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Via Electronic Filing and First Class Mail

June 5, 2020

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

Re: Docket No. 19-10-26: Regulations for Renewable Portfolio Standards

Dear Mr. Gaudiosi:

Attached please find the Comments of Retail Energy Supply Association re Third Request for Comments in connection the above-referenced proceeding.

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. In accordance with the Authority's instructions, a hard copy of this filing will be delivered or mailed to the Authority by July 15, 2020 or at such time as otherwise instructed by the Authority.

Please feel free to contact me if you have any questions or require additional information. Thank you.

Sincerely,


Joey Lee Miranda

Attachment

Copy to: Service List

STATE OF CONNECTICUT

PUBLIC UTILITIES REGULATORY AUTHORITY

REGULATIONS FOR RENEWABLE : DOCKET NO. 19-10-26
PORTFOLIO STANDARDS :
: JUNE 5, 2020

**COMMENTS OF RETAIL ENERGY SUPPLY ASSOCIATION
RE THIRD REQUEST FOR COMMENTS**

The Retail Energy Supply Association (“RESA”)¹ hereby submits its comments in response to the Public Utilities Regulatory Authority’s (“Authority”) May 27, 2020 Notice of Request for Written Comments in the above-captioned proceeding.²

BACKGROUND

Pursuant to law and existing regulations, each electric distribution company (“EDC”) and each electric supplier is required to provide specific minimum percentages of electricity supply from renewable energy generation sources.³ Compliance must be demonstrated annually by October 15 of the following year.⁴

On November 18, 2019, the Authority issued a Notice of Request for Written Comments in the above-captioned proceeding and presented a proposal for amendments to the current renewable portfolio standards (“RPS”) regulations (“Initial Proposal”).⁵ The central feature of the Initial Proposal was a proposed requirement that electric suppliers settle a specified

¹ 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.

² Notice of Request for Written Comments (May 27, 2020) (“Third Notice”).

³ See Conn. Gen. Stat. §§ 16-245a, 16-243q; Conn. Agencies Regs. § 16-245a-1(a).

⁴ See Conn. Agencies Regs. § 16-245a-1(a).

⁵ Notice of Request for Written Comments (Nov. 18, 2019) (“First Notice”).

percentage of their quarterly RPS compliance obligation in the trading period associated with the months in which the load was served.⁶ In response to the First Notice, various participants, including RESA, submitted comments.⁷ On January 21, 2020, the Authority issued a Second Notice of Request for Written Comments requesting that RESA comment on two specific items and that all participants comment on a third item.⁸ In response to the Second Notice, various participants, including RESA, submitted comments.⁹

On May 27, 2020, the Authority issued the Third Notice requesting comments on a revised proposal (“Revised Proposal”) that, among other things, would continue the annual frequency of compliance (instead of implementing the quarterly compliance mechanism of the Initial Proposal), but would create a financial security requirement specifically intended to ensure RPS compliance.¹⁰ The Authority’s Revised Proposal, if adopted, would also alter the timing and content of RPS compliance filings.¹¹ Further, under the Revised Proposal, the Authority would no longer entertain requests from suppliers for reallocation of renewable energy credits (“RECs”) into or out of New England Power Pool Generation Information System

⁶ See First Notice, at 1.

⁷ See Choice Energy, LLC Written Comments (Dec. 16, 2019); Comments of the Office of Consumer Counsel (Dec. 16, 2019); Comments of Retail Energy Supply Association (Dec. 16, 2019) (“RESA First Notice Comments”); Joint Comments of Vistra Energy Corp. and Calpine Energy Solutions, LLC (Dec. 16, 2019); Written Comments of The Connecticut Light and Power Company dba Eversource Energy (Dec. 16, 2019); Written Comments of The United Illuminating Company (Dec. 16, 2019) (“UI First Notice Comments”).

⁸ See Second Notice of Request for Written Comments (Jan. 21, 2020) (“Second Notice”), at 1-2.

