



STATE OF CONNECTICUT

PUBLIC UTILITIES REGULATORY AUTHORITY

PUBLIC COMMENT AND RESPONSE REPORT

Prepared Pursuant to § 4-168(b) of the General Statutes of Connecticut

Regarding

**Amendments to §§ 16-245-1 and 16-245a-1 of the
Regulations of Connecticut State Agencies**

On October 15, 2021, Marissa P. Gillett, Chairman, Public Utilities Regulatory Authority (Authority or PURA), published a notice of intent to amend §§ 16-245-1 and 16-245a-1 of the Regulations of Connecticut State Agencies (Conn. Agencies Reg.). The Authority is amending these regulations under the authority of § 16-245a of the General Statutes of Connecticut (Conn. Gen. Stat.). Pursuant to such notice, the Authority held a public hearing on November 12, 2021. The public comment period remained open until November 17, 2021, at 5:00 p.m.

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 Reg. §§ 16-245-1 and 16-245a-1.

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III. Summary of Comments

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

1. Florence Davis, Esq., Assistant General Counsel, Constellation, Florence.Davis@excelon.com, on behalf of Constellation NewEnergy, Inc. (Constellation)
2. Joaquina Borges King, Esq., Senior Counsel, Eversource Energy, 107 Selden Street, Berlin, CT 06037, Joaquina.BorgesKing@eversource.com, on behalf of Connecticut Light & Power Company d/b/a/ Eversource Energy (Eversource)
3. Brian Calabrese, Esq., Robinson & Cole, One Boston Place, 25th Floor, Boston MA 02108-4404, bcalabrese@rc.com, on behalf of Direct Energy Services, LLC, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Reliant Energy Northeast LLC, Green Mountain Energy Company, and XOOM Energy Connecticut, LLC (collectively, NRG Retail Companies)
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. Joey Lee Miranda, Esq., Robinson & Cole, 280 Trumbull Street, Hartford, CT 06103, jmiranda@rc.com, on behalf of Retail Energy Supply Association (RESA)
6. Daniel Crisp, Esq., Counsel, Avangrid Service Company, 180 Marsh Hill Road, Orange, CT 06466, on behalf of The United Illuminating Company (UI)
7. Christy Prescott, Director of Wholesale Power Contracts, on behalf of UI¹
8. 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, and Calpine Energy Solutions, LLC (Vistra and Calpine)

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

The purpose of and the principal reasons in support of the Proposed Regulations is to amend existing regulations that implement Conn. Gen. Stat. § 16-245a. Specifically, the Proposed Regulations amend Conn. Agencies Reg. § 16-245-1 to add terms to the list of definitions in that section, including the definitions of "Class III sources" and "total output or services." The Proposed Regulations also amend Conn. Agencies Reg. § 16-245a-1 to reflect changes made to Conn. Gen. Stat. § 16-245a pursuant to Public Act 17-186, An Act Concerning Renewable Portfolio Standard Compliance Requirements (Public Act 17-186). Public Act 17-186 amended Conn. Gen. Stat. § 16-245a by eliminating the

¹ Ms. Prescott submitted her comments orally at the November 12, 2021 public comment hearing. See Tr. 11/12/2021, pp. 5-9.

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provisions that allowed electric distribution companies (EDC) and electric suppliers to make up a deficiency in an annual renewable portfolio standard (RPS) obligation in the first three months of the following calendar year, which in turn required the removal of Conn. Agencies Reg. § 16-245a-1(d)².

In addition, the Proposed Regulations amend Conn. Agencies Reg. § 16-245a-1 to require that EDCs and electric suppliers be responsible for independently managing their New England Power Pool (NEPOOL) generation information system (GIS) renewable energy certificate (REC) accounts and prohibiting the Authority from accepting or reviewing requests from EDCs and electric suppliers to reallocate RECs into or out of their NEPOOL GIS accounts or subaccounts. The Proposed Regulations also amend Conn. Agencies Reg. § 16-245a-1 to require electric suppliers to maintain a security with the Authority 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. Additionally, the Proposed Regulations amend Conn. Agencies Reg. § 16-245a-1 to require EDCs to provide final load settlement data to the Authority and electric suppliers on or before the date published by the Authority in its annual notice of the renewable energy portfolio compliance docket, which electric suppliers will use to determine RPS obligations. The Proposed Regulations also amend Conn. Agencies Reg. § 16-245a-1 to authorize the Authority, after conducting a proceeding, to increase or reduce the amount of allowable banking in future compliance years or terminate banking altogether, if the Authority determines doing so is in the public interest. Finally, the Proposed Regulations amend Conn. Agencies Reg. § 16-245a-1 by removing subsection (f) regarding renewable energy trading program emissions attributes as it is not needed. All RECs are required to go through NEPOOL GIS, which determines ownership of such RECs, and all RPS obligations are required to be based exclusively on RECs issued by NEPOOL GIS.

In written comments, the Office of Consumer Counsel (OCC) offers its full support of the Proposed Regulations. OCC Written Comments, Nov. 17, 2021, p. 1.

