

**STATE OF CONNECTICUT**

**PUBLIC UTILITIES REGULATORY AUTHORITY**

REVIEW OF FEASIBILITY, COSTS, AND : DOCKET NO. 18-06-02  
BENEFITS OF PLACING CERTAIN :  
CUSTOMERS ON STANDARD SERVICE :  
PURSUANT TO CONN. GEN. STAT. § 16- :  
245o(m) : AUGUST 13, 2019

**RETAIL ENERGY SUPPLY ASSOCIATION’S  
MOTION FOR ADMINISTRATIVE NOTICE AND/OR  
TO ADMIT EVIDENCE**

The Retail Energy Supply Association (“RESA”)<sup>1</sup> hereby moves the Public Utilities Regulatory Authority (“Authority”) to take administrative notice of and/or admit as evidence the filings and letter rulings identified below, which are relevant to the Authority’s evaluation of the issues in this proceeding and the credibility and probative value of other evidence presented in this proceeding.

**BACKGROUND**

On June 4, 2018, the Authority initiated the instant proceeding to review the feasibility, costs, and benefits of transferring to Standard Service all supplier customers specifically enumerated in Connecticut General Statutes section 16-245o(m) (“Hardship Customers”).<sup>2</sup> As part of its review, the Authority indicated that it intends to investigate the following areas:

- trends in Hardship Customers, including the conditions driving and impacting those trends;
- the number of Hardship Customers serviced by a supplier;
- the amount that Hardship Customers have paid versus the amount that the same customers would have paid if on Standard Service;

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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).

<sup>2</sup> Revised Notice of Proceeding (Feb. 7, 2019) (“Revised Notice of Proceeding”), at 1.

- the impact of placing Hardship Customers on Standard Service;
- any nonmonetary value that Hardship Customers have received while being serviced by a supplier; and
- any other information that will assist the Authority in reviewing the feasibility, costs, and benefits of possibly switching Hardship Customers to Standard Service.<sup>3</sup>

The Authority also encouraged docket participants to explore and identify what, if any, adjustments should be made to existing policies and practices, or if any new policies and practices may have the potential to positively impact Hardship Customers.<sup>4</sup>

Throughout the course of this proceeding, The Connecticut Light and Power Company d/b/a Eversource Energy (“Eversource”) and The United Illuminating Company (“UI”) (collectively, the “electric distribution companies” or “EDCs”) responded to various discovery, including providing information about Standard Service rates and prices billed by electric suppliers.<sup>5</sup> However, the EDCs subsequently admitted that their discovery responses included errors<sup>6</sup> and filed corrected discovery responses.<sup>7</sup>

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<sup>3</sup> See Revised Notice of Proceeding (Feb. 7, 2019), at 1.

<sup>4</sup> *Id.*

<sup>5</sup> See, e.g., UI Interrogatory OCC-3 Response (Nov. 26, 2018); UI Interrogatory OCC-4 Response (Nov. 26, 2018); Eversource Interrogatory OCC-3 Response (Nov. 27, 2018); Eversource Interrogatory OCC-4 Response (Nov. 27, 2018); Eversource Interrogatory OCC-3 Revised Response (Dec. 12, 2018); Eversource Interrogatory OCC-4 Revised Response (Dec. 12, 2018); Eversource Interrogatory OCC-4 Second Revised Response (Jan. 2, 2019); UI Interrogatory RESA-EDC-36 Response (Apr. 30, 2019); UI Interrogatory RESA-EDC-37 Response (Apr. 30, 2019); Eversource Interrogatory RESA-EDC-36 Response (Apr. 30, 2019); Eversource Interrogatory RESA-EDC-37 Response (Apr. 30, 2019); Eversource Interrogatory RESA-EDC-36 Revised Response (May 14, 2019); Eversource Interrogatory RESA-EDC-37 Revised Response (May 14, 2019).

<sup>6</sup> See, e.g., Eversource Interrogatory SEU-6 Response (Jun. 13, 2019); UI Interrogatory SEU-6 Response (Jun. 11, 2019).

