

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

DPUC Investigation Into The Connecticut : Docket No. 08-02-06  
Light and Power Company's Billing Issues :  
: April 25, 2008

**RETAIL ENERGY SUPPLY ASSOCIATION**  
**MOTION FOR CLARIFICATION**

On behalf of its members that serve retail electric customers in Connecticut, the Retail Energy Supply Association ("RESA") hereby requests clarification of the Interim Decision issued by the Department of Public Utility Control (the "Department") on April 18, 2008 in the above-referenced docket (the "Interim Decision").<sup>1</sup> RESA appreciates the Department's prompt efforts to resolve the billing issues arising from the erroneous billing data provided to competitive electricity suppliers (the "Suppliers") by The Connecticut Light and Power Company ("CL&P"). The limited clarification sought in this Motion seeks to ensure that the Department's intentions are promptly implemented in a manner that will avoid undue risk to Suppliers and minimize any further customer confusion that would likely arise from adoption of the remedy contemplated by the Interim Decision.

Part I of this Motion requests that the Department clarify that Order No. 2 of the Interim Decision: (1) applies only to balances arising from "catch-up" billing adjustments that were unbilled as of the date of the Interim Decision; and (2) does not require extended payment plans for customers that choose to pay their balance in lump sum or over a shorter period, consistent

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<sup>1</sup> RESA's members include Commerce Energy, Inc; Consolidated Edison Solutions, Inc; Direct Energy Services, LLC; Gexa Energy; Hess Corporation; Integrys Energy Services, Inc.; Liberty Power Corp.; Reliant Energy Retail Services, LLC; Sempra Energy Solutions; Strategic Energy, LLC; SUEZ Energy Resources NA, Inc. and US Energy Savings Corp. 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.

with the position taken by CL&P and TransCanada Power Marketing Ltd (“TransCanada”) in their recent compliance filings. Part II of the Motion articulates the fundamental differences in the risks assumed by Suppliers and a regulated utility, which make a one-size-fits-all remedy inappropriate for billing errors that originated with the utility such as those at issue in this proceeding. As an alternative to the uniform twelve-month payment plan required by the Interim Decision, RESA requests that the Department permit suppliers to offer payment plans of shorter durations as allowed by Section 16-259a of the Connecticut General Statutes (“Section 16-259a”).

**I. The Department Should Clarify that the Interim Decision Applies to Only to Unpaid Balances and Customers Are Not Required to Accept the Extended Payment Plan.**

A. The Interim Order Applies to Unbilled Amounts Arising From the Billing Error.

Order No. 2 of the Decision requires CL&P and the Suppliers (collectively referred to as the “Companies” in the Interim Decision) to distribute customer balances arising from CL&P’s billing error over at least twelve months. It states in pertinent part:

[T]he Companies shall distribute each customer’s outstanding balance over a period of not less than 12 months. Notwithstanding such distribution, no monthly payment shall exceed fifty percent of the average amount that the Company charged such customers for each billing period over the previous 12-month period.

At the April 15, 2008 Public Hearing in this proceeding (“Hearing”), it became clear that at least some of the affected customers of the Suppliers had already been issued corrected bills and many customers had paid those bills in full. Offering an extended payment plan to these customers would serve no purpose other than to create customer confusion.

The vast majority of Suppliers’ customers that are affected by the billing error are commercial and industrial (C&I”) customers. As explained in Part II below, many of these

customers will object to an extended payment plan of any kind. In addition, many of the affected customers will resent the amount of time they will need to devote to understanding the proposed remedy, especially when relatively small dollar amounts are involved. There is a very good chance that adopting a retroactive remedial approach would generate bad will among at least some customers, which would be directed to the Suppliers, CL&P and, perhaps, the Department as well. At the same time, there is no compelling and offsetting social benefit to be gained from imposing an extended payment plan on a retroactive basis. For all of these reasons, the Department should make clear that Order No. 2 of the Interim Decision applies only to unbilled balances attributable to the billing error as of the date of the Interim Decision.

B. Extended Payment Plans Should Be a Matter of Customer Choice; They Should Not Be Forced on Customers.

The Interim Decision should recognize that not all customers will welcome an extended payment plan. For C&I customers subject to generally accepted accounting principles (“GAAP”) and customary budgeting systems, an extended payment plan causes two problems. First, it will create a liability that must be recognized under the accrual basis system of accounting. In other words, if an amount representing the cost of electricity used in, for example, the month of January, is spread out over a number of months in the future, most businesses will need to recognize the entire billing adjustment in the month in which the expense was incurred (January in this example) to comply with GAAP. Consequently, for purposes of reporting income and earnings, the extended payment plan yields no benefits and creates additional accounting complexity and work for the customer.

Second, the extended payment plan will create and compound budget variances for C&I customers that use annual and monthly budgeting techniques (including the reporting of budget

variances) because it calls for bills pertaining to past electric consumption to be distributed over future months. All other things being equal, the months encompassed within the extended payment period will show up as “over budget” due solely to the creation of the payment plan. These artificial variances will reduce substantially the utility of some customers’ budget reporting procedures. Fortunately, there is a simple way to avoid all of these problems: make the extended payment plan an option available to customers rather than a mandatory remedy imposed upon them. This approach has already been taken by both CL&P and TransCanada in their compliance filings in this proceeding.