² Conn. Agencies Reg. § 16-245a-1(d) states in part that “[a]n electric distribution company or electric supplier that seeks to make up any renewable energy portfolio deficiency within the first three months of the succeeding calendar year shall specifically indicate the amount of renewable energy sources or attributes used within the first three months of the succeeding year to make up the previous year’s deficiency. ...” Conn. Agencies Reg. § 16-245a-1(d) is separate and distinct from Conn. Agencies Reg. § 16-245a-1(e), which allows for the banking of certificates for use in “either of the two following years.”

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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. § 16-245-1 of the Proposed Regulation

Comment:

Both NRG Retail and RESA asserted that the Authority should revise the definition of “total output or services” in § 16-245-1(14) of the Proposed Regulations because it lacks clarity. NRG Retail Written Comments, Nov. 17, 2021 (NRG Retail Written Comments), p. 1; RESA Written Comments, Nov. 17, 2021 (RESA Written Comments), p. 3. For example, according to NRG Retail and RESA, the definition does not refer to the specific load obligation data that will serve as the basis for RPS compliance obligations, which NRG Retail and RESA stated the Authority previously determined would be the 90-day resettlement load data. NRG Retail Written Comments, p. 2; RESA Written Comments, pp. 3-4. Consequently, NRG Retail and RESA recommended that the final regulations expressly state that the electric suppliers’ compliance obligations will be based on the 90-day resettlement figures. NRG Retail Written Comments, p. 3; RESA Written Comments p. 4.

Authority Response:

In § 16-245-1(14) of the Proposed Regulations, the Authority is merely codifying the definition of “total output or services” that it has used since 2006. Specifically, in 2006, the Authority reopened Docket No. 05-11-01, DPUC Review of Renewable Portfolio Standards Compliance for 2004 (Docket No. 05-11-01), for, *inter alia*, the limited purpose of defining “total output or services” as that term is used in Conn. Gen. Stat. § 16-245a. May 3, 2006 Decision In Docket No. 05-11-01. In its August 21, 2006 Decision in Docket No. 05-11-01RE01, DPUC Review of Renewable Portfolio Standards Compliance for 2004 – Reopening: Load Data Standards (Load Data Decision), the Authority defined “total output or services” as an “[electric supplier’s] or [EDC’s] [pool transmission facility] load obligation data recorded in the NEPOOL GIS.” Load Data Decision, p. 4. Since its issuance of the Load Data Decision, the Authority has consistently defined “total output or services” to mean “final settlement load obligation at the pool transmission facility.” See, e.g., March 3, 2021 Decision in Docket No. 19-06-01, Annual Review of Connecticut’s Electric Suppliers’ and Electric Distribution Companies’ Compliance with Connecticut’s Renewable Energy Portfolio Standards in the Year 2018, p. 3. Consistent with the Load Data Decision and subsequent annual RPS compliance decisions, the Authority defines “total output or services” in § 16-245-1(14) of the Proposed Regulations to mean “an electric supplier’s or electric distribution company’s pool transmission facility load obligation data assignment in NEEPOOL GIS.” Accordingly, since the Authority is

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merely codifying the definition of “total output or services” that it has used consistently since 2006 when it first defined the term, the Authority is not making any revisions to the Proposed Regulations in response to NRG Retail’s and RESA’s comments regarding the definition of “total output or services”.

2. § 16-245a-1(a) of the Proposed Regulation

Comment 1:

UI recommended incorporating in § 16-245a-1(a) of the Proposed Regulation language setting August 15th as the earliest date for compliance. Specifically, UI requested that § 16-245a-1(a) of the Proposed Regulations be revised, in part, to state, “Each electric supplier shall submit to the Authority annually, on or before the date published by the Authority in its annual notice of the renewable energy portfolio compliance docket, but in no event earlier than August 15th” UI2 Comment, Nov. 17, 2021 (UI2 Comment), p. 2; Tr. 11/12/2021, pp. 6-7. According to UI, the rationale for the inclusion of this language is that the NEPOOL GIS system allows transactions from a previous compliance year to occur until June 15th of the next calendar year and a majority of the transactions settle in NEPOOL GIS by June 15th. UI2 Comment, pp. 2-3; Tr. 11/12/2021, p. 7. Therefore, an entity with a RPS compliance obligation has to settle RPS certificates in NEPOOL GIS by June 15th; document any deficiencies; and document those changes, prior to preparing the RPS compliance report. UI2 Comment, p. 3; Tr. 11/12/2021, p. 7. Accordingly, UI asserted a date of August 15th gives participating entities enough time to prepare compliance filings. Id.

Authority Response:

The Authority is cognizant of the timing and availability of data required to comply with the RPS requirements and wants to ensure it retains the flexibility in the regulations to set compliance with the RPS requirements that align with timing and availability of data should that timing and availability change in the future. Accordingly, the Authority is not making any revisions to the Proposed Regulations in response to UI’s comments regarding setting August 15th as the earliest date for compliance.

Comment 2:

UI requested that the Authority remove the phrase “to the electric supplier” and replace it with the phrase “available from the electric supplier’s” in §§ 16-245a-1(a) of the Proposed Regulations. UI2 Comment, p. 4. According to UI, NEPOOL is a repository for the initial creation of certificates and the trading that occurs between account holders, so the inclusion of the phrase “to the electric supplier” in § 16-245a-1(a) of the Proposed Regulations is not accurate.