<sup>7</sup> See UI Interrogatory OCC-13 Revised Response (Aug. 1, 2019); UI Interrogatory RESA-EDC-37 Revised Response (Aug. 1, 2019); Eversource Interrogatory RESA-EDC-36 Revised Response (Aug. 8, 2019); Eversource Interrogatory RESA-EDC-37 Revised Response (Aug. 8, 2019).

Both the Office of Consumer Counsel (“OCC”) and RESA relied upon the information provided in the EDCs’ discovery responses in preparing their pre-filed testimony.<sup>8</sup> While RESA questioned the validity of the data and pointed out errors in the information provided,<sup>9</sup> the OCC relied upon the EDCs’ discovery responses without question or inquiry into the accuracy of the information provided.<sup>10</sup>

### MOTION

After the submission of the OCC Testimony and RESA Testimony, the EDCs reported two errors to the Authority: (1) an error in UI’s Standard Service rates to be effective July 1, 2019 (“UI Error”);<sup>11</sup> and (2) an error in supplier prices billed by Eversource (“Eversource Error”).<sup>12</sup> As part of this proceeding, the Authority indicated that it intends to investigate, *inter alia*, the amount that Hardship Customers served by suppliers have paid versus the amount that the same customers would have paid if on Standard Service.<sup>13</sup> Thus, the accuracy of the EDCs’ Standard Service rates and billed supplier prices is relevant and material to the Authority’s evaluation of the issues in this proceeding and the credibility and probative value of other evidence presented in this proceeding. Accordingly, for the reasons discussed more fully below,

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<sup>8</sup> See, e.g., Direct Testimony of Susan M. Baldwin on Behalf of the Office of Consumer Counsel (Feb. 27, 2019) (“OCC Testimony”), at 15 n.18 (“In Sections III and IV of my testimony, the source of my data analysis is the following unless otherwise noted: OCC-003 (non-hardship data), OCC-004 (hardship data), and OCC-011 (EDC prices.)”); Testimony of Richard J. Hudson, Jr. on Behalf of Retail Energy Supply Association (May 21, 2019) (“RESA Testimony”), at 15-16 (identifying source data for Tables RJH-A and RJH-B as EDC Responses to RESA-EDC-37).

<sup>9</sup> See, e.g., Retail Energy Supply Association’s Motion for Extension of Time to Submit Pre-Filed Testimony (May 10, 2019) (Motion No. 020), at 2 (noting that certain aspects of Eversource’s responses to Interrogatories RESA-EDC-34, -36, and -37 “were incomplete or required clarification”); RESA Testimony, at 17-19 (identifying data inconsistencies or anomalies in source data provided by the EDCs).

<sup>10</sup> Hearing Transcript (“Tr.”), at 213-14 (OCC witness admitting that she did not audit EDC data and had no way of knowing if data was accurate).

<sup>11</sup> See Docket 19-01-02, *Administrative Proceeding to Review The United Illuminating Company’s Standard Service and Supplier of Last Resort Service 2019 Procurement Results and Rates*, UI Correspondence and Second Revised Exhibit 1 SS LRS Rates Effective July 2019 (May 24, 2019).

<sup>12</sup> See Undocketed Correspondence - Eversource Informational Filing Concerning Electronic Data Interchange Billing Adjustment (Jun. 28, 2019).

<sup>13</sup> Revised Notice of Proceeding, at 1.