⁹ See Comments of Retail Energy Supply Association re Second Request for Comments (Feb. 4, 2020) (“RESA Second Notice Comments”); Joint Comments of Vistra Energy Corp. and Calpine Energy Solutions, LLC (Feb. 4, 2020); Written Comments of the Department of Energy and Environmental Protection, Bureau of Energy and Technology Policy (Feb. 11, 2020); The Office of Consumer Counsel’s Second Set of Written Comments (Feb. 11, 2020); Written Comments of The Connecticut Light and Power Company dba Eversource Energy (Feb. 7, 2020); Written Comments of The United Illuminating Company (Feb. 4, 2020).

¹⁰ See, generally, Third Notice.

¹¹ See Third Notice, at 2.

(“NEPOOL-GIS”) accounts and/or subaccounts or accommodate banking of RECs for RPS compliance.¹²

The Authority fully outlined the Revised Proposal in a proposed revision of Regulations of Connecticut State Agencies section 16-245a-1 (“Proposed Regulations” or “Proposed Conn. Agencies Regs.”).¹³ RESA hereby submits its comments on the Revised Proposal.

COMMENTS

RESA appreciates the Authority’s desire to develop a mechanism that would allow it to ensure supplier compliance with the RPS and the Authority’s careful consideration of the previous comments it received regarding its Initial Proposal. While the Revised Proposal addresses many of the concerns raised by stakeholders, further revisions are necessary to ensure that the RPS regulations remain balanced and do not impose unnecessary costs on customers. As a threshold matter, the Authority should recognize that the number of suppliers that have been unable to satisfy their RPS obligations to date is very limited. The vast majority of suppliers have complied with their obligations.¹⁴ Thus, before adopting new requirements applicable to all suppliers that would impose unnecessary costs on customers, RESA requests that the Authority take a more measured approach as outlined below.

¹² See Third Notice, at 2-3.

¹³ See *id.* at 3-5.

¹⁴ See *e.g.*, Docket No. 17-06-23, *Annual Review of Connecticut Electric Suppliers’ and Electric Distribution Companies’ Compliance with Connecticut’s Renewable Energy Portfolio Standards in the Year 2016*, Decision (Jan 23, 2019) (“2016 RPS Compliance Decision”), at 41 (“In 2016, 46 electric suppliers and Connecticut’s 2 electric distribution companies were subject to the CT RPS requirements. Of the 48 companies, 32 fully complied with the RPS requirements by procuring and properly settling all of its required renewable energy certificates.”). The remaining entities were obligated to make alternative compliance payments. See 2016 RPS Compliance Decision, at 41. The Authority issued only three notices of violation for failure to make ACP payments timely. See, generally, *e.g.*, Docket No. 17-06-23, *Annual Review of Connecticut Electric Suppliers’ and Electric Distribution Companies’ Compliance with Connecticut’s Renewable Energy Portfolio Standards in the Year 2016*. However, one of those suppliers subsequently filed proof that it had submitted the required ACP. Docket No. 17-06-23, *Annual Review of Connecticut Electric Suppliers’ and Electric Distribution Companies’ Compliance with Connecticut’s Renewable Energy Portfolio Standards in the Year 2016*, EDF Energy Services, LLC Compliance Filing (Jun. 6, 2019).

I. THE AUTHORITY SHOULD REDUCE THE FINANCIAL SECURITY REQUIREMENT TO REASONABLE LEVELS

Under the Revised Proposal, all existing retail electric suppliers would be required to maintain a separate RPS bond with the Authority equal to the full alternative compliance payment (“ACP”) that would have been due for the electric supplier’s full load served the previous calendar year.¹⁵ Wholesale suppliers of Standard Service would not be subject to this requirement.¹⁶

RESA appreciates the Authority’s proposal to create a financial security to enhance RPS compliance and generally supports such a requirement.¹⁷ However, RESA does not support a requirement that retail electric suppliers, regardless of their RPS compliance history, maintain a bond equal to the full ACP that would have been due for the supplier’s full load from the previous calendar year. As the Authority itself recognized, the amount of the financial security necessary to satisfy this obligation would be substantial.¹⁸ In fact, for many suppliers, the amount would be even higher than shown in the Authority’s example.¹⁹ Moreover, such amounts would be exponentially higher than the financial security required under the Authority’s current regulations,²⁰ under consideration in the Authority’s proceeding evaluating amendments to its

¹⁵ Proposed Conn. Agencies Regs. § 16-245a-1(b). A newly licensed supplier would be required to maintain an RPS bond in the amount that is the greater of \$25,000 or equal to the full ACP for the supplier’s projected load for the first year of operations. *See* Proposed Conn. Agencies Regs. § 16-245a-1(b).