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Authority Response:

In light of UI's comment, the Authority is revising § 16-245a-1(a) of the Proposed Regulations by removing the phrase "to the electric supplier" in two places in that subsection. Accordingly, § 16-245a-1(a) of the Proposed Regulations now states that the electric supplier's annual report shall "be based exclusively on certificates issued by NEPOOL GIS" and that the annual report may include copies of "all quarterly and annual reports issued by the NEPOOL GIS..."

Comment 3:

UI suggested that the Authority replace "during the previous calendar year" in § 16-245a-1(a)(4) of the Proposed Regulations with "reflecting the four vintage year quarters associated with the calendar year compliance" since REC creation will span two calendar years. Id., pp. 3-4.

Authority Response:

The annual report required by § 16-245a-1(a) of the Proposed Regulations is based on the previous calendar year. Accordingly, the Authority is not making any revisions to the Proposed Regulations in response to UI's comment.

Comment 4:

RESA argued that § 16-245a-1(a)(4) of the Proposed Regulations, which requires RPS compliance reports to include "[c]opies of *all* quarterly and annual reports issued to the electric supplier by the NEPOOL GIS during the previous calendar year" (emphasis added), is drafted too broadly because NEPOOL GIS makes a variety of reports available, including reports that are inapplicable to an electric supplier's compliance with the Connecticut RPS. RESA Written Comments, p. 5. Accordingly, RESA recommended that the Authority's final regulations only require that each supplier submit copies of NEPOOL GIS "My Settled Certificates" Reports (or successor reports) with the annual Connecticut RPS compliance report. Id., p. 6.

Authority Response:

§ 16-245a-1(a) of the Proposed Regulations specifically states that each supplier shall submit "to the Authority annually, ..., a report demonstrating its compliance with the [RPS] requirements..." and that "the report shall...be based exclusively on certificates issued to the electric supplier by NEPOOL GIS." Accordingly, it is clear in the Proposed Regulations that the quarterly and annual reports issued to an electric supplier by the NEPOOL GIS that an electric supplier is required to submit with its annual report are reports related to its compliance with Connecticut's RPS requirements, including the certificates issued to the electric supplier by NEPOOL GIS. Therefore, the Authority is not making any revisions to the Proposed Regulations in response to RESA's comment

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requesting clarification regarding which NEPOOL GIS reports an electric supplier is required to submit to the Authority with its annual report.

Comment 5:

In § 16-245a-1(a) of the Proposed Regulations, rather than requiring that annual RPS compliance reports be due “on or before the date published by the Authority in its annual notice,” which could be at any time during the year, RESA recommended that the Authority retain the current October 15th filing deadline and decline to adopt the Proposed Regulations permitting the deadline to be set by notice. RESA Written Comments, p. 4.

Authority Response:

See Authority Response to Comment 1, above.

Comment 6:

Eversource noted that there appears to be flexibility in the proposed language in § 16-245a-1(a) of the Proposed Regulations to allow the Authority to decide, from year to year, the specific dates for various reporting deadlines in its annual notice. Eversource Written Comments, p. 1. While Eversource stated it does not seek to limit the flexibility the provision provides, it does request that the Authority incorporate an opportunity for comment on the deadlines PURA proposes each year into the regulation. Id.

Authority Response:

See Authority Response to Comment 1, above.

Comment 7:

Vistra and Calpine recommended that, to the extent the Proposed Regulations are intended to apply to voluntary renewable products, the language requiring reliance exclusively on certificates issued by NEPOOL GIS should be removed. Vistra and Calpine Written Comments, Nov. 17, 2021 (Vistra and Calpine Written Comments), p. 3.

Authority Response:

The Proposed Regulations do not apply to voluntary renewable products. Rather, the Proposed Regulations are applicable to Connecticut’s RPS compliance. Accordingly, the Authority is not making any revisions to the Proposed Regulations in response to Vistra and Calpine’s comment.

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Comment 8:

Vistra and Calpine recommended increased certainty regarding when the annual reports in § 16-245a-1(a) of the Proposed Regulations will be due. Id., p. 3. Specifically, according to Vistra and Calpine, a set date each year would provide certainty and consistency for electric suppliers when planning RPS compliance. Id. Accordingly, Vistra and Calpine requested that the Authority maintain the current set date of October 15th each year for electric suppliers to submit their compliance reporting. Id., p. 4.

Authority Response:

See Authority Response to Comment 1, above.

3. § 16-245a-1(b) of the Proposed Regulation

Comment 1:

Constellation raised a concern regarding the requirement in § 16-245a-1(b) of the Proposed Regulations that electric suppliers post additional security as, according to Constellation, such requirement would significantly increase security requirements. Constellation Written Comments, Nov. 17, 2021 (Constellation Written Comments), p. 1. Constellation did note, however, that it would not view this as an onerous requirement if electric suppliers are able to fulfill this requirement through the use of a parent guarantee, noting that the definition of “security” in Conn. Agencies Reg. § 16-245-1(13) appears to permit this. Id.

