



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 on April 15.

Jeffrey R. Gaudiosi, Esq.  
Executive Secretary  
Page 2

Please contact me at [Florence.Davis@exeloncorp.com](mailto: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



BRIAN E. CALABRESE

280 Trumbull Street  
Hartford, CT 06103-3597  
Main (860) 275-8200  
Fax (860) 275-8299  
bcalabrese@rc.com  
Direct (860) 275-8320

Also admitted in Massachusetts  
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

Page 2

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."<sup>1</sup> 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.<sup>2</sup> Further, the effort and expense of license reviews could be even more significant if any suppliers avail

---

<sup>1</sup> Conn. State Agency Regs. § 16-245-2(f).

<sup>2</sup> 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

Page 3

themselves of the full array of procedural rights available under the Uniform Administrative Procedure Act, Connecticut General Statutes section 4-166 *et seq.*<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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;<sup>6</sup> the New Hampshire Public Utilities Commission application fee is \$250;<sup>7</sup> the Maine Public Utilities Commission application fee is \$100;<sup>8</sup> and the Rhode Island Division of Public Utilities and Carriers filing fee is \$100.<sup>9</sup> 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

---

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

<sup>4</sup> Conn. State Agency Regs. § 16-245-2(b)(1).

<sup>5</sup> Conn. State Agency Regs. § 16-245-2(b)(19).

<sup>6</sup> See 220 CMR 11.05(2)(c).

<sup>7</sup> See Puc 2003.01(b)(3).

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

<sup>9</sup> See 815-RICR-30-05-1.3(D).

Jeffrey R. Gaudiosi, Esq.

July 16, 2021

Page 4

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.<sup>10</sup> 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.”<sup>11</sup> 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.”<sup>12</sup> 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

---

<sup>10</sup> 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).

<sup>11</sup> Conn. Gen. Stat. § 16-245(e) (emphasis added).

<sup>12</sup> Fiscal Note (emphasis added).

Jeffrey R. Gaudiosi, Esq.

July 16, 2021

Page 5

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.<sup>13</sup> Under the Proposed Regulations, \$250,000 is the minimum and there is no set maximum.<sup>14</sup> 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.<sup>15</sup>

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

---

<sup>13</sup> See Conn. State Agency Regs. § 16-245-4.

<sup>14</sup> 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.").

<sup>15</sup> Puc 2003.03(a)(2), (3).

Jeffrey R. Gaudiosi, Esq.

July 16, 2021

Page 6

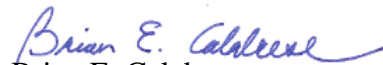
supplier may be required to post. Accordingly, NRG urges the Authority consider the merits and administrative ease of the New Hampshire model.

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.<sup>16</sup>

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

---

<sup>16</sup> See Notice, at 3.





OFFICE OF THE ATTORNEY GENERAL  
CONNECTICUT

LAUREN BIDRA  
ASSISTANT ATTORNEY GENERAL

Phone: 860-827-2603  
Fax: 860-827-2893

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

10 Franklin Square  
New Britain, Connecticut 06051

*An Affirmative Action/Equal Opportunity Employer*

July 16, 2021

2 | Page

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

3 | Page

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  
10 Franklin Square  
New Britain, Connecticut 06051  
Lauren.Bidra@ct.gov  
John.Wright@ct.gov

Service is certified to all Participants  
on this agency's service list.

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

**STATE OF CONNECTICUT**  
**PUBLIC UTILITIES REGULATORY AUTHORITY**

<b>RE: REGULATIONS FOR ELECTRIC SUPPLIER LICENSING</b>	: : : : : :	<b>DOCKET NO. 19-10-41  ERegulations Tracking No. PR2020-007  JULY 16, 2021</b>
--	----------------------------	---

**THE OFFICE OF CONSUMER COUNSEL’S  
SECOND SET OF WRITTEN COMMENTS**

The Office of Consumer Counsel (“OCC”) hereby respectfully submits its Second Set of Written Comments in response to the Public Utilities Regulatory Authority’s (“Authority”) Notice of Intent and Public Comment Period (“Notice”) dated June 9, 2021 in the above-captioned proceeding. In its Notice, the Authority provides an opportunity for all interested stakeholders to submit public comment on the Authority’s proposed amendments to certain sections of the Regulations of Connecticut State Agencies (“R.C.S.A”) §§ 16-245-1 through 16-245-4 that govern certain licensing and compliance requirements of third-party electric suppliers doing business in the Connecticut market. OCC thanks the Authority for taking the time to develop and propose these substantial and important revisions to its regulations applicable to third-party suppliers.