## **II. The Interim Decision Should Recognize Fundamental Differences Between Suppliers and a Regulated Utility.**

The Interim Decision paints Suppliers and CL&P with the same brush. While there may be circumstances in which such an approach is appropriate, this is not one of them. The Department should recognize a number of fundamental distinctions between Suppliers and a regulated utility that warrant different approaches for resolving the billing errors at issue in this proceeding.

### **A. The Suppliers Did Not Create the Billing Error.**

For the most part, Suppliers had no control over the billing errors that resulted in the instant investigation. Under the present metering and billing procedures, Suppliers must accept billing data that they receive from the electric utility for the purpose of billing their customers. RESA takes no position on whether CL&P was negligent in generating the erroneous billing data or in the timing and content of its communication of the error to its customers, the Suppliers or the Department. RESA simply notes that Suppliers should not be required to suffer financial penalties for a billing error that occurred through the actions of another party.

B. Suppliers Face Credit Risks Not Absorbed by the Utility.

Under the traditional ratemaking regime, the shareholders of regulated distribution utilities do not absorb customer credit risks. Instead, in periodic rate cases, net uncollectible customer receivables are incorporated into the rates charged to the utility's electric customers. Suppliers do not have that safety net and, thus, their shareholders must absorb the lost revenue and bad debt risk associated with extended payment plans. These costs are particularly pronounced for a payment plan of a long duration, such as the twelve months proposed by the Interim Decision. These costs and risks were not and could not be factored into the Suppliers' decision to accept a customer or to offer that customer a particular price. Thus, the effect of the Interim Decision is to penalize Suppliers who had no culpability for the original billing error while the party who originated the error is held harmless from that mistake by its other customers.

C. Customer Migration Worsens Suppliers' Credit Exposure.

Customers of competitive electric suppliers can, and frequently do, migrate from one Supplier to another or from competitive supply back to utility service. This happens every day. Imposing an extended payment plan on these customers will inevitably create a situation in which a customer will have several months remaining on a payment plan to Supplier A at a time when it has already switched to Supplier B or to utility service. This leaves Supplier A in a very challenging collection posture: its contractual relationship with the customer has concluded, yet the customer still owes several months of payments for past electricity consumption pursuant to the payment plan. From the paying customer's standpoint, it means that it will be writing checks to two suppliers for several months. As is the case with the accounting and budgeting complexities discussed above, many C&I customers will see this as a disadvantage that imposes

additional transaction costs on their businesses. By contrast, the electric utility does not face this risk, since it retains a billing and (at least a distribution) service relationship with all customers.

D. Section 16-259a of the Connecticut General Statutes Does Not Require 12 Month Payment Plans in this Case.

Section 16-259a requires billing arrearages resulting from billing errors to be prorated over a period of time that is no shorter than the period for which the customers are being held financially liable, provided that none of these prorated payments can exceed 50% of the average amount of the customer's bill for the prior twelve months.<sup>2</sup> While the 50% rule could be triggered in limited exceptional circumstances, in general a customer that had received no bill or a zero bill for two months would be entitled to a payment plan of approximately four months (splitting each of the two unbilled months into two pieces to comply with the 50% rule). In this case, it appears that CL&P has volunteered a twelve-month period either because of its role in creating the billing errors in the first place, its recent history of other customer billing problems or similar reasons. Imposing that same payment plan upon suppliers creates several problems as discussed above.

At the Hearing, most Suppliers testified that they were capable of offering a 12 month payment plan. Those statements should not be taken, however, as an acknowledgement that a twelve-month payment plan is appropriate for every customer in this case. RESA respectfully

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<sup>2</sup> RESA disagrees with the interpretation of Section 16-259a advanced by the Attorney General in a filing dated April 24, 2008 and claiming that an electric utility (or, presumably, a Supplier) cannot recover amounts that cannot be billed within a one-year period because of the 50% rule. The AG's argument conflates the limit on back billing in subsection (a) with the amortization provisions of subsection (d). Nothing in Section 16-259a suggests that the legislature intended for providers to be barred from recovering costs for service consumed so long as they limit their collection to 12 months from the time the error was discovered. To the contrary, the statute harmonizes customer and provider interests by 1) limiting the total amount that can be collected and 2) allowing customers to spread those payments out over time.

requests that the Department take into account the fundamental differences between Suppliers and regulated utilities as it fashions remedies in this and future cases.

**Conclusion – Relief Requested**

In either a subsequent Interim Decision or in its ruling on Supplier compliance filings, the Department should clarify that the 12 month payment plan only applies prospectively to unbilled arrearages as of April 18, 2008, and allows affected customers to pay the arrearage sooner if they wish. As previously noted, this latter point is consistent with the recent compliance filings of CL&P and TransCanada. The Department should also modify the Interim Order to allow suppliers to offer shorter payment plans that comport with Section 16-259a.

Respectfully submitted,

RETAIL ENERGY SUPPLY ASSOCIATION

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