Authority Response:

As noted by Constellation, the definition of “security” in Conn. Agencies Reg. § 16-245-1(13), as amended by the Proposed Regulations, includes bonds, letters of credit, guarantees and other appropriate instruments approved by the Authority. Accordingly, the Authority is not making any revisions to the Proposed Regulations in response to Constellation’s comment.

Comment 2:

RESA asserted that the requirement that all electric suppliers maintain RPS-related financial security with the Authority equal to the full alternative compliance payments (ACP) would be duplicative, unfairly disadvantage retail electric suppliers, and unnecessarily increase costs. RESA Written Comments, p. 6. According to RESA, the requirement is duplicative because the Authority in its proposed regulations regarding electric supplier licensing requirements (Electric Supplier Licensing Proposed Regulations) is already planning to require that financial security posted by each electric supplier be sufficient to, *inter alia*, “ensure...its renewable portfolio standards responsibility.” Id., p. 7, citing Docket No. 19-10-41, Regulations for Electric Supplier

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Licensing, June 19, 2021 Notice of Intent. In addition, RESA asserted that if the financial security requirements are still imposed, it “should be waived for suppliers that satisfy certain credit rating thresholds.” Id. According to RESA, the costs associated with the financial security requirement are significant and would be reflected in the prices that the electric suppliers charge for electric supply and would be ultimately borne by customers. Id., pp. 8-9.

Further, RESA argued that requiring that electric suppliers post this financial security but not imposing a similar obligation on the EDCs’ wholesale suppliers will unfairly burden electric suppliers. Id., p. 9. Specifically, according to RESA, EDCs do not require all wholesale suppliers to post financial security. RESA stated that EDCs only require wholesale suppliers to post financial security if they do not satisfy certain credit requirement thresholds. Id. To create a more level playing field and avoid requiring electric suppliers to incur unnecessary costs, RESA recommended that electric suppliers be treated similarly to the EDCs’ wholesale suppliers and be allowed to satisfy any applicable financial security requirements by demonstrating that they have an investment grade credit rating. Id., p. 10.

Additionally, RESA recommended that the Authority cap the amount of additional RPS-related financial security that suppliers are required to provide. Id. According to RESA, Massachusetts recently established a financial security requirement based on a percentage of a supplier’s gross receipts, but subject to minimum (\$100,000) and maximum amounts (\$1 million). Id. p. 11, citing 225 CMR 14.08(4)(c). Finally, RESA asserted that any financial security that the Authority requires should only be used to cover any unpaid ACPs and should not be used for any other financial liabilities. RESA Written Comments, p. 11.

Authority Response:

In response to RESA’s comment, the Authority is revising its Electric Supplier Licensing Proposed Regulations by removing any reference to the RPS requirements in the provision requiring maintenance of a security.

In addition, with respect to RESA’s other comments regarding the security requirement, the Authority is requiring in § 16-245a-1(b) of the Proposed Regulations that electric suppliers maintain a security with the Authority 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. Requiring an electric supplier to maintain a security equal to only a percentage of its full ACP or capping or waiving the amount of the security will not alleviate the situations the Authority is trying to address in the Proposed Regulations. Accordingly, the Authority is not making any revisions to the Proposed Regulations in response to RESA’s comment.

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Comment 3:

While Vistra and Calpine support increased financial securities to ensure that electric suppliers are able to meet their financial obligations, they noted that the Authority recently addressed RPS obligations in connection with the increased security requirements in the Electric Supplier Licensing Proposed Regulations. Vistra and Calpine Written Comments, p. 1. According to Vistra and Calpine, to now require additional security for RPS obligations is redundant and unnecessary. Id., p. 2.

Vistra and Calpine recommended that the Authority permit a lower security for suppliers with a longer demonstrated history of compliance as the full ACP amount is unnecessarily broad and places a substantial financial burden on all electric suppliers. Id. Specifically, Vistra and Calpine recommend that § 16-245a-1(b)(1) be revised as follows:

(1) In addition to the security required by section 16-245-4 of the Regulations of Connecticut State Agencies, each electric supplier shall maintain a renewable energy portfolio standards security with the Authority equal to a percentage of the full alternative compliance payment that the electric supplier would be required to pay to the Authority pursuant to section 16-245(k) of the Connecticut General statutes based on the forecast year load at a rate of 5% for suppliers with a demonstrated RPS compliance history of ten (10) years or longer, 10% for suppliers with a demonstrated RPS compliance history of five (5) years or longer, and 20% for all other suppliers.

Authority Response:

See Authority Response to Comment 2, above.

4. § 16-245a-1(c) of the Proposed Regulation

Comment 1:

Constellation asserted that there may be situations in which good cause exists for allowing a reallocation of RECs into or out of an electric supplier's NEPOOL GIS account or subaccount. Constellation Written Comments, p. 2. Accordingly, Constellation requests that the Authority allow itself some flexibility to address circumstances in which good cause exists for allowing a reallocation of RECs into or out of an electric supplier's NEPOOL GIS account or subaccount such that the electric supplier is not left with losses and increased RPS compliance costs through no fault of its own. Id.