RESA requests that the Authority take administrative notice of or admit as evidence the following (collectively, the “Materials”):

***UI Error*** - Docket No. 19-01-02 (collectively, the “UI Materials”):

- Authority Correspondence re: Approval of UI’s Standard Service and Last Resort Service generation rates and BFMCC; eff 7/1/2019 (May 23, 2019);<sup>14</sup>
- UI Correspondence and Second Revised Exhibit 1 SS LRS Rates Effective July 2019 (May 24, 2019);<sup>15</sup>
- Authority Correspondence re: corrected rates (May 24, 2019);<sup>16</sup>
- **\*\*CORRECTED LETTER\*\***: Authority Correspondence re: Approval of UI’s Standard Service and Last Resort Service generation rates and BFMCC; eff 7/1/2019 (May 29, 2019);<sup>17</sup>
- Authority Motion No. 2 Ruling (Jun. 11, 2019);<sup>18</sup> and
- UI Motion 02 Supplier Switching Activity Compliance Filing (Jul. 31, 2019).<sup>19</sup>

***Eversource Error*** – Undocketed Correspondence (collectively, the “Eversource Materials”):

- Eversource Informational Filing Concerning Electronic Data Interchange Billing Adjustment (Jun. 28, 2019);<sup>20</sup>
- Authority Response to Eversource 6-28 Letter Regarding EDI Error (Jun. 28, 2019);<sup>21</sup>

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<sup>14</sup> Available at:  
<http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/1855303b982fae6a852584030063e8d3?OpenDocument>.

<sup>15</sup> Available at:  
<http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/d7ff4c3cbbec15c08525840400529f20?OpenDocument>.

<sup>16</sup> Available at:  
<http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/004ac7a9110c090c8525840400612fe2?OpenDocument>.

<sup>17</sup> Available at:  
<http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/8844ed93ebddeb7d85258409005c5db5?OpenDocument>.

<sup>18</sup> Available at:  
<http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/44949225f4d8a88585258416006af11f?OpenDocument>.

<sup>19</sup> Available at:  
<http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/acdcb79d2797bddc852584480048a1de?OpenDocument>.

<sup>20</sup> Available at:  
<http://www.dpuc.state.ct.us/DPUCUndocketed.nsf/88f12116235902e185256a860056babb/85256a63004def9685258427005833c1?OpenDocument>.

- Eversource Compliance with the Public Utilities Regulatory Authority’s June 28, 2019 Letter Concerning Electronic Data Interchange Billing Adjustment (Jul. 1, 2019);<sup>22</sup>
- Authority Response to Eversource 7/1/19 Letter re: EDI Error (Jul. 3, 2019 );<sup>23</sup>
- Eversource Compliance with the Public Utilities Regulatory Authority’s July 3, 2019 Letter Concerning Electronic Data Interchange Billing Adjustment (Jul. 10, 2019);<sup>24</sup> and
- Eversource Compliance with the Public Utilities Regulatory Authority’s July 3, 2019 Letter Concerning Electronic Data Interchange Billing Adjustment – Public Version of Attachment 1 (Jul. 15, 2019).<sup>25</sup>

## **I. THE AUTHORITY SHOULD TAKE ADMINISTRATIVE NOTICE OF THE MATERIALS**

The Uniform Administrative Procedures Act provides, in relevant part, that “notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the agency’s specialized knowledge . . . .”<sup>26</sup> Judicial cognizable facts are those of which a court may take judicial notice.<sup>27</sup> The Connecticut Code of Evidence provides that: “A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) within the knowledge of people generally in the ordinary course of human experience, or (2) generally

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<sup>21</sup> Available at: <http://www.dpuc.state.ct.us/DPUCUndocketed.nsf/88f12116235902e185256a860056babb/a6ffec68dfc901908525842700684e8b?OpenDocument>.

<sup>22</sup> Available at: <http://www.dpuc.state.ct.us/DPUCUndocketed.nsf/88f12116235902e185256a860056babb/85256a63004def968525842a00627253?OpenDocument>.

<sup>23</sup> Available at: <http://www.dpuc.state.ct.us/DPUCUndocketed.nsf/88f12116235902e185256a860056babb/9944543470fbf5988525842c0055323a?OpenDocument>.

<sup>24</sup> Available at: <http://www.dpuc.state.ct.us/DPUCUndocketed.nsf/88f12116235902e185256a860056babb/85256a63004def968525843300691a84?OpenDocument>.

<sup>25</sup> Available at: <http://www.dpuc.state.ct.us/DPUCUndocketed.nsf/88f12116235902e185256a860056babb/85256a63004def96852584380050b8b9?OpenDocument>.