¹⁶ *See* Proposed Conn. Agencies Regs. § 16-245a-1(b).

¹⁷ *See* RESA Second Notice Comments, at 14.

¹⁸ *See* Connecticut Annual RPS Compliance Report (sample) (May 27, 2020) (*available at* <http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/d36c8dc658ba2aee852585750063797e?OpenDocument>) (“RPS Example Exhibit”) (showing a bond requirement of more than \$7 million, based on total load of 470,000 MWh).

¹⁹ *See* 2016 RPS Compliance Decision, at 23 (listing suppliers’ load served for 2016, which, for thirteen suppliers, exceeded 470,000 MWh).

²⁰ *See* Conn. Agencies Regs. § 16-245-4(b) (“[I]n no event shall the department require security in excess of \$250,000.”).

electric supplier licensing regulations,²¹ or in any other New England state.²² Procuring financial security in such amounts could impose thousands, hundreds of thousands and possibly millions of dollars in added costs on electric suppliers. These costs would be *in addition to* the costs suppliers already incur to post the general financial security required by the Authority (which is proposed to increase)²³ and to purchase the RECs necessary to comply with their RPS obligations. This cost would be borne by every supplier, even suppliers who have operated in the Connecticut market for nearly twenty (20) years²⁴ and fully complied with their RPS obligations. Notably, the two suppliers who, in the most recently adjudicated RPS compliance docket, were found to have failed to satisfy their RPS obligations were licensed for five (5) years or less before the compliance year in which such failure occurred.²⁵

RESA appreciates the Authority's desire to institute a financial security requirement sufficient to ensure RPS compliance.²⁶ Ultimately, however, the substantial cost of such a

²¹ See Docket No. 19-10-41, *Regulations for Electric Supplier Licensing*, Notice of Request for Written Comments (Nov. 21, 2019), at 10 (proposing financial security that varies based on annual load, but that is capped at \$2 million).

²² 65-407 Me. Code R. ch. 305, § 2(B)(3)(c) (maximum financial security of \$1 million); N.H. Code Admin. R. Puc 2003.03(a)(3) (maximum financial security of \$500,000); 815 R.I. Code R. 30-05-1.3(A)(9)(a)(5) (financial security of \$250,000). Massachusetts does not currently require suppliers to post financial security.

²³ See Conn. Agencies Regs. § 16-245-4(b) (“[I]n no event shall the department require security in excess of \$250,000.”); Docket No. 19-10-41, *Regulations for Electric Supplier Licensing*, Notice of Request for Written Comments (Nov. 21, 2019), at 10 (proposing financial security that varies based on annual load, but that is capped at \$2 million).

²⁴ See, e.g., Docket No. 99-11-14, *Application of Constellation NewEnergy, Inc. f/k/a AES for an Electric Supplier License*, Decision (Feb. 7, 2001) (granting a license to operate as an electric supplier).

