16-245-1(14) point to the Electric Distribution Companies’ (“EDCs”) final resettled load data as filed in the annual renewable portfolio standards (“RPS”) docket. Currently, the proposed definition of Load means the “number of megawatt hours served as indicated by the electric distribution company load settlement data or billing data, and *shall not include line loss.*”⁶ However, in the annual RPS docket the supplier’s load is “defined as its Final Settlement Load Obligation at the Pool Transmission Facility. The EDCs were required to provide their own as well as each supplier’s Final Settlement Load information for 2019 (EDC Load Data). The EDC Load Data includes monthly meter adjustments (MMA or 90-day true-up; recorded by the NEPOOL GIS system in the period that they occur) and the MDE RBA (post 90-day true-up).”⁷ The NEPOOL GIS Operating Rules add that the “electrical load for which a Retail LSE shall have a

⁵ See Section 28 of *An Act Concerning Energy Independence*, Public Act 05-1 (Jun. Special Session); see also Docket No. 11-11-07 et al., Proposed Decision (Oct. 2, 2020) (setting January 30 as the annual filing requirement in compliance with the Conn. Gen. Stat. § 16-245p(a) report), which was adopted on October 21, 2020 during the Authority’s regular meeting.

⁶ Revisions, Conn. Agencies Regs. § 16-245-1(14) (emphasis added).

⁷ Docket No. 20-06-01, Annual Review of Connecticut Electric Suppliers’ and Electric Distribution Companies’ Compliance with Connecticut’s Renewable Energy Portfolio Standards in the Year 2019, Decision (May 19, 2021) (“2019 RPS Docket”), at 3 (internal citations omitted).



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Certificates Obligation **will include any and all line losses**, as already calculated into the settlements data provided to the GIS Administrator by the ISO.”⁸

Given that the Revision to Conn. Agencies Regs. § 16-245-4(a) provide, in part, that “[a]n electric supplier shall maintain an amount of security based on its Load served in the previous calendar year as indicated by the electric distribution company filings in the annual renewable portfolio standards docket,” and further given that “each company’s REC obligations for RPS compliance are determined based on the Final Settlement Load data provided by the EDCs,”⁹ defining a supplier’s “Load” as reflected on the EDCs final resettled load data as filed in the annual RPS docket will provide clarity as to the exact source of the data, and consistency for the load amounts used as between the RPS obligations and the security requirements. As currently written, the definition of Load, which “shall not include line loss,” may lead to confusion regarding the thresholds for the security as to whether to use pre-settlement load data as reported by the EDCs, which does not include line losses, or the post-settlement data used for RPS obligations. Directing readers to the final resettled load amounts will avoid any such confusion.

Vistra therefore recommends the following revision to the definition of “Load” in Conn. Agencies Regs. § 16-245-1(14):

Current proposal: “Load” means number of megawatt hours served as indicated by the electric distribution company load settlement data or billing data, and shall not include line loss.

Vistra’s recommended language: “Load” means the total final settlement load obligation as reported by the electric distribution companies in the annual renewable portfolio standards docket.”

The Revisions provide a schedule based on load served, but additionally provide that “[n]otwithstanding this schedule, the Authority has the discretion to increase an electric supplier’s security as indicated by decision in the supplier’s licensing docket to accommodate a supplier’s renewable portfolio standards obligations in excess of 1,000,000 MWh.” Vistra opposes this additional, undefined potential increase and believes that the schedule as written is sufficient. This authority to increase a supplier’s security puts suppliers in an uncertain position as the Authority has not defined or even described what may trigger this requirement. As such, Vistra requests that this Revision be removed.

The Revisions already propose new security amounts for those suppliers with an annual load over 1,000,000 MWh that is nearly ten times the current security obligations for those same suppliers (currently, \$250,000 to the proposed \$2 million). Vistra agrees that the current security requirements do not adequately reflect supplier load or obligations and can result in significant unfunded liabilities in the event a supplier were unable to meet its obligations. However, the proposed increases in the Revisions should adequately ensure supplier responsibility to, *inter alia*, its RPS obligations for the benefit of customers. To the extent the Authority seeks a further increase, it should utilize the rulemaking process to provide all parties notice and the opportunity to comment.