<sup>26</sup> Conn. Gen. Stat. § 4-178.

<sup>27</sup> *Conn. Light & Power Co. v. Conn. Dep’t of Pub. Util. Control*, 2010 Conn. Super. LEXIS 321, \*22 (Feb. 4, 2010).

accepted as true and capable of ready and unquestionable demonstration.”<sup>28</sup> The Authority’s regulations recognize that prior decisions and orders of the Commissioners constitute judicially cognizable facts.<sup>29</sup>

The rulings and correspondence from the Authority within the Materials are not subject to reasonable dispute and, therefore, are judicially cognizable.<sup>30</sup> The other items within the Materials are the filings upon which the Authority relied in issuing its correspondence and rulings.<sup>31</sup> As such, they are no longer subject to reasonable dispute and, therefore, are judicially cognizable.<sup>32</sup> Thus, the Authority should take administrative notice of the Materials.

## **II. THE AUTHORITY SHOULD ADMIT THE MATERIALS AS EVIDENCE**

Connecticut General Statutes section 4-178 sets forth the standards for the admission of evidence in contested cases before the Authority. Specifically, “[a]ny oral or documentary evidence may be received, but the agency shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence . . . .”<sup>33</sup> The Authority’s rules of practice also reflect these statutory provisions.<sup>34</sup>

Evidence is material if it addresses “facts directly in issue or those probative of matters in issue . . . .”<sup>35</sup> Evidence is relevant if it “has a logical tendency to aid the trier in the determination

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<sup>28</sup> Conn. Code of Evid. § 2; *see also West Hartford v. Freedom of Information Com.*, 218 Conn. 256, 264 (1991).

<sup>29</sup> *See* Conn. State Agency Regs. § 16-1-38(d) (“The commissioners may take notice of judicially cognizable facts, including prior decisions and orders of the commissioners.”).

<sup>30</sup> *Cf. id.*; *see also* Docket No. 06-12-07RE06, *Application of Liberty Power Holdings, LLC for an Electric Supplier License – Review of Allegations of Consumer Protection Violation*, Notice of Taking of Administrative Notice (Nov. 13, 2015) (taking administrative notice of, among other things, correspondence in the Authority’s undocketed database from the Authority and from a party).

<sup>31</sup> *See, generally*, Materials.

<sup>32</sup> *Cf.* Docket No. 06-12-07RE06, *Application of Liberty Power Holdings, LLC for an Electric Supplier License – Review of Allegations of Consumer Protection Violation*, Notice of Taking of Administrative Notice (Nov. 13, 2015) (taking administrative notice of, among other things, correspondence in the Authority’s undocketed database from the Authority and from a party).

<sup>33</sup> Conn. Gen. Stat. §4-178(1); *see also* Conn. State Agency Regs. §16-1-38(a).

<sup>34</sup> *See* Conn. State Agency Regs. § 16-1-38.

<sup>35</sup> *Salmon v. Dept. of Pub. Health and Addiction Services*, 259 Conn. 288, 317 (2002) (citations omitted).

of an issue.”<sup>36</sup> A “fact is relevant to another if in the common course of events, the existence of one, alone or with other facts, renders the existence of the other more certain or more probable.”<sup>37</sup> Indeed, “[a]ll that is required is that the evidence tend to support a relevant fact even to a slight degree . . . .”<sup>38</sup>

Moreover, evidence regarding the credibility and reliability of other evidence is relevant.<sup>39</sup> For instance,

[m]atters which might not be strictly relevant on direct examination may be so on cross-examination where that matter is explored for the purpose of credibility. Given that function of cross-examination in shedding light on the credibility of the witness’ direct testimony, “[t]he test of relevancy is not whether the answer sought will elucidate any of the main issues, but whether it will to a useful extent aid the court or jury in appraising the credibility of the witness and assessing the probative value of the direct testimony.”<sup>40</sup>

Further, inaccurate information submitted in one proceeding “is directly relevant to . . . credibility.”<sup>41</sup>

#### **A. The Materials Are Material And Relevant To The Issues In This Proceeding**

The Materials are directly material and relevant to the issues in this proceeding. As part of this proceeding, the Authority intends to investigate, *inter alia*, the amount that Hardship Customers served by suppliers have paid *versus* the amount that the same customers would have paid if on Standard Service.<sup>42</sup> In its testimony, RESA evaluated this issue, in part, based on the

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<sup>36</sup> *State v. Pagan*, 158 Conn. App. 620, 634 (2015).