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Authority Response:

The Authority has consistently ruled in its Decisions that: (1) the Authority relies exclusively on the NEPOOL GIS system and will not examine or consider outside evidence such as contracts, receipts, attestations or affidavits concerning the use of RECs, May 20, 2014 Decision in Docket No. 13-11-18, Petition of Clearview Electric, Inc. for a Declaratory Ruling Regarding the Applicability of Certain Statutes and Regulations to Its Renewable Energy Portfolio Standards Compliance in the Year 2010 (Docket No. 13-11-18 Decision), pp. 4-7, and (2) the Authority will not “review or rectify any administrative or clerical errors of any person and/or entities who fail to comply with NEPOOL GIS rules,” See 2010 RPS Compliance Decision, p. 11, citing February 11, 2009 Decision in Dockets No. 08-11-14, Application for a Declaratory Ruling Regarding Koch Supply and Trading, LP NEPOOL GIS Banking Error, 08-12-05, Declaratory Ruling Regarding Consolidated Edison Energy Inc. NEPOOL GIS Banking Error, 09-01-15, Declaratory Ruling Regarding CE2 Environmental Opportunities I LP NEPOOL GIS Banking Error, and 09-01-11, Declaratory Ruling Regarding Suez Energy Marketing NA, Inc. NEPOOL GIS Banking Error, or “overlook the results of the GIS based upon clerical or managerial error,” Docket No. 13-11-18 Decision, p. 13. Strict compliance with the NEPOOL GIS operating rules is necessary to maintain and safeguard the integrity of the Connecticut RPS program and adherence to the regulatory construct for RPS compliance, including statutory deadlines, is essential in order for the RPS program to be meaningful and fair, and companies’ compliance reports and supporting data are reviewed and validated accordingly. Therefore, the Authority is not making any revisions to the Proposed Regulations in response to Constellation’s comment.

Comment 2:

While RESA agreed that suppliers should be expected to manage their REC accounts throughout the year and to account for, and retire, their RECs in accordance with applicable requirements, it asserted that the Authority should retain the flexibility to reallocate RECs if presented with compelling circumstances that are not the result of supplier error. RESA Written Comments, p. 15. Accordingly, RESA requested that the Authority modify the Proposed Regulations to read: “The Authority shall not accept or review a request from an electric supplier to reallocate renewable energy certificates into or out of the electric supplier’s NEPOOL GIS accounts or subaccounts, or both, except in compelling circumstances, which do not include supplier error.” Id.

Authority Response:

See Response to Comment 1, above.

Comment 3:

Vistra and Calpine asserted that the broadly worded language in § 16-245-1(c) of the Proposed Regulations creates an unnecessarily rigid approach when considering the

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REC settlement process allowed by NEPOOL GIS Operating Rules. Vistra and Calpine Written Comments, p. 3. Specifically, according to Vistra and Calpine, Section 3.8 of the NEPOOL GIS Operating Rules allows for post-closing REC adjustments. Id. Accordingly, Vistra and Calpine recommended that the Authority delete § 16-245a-1(c) of the Proposed Regulations. Id.

Authority Response:

See Response to Comment 1, above.

5. § 16-245a-1(d) of the Proposed Regulation

Comment 1:

Both NRG Retail and RESA stated that the Authority should require in § 16-245a-1(d) of the Proposed Regulations that the EDCs provide the electric suppliers with load data before the end of the NEPOOL GIS trading period for a given year. NRG Retail Written Comments, p. 2; RESA Written Comments, p. 16. Currently, EDCs provide suppliers with load data one month before the close of the NEPOOL trading period, which, according to NRG Retail and RESA, is too late if the EDCs load data is significantly different from the electric supplier's data and RECs need to be purchased. Id. Accordingly, based on the Massachusetts Department of Energy Resource's regulations, NRG Retail and RESA suggested that the Authority require in the Proposed Regulations that (1) The EDCs provide the annual RPS load obligation of each electric supplier by May 1 each year; (2) the electric supplier has a defined time period to validate or challenge the accuracy of the load obligation values (e.g., within five (5) business days) with the EDCs; and (3) once the load obligation is validated and accepted by each electric supplier and EDC, those load obligation values would be used as the basis of the electric supplier's annual RPS obligation. NRG Retail Written Comments, p. 3; RESA Written Comments, p. 16. NRG Retail and RESA asserted that the adoption of this approach will help electric suppliers better manage their RPS obligations, and could reduce ACPs, because it will enable them to address REC shortfalls while the trading period is open and RECs may be moved among subaccounts. NRG Retail Written Comments, p. 3; RESA Written Comments, pp. 17-18.

Authority Response:

As stated previously, the Authority is cognizant of the timing and availability of data required to comply with the RPS requirements and wants to ensure it retains the flexibility in the regulations to set compliance with the RPS requirements that align with timing and availability of data should that timing and availability change in the future. In addition, the process outlined in § 16-245a-1(d) of the Proposed Regulations is the process the Authority has been using for a number of years without incident. See e.g., April 13, 2021 Notice of Proceeding in Docket No. 21-06-01, [Annual Review of Connecticut's Electric Suppliers' and Electric Distribution Companies' Compliance with Connecticut's](#)

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Renewable Energy Portfolio Standards in the Year 2020, p. 2; June 8, 2020 Notice of Proceeding in Docket No. 20-06-01, Annual Review of Connecticut's Electric Suppliers' and Electric Distribution Companies' Compliance with Connecticut's Renewable Energy Portfolio Standards in the Year 2019, p. 2; September 23, 2019 Notice of Proceeding, Annual Review of Connecticut's Electric Suppliers' and Electric Distribution Companies' Compliance with Connecticut's Renewable Energy Portfolio Standards in the Year 2018, p. 2. Accordingly, the Authority is not making any revisions to the Proposed Regulations in response to NRG Retail's and RESA's comments.