⁸ New England Power Pool Generation Information System Operating Rules, Rule 4.1(c) (emphasis added).

⁹ 2019 RPS Docket, at 7.



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Therefore, Vistra recommends the following revision to Conn. Agencies Regs. § 16-245-4(a):

Current proposal: Notwithstanding this schedule, the Authority has the discretion to increase an electric supplier's security as indicated by decision in the supplier's licensing docket to accommodate a supplier's renewable portfolio standards obligations in excess of 1,000,000 MWh.

Vistra recommends striking this sentence.

Vistra requests clarification that the Revision in Conn. Agencies Regs. § 16-245-4(b) requiring suppliers to "submit necessary updates of security as a compliance filing in their most current licensing docket prior to April 15 of each calendar year" is based on the load reported in the October 15 RPS filing of the *prior* year. This clarification will reduce any confusion as to whether suppliers are required to calculate security off of an estimate annual load before the EDCs make their supplier load filings on October 15 later in the same calendar year or, as Vistra believes, calculate security of the load reported by the EDCs as part of the prior calendar year's RPS filing.

Current proposal: All suppliers shall submit necessary updates of security as a compliance filing in their most current licensing docket prior to April 15 of each calendar year.

Vistra's recommended language: All suppliers shall submit necessary updates of security as a compliance filing in their most current licensing docket prior to April 15 of each calendar year based on the electric distribution company filings in the annual renewable portfolio standards docket filed in the previous year.

I certify that a copy hereof has been sent to all participants of record as reflected on the Authority's service list as of this date. A copy has also been filed with the Authority as an electronic web filing and is complete.

Please do not hesitate to contact me if you have any questions or require additional information. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alexander W. Judd', written over a horizontal line.

Alexander W. Judd

Copy to: Service List

STATE OF CONNECTICUT

PUBLIC UTILITIES REGULATORY AUTHORITY

REGULATIONS FOR ELECTRIC SUPPLIER : DOCKET NO. 19-10-41
LICENSING (EREGULATIONS TRACKING :
PR2020-007) : FEBRUARY 2, 2024

COMMENTS OF THE NRG RETAIL COMPANIES

Direct Energy Services, LLC; Direct Energy Business, LLC d/b/a NRG Business; NRG Business Marketing, LLC f/k/a Direct Energy Business Marketing, LLC; Energy Plus Holdings LLC (“EPH”); Independence Energy Group LLC; NRG Home licensed as Reliant Energy Northeast LLC; Green Mountain Energy Company; and XOOM Energy Connecticut, LLC (collectively, the “NRG Retail Companies”) hereby respectfully submit these comments in response to the Public Utilities Regulatory Authority’s (“Authority”) January 2, 2024 Notice of Intent and Public Comment Period¹ in the above-captioned proceeding.

BACKGROUND

In November 2019, the Authority issued a notice offering an opportunity to comment on a draft set of potential revisions to the electric supplier licensing regulations.² In June 2021, the Authority issued a Notice of Intent and Public Comment Period seeking written comments on proposed amendments to the Electric Supplier Regulations.³ Multiple parties, including the NRG Retail Companies, submitted comments in response to the 2021 Notice.⁴

¹ Notice of Intent and Public Comment Period (Jan. 2, 2024) (“2024 Notice”).

² Notice of Request for Written Comments (Nov. 21, 2019) (“2019 Notice”). The current electric supplier licensing regulations, which are set forth in Regulations of Connecticut State Agencies sections 16-245-1 to 16-245-6 (“Electric Supplier Regulations”), address both licensing and post-licensing requirements.

³ Notice of Intent and Public Comment Period (Jun. 9, 2021) (“2021 Notice”).

⁴ *See, e.g.*, Comments of NRG Retail Companies (Jul. 16, 2021) (“NRG Comments”).