²⁵ Compare Docket No. 17-06-23, *Annual Review of Connecticut Electric Suppliers' and Electric Distribution Companies' Compliance with Connecticut's Renewable Energy Portfolio Standards in the Year 2016*, Notice of Violation and Assessment of Civil Penalty in the Amount Set Forth in the Schedule Below (Mar. 20, 2019) (issued to AmericaWide for failure to file proof that submitted ACP for 2016 compliance year); Docket No. 17-06-23, *Annual Review of Connecticut Electric Suppliers' and Electric Distribution Companies' Compliance with Connecticut's Renewable Energy Portfolio Standards in the Year 2016*, Notice of Violation and Assessment of Civil Penalty in the Amount Set Forth in the Schedule Below (Mar. 20, 2019) (issued to Abest for failure to file proof that submitted ACP for 2016 compliance year) with Docket No. 11-07-08, *Application of AmericaWide Energy, LLC for an Electric Supplier License*, Decision (Sep. 21, 2011) (granting AmericaWide a license to operate as an electric supplier); Docket No. 13-01-09, *Application of Abest Power, LLC for an Electric Supplier License*, Decision (Mar. 27, 2013) (granting Abest a license to operate as an electric supplier).

²⁶ See Third Notice, at 3.

financial security requirement would be reflected in the prices that suppliers charge for electric supply and would be borne by customers. To avoid such a substantial cost increase while still achieving its goal of decreasing the risks of RPS non-compliance, RESA suggests that the Authority set the financial security amount in a manner that accounts for each supplier's compliance history based on a reasonable proportion of the ACP that would have been due for the previous calendar year rather than the full amount.

As noted in RESA's prior comments, suppliers with a long history of demonstrated compliance should not be subjected to additional requirements to ensure future compliance.²⁷ If, however, the Authority determines that it is appropriate to impose an additional financial security requirement on all suppliers (even those with a demonstrated record of RPS compliance), it should account for a supplier's compliance history in setting the amount. For suppliers that have complied with their RPS obligations for five (5) consecutive years or longer, the Authority should require financial security of ten percent (10%) of the full ACP that would have been due for the supplier's full load served in the previous calendar year. For suppliers that do not have this established history of compliance (i.e., a supplier that has not operated in Connecticut for five (5) consecutive years or that has failed to meet its obligation in one of the preceding five (5) years), the Authority should require financial security of twenty percent (20%) of the full ACP that would have been due for the supplier's full load served in the previous calendar year. In this way, the Authority will have available a means for recovering funds that to offset unpaid ACPs without placing a substantial financial burden on electric suppliers that will ultimately be borne by customers in the form of higher prices.

²⁷ See RESA Second Notice Comments, at 15.

II. THE AUTHORITY SHOULD OFFER FLEXIBILITY IN THE FORM OF FINANCIAL SECURITY

The Proposed Regulations contemplate that electric suppliers would provide financial security in the form of a bond.²⁸ However, other mechanisms provide the same level of financial security to the Authority as bonds and are generally accepted as forms of financial security in Connecticut and the New England energy markets. For example, letters of credit, corporate guarantees, certificates of deposit, and cash can offer financial security comparable to a bond. Thus, consistent with the Authority's current financial security requirements and the requirements in other New England states, the Authority should revise the Proposed Regulations to allow the use of other forms of financial security.

Currently, the Authority permits suppliers to satisfy their financial security requirements through the use of various instruments.²⁹ Other New England states also allow suppliers to satisfy their financial security requirements through several means.³⁰ Likewise, the Authority should provide flexibility and allow suppliers to satisfy their RPS financial security requirements through any one of a variety of financial assurance methods, including bonds, letters of credit, corporate guarantees or certificates of deposit.

Mechanisms other than bonds may also help to reduce costs. For example, because of an existing relationship with a bank, providing a letter of credit may be less costly than procuring a

²⁸ See Proposed Conn. Agencies Regs. § 16-245a-1(b).

²⁹ See, e.g., Application for a Connecticut Electric Supplier License (Aug. 2016) (available at: <https://portal.ct.gov/-/media/PURA/electric/electricsupplierapplicationdoc?la=en>) (last visited Jun. 5, 2020), § F (“For the purposes of this Application, ‘security’ means a bond, letter of credit, guarantee, or other appropriate financial instrument from a creditworthy financial institution.”).