Comment 2:

Eversource noted that there appears to be flexibility in the proposed language in § 16-245a-1(d) of the Proposed Regulations to allow the Authority to decide, from year to year, the specific dates for various reporting deadlines in its annual notice. Eversource Written Comments, p. 1. While Eversource stated it does not seek to limit the flexibility the provision provides, it did request that the Authority incorporate an opportunity for comment on the deadlines PURA proposes each year into the regulation. Id.

Authority Response:

See Response to Comment 1, above.

Comment 3:

Vistra and Calpine requested that the EDCs be required in § 16-245a-1(d) of the Proposed Regulations to provide the report that summarizes the electric supplier's monthly and final load settlement data to the electric suppliers and the Authority by May 15th each year. Vistra and Calpine Written Comments, p. 4.

Authority Response:

See Response to Comment 1, above.

Comment 4:

Vistra and Calpine stated that they support quarterly, rather than monthly, EDC reporting of load settlement data to electric suppliers given that REC trading is also quarterly, and quarterly reports would include resettlement information that monthly reports would not reflect. Id.

Authority Response:

While the Authority recognizes that quarterly reports may include resettlement information that monthly reports would not reflect, it wants electric suppliers to have access to load settlement data monthly to ensure they have sufficient time to obtain RECs

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if needed to comply with the RPS obligations. Making load settlement data available monthly rather than quarterly will provide such access. Accordingly, the Authority is not making any revisions to the Proposed Regulations in response to Vistra and Calpine's comments.

6. § 16-245a-1(e) of the Proposed Regulation

Comment 1:

UI suggested incorporating in § 16-245a-1(e) of the Proposed Regulations language setting August 15th as the earliest date for the EDC's compliance with this subsection because the NEPOOL GIS system allows transactions from a previous compliance year to occur until June 15th of the next calendar year and a majority of the transactions settle in NEPOOL GIS by June 15th. UI2 Comment, dated Nov. 17, 2021, pp. 2-3; Tr. 11/12/2021, pp. 6-7.

Authority Response:

As stated previously, the Authority is cognizant of the timing and availability of data required to comply with the RPS requirements and wants to ensure it retains the flexibility in the regulations to set compliance with the RPS requirements that align with timing and availability of data should that timing and availability change in the future. Accordingly, the Authority is not making any revisions to the Proposed Regulations in response to UI's comment regarding setting August 15th as the earliest date for compliance.

Comment 2:

UI recommended that the Authority replace "issued to the electric distribution company by the NEPOOL GIS" in § 16-245a-1(e)(4) of the Proposed Regulations with "available from the electric distribution company's NEPOOL GIS account". UI2 Comment, p. 4. According to UI, NEPOOL GIS is a repository for the initial creation of RECs and the trading that occurs between account holders, so the phrase "to the electric distribution company" is not accurate. Id.

Authority Response:

In light of UI's comment, the Authority is removing the phrase "to the electric distribution company" from § 16-245a-1(e)(4) of the Proposed Regulations. Accordingly, § 16-245a-1(e)(4) of the Proposed Regulations now states that the EDC's annual report shall include copies of all quarterly and annual reports "issued by the NEPOOL GIS during the previous calendar year."

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Comment 3:

UI recommended that the Authority replace “during the previous calendar year” in § 16-245a-1(e)(4) and (5) of the Proposed Regulations with “reflecting the four vintage year quarters associated with the calendar year compliance” since REC creation will span two calendar years. Id., pp. 3-4.

Authority Response:

The annual report required by § 16-245a-1(e) of the Proposed Regulations is based on the previous calendar year. Accordingly, the Authority is not making any revisions to the Proposed Regulations in response to UI’s comment.

Comment 4:

UI noted that there is no subdivision (7) in between subdivisions (6) and (8) in § 16-245a-1(e) of the Proposed Regulations. UI2 Comment, p. 4.

Authority Response:

The Authority has corrected the numbering of the subdivisions in § 16-245a-1(e) of the Proposed Regulations such that subdivision (8) is now subdivision (7).

Comment 5:

Eversource noted that there appears to be flexibility in the proposed language in § 16-245a-1(e) of the Proposed Regulations to allow the Authority to decide, from year to year, the specific dates for various reporting deadlines in its annual notice. Eversource Written Comments, p. 1. While Eversource stated it does not seek to limit the flexibility the provision provides, it does request that the Authority incorporate an opportunity for comment on the deadlines PURA proposes each year into the regulation. Id.

Authority Response:

See Authority Response to Comment 1.

7. § 16-245a-1(g) of the Proposed Regulation

Comment 1:

Constellation requested that the Authority make revisions to § 16-245a-1(g) of the Proposed Regulations to make clear that any Authority decision to increase, decrease or terminate REC banking will not affect the qualification of existing banked RECs, which would have been banked by electric suppliers in reliance of the requirements in existence at the time of such banking. Constellation Comment, p. 2. According to Constellation,

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decreasing or eliminating banking allowances without creating such an exemption for RECs that have already been banked could result in significant losses by suppliers. Id.

