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*Via Electronic Filing and First Class Mail*

February 8, 2019

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

Re: **Docket 18-12-22: Investigation into Amnesty for Suppliers for Conn. Gen. Stat. § 16-245d(2) Next Cycle Rate Violations**

Dear Mr. Gaudiosi:

Enclosed please find the Retail Energy Supply Association's Motion for Participant Status, Procedural Conference, and Suspension of the Procedural Order in connection with the above-referenced matter.

I certify that a copy hereof has been sent to all participants of record as reflected on the Public Utilities Regulatory Authority's ("Authority") 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,



Joey Lee Miranda

Enclosure

Copy to: Service List

**STATE OF CONNECTICUT**

**PUBLIC UTILITIES REGULATORY AUTHORITY**

INVESTIGATION INTO AMNESTY	:	DOCKET NO. 18-12-22
FOR SUPPLIERS FOR CONN. GEN.	:	
STAT. § 16-245d(2) NEXT CYCLE	:	
RATE VIOLATIONS	:	FEBRUARY 8, 2019

**RETAIL ENERGY SUPPLY ASSOCIATION’S  
MOTION FOR PARTICIPANT STATUS, PROCEDURAL CONFERENCE, AND  
SUSPENSION OF THE PROCEDURAL ORDER**

The Retail Energy Supply Association (“RESA”)<sup>1</sup> hereby moves the Public Utilities Regulatory Authority (“Authority”) for participant status, a procedural conference, and suspension of the procedural order in the above-captioned proceeding.

**BACKGROUND**

During the 2014 legislative session, the Connecticut General Assembly passed Public Act 14-75, *An Act Concerning Electric Customer Consumer Protection* (the “Act”). Section 1 of the Act (as modified by Section 58 of Public Act 14-94 and later codified at Connecticut General Statutes section 16-245d) required, among other things, that the Authority open a proceeding to redesign the standard billing format to include the placement of the following items on the front page of the bills of residential customers receiving service from an electric supplier: (1) the electric generation service price; (2) the term and expiration date of such price; (3) any change to such price effective for the next billing cycle (the “Next Cycle Rate”); (4) the cancellation fee, if applicable; (5) notification that such price is variable, if applicable; (6) the Standard Service rate; (7) the term and expiration date of the Standard Service rate; (8) the dollar amount that would

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<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

have been billed for the electric generation services component had the customer been receiving Standard Service; and (9) an electronic link or website address to the Rate Board and the toll-free telephone number and other information necessary to enable the customer to obtain Standard Service (collectively, the “Summary Information”).<sup>2</sup>

On January 21, 2015, PURA issued a decision requiring implementation of the requirements of Section 1 of the Act and re-establishing the electronic billing transaction (“EBT”) Working Group to assist in the implementation process.<sup>3</sup> The EBT Working Group process identified several issues that were not specifically addressed in the January 21, 2015 Decision and/or that required clarification. In response, the Authority issued a clarifying decision that, *inter alia*, determined that the “Next [Cycle] Rate must appear on bills before those charges are incurred by the customer to allow the customer time to negotiate a lower rate or opt out of the upcoming rate.”<sup>4</sup>

On December 17, 2018, the Authority initiated the instant docket<sup>5</sup> “to consider a process whereby suppliers could elect to self-report next cycle rate violations . . . and provide appropriate refunds to customers in accordance with orders issued in this docket.”<sup>6</sup> On January 28, 2019, the Authority issued a Notice of Proceeding and Procedural Order.<sup>7</sup> The Procedural Order requires, in pertinent part, that:

- on or before February 11, suppliers notify the Authority if they will participate in the amnesty program in this docket; and

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<sup>2</sup> P.A. 14-75, § 1; P.A. 14-94, § 58.

<sup>3</sup> See, generally, Docket No. 14-07-19, *PURA Investigation into Redesign of the Residential Electric Billing Format*, Decision (Jan. 21, 2015) (“January 21, 2015 Decision”).

<sup>4</sup> See Docket No. 14-07-19RE01, *PURA Investigation into Redesign of the Residential Electric Billing Format – Billing Format Clarifications*, Decision (Aug. 12, 2015), at 13.

<sup>5</sup> Notice of Proceeding and Procedural Order (Jan. 28, 2019) (“Procedural Order”), at 1.

<sup>6</sup> Request to Establish New Docket on PURA’s Own Motion (Dec. 3, 2018) (“Docket Request”).

<sup>7</sup> See Procedural Order.

- by March 31, any suppliers seeking to participate in the amnesty program must voluntarily submit a filing that: a) self-reports all past next cycle rate violations up to January 28, 2019; and b) proposes a plan to provide refunds to affected customers on or before May 31, 2019.<sup>8</sup>

According to the Procedural Order, “[t]he Authority intends to review any self-reporting submitted by Suppliers and to review and approve, approve with modifications, or reject any proposed plans to refund overbilled customers.”<sup>9</sup> The Authority has also indicated that it is willing to consider motions for protective order for “some of this information contained in [a supplier’s] filing under seal.”<sup>10</sup>

In the Procedural Order, the Authority designated various entities as participants and required that others seeking participant status file a motion by February 11, 2019.<sup>11</sup> RESA hereby files a motion for participant status, a procedural conference and suspension of the Procedural Order.

### **MOTION**

RESA commends the Authority for opening the instant docket and evaluating other means by which to address potential non-compliance concerns arising out of the complexities surrounding implementation of the Summary Information requirements. RESA unequivocally supports the development of an amnesty program such as the one being considered in this proceeding. However, before the Authority requires suppliers to make specific filings, for the reasons set forth more fully below, RESA requests that the Authority conduct a procedural conference to address certain legal and factual predicates to such a program and, until it has done so, suspend the requirements of the Procedural Order.