³⁰ See, e.g., 65-407 Me. Code R. ch. 305, § 2(B)(3)(e) (allowing financial security to be provided in the form an irrevocable letter of credit from a qualified bank or cash); N.H. Code Admin. R. Puc 2003.03(a)(1) (allowing financial security to be provided in the form of a surety bond, an irrevocable letter of credit from a qualified bank, or a corporate guarantee from a qualified entity); 815 R.I. Code R. 30-05-1.3(A)(9)(a) (allowing financial security to be provided in the form of a surety bond, a certificate of deposit, an irrevocable letter of credit from a qualified bank, or a corporate guarantee from a qualified entity).

bond from an entity with which a supplier does not have a comparable existing relationship.

Ultimately, with more options for mechanisms to use to provide financial security, suppliers will have opportunities to account for their own unique circumstances and provide financial security in a form that may be less costly to obtain. Conversely, limiting suppliers to a single form of financial security could prove more costly; a cost that will ultimately be borne by customers in the form of higher supplier prices.

III. BANKING IS NECESSARY TO CONTROL RPS COMPLIANCE COSTS

Under the Revised Proposal, the Authority would “no longer accommodate banking with regard to RPS compliance.”³¹ However, as RESA noted in its prior comments,³² REC banking is a critical feature of an RPS compliance regime because it allows load-serving entities, including the wholesale suppliers serving the EDCs’ Standard Service and Last Resort Service load, to manage their compliance costs for the ultimate benefit of customers.³³ Moreover, by removing banking, the Authority could actually undermine its ultimate goal of ensuring RPS compliance. Thus, consistent with the current Connecticut RPS compliance process and regimes in the other New England states,³⁴ the Authority should continue to permit banking of RECs for use in demonstrating compliance in future years.

³¹ Third Notice, at 2; *see also* Proposed Conn. Agencies Regs. § 16-245a-1(c).

³² RESA First Notice Comments, at 16; RESA Second Notice Comments, at 3-8.

³³ *Cf.* Docket No. 19-06-01, *Annual Review of Connecticut Electric Suppliers' and Electric Distribution Companies' Compliance with Connecticut's Renewable Energy Portfolio Standards in the Year 2018*, The Connecticut Light and Power Company d/b/a Eversource Energy (“Eversource”) Annual Connecticut Renewable Portfolio Standards (RPS) Filing (Oct. 15, 2019) (showing the use of banked RECs to satisfy Eversource’s 2018 RPS obligation and surplus RECs to be banked for use in future years).

³⁴ *See* 65-407 Me. Code R. ch. 311, § 7(B) (authorizing Maine competitive electricity providers to bank RECs for use in demonstrating compliance in future years); 225 C.M.R. 14.08(2) (authorizing Massachusetts competitive suppliers to bank RPS Class I RECs for use in demonstrating compliance in future years); 225 C.M.R. 15.08(2) (authorizing Massachusetts competitive suppliers to bank RPS Class II RECs for use in demonstrating compliance in future years); N.H. Code Admin. R. Puc 2503.05 (authorizing New Hampshire providers of electricity to bank RECs for use in demonstrating compliance in future years); 810 R.I. Code R. 40-05-2.8(D)(2) (authorizing Rhode Island obligated entities (i.e., suppliers and EDCs) to bank RECs for use in demonstrating compliance in future years).

REC banking allows load-serving entities, at times when REC prices are low, to purchase additional quantities of RECs (in addition to the quantities that they need for their current compliance obligations) and bank these RECs for future compliance when REC prices may be higher. Doing so enables load-serving entities to control their compliance costs, which are ultimately included in the prices charged to customers.³⁵ For example, allowing wholesale suppliers serving the Standard Service and Last Resort Service load to buy and bank RECs when prices are lower permits those suppliers to mitigate the RPS compliance costs included in their wholesale supply bids. Such reductions in bid prices can lead to Standard Service and Last Resort Service rates that are lower than they would be without the availability of REC banking. Further, because the use of previously banked RECs for compliance mitigates the overall demand for RECs, it moderates the prices of newly created RECs for the benefit of all Connecticut customers, including those served pursuant to Standard Service or Last Resort Service.³⁶

