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December 16, 2019

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:

Enclosed please find the Comments of Retail Energy Supply Association 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. A copy has also been filed with the Authority as an electronic web filing and is complete.

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 :
: DECEMBER 16, 2019

COMMENTS OF RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association (“RESA”)¹ hereby submits its comments in response to the Public Utilities Regulatory Authority’s (“Authority”) November 18, 2019 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 are required to provide specific minimum percentages of their 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 the Notice and presented a proposal for amendments to the current renewable portfolio standards (“RPS”) regulations (“Proposal”).⁵ The Authority noted that the Proposal was designed, in part, to address situations in which certain electric suppliers have amassed large RPS obligations but filed for bankruptcy or left the market

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 (Nov. 18, 2019) (“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.

without meeting those obligations.⁶ Under the Proposal, electric suppliers would be required to settle a pre-specified minimum percentage of their quarterly RPS requirement (e.g., 90%) in the trading period associated with the months the load was served using monthly billing or load settlement data obtained from the EDCs with an adjustment for line losses to determine the quarterly RPS renewable energy credit (“REC”) obligation.⁷ Further, electric suppliers would be allowed a true-up during the fourth quarter settlement period for any remaining, unsettled RPS requirements for the annual period.⁸ Electric suppliers would not be restricted from settling 100% of their quarterly load obligations in any quarter, or from purchasing additional RECs to apply to a later quarterly compliance period during a given RPS year.⁹

In addition, the Proposal provides for quarterly enforcement of unmet RPS requirements by the Authority under Connecticut General Statutes section 16-41.¹⁰ The Notice fully outlined the Proposal in a proposed revision of Regulations of Connecticut State Agencies section 16-245a-1 (“Proposed Regulations” or “Proposed Conn. Agencies Regs.”).¹¹ RESA now hereby submits its comments in response to the Proposal.

COMMENTS

RESA appreciates the Authority’s desire to limit the risk of potential RPS noncompliance. Instances of noncompliance with the RPS not only negatively affect Connecticut’s clean energy goals¹² but also undermine consumers’ confidence that they will receive the renewable energy content that they expect. However, the overwhelming majority of

⁶ See Notice, at 1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ See *id.* at 2-4.

¹² See, e.g., Executive Order No. 3, § 8 (Sep. 3, 2019) (requiring analysis of pathways and recommendations of strategies “for achieving a 100% zero carbon target for the electric sector by 2040”).

electric suppliers appear to meet their compliance obligations (either by settling the required amounts of RECs or paying alternative compliance payments (“ACPs”)).¹³ The Proposal, however, would have a significant, disruptive effect on the *entire* retail electricity supply sector and would impose a burden on *all* electric suppliers - even those meeting their obligations. Thus, RESA urges the Authority to forgo adopting the Proposal and to schedule a technical meeting that would allow stakeholders to discuss alternative approaches that could limit the risks of significant noncompliance without disrupting retail electric supply markets or negatively affecting electric suppliers with a proven track record of compliance.

I. THE PROPOSAL WILL ADD UNNECESSARY COMPLEXITY AND COST

Proposed Regulations section 16-245a-1(a) would require each electric supplier to submit quarterly reports demonstrating compliance with a minimum of ninety percent (90%) (subject to adjustment by the Authority) of Connecticut’s RPS requirements for the first three quarters, in addition to a report demonstrating annual compliance.¹⁴ This aspect of the Proposal would have significant adverse effects on electric suppliers and the market for RECs and would impose significant additional costs on ratepayers.

As a preliminary matter, electric suppliers have devoted considerable effort to developing strategies for complying with their RPS obligations. These strategies may include purchasing and

¹³ 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*.

¹⁴ See Proposed Conn. Agencies Regs. § 16-245a-1(a) (“Each electric supplier shall submit quarterly reports each year by October 15, January 15, and April 15, or as often as the Public Utilities Regulatory Authority indicates as necessary in a decision, demonstrating compliance with a minimum of ninety percent (90%), or the amount the Public Utilities Regulatory Authority deems necessary in a decision, of the renewable energy portfolio standard requirements set forth in sections 16-245a and 16-243q of the Connecticut General Statutes for each of their respective quarters.”).

retiring RECs during the current compliance year, relying on previously banked RECs,¹⁵ and making ACPs.¹⁶ Moreover, electric suppliers that purchase and retire RECs during the current compliance year may use various procurement strategies to do so, including making purchases of RECs in regular amounts and at regular intervals throughout the calendar year, purchasing RECs when prices fall to certain levels regardless of the time of year, and entering into long-term contracts to secure supplies of RECs at set prices years before the RECs are actually generated. A common contracting practice is to take delivery of RECs just prior to the end of the particular compliance year rather than throughout the year. The Proposal has the potential to upend these carefully developed strategies and to impose additional costs that would ultimately be borne by customers.