Authority Response:

Neither the provision regarding banking of RECs in the Proposed Regulations, nor a future decision issued by the Authority increasing, decreasing or terminating the banking of RECs should be construed as having a retrospective effect. The Authority may only apply the Proposed Regulations and any future decision regarding the banking of RECs prospectively. Accordingly, the Authority is not making any revisions to the Proposed Regulations in response to Constellation's comment.

Comment 2:

UI requested clarification as to the meaning of the words "each year" in § 16-245a-1(g) of the Proposed Regulations. UI2 Comments, p. 3. Specifically, to clarify this language, UI suggested that the Authority revise it to replace the words "each year" with a specific timeframe, for example, "the prior two years". Id. According to UI, if the language remains as proposed, if UI satisfied RPS compliance by choosing to pay an ACP in 2015, then it would be subject to interpretation as to whether UI would be prohibited from banking in 2021 or beyond. Id.

Authority Response:

An EDC or electric supplier may bank RECs that it generated in one year to comply with the RPS requirements in either of the following two years provided the EDC or electric supplier has complied with the RPS requirements in the year in which it generated the RECs. Accordingly, the Authority has revised § 16-245a-1(h) in the Final Proposed Regulations by replacing the words "each year" with "in the year in which the electric supplier or electric distribution company generated the renewable energy certificates".

Comment 3:

RESA stated that REC banking is necessary to control RPS compliance costs because it allows load-serving entities to manage their compliance costs for the ultimate benefit of customers. RESA Written Comments, p. 18. Further, because the use of previously banked RECs for compliance mitigates the overall demand for RECs, RESA asserted that banking moderates the prices of newly created RECs for the benefit of all Connecticut customers, including those served pursuant to Standard Service or Last Resort Service. Id., pp. 19-20. Moreover, according to RESA, eliminating or reducing REC banking could negatively impact renewable energy generators. Id., p. 20. Additionally, without banking or with reduced banking, RESA asserted that there will also be a higher likelihood that more electric suppliers will be forced to pay an ACP instead of satisfying the entirety of their obligations through the purchase of RECs. Id. Therefore, RESA recommended that the Authority continue to permit the banking of RECs for use in

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demonstrating compliance in future years and not include in the Final Proposed Regulations a provision that, in a future proceeding, the Authority could terminate REC banking or reduce the amount of allowable banking. Id., p. 19.

If, however, the Authority retains the provision in the Final Proposed Regulations, RESA stated that the Authority should ensure that any future change in the availability of banking avoids stranded costs. Id., p. 22. In order to avoid stranded costs, RESA recommended that the Authority account for contractual REC arrangements and banked RECs that exist as of the date of the final regulations. Id., p. 23.

Authority Response:

See Response to Comment 1.

Comment 4:

Vistra and Calpine requested that the Authority revise § 16-245a-1(g) of the Proposed Regulations by deleting “generated” because electric suppliers often do not “generate” the RECs that they use for RPS compliance, but instead own RECs purchased in the market. Vistra and Calpine Written Comments, p. 5.

Authority Response:

The term “generated” in § 16-245a-1(g) of the Proposed Regulation is referring to the RECs that NEPOOL GIS generates, not the total output or services generated from Class I renewable energy sources and Class II renewable energy sources and obtained from Class III sources to meet the renewable portfolio standards. Accordingly, the Authority is not making any revisions to the Proposed Regulations in response to Vistra and Calpine’s comment.

Comment 5:

While the Proposed Regulations as written allow for banking to continue, Vistra and Calpine are concerned by the additional language in § 16-245-1(g) of the Proposed Regulations that would allow the Authority to reduce or terminate banking in an uncontested proceeding. Id. Vistra and Calpine recommended that if the Authority determines in the future that it will seek to change the banking construct, it should do so through the regulatory process. Id. If, however, the Authority proposes to determine future banking allowances in a proceeding, Vistra and Calpine stated that the proceeding should at the very least be a contested proceeding. Id. According to Vistra and Calpine, the Proposed Regulations as drafted cause uncertainty for electric suppliers as they may or may not be able to rely on banking for future years if or when the Authority may reduce or terminate banking altogether. Id. Vistra and Calpine also assert that there is uncertainty in the Proposed Regulations regarding what type of transition period may exist after any determination to reduce or terminate banking. Id.

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Authority Response:

In response to the Vistra and Calpine Comments, the Authority has removed the word “uncontested” from § 16-245a-1(g) of the Final Proposed Regulation.

Comment 6:

Vistra and Calpine recommended that the Authority replace “may bank renewable energy certificates that it generated in one year to comply with the renewable energy portfolio standard requirements in either of the following two years” in § 16-245a-1(g) of the Proposed Regulations with “may bank renewable energy certificates in the current year to comply with the renewable energy portfolio standard requirements in either of the following two years” because electric suppliers often do not “generate” the RECs that they use for RPS compliance. Id.