<sup>37</sup> *State v. Colon*, 272 Conn. 106, 200 (2004).

<sup>38</sup> *Id.* at 201.

<sup>39</sup> *State v. Fasano*, 88 Conn. App. 17, 37 (2005) (“Once a witness has testified to certain facts, for example, his credibility is ‘a fact that is of consequence to [or material to] the determination of the action,’ and evidence relating to his credibility is therefore relevant—but only if the facts to which the witness has already testified are themselves relevant to an element of a crime, cause of action, or defense in the case.”) (emphasis in original) (quoting 2 C. Fishman, *Jones on Evidence* (7th Ed. 1994), at 260-61).

<sup>40</sup> *State v. Oulette*, 190 Conn. 84, 102 (1983) (quoting McCormick, *Evidence* (2d Ed. § 29)).

<sup>41</sup> *Cf. Weaver v. Knight*, 313 Conn. 393, 427 (2014) (“A claim that the witness gave false testimony in a prior case is directly relevant to a witness’ credibility.”).

<sup>42</sup> Revised Notice of Proceeding, at 1.

Standard Service rates that would be going into effect on July 1, 2019.<sup>43</sup> Since the UI Materials address the accuracy of UI's July 1, 2019 Standard Service rates, they are directly relevant and material to the issues in this proceeding and should be admitted as evidence.<sup>44</sup>

Moreover, information about instances in which customers may have been provided refunds or assessed additional charges is directly material and relevant to the issues in this proceeding because it will assist the Authority in understanding the amounts that Hardship Customers *actually* paid for supplier service. In particular, the Eversource Materials are relevant and material to demonstrate that there are instances in which billed supplier prices would not always reflect the amount customers actually paid for supplier service. For example, if any customers had amounts subsequently credited or debited,<sup>45</sup> the billed prices reported by the EDCs would not reflect those adjustments. Nor would the analysis in the OCC Testimony, which blindly relied on the data provided by the EDCs.<sup>46</sup> Therefore, like the UI Materials, the Eversource Materials are directly relevant and material to the issues in this proceeding and should be admitted as evidence.<sup>47</sup>

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<sup>43</sup> See RESA Testimony, at 21.

<sup>44</sup> See *Salmon*, 259 Conn. at 317 (noting that evidence is material if it addresses “facts directly in issue or those probative of matters in issue . . . .”); *Pagan*, 158 Conn. at 634 (noting that evidence is relevant if it “has a logical tendency to aid the trier in the determination of an issue”).

<sup>45</sup> See, e.g., Eversource Compliance with the Public Utilities Regulatory Authority’s July 3, 2019 Letter Concerning Electronic Data Interchange Billing Adjustment – Public Version of Attachment 1 (Jul. 15, 2019) (reflecting amounts that were subsequently credited or debited to customers).

<sup>46</sup> OCC Testimony, at 15 n.18 (“In Sections III and IV of my testimony, the source of my data analysis is the following unless otherwise noted: OCC-003 (non-hardship data), OCC-004 (hardship data), and OCC-011 (EDC prices).”); Tr. at 213-14 (OCC witness admitting that she did not audit EDC data and had no way of knowing if data was accurate).

<sup>47</sup> See *Salmon*, 259 Conn. at 317 (noting that evidence is material if it addresses “facts directly in issue or those probative of matters in issue . . . .”); *Pagan*, 158 Conn. at 634 (noting that evidence is relevant if it “has a logical tendency to aid the trier in the determination of an issue”).