On September 29, 2023, the Authority issued a Notice of Decision indicating its intent to adopt final regulations⁵ and a response to comments filed by stakeholders prior to that date.⁶ On that same day, the Authority submitted the regulations to the Attorney General (“AG”) for a legal sufficiency review.⁷ On October 30, 2023, without explanation, the Authority withdrew the final regulations from the AG review process.⁸

Subsequently, the Authority issued a second Notice of Intent and Public Comment Period offering an opportunity for interested stakeholders to comment on proposed amendments to the Electric Supplier Regulations (“Proposed Amendments”).⁹ The NRG Retail Companies hereby submit these comments in response to the 2024 Notice.

COMMENTS

As an initial matter, the NRG Retail Companies appreciate the Authority’s desire to amend the Electric Supplier Regulations and support many of the proposed changes. However, for the reasons set forth more fully below, the NRG Retail Companies request that the Authority: (a) not increase the frequency of the license review process; (b) not increase the license applications fees to the levels proposed; (c) modify the proposed financial security requirements; and (d) revise the proposed cyber and data security requirements.

I. IT IS UNNECESSARY TO INCREASE THE FREQUENCY OF THE LICENSE REVIEW PROCESS

Subpart (f) of section 16-245-2 of the Proposed Amendments provides, in pertinent part, “that beginning on April 15, 2025, the Authority shall conduct biennial proceedings to review

⁵ Notice of Decision (Sep. 29, 2023).

⁶ See Public Comment and Response Report (Sep. 29, 2023) (“Report”).

⁷ See Conn. Gen. Stat. § 4-169.

⁸ See PR2020-007 Regulation Making Record, RMR History ID 17 (available at: <https://eregulations.ct.gov/eRegsPortal/Search/RMRView/PR2020-007>) (last visited Feb. 1, 2024).

⁹ See 2024 Notice.

certain aspects of all electric supplier licenses.”¹⁰ According to the Report, despite prior comments opposing such a change,¹¹ this revision is needed because “the current five year review cycle is protracted and . . . the more frequent two-year review will enable the Authority to respond to compliance issues more quickly as they arise and in turn will hopefully encourage electric suppliers to respond to such compliance issues more timely.”¹² While this may have been true when this change was originally introduced in 2019,¹³ due in large measure, to the creation of the Office of Education, Outreach and Enforcement (“EOE”) and its ongoing activities,¹⁴ that is no longer the case.

Prior to the creation of the EOE, the evaluation of electric supplier license review applications took years. For example, EPH submitted a license review application in 2014 and did not receive a decision on that application until 2021.¹⁵ Now, however, the evaluation of electric supplier license review applications happens very quickly. For example, Eligo Electric CT, LLC submitted a license review application on October 27, 2023¹⁶ and received a decision on that application in less than one month – on November 22, 2023.¹⁷ Thus, the current five-year license review process no longer “protracted.”

¹⁰ Proposed Amendments § 16-245-2(f).

¹¹ See, e.g., NRG Comments, at 2-3.

¹² Report, at 5.

¹³ See 2019 Notice, a 5 (initially proposing a biennial review process).

¹⁴ Docket No. 20-02-22, *Annual Report to the Legislature - The State of Electric Competition*, Legislative Report (Mar. 31, 2021), at 2 (“In July 2020, the Authority established the Office of Education, Outreach and Enforcement (EOE). EOE is comprised of three units: (1) licensing and certification; (2) mediation and enforcement; and (3) education and outreach. The licensing unit evaluates supplier license applications and conducts periodic reviews.”).

¹⁵ See generally, Docket No. 09-01-21RE02, *Application of Energy Plus Holdings, LLC for an Electric Supplier License – Review*.

¹⁶ See Docket No. 14-09-11, *Application of Eligo Energy CT, LLC for an Electric Supplier License*, Five-year Application for Review of a Connecticut Electric Supplier License (Oct. 27, 2023).

¹⁷ See Docket No. 14-09-11, *Application of Eligo Energy CT, LLC for an Electric Supplier License*, Decision (Nov. 22, 2023).