Authority Response:

Based on the comment received from Vistra and Calpine, the Authority is revising § 16-245a-1(g) in the Final Proposed Regulation to reflect the changes proposed in the Vistra and Calpine Written Comments. Specifically, the Authority is revising § 16-245a-1(g) in the Final Proposed Regulation by replacing “may bank renewable energy certificates that it generated in one year to comply with the renewable energy portfolio standard requirements in either of the following two years” with “may bank renewable energy certificates in the current year to comply with the renewable energy portfolio standard requirements in either of the following two years.” See § 16-245a-1(h) of the Final Proposed Regulations.

8. § 16-245a-1(h) of the Proposed Regulation

Comment 1:

UI suggests that the Authority modify the first sentence of § 16-245a-1(h) of the Proposed Regulation to reflect the Authority’s authority to review compliance filings. UI2 Comment, p. 5. Specifically, UI recommends that the Authority add “at any time after the annual compliance filing is submitted to the [Authority] by the electric supplier or electric distribution company...” Id.

Authority Response:

The Authority agrees with UI’s recommendation. Accordingly, it has added “after the annual compliance filing is submitted to the [Authority] by the electric supplier or electric distribution company, respectively” to the end of the first sentence of § 16-245a-1(h) in the Final Proposed Regulations. Therefore, the first sentence of § 16-245a-1(h) now reads as follows: “The Authority may review an electric supplier’s or electric

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distribution company's compliance filings at any time after the annual compliance filing is submitted to the [Authority] by the electric supplier or electric distribution company, respectively." See § 16-245a-1(h) of the Final Proposed Regulations.

Comment 2:

RESA asserted that the Authority has exceeded its authority in adding language that claims to assess a civil penalty if electric suppliers or EDCs fail to demonstrate annual compliance with the RPS requirements. RESA Written Comments, p. 12. Specifically, RESA argued that Conn. Gen. Stat. § 16-245 expressly requires and only authorizes the Authority to assess an ACP if an electric supplier does not purchase sufficient RECs to meet its RPS obligations. Id. According to RESA, it does not authorize the Authority to impose civil penalties simply because an electric supplier does not purchase sufficient RECs to meet its RPS obligations. Id. RESA asserted that the legislature specifically denied PURA the authority to do so. Id., p. 13, citing Conn. Gen. Stat. § 16-245(k) ("Any licensee who fails to comply with a license condition or who violates any provision of this section, *except for the renewable portfolio standards contained in subsection (g) of this section*, shall be subject to civil penalties by the Public Utilities Regulatory Authority in accordance with section 16-41"). RESA also stated that without a meaningful ACP option that would replace a civil penalty if an electric supplier or EDC does not retire sufficient RECs, the demand for RECs would increase prices which would be borne by the ratepayers. Accordingly, RESA recommended that the Authority revise § 16-245a-1(h) of the Proposed Regulations to clarify that civil penalties will not be imposed solely for retiring an insufficient number of RECs. Id.

Authority Response:

In light of RESA's comments, the Authority has revised § 16-245a-1(h) of the Final Proposed Regulation to make its statutory authority clear with respect to civil penalties. Accordingly, § 16-245a-1(h) of the Final Proposed Regulation now states:

(h) Renewable Energy Portfolio Deficiencies. The Authority may review an electric supplier's or electric distribution company's compliance filings at any time after the annual compliance filing is submitted to the Authority by the electric supplier or electric distribution company, respectively. Any electric supplier or electric distribution company that violates any provision of this section, including the requirement to file accurate load data or renewable portfolio standards information in its annual report or to maintain an appropriate security, shall be subject to civil penalties by the Authority in accordance with the procedures contained in section 16-41 of the Connecticut General Statutes.

Comment 3:

Vistra and Calpine asserted that, to the extent the Proposed Regulations seek to impose civil penalties for non-compliance with Class I and Class II RPS requirements,

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this exceeds the Authority's statutory authority. Vistra and Calpine Written Comments, p. 6. According to Vistra and Calpine, electric suppliers failing to comply with the Class I and Class II RPS requirements are exempt from civil penalties and are instead required to make an ACP. Id. Vistra recommends that the Authority revise § 16-245a-1(h) of the Proposed Regulations as follows:

~~The Authority may review an electric supplier's or electric distribution company's compliance filings at any time. The Authority shall have the right to assess a penalty pursuant to sections 16-41 and 16-245 of the Connecticut General Statutes, or any other applicable law, within two years of the filing date if an electric supplier or electric distribution company fails to file accurate load data or renewable portfolio standards information in its annual report or fails to maintain an appropriate security. The Authority shall have the right to assess an alternative compliance payment or pursue a penalty pursuant to sections 16-41 or 16-245 of the Connecticut General Statutes within two years of the filing date for any electric distribution company or electric supplier failing to demonstrate sufficient annual compliance.~~

Id.

Authority Response:

See Response to Comment 2.

IV. Conclusion

Based upon the comments addressed in this Public Comment and Response Report, I recommend the proposed amendments to the Renewable Energy Portfolio Standards Regulations, publicly noticed on October 15, 2021, 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 Assembly and, upon adoption, submitted to the Secretary of State for posting on the eRegulations system.



Kathryn Keenan
Staff Attorney
Office of Adjudications

June 28, 2022
Date

Attachments