In general, OCC strongly supports the Authority’s proposed amendments as drafted. Overall, the amendments that the Authority has proposed reflect and incorporate many of the comments that OCC set forth at prior stages of this proceeding. *See generally* Written Comments of the Office of Consumer Counsel, Docket No. 19-10-41, *supra*, (Dec. 12, 2019). Since the Authority’s last substantive revisions to the regulations in 2005, the third-party electric supply

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 16<sup>th</sup> 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

**ALEXANDER W. JUDD**

Attorney at Law

242 Trumbull Street  
Hartford, CT 06103-1212  
T: (860) 275-0147 F: (860) 331-8834  
ajudd@daypitney.com

***Via Electronic Filing<sup>1</sup> 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.<sup>2</sup> ("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.

<sup>1</sup> 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 be delivered or mailed according to a subsequent determination by the Authority.

<sup>2</sup> 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  
 Page 2

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  
 Page 3

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.”<sup>3</sup> 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....”<sup>4</sup>

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.

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

<sup>4</sup> 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



Jeffrey R. Gaudiosi, Esq.  
 July 16, 2021  
 Page 4

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 2005<sup>5</sup> 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*.”<sup>6</sup> 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).”<sup>7</sup> The NEPOOL GIS Operating Rules add that the “electrical load for which a Retail LSE shall have a

---

<sup>5</sup> 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.

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

<sup>7</sup> 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).



Jeffrey R. Gaudiosi, Esq.  
 July 16, 2021  
 Page 5

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

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,”<sup>9</sup> 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.

---

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

<sup>9</sup> 2019 RPS Docket, at 7.



Jeffrey R. Gaudiosi, Esq.  
July 16, 2021  
Page 6

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'.

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 Period<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> Multiple parties, including the NRG Retail Companies, submitted comments in response to the 2021 Notice.<sup>4</sup>

---

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

<sup>2</sup> 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.

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

<sup>4</sup> *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 regulations<sup>5</sup> and a response to comments filed by stakeholders prior to that date.<sup>6</sup> On that same day, the Authority submitted the regulations to the Attorney General (“AG”) for a legal sufficiency review.<sup>7</sup> On October 30, 2023, without explanation, the Authority withdrew the final regulations from the AG review process.<sup>8</sup>

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”).<sup>9</sup> 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

---

<sup>5</sup> Notice of Decision (Sep. 29, 2023).

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

<sup>7</sup> See Conn. Gen. Stat. § 4-169.

<sup>8</sup> 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).

<sup>9</sup> See 2024 Notice.



certain aspects of all electric supplier licenses.”<sup>10</sup> According to the Report, despite prior comments opposing such a change,<sup>11</sup> 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.”<sup>12</sup> While this may have been true when this change was originally introduced in 2019,<sup>13</sup> due in large measure, to the creation of the Office of Education, Outreach and Enforcement (“EOE”) and its ongoing activities,<sup>14</sup> 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.<sup>15</sup> 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, 2023<sup>16</sup> and received a decision on that application in less than one month – on November 22, 2023.<sup>17</sup> Thus, the current five-year license review process no longer “protracted.”

---

<sup>10</sup> Proposed Amendments § 16-245-2(f).

<sup>11</sup> See, e.g., NRG Comments, at 2-3.

<sup>12</sup> Report, at 5.

<sup>13</sup> See 2019 Notice, a 5 (initially proposing a biennial review process).

<sup>14</sup> 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.”).

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

<sup>16</sup> 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).

<sup>17</sup> 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.<sup>18</sup> At the end of 2019, “[f]ifty-nine (59) suppliers were licensed in Connecticut . . . .”<sup>19</sup> However, as of December 31, 2022, only “thirty-four (34) suppliers were licensed in Connecticut . . . .”<sup>20</sup> 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;<sup>21</sup> thereby, enabling “the Authority to respond to compliance issues more quickly as they arise . . . .”<sup>22</sup> The EOE’s activities have also “in turn . . . encourage[d] electric suppliers to respond to such compliance issues more timely.”<sup>23</sup> 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 2017<sup>24</sup> that was not concluded until more than two (2) years later.<sup>25</sup> Now, however, the enforcement process is finalized much more rapidly. For example, in mid-December 2021,

---

<sup>18</sup> See 2019 Notice, a 5 (initially proposing a biennial review process).