Moreover, eliminating REC banking could negatively impact renewable energy generators. Presently, as noted above, load-serving entities purchase RECs beyond their compliance obligations strategically to mitigate against the prospect of higher future REC prices. Not only does this help load-serving entities manage REC compliance costs for the benefit of their customers, but it also has a stabilizing effect on the renewable energy markets. At times

³⁵ See, e.g., Docket No. 16-03-01, *PURA Annual Review of the Rate Adjustment Mechanisms of the Connecticut Light and Power Company*, Decision (Oct. 26, 2016), at 2 (authorizing the recovery of RPS compliance costs through Standard Service rates). Additionally, because there are limitations on the use of banked RECs (see Conn. Agencies Regs. § 16-245a-1(e)), suppliers may be able to negotiate better prices for RECs purchased for banking than RECs purchased for immediate use. Any resulting saving could reduce load-serving entities', including the wholesale suppliers of Standard Service and Last Resort Service, RPS compliance costs and ultimately the prices paid by customers.

³⁶ See, e.g., Docket No. 16-03-01, *PURA Annual Review of the Rate Adjustment Mechanisms of the Connecticut Light and Power Company*, Decision (Oct. 26, 2016), at 2 (authorizing the recovery of RPS compliance costs through Standard Service rates).

when REC prices are low and generators may be experiencing reduced cashflows as a result, load-serving entities' strategic buying of RECs for banking increases demand for those RECs and can have a stabilizing effect on prices and, concomitantly, renewable generator cashflows. Without banking, generators will lose this benefit of increased demand when REC prices are low and face greater chances of financial harm during those times.

Without banking, the Authority also creates a higher likelihood that more suppliers will be forced to pay an ACP instead of satisfying the entirety of their obligations through the purchase of RECs.³⁷ As part of their compliance efforts, some electric suppliers enter into contracts for RECs well in advance of the compliance deadlines. In fact, some of these contracts are long-term contracts that provide for the delivery of RECs in multiple future compliance years. The number of RECs that a supplier agrees to purchase under these forward contracts is based on the supplier's anticipated load over the term of the contract. Currently, if the supplier over-estimates its anticipated load for a given year (e.g., because customers leave or because usage is down as a result of a pandemic), it is able to bank excess RECs for use in future compliance years. However, if banking is no longer an option, suppliers are much more likely to under-estimate their anticipated load each year. By doing so, they can avoid paying for excess RECs that have no value because they cannot be used to satisfy the current year's compliance obligation and cannot be banked for use in future years. As a result, if their actual load exceeds the estimates, those suppliers will be forced to buy RECs at the end of the annual compliance period. However, there may not be a sufficient number of RECs available in the market at that time to satisfy each supplier's remaining obligations. As a consequence, more and more

³⁷ 2016 RPS Compliance Decision, at 41 ("In 2016, 46 electric suppliers and Connecticut's 2 electric distribution companies were subject to the CT RPS requirements. Of the 48 companies, 32 fully complied with the RPS requirements by procuring and properly settling all of its required renewable energy certificates.").

suppliers will likely be required to submit an ACP. This will also unnecessarily increase the cost of RPS compliance. These costs ultimately would be borne by customers as they are incorporated into retail supply prices.

Moreover, eliminating the availability of REC banking could actually undermine the Authority's ultimate goal of ensuring RPS compliance. If a supplier does not purchase sufficient RECs and does not submit an ACP to satisfy its obligations in any given year, banked RECs can be used to offset the potential severity of this non-compliance³⁸ and, depending on a supplier's load in any given year, could be used to satisfy the entirety of a supplier's obligations. For instance, if before it became financially distressed, a supplier banked 1,000 Class I RECs over the last two years and, because of reduced load obligations, only needs 950 RECs to satisfy its Class I REC obligations for the current year, those banked RECs would be sufficient to satisfy the entirety of its obligations. In this way, banked RECs effectively function as security for the supplier's future RPS compliance obligation. Consequently, if banking were no longer permitted, the Authority would actually increase the opportunity of future non-compliance in contravention of its stated objective.³⁹ Thus, the Authority should continue to permit suppliers to bank RECs for use in future years.