In addition, the number of Connecticut licensed electric suppliers has dropped by more than forty percent (40%) since a biennial review process was originally considered.¹⁸ At the end of 2019, “[f]ifty-nine (59) suppliers were licensed in Connecticut”¹⁹ However, as of December 31, 2022, only “thirty-four (34) suppliers were licensed in Connecticut”²⁰ As a consequence, there are less review applications that must be evaluated, which likely has contributed to the drastic reduction in the time needed to complete the license review process.

Moreover, since the creation of the EOE, the review of electric supplier activities for potential compliance issues occurs on a regular basis;²¹ thereby, enabling “the Authority to respond to compliance issues more quickly as they arise”²² The EOE’s activities have also “in turn . . . encourage[d] electric suppliers to respond to such compliance issues more timely.”²³ Before the creation of EOE, the enforcement process would take years. For example, the Authority opened an investigation into certain activities of Liberty Power Holdings, LLC in September 2017²⁴ that was not concluded until more than two (2) years later.²⁵ Now, however, the enforcement process is finalized much more rapidly. For example, in mid-December 2021,

¹⁸ See 2019 Notice, a 5 (initially proposing a biennial review process).

¹⁹ Docket No. 19-01-08, *2019 Annual Report to the Legislature - State of Electric Competition*, Legislative Report (Mar. 31, 2020), at 8.

²⁰ Docket No. 22-11-01, *Annual Report to the Legislature - The State of Electric Competition*, Legislative Report (Mar. 29, 2023), at 9

²¹ Docket No. 21-11-01, *Annual Report to the Legislature - The State of Electric Competition*, Legislative Report (Mar. 23, 2022), at 2-3 (summarizing enforcement actions taken against suppliers in dockets throughout 2021); Docket No. 22-11-01, *Annual Report to the Legislature - The State of Electric Competition*, Legislative Report (Mar. 29, 2023), at 2-4 (summarizing enforcement actions taken against suppliers in dockets throughout 2022).

²² Report, at 5.

²³ *Id.*

²⁴ See Docket No. 06-12-07, *Application of Liberty Power Holdings, LLC for an Electric Supplier License*, Decision (Sep. 7, 2017) (opening investigation).

²⁵ See Docket No. 06-12-07RE07, *Application of Liberty Power Holdings, LLC for an Electric Supplier License – Review of Allegations of Consumer Protection Violations*, Settlement Agreement (Oct. 30, 2019).

EOE issued interrogatories to Constellation NewEnergy, Inc. regarding certain activities²⁶ and, just over two (2) months later, the matter was concluded.²⁷ Through EOE’s activities, the Authority has been able “to respond to compliance issues more quickly as they arise and in turn . . . encourage electric suppliers to respond to such compliance issues more timely.”²⁸ Thus, there is no longer a need to increase the frequency with which electric supplier license reviews occur.

Finally, the transition to a biennial licensing proceeding will impose an unwarranted and unnecessary administrative burden on retail electricity suppliers; thus, increasing financial and other resource costs. Specifically, reviewing licenses every two (2) years instead of every five (5) years will increase the number of license reviews for each electric supplier by two-and-one-half times. Thus, over a ten-year period, if the Proposed Amendments are adopted without change, an electric supplier would be required to submit, and the Authority would need to review, five (5) license review applications (instead of two (2) license review applications under the current regulations). These additional reviews will burden electric suppliers and the Authority. Indeed, to complete them, increases in staffing levels or comparable external support may be required, with attendant cost. Further, the effort and expense of license reviews could be even more significant if any suppliers avail themselves of the full array of procedural rights available under the Uniform Administrative Procedure Act.²⁹ Because the reasons supporting the need for increasing the frequency of electric supplier license reviews have been addressed, in large measure, by the creation of the EOE and its subsequent activities, imposing the additional burden and costs

²⁶ See Docket No. 06-07-11, *Application of Constellation New Energy for Expansion of its Electric Supplier License*, Motion No. 10 (Mar. 21, 2022), Settlement Agreement, at 1 (“**WHEREAS**, on December 16, 2021, EOE issued a number of interrogatories to Constellation regarding its marketing and training practices.”) (emphasis in original).

