

July 1, 2009

VIA ELECTRONIC FILING AND FIRST CLASS MAILMs. Kimberley J. Santopietro
Executive Secretary
Department of Public Utility Control
10 Franklin Square
New Britain, CT 06051Re: Docket No. 08-09-01; DPUC Promulgation of Regulations for Banking
Renewable Energy Credits

Dear Ms. Santopietro:

The Retail Energy Supply Association (“RESA”)¹ submits this letter to request that the Department of Public Utility Control (“Department” or “DPUC”) modify the draft Regulations for Banking Renewable Energy Credits that were published in the Connecticut Law Journal (“CLJ”) on June 16, 2009 (“Proposed Regulations” or “Regulations”) before they are issued in final form.²

The Proposed Regulations contain an unusual and restrictive eligibility criterion: an electric supplier or an electric utility (each a “load serving entity” or “LSE”) may bank renewable energy certificates (“RECs”) only if the LSE historically has satisfied the Renewable Portfolio Standard (“RPS”) in Connecticut exclusively through the purchase of RECs. If an LSE has ever made an alternative compliance payment (“ACP”) in lieu of purchasing RECs to meet the Connecticut RPS, such LSE would be barred from banking RECs under the Regulations. This punitive restriction (hereinafter the “ACP

¹ RESA’s members include Commerce Energy, Inc; Consolidated Edison Solutions, Inc; Direct Energy Services, LLC; Exelon Energy Company; Gexa Energy; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power Corp.; RRI Energy; Sempra Energy Solutions LLC; SUEZ Energy Resources NA, Inc. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

² The Final Regulations will be set forth in Section 16-245a-1 of the Regulations of the Connecticut State Agencies.

Restriction”) does not exist in the laws of other New England states and would undermine the goals of the Proposed Regulations and the NEPOOL GIS.

Procedural Background

The Department first issued the Proposed Regulations on February 11, 2009, when they were submitted to the Office of Policy Management (“OPM”) for comment prior to publication of the Regulations in the CLJ. RESA filed comprehensive comments on the draft Regulations in this docket on March 10, 2009, which recommended that the ACP Restriction be removed from the Regulations before publication in the CLF.³

On May 12, 2009, the Deputy Legal Counsel for Governor M. Jodi Rell authorized the Department to proceed with this rulemaking pursuant to chapter 54 of the Connecticut General Statutes. On June 4, 2009, the Department forwarded the Proposed Regulations to: (1) members of the Energy and Technology Committee of the Connecticut General Assembly pursuant to Section 4-168(a) of the Connecticut General Statutes; and (2) the CLJ for publication on June 16, 2009. The Regulations so distributed on June 4, 2009 and published on June 16, 2009 continue to include the ACP restriction and are the same as the February 11, 2009 draft Regulations in all other respects. The Department has not filed any correspondence in this docket to indicate whether or not it has considered the concerns raised by RESA in its March 10, 2009 Comments.

By law, interested persons must be afforded at least thirty (30) days to comment on the Proposed Regulations following publication in the CLJ. See Conn. Gen. Stat. § 4-168(a). RESA therefore submits these summary comments, along with a copy of its March 10, 2009 Comments, which are attached to and incorporated into this letter by reference.

Summary Comments

The Proposed Regulations state that: (1) they establish the same banking provisions and restrictions as are used by Massachusetts, Maine and Rhode Island; and (2) the resulting uniformity throughout the New England states will promote investment in renewable energy generation by ameliorating REC price fluctuations. The Regulations as presently drafted do not support either of these claims.

³ The Department’s February 11, 2009 letter to the OPM requested comments from the OPM on or before March 13, 2009 so that the Regulations could be timely published in the CLJ thereafter.

Maine, Massachusetts and Rhode Island do not prohibit LSEs from banking RECs if they ever have paid the ACP and, consequently, the uniformity benefits cited by the Department will be nonexistent if the Proposed Regulations are adopted. Maine's REC banking regulations do not contain any type of compliance restriction, and the regulations of Massachusetts and Rhode Island simply require an LSE to have complied with the RPS either through procuring RECs or paying the ACP for each applicable compliance year. A survey of these laws, complete with regulatory citations, is set forth in Part I of RESA's March 10, 2009 Comments. RESA notes, further, that the inclusion of the ACP restriction in the Proposed Regulations also undermines the uniformity goals of the NEPOOL GIS, which was designed in consultation with policymakers from Connecticut and other New England states.

The Proposed Regulations recognize that REC banking can stabilize REC prices and foster renewable energy development by facilitating bilateral contracting between LSEs and renewable generation developers. As the Regulations properly note, bilateral contracting reduces price volatility when the REC market supply is overabundant or deficient and also provides LSEs with greater flexibility to purchase RECs at the best possible price for their customers. The resulting contracts between LSEs and renewable generation developers provide a predictable revenue stream for renewable projects, which paves the way for the construction and financing of renewable resources. The Proposed Regulations, however, are not likely to yield these benefits in Connecticut or the New England region because the state's two electric utilities and several competitive electric suppliers already have made ACPs and more are likely to do so in the future. Support for this position is included in Part II of RESA's March 10, 2009 Comments.

Finally, the ACP restriction in the Proposed Regulations does not comport with the economic realities of the marketplace or sound public policy. As RESA explained in Part III of its March 10, 2009 Comments, suppliers often have no choice but to make the ACP when there is an insufficient supply of RECs. Indeed, since the ACP is a ceiling price, there is little or no benefit to an LSE paying the ACP as opposed to purchasing an REC at the same or a lower price. There is no valid reason to penalize LSEs that make ACPs from time to time in response to market forces, given that the ACP is a perfectly acceptable and legal compliance mechanism and is not treated as a penalty under the Connecticut General Statutes. In short, Connecticut has much to lose but virtually nothing to gain from the ACP Restriction.

For all of the foregoing reasons, the Department should modify the Proposed Regulations to allow an LSE to bank RECs so long as it has satisfied its renewable obligations in Connecticut through purchasing RECs or has paid the statutorily-permitted ACP, consistent with the laws of other New England states. The regulation attached to RESA's March 10, 2009 Comments would achieve that result.

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I certify that a copy hereof has been furnished on this date via first class mail, postage prepaid, to all parties, intervenors and participants of record as evidenced on the Department's service list as of this date. A copy has also been filed with the Department as an electronic web filing and is complete.

Respectfully submitted,

RETAIL ENERGY SUPPLY ASSOCIATION

By: 
Paul R. McCary
Its Attorney