If, despite the foregoing, the Authority eliminates REC banking (which RESA strongly opposes), it should do so in a manner that avoids creating stranded assets. As noted above, some suppliers enter into long-term contracts that provide for the delivery of RECs in multiple future compliance years. If the Authority immediately removes banking as an option, it will disrupt the

³⁸ See, e.g., 2016 RPS Compliance Decision, at 22 (applying banked RECs against Abest's 2016 RPS compliance obligation).

³⁹ See Third Notice, at 1 ("The Authority indicated in its first request for written comments that it was attempting to address the problem of suppliers amassing large RPS obligations and filing for bankruptcy or leaving the market without meeting their RPS obligations.").

current expectations and obligations under those contractual relationships.⁴⁰ Further, in reliance on the existing regulations, some load-serving entities have already banked RECs for use in future compliance years.⁴¹ As a consequence, if the Authority no longer permits banking, it will degrade the value of those banked RECs to zero.⁴² In order to avoid this, if the Authority removes banking, it should account for contractual REC arrangements and banked RECs that exist as of the effective date of its amended regulations. Otherwise, load-serving entities will have already sunk costs and/or will be required to incur additional costs to purchase RECs to satisfy upcoming RPS obligations. These added costs will be passed onto customers in the form of higher prices and rates.⁴³

IV. ALLOWING BANKING DOES NOT UNNECESSARILY COMPLICATE THE RPS PROCESS

According to the Third Notice, the removal of banking is intended to “simplify the reporting process, thereby reducing the complexity of RPS compliance for suppliers.”⁴⁴ RESA appreciates the Authority’s desire to simplify the reporting process and supports many of the proposed changes to the annual reporting form, including the removal of reporting by generator

⁴⁰ Such an action could run afoul of protections afforded under the Contracts Clause of the United States Constitution. *Cf.* Docket No. 20-03-15, *Emergency Petition of William Tong, Attorney General for the State of Connecticut, for a Proceeding to Establish a State of Emergency Utility Shut-Off Moratorium*, Comments of Retail Energy Supply Association (Mar. 26, 2020), at 14-18.

⁴¹ *See, e.g.*, Docket No. 19-06-01, *Annual Review of Connecticut Electric Suppliers' and Electric Distribution Companies' Compliance with Connecticut's Renewable Energy Portfolio Standards in the Year 2018*, Eversource Annual Connecticut Renewable Portfolio Standards (RPS) Filing (Oct. 15, 2019) (showing surplus RECs to be banked for use in future years).

⁴² Such an action could constitute a regulatory taking under the United States Constitution. *Cf.* Docket No. 20-03-15, *Emergency Petition of William Tong, Attorney General for the State of Connecticut, for a Proceeding to Establish a State of Emergency Utility Shut-Off Moratorium*, Comments of Retail Energy Supply Association (Mar. 26, 2020), at 12-14.

⁴³ *See, e.g.*, Docket No. 16-03-01, *PURA Annual Review of the Rate Adjustment Mechanisms of the Connecticut Light and Power Company*, Decision (Oct. 26, 2016), at 2 (authorizing the recovery of RPS compliance costs through Standard Service rates).

⁴⁴ Third Notice, at 3.

location and fuel source.⁴⁵ However, banking does not make the RPS compliance process more complex for suppliers. In fact, banking is an integral mechanism available throughout the New England region that, for decades, has provided suppliers with flexibility in satisfying their RPS obligations.⁴⁶

The removal of banking is also not necessary to simplify the reporting process. The Authority's existing reporting form already provides a place for load-serving entities to provide the Authority with the information necessary to verify the number of banked RECs a supplier has used for the current year's compliance and the number of surplus RECs a supplier has available to bank for use in future years.⁴⁷ This information could easily be integrated into the Authority's new proposed form.⁴⁸

V. THE AUTHORITY SHOULD CONSIDER COMPELLING REQUESTS FOR THE REALLOCATION OF RECS

Under the Revised Proposal, the Authority would no longer accept requests from suppliers for reallocation of RECs into or out of NEPOOL-GIS accounts and/or subaccounts.⁴⁹ In support of this feature of the Revised Proposal, the Authority reasoned that “[s]uppliers are expected to independently manage their accounts throughout the year.”⁵⁰ RESA agrees.