²⁷ See Docket No. 06-07-11, *Application of Constellation New Energy for Expansion of its Electric Supplier License*, Motion No. 10 Ruling (Mar. 22, 2022) (approving settlement agreement).

²⁸ *Cf.* Report, at 5.

²⁹ See, e.g., Conn. Gen. Stat. §§ 4-166 *et seq.*

associated with this change is no longer warranted. Accordingly and to avoid such increased burdens, NRG urges the Authority to maintain the current five-year license review cycle.

II. THE EXPONENTIAL INCREASE IN APPLICATION FEES IS EXCESSIVE AND UNWARRANTED

Subpart (b)(1) of section 16-245-2 of the Proposed Amendments would require, for initial electric supplier license applications, “an application fee in the amount of \$2,500”³⁰ This represents a two-and-half time increase from the current filing fee of \$1,000.³¹ The Proposed Amendments also seek to change the fee for a license review application from \$250³² to \$2,500.³³ According to the Report, despite prior comments opposing such a change,³⁴ this proposed revision is necessary because “investigating and administering the licensing procedure requires the time and resources of Authority staff, accountants, and attorneys, which is reflected in the amendment to the licensing fee amount[s]”³⁵

While the NRG Retail Companies recognize that the Authority’s costs may have increased since the current fees were established,³⁶ a 2.5-fold increase in the initial application fee and a tenfold increase in the license review application fee are excessive and unreasonable. For instance, the current Connecticut initial filing fee of \$1,000 is already four to ten times higher than the electric supplier license application fees of other New England states.³⁷ It is unclear why Connecticut’s cost structure warrants an initial applicable fee that is already so

³⁰ Proposed Amendments § 16-245-2(b)(1).

³¹ See Conn. State Agency Revs. §16-245-2(b)(1).

³² See Conn. State Agency Regs. § 16-245-2(b)(19).

³³ See Proposed Amendments § 16-245-2(f)(1).

³⁴ See, e.g., NRG Comments, at 2-3.

³⁵ Report, at 6.

³⁶ See *id.* (noting the fees have not changed since 2005).

³⁷ The Massachusetts application fee is \$100 (220 CMR 11.05(2)(c)); the New Hampshire application fee is \$250 (Puc 2003.01(b)(3)); the Maine application fee is \$100 (65-407-305 Me. Code R. §2(D)(5)); and the Rhode Island filing fee is \$100 (815-RICR-30-05-1.3(D)).

much higher than its neighbors. It is, even less clear, why that cost structure would warrant a 2.5 times increase in the initial application fee and a 10 times increase in the license review application fee especially, in light of the fact, that the Authority’s overall costs appear to only have increased by approximately 62% since 2005.³⁸

Moreover, as NRG noted previously,³⁹ a ten (10) times increase in the license review application fee is inconsistent with the statutory authorization for such a fee. Pursuant to Connecticut General Statutes section 16-245: “The application fee shall include the costs to investigate and administer the licensing procedure and *shall be commensurate* with the level of investigation necessary, as determined by regulations adopted by the Public Utilities Regulatory Authority.”⁴⁰ However, the Authority’s Fiscal Note specifically indicates: “Although the change in review cycle from every 5 years to biennial will increase the number of licenses reviewed each year, [the Authority] expects that the change in review cycle period will *reduce the amount of time* [Authority] staff expends on maintenance of supplier licensing dockets.”⁴¹ In response to NRG’s prior comments, the Report states “that the increase in the Authority’s review of licenses each year is expected to reduce the amount of time spent on maintenance of supplier licensing dockets, the Authority is referring to a reduction in the need for large-scale investigations into an electric supplier’s multi-year practices, not a reduction in the amount of time spent on electric