A. The Proposal Raises Substantial Compliance Questions

The Proposal raises significant questions about the means by which electric suppliers will be able to demonstrate compliance with their RPS requirements. For example, the Notice indicates that the Proposal includes a revised definition of “load.”¹⁷ However, the Proposed Regulations do not include this revised definition.¹⁸ Consequently, stakeholders do not know how the Proposal means to revise the definition of load.

If the monthly load is determined based on the EDC’s billing determinants, there may be discrepancies between the load data the EDCs report to ISO New England (“ISO-NE”) and those retail billing determinants for any customer that generates more electricity than it uses in any

¹⁵ See Conn. Agencies Regs. § 16-245a-1(e).

¹⁶ See Conn. Gen. Stat. § 16-245(k).

¹⁷ See Notice, at 1.

¹⁸ See, generally, Proposed Regulations.

hour.¹⁹ Further, currently, for purposes of the annual RPS compliance filing, the Authority relies on the Post-90 Day Settlement Data reported by the EDCs to determine supplier load obligations.²⁰ However, the Proposed Regulations contemplate that the EDCs will provide quarterly reporting on May 1, August 1, November 1 and February 1 for quarters 1-4, respectively.²¹ However, reporting on this schedule will not permit the use of the Post-90 Day Settlement Data. In fact, because these quarterly reporting dates are only two months after the end of each quarter, it will not even permit the use of the ISO-NE 90-Day Settlement Data. Thus, the data will always only be preliminary and, by its very nature, will require reconciliation at some future date. While the Proposal contemplates an opportunity for a true-up,²² no such mechanism appears in the Proposed Regulations. Moreover, the Proposed Regulations provide for potential enforcement action against suppliers who fail to satisfy their quarterly compliance obligations.²³

¹⁹ See, e.g., 15-09-03, *PURA Investigation into Net Metering kWh Banking*, Interim Decision (Dec. 28, 2016), at 16 (finding that the EDCs “explained that most of the energy produced from smaller Class I renewable sources, such as residential solar arrays, is not accounted for through the ISO-NE settlement process”).

²⁰ See 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*, Notice of Proceeding (Sep. 23, 2019), at 1 (“[T]he Authority will use the Final Settlement Load (Post-90-Day) to determine a company’s total load and obligations . . .”).

²¹ Proposed Conn. Agencies Regs. § 16-245a-1(b).

²² Notice, at 1 (“Suppliers would be allowed a true-up during the fourth quarter settlement period for any remaining, unsettled RPS requirements for the annual period.”).

²³ Proposed Conn. Agencies Regs. § 16-245a-1(e) (“The Public Utilities Regulatory Authority shall have the right to assess a penalty pursuant to Sections 16-41 and 16-245 of the Connecticut General Statutes or equivalents within two years of the filing date if an electric supplier fails to demonstrate sufficient quarterly compliance pursuant to subsection (a).”).

This potential noncompliance risk is exacerbated by the fact that it does not appear that suppliers will be permitted to satisfy their quarterly obligations through an ACP.²⁴ If electric suppliers are required to settle RECs quarterly, any restraints or limitations on the availability of RECs (as discussed in Section B below) could lead to significant increases in the prices of other RECs because electric suppliers would have no choice but to buy whatever RECs are available in the market, at whatever prices the REC market demands, unless there is a meaningful option to comply by making an ACP (which is not currently contemplated in the Proposed Regulations).²⁵ This would increase the cost of compliance for all electric suppliers (even those who have consistently demonstrated compliance with their RPS obligations) and, ultimately, the prices paid by customers (even those served by suppliers who have consistently demonstrated compliance with the RPS obligations). Further, if, ultimately, there is an ACP option for quarterly compliance, it is not clear how it would relate to any potential, annual true-up of quarterly compliance obligations.²⁶ For example, would a quarterly ACP be subject to refund if an electric supplier subsequently settles sufficient RECs to meet its annual obligation?