**B. The Materials Are Material And Relevant To The Credibility And Probative Value Of Other Evidence Admitted In This Proceeding**

The Materials also call into question the accuracy of the data that the EDCs submitted in this proceeding. As previously noted, as part of this proceeding, the Authority intends to investigate, *inter alia*, the amount that Hardship Customers served by suppliers have paid *versus* the amount that the same customers would have paid if on Standard Service.<sup>48</sup> Thus, information about the EDCs' Standard Service rates, which are used to determine the amount that Hardship Customers would have paid if on Standard Service, is material and relevant.<sup>49</sup> As a consequence, information about the credibility and probative value of that evidence is also relevant and material.<sup>50</sup> Accordingly, because the UI Materials contain evidence regarding the credibility and probative value of other evidence submitted by UI in this proceeding (i.e., its Standard Service rates),<sup>51</sup> they are relevant and material and should be admitted as evidence in this proceeding.<sup>52</sup>

Similarly, information about billed supplier prices, which are used to determine the amounts that Hardship Customers have paid to suppliers, is material and relevant.<sup>53</sup> As a consequence, information about the credibility and probative value of that evidence is also relevant and material.<sup>54</sup> Accordingly, because the Eversource Materials contain evidence regarding the credibility and probative value of other evidence submitted by Eversource in this

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<sup>48</sup> Revised Notice of Proceeding, at 1.

<sup>49</sup> *Salmon*, 259 Conn. at 317 (noting that evidence is material if it addresses “facts directly in issue or those probative of matters in issue . . .”); *Pagan*, 158 Conn. at 634 (noting that evidence is relevant if it “has a logical tendency to aid the trier in the determination of an issue”).

<sup>50</sup> *Cf. Fasano*, 88 Conn. App. at 37; *Oulette*, 190 Conn. at 102; *Weaver*, 313 Conn. at 427.

<sup>51</sup> *See, e.g.*, UI Interrogatory RESA-EDC-8 Response (Mar. 15, 2019) (submitting Standard Service rates).

<sup>52</sup> *See Colon*, 272 Conn. at 200 (“One fact is relevant to another if in the common course of events, the existence of one, alone or with other facts, renders the existence of the other more certain or more probable.”); *id.* at 201 (“All that is required is that the evidence tend to support a relevant fact even to a slight degree . . .”).

<sup>53</sup> *Id.*

<sup>54</sup> *Cf. Fasano*, 88 Conn. App. at 37; *Oulette*, 190 Conn. at 102; *Weaver*, 313 Conn. at 427.

proceeding (i.e., billed supplier prices),<sup>55</sup> they are relevant and material and should be admitted as evidence in this proceeding.<sup>56</sup>

### CONCLUSION

For all the foregoing reasons, the Authority should take administrative notice of or admit as evidence the Materials, which are relevant to the Authority's evaluation of the issues in this proceeding as well as the credibility and probative value of other evidence presented in this proceeding.

Respectfully Submitted,  
RETAIL ENERGY SUPPLY  
ASSOCIATION

By 

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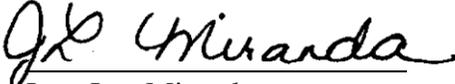
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<sup>55</sup> See, e.g., Eversource Interrogatory OCC-3 Response (Nov. 27, 2018); Eversource Interrogatory OCC-4 Response (Nov. 27, 2018); Eversource Interrogatory RESA-EDC-36 Response (Apr. 30, 2019); Eversource Interrogatory RESA-EDC-37 Response (Apr. 30, 2019).

<sup>56</sup> See *Colon*, 272 Conn. at 200 (“One fact is relevant to another if in the common course of events, the existence of one, alone or with other facts, renders the existence of the other more certain or more probable.”); *id.* at 201 (“All that is required is that the evidence tend to support a relevant fact even to a slight degree . . .”).

**CERTIFICATION**

I hereby certify that a copy of the foregoing was sent to all participants of record on this  
13th day of August 2019.

  
Joey Lee Miranda