³⁸ Compare Connecticut State Budget 2003-2005: A Summary of Revenue Appropriations and Bonds Authorized by the General Assembly (Aug. 2004) (available at: https://www.cga.ct.gov/ofa/Documents/year/BB/2005BB-20040800_FY%2005%20Connecticut%20Budget%20Revisions.pdf), at 7 (showing an original fiscal year 2005 budget appropriation for Consumer Counsel & Public Utility of 19.1 million dollars) (last visited Feb. 1, 2023) with Governor Lamont’s February 2021 Budget Proposal For the FY 2022 – FY 2023 Biennial Budget (available at: https://portal.ct.gov/-/media/OPM/Budget/2022_2023_Biennial_Budget/Bud_WebPage/GovBud_2022-23_Final_Web_Update.pdf), at 23 (proposing a fiscal year 2023 budget appropriation for Consumer Counsel & Public Utility Control of 31.0 million dollars) (last visited Feb. 1, 2023).

³⁹ NRG Comments, at 4.

⁴⁰ Conn. Gen. Stat. § 16-245(e) (emphasis added).

⁴¹ 2021 Notice, Fiscal Note (emphasis added).

supplier license applications and biennial licensing reviews.”⁴² However, the EOE’s activities have already resulted in “a reduction in the need for large-scale investigations into an electric supplier’s multi-year practices.”⁴³ For example, as noted above, the Authority opened an investigation into certain activities of Liberty Power Holdings, LLC before the creation of the EOE in September 2017⁴⁴ that was not concluded until two years later.⁴⁵ In 2022, however, the Authority reported that, through the EOE’s efforts, an investigation into certain activities of Constellation NewEnergy, Inc. was concluded in just over two (2) months.⁴⁶ Given the significant reduction in the amount of time spent on enforcement activities, a tenfold increase in the license review application fee is unwarranted.

Further, when this tenfold increase is coupled with the proposed requirement that suppliers submit license review applications every two years instead of every five, the cost increases are compounded. For example, under the current regulations, over a ten-year period, a licensed supplier would be required to file two (2) license review applications, each with a \$250 fee, and, thus, pay a total of \$500 in application fees. However, under the Proposed Amendments, over a ten-year period, a licensed supplier would be required to file five (5) license review applications, each with a \$2,500 fee resulting in a total of \$12,500 in application fees—***twenty-five times*** the current amount. Imposing such increased financial burdens on licensed suppliers is unreasonable, particularly because the Authority’s costs have not increased that

⁴² Report, at 6.

⁴³ *Id.*

⁴⁴ See Docket No. 06-12-07, *Application of Liberty Power Holdings, LLC for an Electric Supplier License*, Decision (Sep. 7, 2017) (opening investigation).

⁴⁵ See Docket No. 06-12-07RE07, *Application of Liberty Power Holdings, LLC for an Electric Supplier License – Review of Allegations of Consumer Protection Violations*, Settlement Agreement (Oct. 30, 2019).

⁴⁶ See Docket No. 22-11-01, *Annual Report to the Legislature - The State of Electric Competition*, Legislative Report (Mar. 29, 2023), at 2-4 (summarizing enforcement actions taken against suppliers in dockets throughout 2022).

much and, as demonstrated above, the time expended on electric supplier license reviews and enforcement actions have decreased dramatically over the last several years. Therefore, the NRG Retail Companies urge the Authority to modify the proposed application fees to accurately reflect “the costs to investigate and administer the licensing procedure.”⁴⁷

III. THE FINANCIAL SECURITY REQUIREMENTS ARE EXCESSIVE AND UNJUSTIFIED

Under the current regulation, an electric supplier may elect to maintain security based on a percentage of estimated gross receipts up to a maximum of \$250,000.⁴⁸ Under the Proposed Amendments, \$250,000 is the minimum and there is no set maximum.⁴⁹ This proposed increase is excessive and unjustified especially in light of the requirement that became effective on December 27, 2022 that electric suppliers post separate financial security to ensure they satisfy their renewable portfolio standard (“RPS”) obligations.⁵⁰

When the Authority originally proposed increasing the financial security, it do so to ensure suppliers had the financial capability to satisfy both their financial and customer supply *and* RPS obligations.⁵¹ In 2019, there was not a separate financial security requirement in the RPS regulations nor had amendments to the RPS regulations been proposed that would have added such a requirement.⁵² Instead, the Authority proposed increasing the financial security

⁴⁷ Cf. Conn. Gen. Stat. § 16-245(e).