B. The Proposal Will Fundamentally Alter REC Trading

Currently, electric suppliers are not required to purchase and retire RECs at any set time during the year so long as they have purchased and retired sufficient RECs to satisfy their obligations before the last day of the trading period of any given year. As a result, those selling RECs are not guaranteed any specific level of demand at any point during the year.

²⁴ Compare Proposed Conn. Agencies Regs. § 16-245a-1(e) (“The Public Utilities Regulatory Authority shall have the right to assess an *Alternative Compliance Payment or pursue a penalty* pursuant to Section 16-41 of the Connecticut General Statutes within two years of the filing date for any electric distribution company or electric supplier failing to demonstrate sufficient *annual* compliance pursuant to subsections (a) or (b).”) (emphasis added) *with id.* (“The Public Utilities Regulatory Authority shall have the right to *assess a penalty* pursuant to Sections 16-41 and 16-245 of the Connecticut General Statutes or equivalents within two years of the filing date if an electric supplier fails to demonstrate sufficient *quarterly* compliance pursuant to subsection (a).”) (emphasis added).

²⁵ *Id.*; see also *infra* Section III.

²⁶ See Notice, at 1 (indicating that electric suppliers could true-up quarterly compliance obligations in the fourth quarter settlement period).

Consequently, those selling RECs must maintain competitive pricing levels throughout the entire annual trading period. Conversely, the Proposal would create specific levels of demand for RECs in the first three quarters,²⁷ while sellers will retain their ability to sell RECs generated in each of the four quarters at any time during the year. This proposed change increases the market power of REC sellers and, consequently, creates a risk for increased REC prices. These price increases could be particularly acute if, because of operational issues, there is a limited supply of RECs available at any of those times.²⁸ Ultimately, customers will bear these added costs as they are incorporated into Standard Service rates²⁹ and retail supply prices.

Further, the Proposal would disrupt existing REC procurement strategies and frustrate compliance efforts that electric suppliers may have undertaken already. 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. These contracts, however, have been designed to provide for compliance under the current annual compliance schedule, with RECs generally delivered only at the end of the trading period for the entire compliance year. If the Proposal is adopted, electric suppliers that worked proactively to meet their compliance obligations and contracted to procure a sufficient supply of RECs by the annual compliance date would be required to contract for additional RECs (or to negotiate changes to their REC supply

²⁷ See Proposed Conn. Agencies Regs. § 16-245a-1(a) (“Each electric supplier shall submit quarterly reports each year by October 15, January 15, and April 15, or as often as the Public Utilities Regulatory Authority indicates as necessary in a decision, demonstrating compliance with a minimum of ninety percent (90%), or the amount the Public Utilities Regulatory Authority deems necessary in a decision, of the renewable energy portfolio standard requirements set forth in sections 16-245a and 16-243q of the Connecticut General Statutes for each of their respective quarters.”).

²⁸ The Proposal could have additional ramifications for facilities that generate renewable energy that could further impact the availability and pricing of RECs of which RESA is unaware.

²⁹ 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).

contracts) to meet their quarterly compliance obligations. Doing so, however, could impose additional costs on these electric suppliers. These costs ultimately would be borne by ratepayers as they are incorporated into retail supply prices. As a consequence, electric suppliers engaged in behavior intended to ensure their compliance will be placed at a competitive disadvantage vis-à-vis suppliers who have not undertaken such proactive efforts; thereby, punishing the very behavior the Authority should be seeking to encourage.

Moreover, the Proposal would have broad implications for the REC market – a market that is generally run on a regional basis.³⁰ Currently, many RECs are not delivered until June of the year following the compliance year. While the REC trading and delivery mechanisms may be able to be modified to accommodate the Proposal, those changes would fundamentally alter the way in which the REC trading market operates – a market that it is not limited to Connecticut. Further, implementing these changes would likely impose transaction costs³¹ that, ultimately, would be incorporated into the prices that customers pay for retail electricity products.

If the Authority ultimately is inclined to move forward with establishing a quarterly RPS compliance reporting obligation, it should set the minimum percentage of the quarterly requirement at a level significantly less than the ninety percent (90%) contemplated in the Proposal.³² Doing so would enhance the ability of electric suppliers to execute REC procurement strategies designed to limit cost and mitigate the disruption to the regional REC market.

³⁰ See NEPOOL Generation Information System (<https://www.nepoolgis.com/>) (“The **New England Power Pool Generation Information System** (NEPOOL GIS) issues and tracks certificates for all MWh of generation and load produced in the ISO New England control area, as well as imported MWh from adjacent control areas.”) (emphasis in original) (last visited Dec. 16, 2019).