⁴⁵ Compare Third Notice, RPS Example Exhibit with Annual Connecticut Renewable Portfolio Standards (RPS) Filing Form, Exhibits B and C (available at: <https://portal.ct.gov/-/media/PURA/RPS/annualctrenewableportfoliostandardsfilingexhibitsbcdxlsx.xlsx?la=en>) (last visited Jun. 5, 2020).

⁴⁶ See 65-407 Me. Code R. ch. 311, § 7(B) (authorizing Maine competitive electricity providers to bank RECs for use in demonstrating compliance in future years); 225 C.M.R. 14.08(2) (authorizing Massachusetts competitive suppliers to bank RPS Class I RECs for use in demonstrating compliance in future years); 225 C.M.R. 15.08(2) (authorizing Massachusetts competitive suppliers to bank RPS Class II RECs for use in demonstrating compliance in future years); N.H. Code Admin. R. Puc 2503.05 (authorizing New Hampshire providers of electricity to bank RECs for use in demonstrating compliance in future years); 810 R.I. Code R. 40-05-2.8(D)(2) (authorizing Rhode Island obligated entities (i.e., suppliers and EDCs) to bank RECs for use in demonstrating compliance in future years).

⁴⁷ See Annual Connecticut Renewable Portfolio Standards (RPS) Filing Form, Exhibit A (available at: <https://portal.ct.gov/-/media/PURA/electric/AnnualCTRenewablePortfolioStandardsFilingExhibitA.xlsx?la=en>) (last visited Jun. 5, 2020).

⁴⁸ See Third Notice, RPS Example Exhibit.

⁴⁹ See Third Notice, at 2.

⁵⁰ Third Notice, at 2; see also Proposed Conn. Agencies Regs. § 16-245a-1(c).

Suppliers should be expected to manage their REC accounts throughout the year and to properly account for, and retire, their RECs in accordance with applicable requirements. However, the Authority should retain the flexibility to reallocate RECs if presented with compelling circumstances that are not the result of supplier error.

For example, if the trading period has concluded and a supplier is no longer serving customers because it has chosen to exit the market, it may have already retired RECs or have remaining banked RECs that it cannot use. In these circumstances, the Authority could prevent those RECs from being stranded and unusable by allowing them to be reallocated to another supplier—such as a supplier that purchased the contracts, or otherwise became responsible for the load, of the supplier that exited the market.⁵¹ Such Authority action could allow customers of the supplier exiting the market who were transferred to the other supplier to benefit from RECs that were purchased to serve their load. Thus, the Authority should retain the flexibility to consider such circumstances on their merits and, if it regards the circumstances as compelling, to allow RECs to be reallocated. Accordingly, RESA requests that the Authority modify its proposed regulations to read:⁵² “The Authority will not accept or review requests from suppliers for reallocation of renewable energy certificates into or out of Connecticut NEPOOL-GIS accounts and/or subaccounts except in compelling circumstances, which do not include supplier error.”

⁵¹ See, e.g., Docket No. 19-06-01, *Annual Review of Connecticut Electric Suppliers' and Electric Distribution Companies' Compliance with Connecticut's Renewable Energy Portfolio Standards in the Year 2018*, Motion No. 2 Ruling (Jun. 13, 2019) (permitting the transfer of the remaining banked RECs in excess of TransCanada Power Marketing Ltd.'s anticipated 2018 RPS obligations to EDF Energy Services, LLC).

⁵² Added text is double under-lined.

CONCLUSION

For all the foregoing reasons, the Authority should modify the Revised Proposal (including the Proposed Regulations) as requested herein before issuing it in final.

Respectfully submitted,
RETAIL ENERGY SUPPLY ASSOCIATION

By 

Joey Lee Miranda
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CERTIFICATION

I hereby certify that a copy of the foregoing was sent to all participants of record on this
5th day of June 2020.


Joey Lee Miranda