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<sup>8</sup> Procedural Order, at 1-2.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

## **I. RESA SHOULD BE DESIGNATED AS A PARTICIPANT**

RESA is a non-profit organization and trade association that represents the interests of its members in regulatory proceedings in the Mid-Atlantic, Great Lakes, New York and New England regions. RESA members are active participants in the retail competitive markets for electricity, including the Connecticut retail electric market.

Several RESA member companies are licensed by the Authority to serve residential customers in Connecticut and are presently providing electricity service to residential customers in Connecticut. As such, the electric distribution companies are required to display the Summary Information on the bills of customers served by RESA member companies.<sup>12</sup> In addition, RESA member companies may wish to seek amnesty under the process being considered in the instant docket. Accordingly, RESA has an interest in ensuring the amnesty program adequately protects the interests of its members and their customers. Thus, RESA requests that it be designated a participant in this proceeding.

## **II. THE AUTHORITY SHOULD SCHEDULE A PROCEDURAL CONFERENCE AND SUSPEND THE PROCEDURAL SCHEDULE**

When the Authority opened this proceeding, it indicated the purpose was “to *consider* a process” for electric suppliers to self-report Next Cycle Rate violations, provide appropriate refunds, and receive amnesty from civil penalties.<sup>13</sup> However, the Procedural Order actually *implements* a process by setting specific parameters for seeking amnesty, including the content of filings that suppliers must make and the dates by which these filings are to be made.<sup>14</sup>

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<sup>12</sup> See Conn. Gen. Stat. § 16-245d(a)(2); January 21, 2015 Decision; Docket No. 14-07-19RE01, *PURA Investigation into Redesign of the Residential Billing Format – Billing Format Clarifications*, Decision (Aug. 12, 2015).

<sup>13</sup> Docket Request (emphasis added).

<sup>14</sup> See Procedural Order, at 1-2.

While RESA strongly supports an amnesty program as an alternative to enforcement, before such a program is implemented, various legal and factual issues should be considered to ensure that the program serves its intended purpose and adequately protects both consumers and suppliers. Full consideration of these legal and factual issues could lead to increased participation in the amnesty program to the benefit of ratepayers.<sup>15</sup>

For example, while RESA believes the Authority has the power to establish an amnesty program such as the one being considered in this proceeding,<sup>16</sup> neither the Docket Request nor the Procedural Order set forth the statute providing the Authority with the power to do so or to do so in an uncontested proceeding.<sup>17</sup>

Furthermore, the Procedural Order requires suppliers to report Next Cycle Rate “violations.” However, as the Authority is aware, the Authority’s power to enforce the requirements of Connecticut General Statutes section 16-245d(a)(2) against suppliers has been called into question.<sup>18</sup> Moreover, the admission to any violation could have legal implications beyond this proceeding and, because suppliers may have reporting obligations in other states, could have regulatory implications beyond the State of Connecticut. Since the amnesty program is the equivalent of an alternative dispute resolution process, RESA recommends that any self-reporting be treated comparably to disputed claims in a settlement rather than as an admission.

Likewise, the Procedural Order does not address the ramifications of self-reporting if amnesty is not granted. For instance, the Procedural Order indicates that the Authority intends to review any self-reporting and “to review and approve, *approve with modifications, or reject* any

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<sup>15</sup> See *id.* (providing for reimbursement of impacted customers).

<sup>16</sup> See, e.g., Conn. Gen. Stat. § 16-19jj.

<sup>17</sup> See *id.* (providing for alternative dispute resolution “to resolve contested cases and proceedings”).

<sup>18</sup> See Docket No. 10-06-18RE01, *Application of Spark Energy, L.P. For An Electric Supplier License - Investigation Into Compliance With §16-245d(a)(2)*, Brief of Spark Energy LLC (Nov. 9, 2018).

proposed plans to refund overbilled customers.”<sup>19</sup> If suppliers submit plans that are approved with modification and are unwilling to accept the modification or if the Authority rejects supplier plans, will the self-reporting then be admitted as evidence in a subsequent enforcement proceeding?

In addition to these legal issues, the Procedural Order raises several factual questions. For instance, if the Authority rejects a supplier’s plan, will the supplier have the opportunity to submit a revised plan for consideration? Further, the Procedural Order provides that “a Supplier may submit *some* of this information contained in this filing under seal along with a motion requesting protected treatment of information.”<sup>20</sup> However, without knowing what information will be made publicly available, suppliers may be less willing to take advantage of the amnesty program because the information could be used for other purposes to the detriment of suppliers. Thus, before requiring suppliers to self-report and submit refund plans, the Authority should establish the parameters of the information that will be treated as confidential.

By resolving these issues and other comparable matters, the Authority will encourage increased supplier participation in the amnesty program and ensure that the greatest number of customers are provided refunds. Therefore, RESA requests that the Authority schedule a procedural conference to address these issues and to determine the appropriate next steps and, until it has done so, suspend the requirements of the Procedural Order.

## **CONCLUSION**

For the reasons set forth above, the Authority should grant RESA participant status, schedule a procedural conference, and suspend the Procedural Order.

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<sup>19</sup> Procedural Order, at 2 (emphasis added).

<sup>20</sup> *Id.* (emphasis added).

Respectfully submitted,  
RETAIL ENERGY SUPPLY  
ASSOCIATION

By: \_\_\_\_\_

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**CERTIFICATION**

I hereby certify that, a copy of the foregoing was sent to all participants of record on this  
8th day of February 2019.

A handwritten signature in black ink that reads "Joey Lee Miranda". The signature is written in a cursive style with a large initial "JL".

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Joey Lee Miranda