³¹ See, e.g., Exchange and Clearing Transaction Fee Schedule for Nodal Exchange Options (available at: <https://www.nodalexchange.com/wp-content/uploads/Transaction-Fee-Schedule-Environmental-Options.pdf>) (identifying certain costs associated with certain REC transactions) (last visited Dec. 16, 2019).

³² See Notice, at 1.

C. The Proposal Would Impose Unreasonable Administrative Burdens On Electric Suppliers

The Proposal would require electric suppliers to file four RPS compliance reports each year.³³ Under current regulations, electric suppliers are required to file only one RPS compliance report annually.³⁴ Preparing this single annual report is a significant undertaking. Electric suppliers devote considerable effort and resources to gather the materials needed for this report, analyze them, and prepare the report. Quadrupling the number of such reports that electric suppliers must file would increase the amount of effort and resources that electric suppliers have to devote to demonstrating their compliance with Connecticut's RPS and impose an unreasonable burden on electric suppliers (even those who consistently satisfy their RPS obligations). In fact, many electric suppliers may not currently have the operational flexibility to prepare four Connecticut RPS compliance reports per year and may need to make significant operational changes, at great cost, to meet the increased filing requirements that the Proposal would impose. These increased administrative costs would ultimately be incorporated into the prices paid by customers.

D. Quarterly Compliance Is Less Effective Than Other Less Burdensome Options For Mitigating The Risk Of Noncompliance

There is no need to burden all electric suppliers with onerous requirements to file quarterly RPS compliance reports, especially since the vast majority of electric suppliers have

³³ See Proposed Conn. Agencies Regs. § 16-245a-1(a).

³⁴ See Conn. Agencies Regs. § 16-245a-1(a).

complied with their RPS obligations,³⁵ when other less burdensome ways of mitigating the risk of noncompliance may be available. For instance, the Authority is already contemplating proposing updates to its electric supplier licensing regulations to increase the amount of financial security that electric suppliers must provide.³⁶ The financial security requirement would be in place to ensure RPS compliance and would be based on megawatt-hours (MWh) of energy supplied up to a maximum of \$2 million.³⁷ With such financial security in place to ensure RPS compliance, the Authority will obviate the need for unduly burdensome regulatory filing requirements, such as those set forth in the Proposal.

Furthermore, an increased financial security requirement would be more effective at addressing noncompliance than quarterly compliance reporting because of the lag between the period of actual noncompliance and the filing of the quarterly reports that would demonstrate such noncompliance. For example, noncompliance for load served in the first quarter would not be reported until October 15.³⁸ By that time, a noncompliant and financially distressed electric

³⁵ See Docket 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), at 1 (finding that 32 of 48 companies (46 suppliers and 2 EDCs) satisfied their RPS obligations through the purchase of RECs); see also Docket 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); Docket 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). A third NOV was issued to EDF Energy. See Docket 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 EDF Energy for failure to file proof that submitted ACP). However, EDF Energy subsequently filed proof that it had submitted the required ACP. Docket 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).

³⁶ See Docket No. 19-10-41, *Regulations for Electric Supplier Licensing*, Notice of Request for Written Comments (Nov. 21, 2019).

³⁷ See *id.*, Proposed Revision to Conn. Agencies Regs. § 16-245-4(a).

³⁸ See Proposed Conn. Agencies Regs. § 16-245a-1(a) (setting a compliance reporting deadline of October 15 for first quarter compliance).

supplier likely would have continued to serve load such that, by the time, the first quarter's report was filed, the supplier will have already served load for nearly ten (10) months out of the year; thereby, limiting the Authority's ability to address potential noncompliance until such a supplier has already served the vast majority of its load for the year. As a consequence, the Authority will have increased the burden on all suppliers (even those who consistently comply with the RPS) and increased the cost for all customers (even those served by suppliers who consistently comply with the RPS) without any concomitant benefit and likely little, if any, real ability to address the issue. Conversely, through the financial security, the Authority would actually be able to effectively address the noncompliance by drawing on the financial security to satisfy the ACP for such noncompliant suppliers.³⁹

Beyond financial security there may be other methods of mitigating the risk of RPS noncompliance that could be explored among stakeholders in a technical meeting. Finally, even if the Authority does not make the changes to its financial security regulations that it is contemplating, electric suppliers should have the option of providing additional financial security to secure RPS compliance in lieu of filing quarterly compliance reports.