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

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

<sup>21</sup> 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).

<sup>22</sup> Report, at 5.

<sup>23</sup> *Id.*

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

<sup>25</sup> 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 activities<sup>26</sup> and, just over two (2) months later, the matter was concluded.<sup>27</sup> 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.”<sup>28</sup> 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.<sup>29</sup> 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

---

<sup>26</sup> 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).

<sup>27</sup> 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).

<sup>28</sup> *Cf.* Report, at 5.

<sup>29</sup> 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 . . . .”<sup>30</sup> This represents a two-and-half time increase from the current filing fee of \$1,000.<sup>31</sup> The Proposed Amendments also seek to change the fee for a license review application from \$250<sup>32</sup> to \$2,500.<sup>33</sup> According to the Report, despite prior comments opposing such a change,<sup>34</sup> 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] . . . .”<sup>35</sup>

While the NRG Retail Companies recognize that the Authority’s costs may have increased since the current fees were established,<sup>36</sup> 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.<sup>37</sup> It is unclear why Connecticut’s cost structure warrants an initial applicable fee that is already so

---

<sup>30</sup> Proposed Amendments § 16-245-2(b)(1).

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

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

<sup>33</sup> See Proposed Amendments § 16-245-2(f)(1).

<sup>34</sup> See, e.g., NRG Comments, at 2-3.

<sup>35</sup> Report, at 6.

<sup>36</sup> See *id.* (noting the fees have not changed since 2005).

<sup>37</sup> 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.<sup>38</sup>

Moreover, as NRG noted previously,<sup>39</sup> 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.”<sup>40</sup> 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.”<sup>41</sup> 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

---

<sup>38</sup> 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](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](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).

<sup>39</sup> NRG Comments, at 4.

<sup>40</sup> Conn. Gen. Stat. § 16-245(e) (emphasis added).

<sup>41</sup> 2021 Notice, Fiscal Note (emphasis added).

supplier license applications and biennial licensing reviews.”<sup>42</sup> 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.”<sup>43</sup> 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 2017<sup>44</sup> that was not concluded until two years later.<sup>45</sup> 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.<sup>46</sup> 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

---

<sup>42</sup> Report, at 6.

<sup>43</sup> *Id.*

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

<sup>45</sup> 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).

<sup>46</sup> 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.”<sup>47</sup>

### **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.<sup>48</sup> Under the Proposed Amendments, \$250,000 is the minimum and there is no set maximum.<sup>49</sup> 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.<sup>50</sup>

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.<sup>51</sup> 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.<sup>52</sup> Instead, the Authority proposed increasing the financial security

---

<sup>47</sup> Cf. Conn. Gen. Stat. § 16-245(e).

<sup>48</sup> See Conn. State Agency Regs. § 16-245-4.

<sup>49</sup> Proposed Amendments § 16-245-4(a).

<sup>50</sup> 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).

<sup>51</sup> 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).

<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup>

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.”<sup>57</sup> While the amount of required security may not have changed since

---

<sup>53</sup> 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).

<sup>54</sup> 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).

<sup>55</sup> 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).

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

<sup>57</sup> 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.<sup>58</sup> 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.<sup>59</sup>

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

---

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

<sup>59</sup> 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."<sup>60</sup> 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.<sup>61</sup> 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

---

<sup>60</sup> Proposed Amendments § 16-245(b)(17).

<sup>61</sup> 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

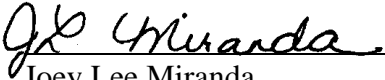
For all the foregoing reasons, the NRG Retail Companies urge the Authority to revise the Proposed Amendments before adopting final amended regulations.

Respectfully Submitted,  
 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; XOOM  
 ENERGY CONNECTICUT, LLC

By:   
 Joey Lee Miranda  
 Robinson & Cole LLP  
 280 Trumbull Street  
 Hartford, CT 06103  
 Tel. No.: (860) 275-8200  
 Fax No.: (860) 275-8299  
 E-mail: [jmiranda@rc.com](mailto:jmiranda@rc.com)

**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