⁴⁸ See Conn. State Agency Regs. § 16-245-4.

⁴⁹ Proposed Amendments § 16-245-4(a).

⁵⁰ Docket No. 19-10-26, *Regulations for Renewable Portfolio Standards*, Docket Closing Other Than Decision (Dec. 27, 2022) (noting the effective date the amended RPS regulations that included the new financial security requirement).

⁵¹ See 2019 Notice, at 10 (“An electric supplier shall maintain security in an amount that will ensure its financial responsibility, its renewable portfolio standards responsibility, and its supply of electricity to end use customers in accordance with contracts, agreements or arrangements.”) (emphasis in original to reflect proposed revisions from current regulation).

⁵² See Docket No. 19-10-26, *Regulations for Renewable Portfolio Standards*, Notice of Request for Written Comments (Nov. 18, 2019) (setting forth a proposal to amend the RPS regulations that did not include financial security).

requirements in the Electric Supplier Regulations to ensure suppliers met their RPS obligations.⁵³ Subsequently, the Authority added a financial security requirement to its proposed (and later adopted) amendments to the RPS regulations. Recognizing this change, the Proposed Amendments no longer indicate that the increased financial security could be used to ensure suppliers satisfy their RPS obligations.⁵⁴ Instead, the Proposed Amendments now indicate that the financial security included in the Electric Supplier Regulations will be “in addition to” the RPS financial security.⁵⁵ Notably, however, despite the fact that the financial security included in the Proposed Amendments is no longer proposed to be used to satisfy RPS obligations, the Authority did not reduce the amount of financial security that will be required from what was originally proposed.⁵⁶

In support of maintaining the excessive financial security requirements included in the Proposed Amendments, the Authority noted that “[t]he amount of security required has not changed since at least 2005 and therefore is in need of an update to address changed conditions in the supplier market.”⁵⁷ While the amount of required security may not have changed since

⁵³ See 2019 Notice, at 10 (“An electric supplier shall maintain security in an amount that will ensure its financial responsibility, its renewable portfolio standards responsibility, and its supply of electricity to end use customers in accordance with contracts, agreements or arrangements.”) (emphasis in original to reflect proposed revisions from current regulation).

⁵⁴ Compare 2019 Notice, at 10 (“An electric supplier shall maintain security in an amount that will ensure its financial responsibility, its renewable portfolio standards responsibility, and its supply of electricity to end use customers in accordance with contracts, agreements or arrangements.”) (emphasis in original to reflect proposed revisions from current regulation) with Proposed Amendments § 16-245-4(a) (“In addition to the security required by section 16-245a-1(b) of the Regulations of Connecticut State Agencies, each electric supplier shall maintain security in an amount that will ensure its financial responsibility and its supply of electricity to end use customers in accordance with contracts, agreements, or arrangements.”) (emphasis in original to reflect proposed revisions from current regulation).

⁵⁵ Proposed Amendments § 16-245-4(a) (“In addition to the security required by section 16-245a-1(b) of the Regulations of Connecticut State Agencies, each electric supplier shall maintain security in an amount that will ensure its financial responsibility and its supply of electricity to end use customers in accordance with contracts, agreements, or arrangements.”) (emphasis in original to reflect proposed revisions from current regulation).

⁵⁶ Compare 2019 Notice, at 10 with Proposed Amendments § 16-245-4(a).

⁵⁷ Report, at 11.

2005, the exponential increases proposed are excessive and unjustified in light of the requirement that suppliers must now maintain separate financial security to satisfy their RPS obligations.⁵⁸ As an alternative, the NRG Retail Companies recommend the Authority adopt a more reasonable financial security requirement like the one adopted by the New Hampshire Public Utilities Commission that establishes a the following three-tier approach:

The financial security instrument . . . shall . . .