II. ALLOWING THE EDCS TO DEMONSTRATE COMPLIANCE ANNUALLY WOULD BURDEN ELECTRIC SUPPLIERS WITH DISPROPORTIONATELY HIGHER COMPLIANCE COSTS

While the Proposal would impose a quarterly compliance requirement on electric suppliers,⁴⁰ the EDCs would only be required to demonstrate RPS compliance annually.⁴¹ This is unjust and runs counter to the Authority's efforts to maintain equitable treatment across all load-

³⁹ See Docket No. 19-10-41, *Regulations for Electric Supplier Licensing*, Notice of Request for Written Comments (Nov. 21, 2019), Proposed Revision to Conn. Agencies Regs. § 16-245-4(a).

⁴⁰ See Proposed Conn. Agencies Regs. § 16-245a-1(a).

⁴¹ See Proposed Conn. Agencies Regs. § 16-245a-1(c).

serving entities.⁴² As discussed above,⁴³ the quarterly compliance regime contemplated by the Proposal will cause demand and prices for RECs to spike when electric suppliers attempt to procure sufficient RECs to meet their quarterly compliance obligations. EDCs, however, will not be subject to these quarterly price spikes. Instead, they (or the wholesale suppliers supplying Standard Service) will be able to purchase RECs throughout the year and will have the opportunity to purchase RECs at whatever points during the year prices are favorable. As a result, retail electric suppliers may be forced to pay more per REC for RPS compliance than the EDCs. This will create upward pressure on competitive supply prices relative to Standard Service rates, force retail electric suppliers to increase the prices of their supply offerings to cover their RPS compliance costs, and decrease retail electric suppliers' ability to offer savings compared to Standard Service.⁴⁴

III. THE PROPOSAL FAILS TO PROVIDE A MEANINGFUL ALTERNATIVE COMPLIANCE OPTION

The Proposed Regulations would grant the Authority the power to impose a civil penalty if an electric supplier fails to demonstrate quarterly compliance.⁴⁵ Further, the Proposed Regulations would grant the Authority the power to assess an ACP or to impose a civil penalty

⁴² Cf. Docket No. 16-07-20, *Annual Review of Connecticut Electric Suppliers' and Electric Distribution Companies' Compliance with Connecticut's Renewable Energy Portfolio Standards in the Year 2015*, Motion No. 4 Ruling (Mar. 16, 2017), at 2 (rejecting a proposed settlement regarding The Connecticut Light and Power Company d/b/a Eversource Energy's ("Eversource") RPS compliance obligations because "[a]llowing Eversource to discount the generally accepted settlement amount by 50% would give Eversource an unfair advantage over all other load-serving entities who are required to comply with the same RPS requirements.").

⁴³ See Section I.A *supra*.

⁴⁴ See Connecticut Rate Board, <https://www.energizect.com/compare-energy-suppliers> (showing suppliers offers reflecting savings over Standard Service) (last visited Dec. 16, 2019).

⁴⁵ See Proposed Conn. Agencies Regs. § 16-245a-1(e) ("The Public Utilities Regulatory Authority shall have the right to assess a penalty pursuant to Sections 16-41 and 16-245 of the Connecticut General Statutes or equivalents within two years of the filing date if an electric supplier fails to demonstrate sufficient quarterly compliance pursuant to subsection (a).").

on any electric supplier or EDC that fails to demonstrate annual compliance.⁴⁶ Currently, the EDCs and electric suppliers are able to meet their RPS obligations through ACPs.⁴⁷ However, under the Proposed Regulations, there would be no option for electric suppliers to meet quarterly compliance obligations through ACPs.⁴⁸ Further, the Proposal effectively eliminates the ability of an electric supplier or an EDC to rely on an ACP to meet its annual RPS obligations, because, at the Authority's option, the EDC or electric supplier may be subject to a civil penalty, instead of the applicable ACP.⁴⁹

As an initial matter, the provisions of the Proposed Regulations that would impose civil penalties on electric suppliers for failure to satisfy the RPS through the purchase of RECs exceed the Authority's power under applicable law. Connecticut General Statutes section 16-245 expressly requires the Authority to assess an ACP if an electric supplier does not purchase sufficient RECs to meet its RPS obligations.⁵⁰ It does not authorize the imposition of civil penalties simply because an electric supplier does not purchase sufficient RECs to meet its RPS obligations.⁵¹ As a creature of statute, the Authority can act only within the parameters

⁴⁶ See Proposed Conn. Agencies Regs. § 16-245a-1(e) ("The Public Utilities Regulatory Authority shall have the right to assess an Alternative Compliance Payment or pursue a penalty pursuant to Section 16-41 of the Connecticut General Statutes within two years of the filing date for any electric distribution company or electric supplier failing to demonstrate sufficient annual compliance pursuant to subsections (a) or (b).").

⁴⁷ See Conn. Gen. Stat. § 16-245(k) (allowing electric suppliers to pay an ACP in lieu of settling the requisite number of RECs).

⁴⁸ See Proposed Conn. Agencies Regs. § 16-245a-1(e).

⁴⁹ Compare Conn. Gen. Stat. § 16-245(k) (specifying ACP rates) with Conn. Gen. Stat. § 16-41(a) (authorizing a civil penalty of up to \$10,000 for each violation of a regulation of the Authority for which no other penalty is prescribed).

⁵⁰ See Conn. Gen. Stat. § 16-245(k) (providing that "the authority shall require a payment by a licensee that fails to comply with the renewable portfolio standards" for Class I and Class II at the statutory ACP rate); see also Conn. Gen. Stat. § 16-243q(b) (requiring the Authority to assess an ACP to electric suppliers that do not settle sufficient RECS to comply with their Class III RPS obligations).

⁵¹ See Conn. Gen. Stat. § 16-245(k) ("Any licensee who fails to comply with a license condition or who violates any provision of this section, *except for the renewable portfolio standards contained in subsection (g) of this section*, shall be subject to civil penalties by the Public Utilities Regulatory Authority in accordance with section 16-41 . . .") (emphasis added).

established by law.⁵² The Authority does not have the power to make law; it only has the power to carry out the will of the legislature as expressed in statute.⁵³ If the Legislature had intended to authorize the Authority to impose civil penalties on electric suppliers simply for failure to purchase sufficient RECs to meet their RPS obligations, it could have done so.⁵⁴ However, it did not. In fact, it even denied the Authority the power to do so.⁵⁵

Moreover, an alternative compliance option is an important feature of a well-functioning and equitable RPS program. Specifically, an ACP is an important mechanism for controlling RPS compliance costs that are ultimately included in the prices charged to ratepayers. An ACP recognizes that there may not be sufficient RECs available in the market at a reasonable price and, as a practical matter, places a ceiling on the price of RECs. In doing so, it avoids a small number of REC sellers (which could be generators or third-party traders) being able to artificially increase the price of RECs above a certain threshold; thereby, protecting consumers from having to bear the expense of renewable energy at any price. For example, if only two generators are eligible, those two generators may not be able to produce a sufficient number of RECs for all of the electric suppliers and EDCs to satisfy their RPS obligations. This will send a signal to the market that more renewable generation is necessary.

However, without an ACP, the cost of that new generation will not be capped in any way; thus, EDCs and electric suppliers could end up paying exorbitant prices for RECs to satisfy their

⁵² See *Waterbury v. Comm'n on Human Rights and Opportunities*, 160 Conn. 226, 230-31 (1971) (noting that administrative agencies must act within their statutory authority).

⁵³ See *Conn. Hosp. Ass'n. v. State*, 200 Conn. 133, 144 (1986) (“The power of an administrative agency to prescribe rules and regulations under a statute is not the power to make law, but only the power to adopt regulations to carry into effect the will of the legislature as expressed by the statute.” (internal quotation mark removed)).

⁵⁴ See *State v. Heredia*, 310 Conn. 742, 761-62 (2013).

⁵⁵ See Conn. Gen. Stat. § 16-245(k) (“Any licensee who fails to comply with a license condition or who violates any provision of this section, *except for the renewable portfolio standards contained in subsection (g) of this section*, shall be subject to civil penalties by the Public Utilities Regulatory Authority in accordance with section 16-41”) (emphasis added).

compliance obligations with those costs ultimately being borne by ratepayers. Without an ACP available, when there are not sufficient RECs available to permit all EDCs and electric suppliers to meet their compliance obligations, there will be no other manner in which to achieve compliance. Scarcity likely will cause extreme spikes in REC prices, as EDCs and suppliers are forced to compete for the limited number of available RECs by paying higher prices for them. Electric suppliers and EDCs that are not able to purchase RECs could face the prospect of civil penalties,⁵⁶ even though noncompliance will not result from any failure of their part, but from the simple unavailability of adequate supplies of RECs. By permitting the use of an ACP to satisfy all RPS obligations, no matter how frequently compliance is required, the Authority can avoid this situation and ensure that RPS compliance does not cost ratepayers more than is necessary.