(2) Be in an amount equal to the greater of:

- a. \$100,000; or
- b. 25% of the [supplier]’s actual gross revenue in New Hampshire for the preceding full year of operation, not including revenue from the provision of default service, for any year after the [supplier]’s first full year of operation;

(3) Not exceed \$500,000, notwithstanding (2) above.⁵⁹

If adopted in Connecticut, the New Hampshire model would double the current maximum security amount; thereby, addressing the Authority’s concern that the amount has not been updated since 2005. The New Hampshire model would also avoid the complexity and administrative burden associated with the formulaic model in the Proposed Amendments and provide certainty as to the maximum amount a supplier may be required to post. Accordingly, the NRG Retail Companies urge the Authority to consider the merits and administrative ease of the New Hampshire model.

IV. THE PROPOSED CYBER AND DATA SECURITY REQUIREMENTS SHOULD BE MODIFIED

The Proposed Amendments would add a requirement that applicants for an electric supplier license and electric suppliers submitting license review applications attest that “the

⁵⁸ See Conn. State Agency Regs. § 16-245a-1(b).

⁵⁹ Puc 2003.03(a)(2), (3).

applicant and the applicant's third party agents have reasonable cyber and data security practices, including a description of the applicant's and the third party agents' cyber and data security practices."⁶⁰ The NRG Retail Companies understand and generally support the Authority's desire to ensure adequate cyber and data security practices are in place. However, the NRG Retail Companies oppose a requirement that suppliers submit a description of those practices to the Authority because such a requirement would actually undermine those security practices. Thus, the NRG Retail Companies request that this requirement be removed before the Proposed Amendments are adopted in final.

Requiring a description of cyber and data security practices actual undermines those practices and should not be required. Cyber-attacks are on the rise, especially for the utility and energy sector.⁶¹ By requiring a description of cyber and data security practices, the Authority would actually be providing potential hackers with access to information they can use to undermine those protections and gain access to customer information as well as other confidential and proprietary information.

Furthermore, even if these descriptions were provided under protective orders, there is still a significant risk that bad actors could gain access to the descriptions by hacking the Authority's systems. In fact, by requiring that the descriptions be submitted, the Authority would be publicly announcing where information about the cyber and data security practices of all suppliers and their agents could be found. This creates an unnecessary and significant risk. Therefore, the NRG Retail Companies request that the Authority remove the requirement that

⁶⁰ Proposed Amendments § 16-245(b)(17).

⁶¹ See International Energy Agency, *Average Number of Weekly Cyberattacks Per Organization in Selected Industries, 2020-2022*, <https://www.iea.org/data-and-statistics/charts/average-number-of-weekly-cyberattacks-per-organisation-in-selected-industries-2020-2022> (last visited Feb. 1, 2024).

suppliers submit descriptions of their cyber and data security requirements before the Proposed Amendments are adopted in final.

In order to avoid undermining the security of their cyber and data security practices, third-party vendors also do not want to share those practices with others. As a consequence, suppliers will not be able to attest to the practices of those entities. Accordingly, the NRG Retail Companies also request that the Authority modify the required attestation to read: “the applicant has reasonable cyber and data security practices and requires its third party agents to have reasonable cyber and data security practices.”

CONCLUSION

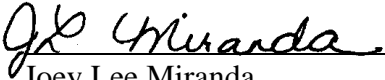
For all the foregoing reasons, the NRG Retail Companies urge the Authority to revise the Proposed Amendments before adopting final amended regulations.

Respectfully Submitted,
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ENERGY BUSINESS, LLC D/B/A NRG
BUSINESS; NRG BUSINESS MARKETING, LLC
F/K/A DIRECT ENERGY BUSINESS
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HOLDINGS LLC; INDEPENDENCE ENERGY
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CERTIFICATION

I hereby certify that a copy of the foregoing was sent to all participants of record on this
2nd day of February 2024.



Joey Lee Miranda