Even in quarters or years where there may be sufficient RECs available, if they are controlled by a small number of REC sellers (which could be generators or third-party traders), those companies would be able to exert significant market power over those RECs since they would still be free to sell RECs throughout the annual trading period whereas electric suppliers would have certain fixed quarterly purchase obligations.⁵⁷ The consequence will be higher costs that will ultimately be borne by ratepayers. To prevent this situation, the Authority should

⁵⁶ Proposed Conn. Agencies Regs. § 16-245a-1(e) (“The Public Utilities Regulatory Authority shall have the right to assess a penalty pursuant to Sections 16-41 and 16-245 of the Connecticut General Statutes or equivalents within two years of the filing date if an electric supplier fails to demonstrate sufficient quarterly compliance pursuant to subsection (a).”); *id.* (“The Public Utilities Regulatory Authority shall have the right to assess an Alternative Compliance Payment or pursue a penalty pursuant to Section 16-41 of the Connecticut General Statutes within two years of the filing date for any electric distribution company or electric supplier failing to demonstrate sufficient annual compliance pursuant to subsections (a) or (b).”).

⁵⁷ *See* Proposed Conn. Agencies Regs. § 16-245a-1(a) (“Each electric supplier shall submit quarterly reports each year by October 15, January 15, and April 15, or as often as the Public Utilities Regulatory Authority indicates as necessary in a decision, demonstrating compliance with a minimum of ninety percent (90%), or the amount the Public Utilities Regulatory Authority deems necessary in a decision, of the renewable energy portfolio standard requirements set forth in sections 16-245a and 16-243q of the Connecticut General Statutes for each of their respective quarters.”).

continue to permit the use of ACPs to satisfy RPS obligations, no matter how frequently compliance is required.

IV. THE PROPOSED REGULATIONS DO NOT EXPRESSLY PERMIT THE USE OF BANKED RECs FOR QUARTERLY COMPLIANCE

The Proposal contemplates the use of RECs purchased in one quarter for compliance with a subsequent quarter's compliance obligation.⁵⁸ However, the Proposed Regulations do not expressly permit the use of banked RECs to satisfy quarterly obligations.⁵⁹ Quarterly banking is an important component of the Proposal that should be memorialized in the regulations because it provides electric suppliers the flexibility to purchase RECs when prices are low as a hedge against REC price increases. To reflect the Proposal fully, the banking provision of the Proposed Regulations should expressly recognize REC banking from quarter to quarter.

Banking allows electric suppliers to meet their obligations in the most efficient and cost effective way and to manage their obligations as the amount of load they serve changes. At times when REC prices are low, electric suppliers are able 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. Doing so allows suppliers to control their compliance costs, which are ultimately included in the prices charged to customers. In fact, the possibility of using banked RECs in a quarterly compliance paradigm is particularly important because it would allow electric suppliers to acquire certain RECs whose production varies over the course of a year (such as solar and hydro RECs) at times when there is an ample supply of such RECs for compliance during times when far fewer quantities of such RECs may be available.

⁵⁸ See Notice, at 1 (“The supplier would not be restricted from settling 100% of its quarterly load obligation in any quarter, or from purchasing additional RECs to apply to a later quarterly compliance period during a given RPS year.”).

⁵⁹ See Proposed Conn. Agencies Regs. § 16-245a-1(f) (“An electric distribution company or electric supplier may bank Class I, Class II and Class III renewable energy certificates generated in *one year* to comply with the renewable energy portfolio requirements in either of the *two following years . . .*”) (emphasis added).

CONCLUSION

RESA urges the Authority to forgo adopting the Proposal without significant revision. Because any proposal to increase the frequency with which electric suppliers would need to demonstrate compliance with their RPS obligations could have significant operational, market, and customer impacts, RESA recommends that the Authority schedule a technical meeting to allow for discussion and further input on any alternative proposals before developing revised draft regulations.

Respectfully submitted,
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CERTIFICATION

I hereby certify that a copy of the foregoing was sent to all participants of record on this
16th day of December 2019.


Joey Lee Miranda