STATE OF CONNECTICUT

PUBLIC UTILITIES REGULATORY AUTHORITY

REVIEW OF FEASIBILITY, COSTS, AND BENEFITS OF PLACING CERTAIN CUSTOMERS ON STANDARD SERVICE PURSUANT TO CONN. GEN. STAT. § 16-245o(m)	:	DOCKET NO. 18-06-02
	:	DECEMBER 10, 2019

WRITTEN EXCEPTIONS OF RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association ("RESA")[1] hereby submits its written exceptions to the Public Utilities Regulatory Authority's ("Authority") December 2, 2019 Proposed Final Decision[2] in the above-referenced proceeding. For the reasons set forth below, RESA requests that the Authority modify the Proposed Decision before issuing it in final. RESA does not request oral but reserves the right to participate should another participant request it.

BACKGROUND

In 2014, the General Assembly passed Public Act 14-75, *An Act Concerning Electric Customer Consumer Protection* (the "Act"). Section 4 of the Act authorized the Authority to open a proceeding to

> review the feasibility, costs and benefits of placing on standard service all customers of all electric suppliers (1) who are hardship cases for purposes of subdivision (3) of subsection (b) of section 16-262c, (2) having moneys due and owing deducted from such customers' bills by the electric distribution company pursuant to subdivision (4) of subsection (b) of section 16-262c, (3) receiving other financial assistance from an electric distribution company, or (4) who are otherwise protected by law from shut off of electricity services. Notwithstanding the provisions of section 16-245r, the authority may, in a

[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] Proposed Final Decision (Dec. 2, 2019) ("Proposed Decision").

> final decision issued pursuant to this subsection, order all such customers to be placed on standard service.[3]

Four years later - on June 4, 2018 - the Authority initiated the instant proceeding to undertake this review.[4]

On February 27, 2019, the Office of Consumer Counsel ("OCC") submitted the pre-filed testimony of Susan M. Baldwin, which it subsequently corrected (collectively, "OCC Testimony").[5] On May 21, 2019, RESA submitted the pre-filed testimony of Richard J. Hudson, Jr., which it subsequently corrected and, in response to The United Illuminating Company's ("UI") revised interrogatory responses, revised (collectively, "RESA Testimony").[6]

A hearing was held on July 16-17, 2019.[7] In response to requests at the hearing,[8] late-filed exhibits ("LFEs") were submitted by the electric distribution companies, The Connecticut Light and Power Company d/b/a Eversource Energy ("Eversource") and UI (together, the "EDCs"),[9] and a LFE hearing was held on August 15, 2019.[10] As a result of the LFE hearing, UI subsequently filed a revised version of LFE-4.[11] Thereafter, post-hearing briefs,[12] reply briefs,[13] and letters in lieu thereof were filed.[14]

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[3] P.A. 14-75, § 4 (now codified at Conn. Gen. Stat. § 16-245o(m)).

[4] Revised Notice of Proceeding (Feb. 7, 2019), at 1.

[5] Direct Testimony of Susan M. Baldwin on Behalf of the Office of Consumer Counsel (Feb. 27, 2019); Errata to Direct Testimony of Susan M. Baldwin (Apr. 9, 2019); Susan M. Baldwin – Errata to Testimony (Apr. 25, 2019); Errata to Direct Testimony of Susan M. Baldwin (Jun. 26, 2019).

[6] Testimony of Richard J. Hudson, Jr. On Behalf of Retail Energy Supply Association (May 21, 2019); Errata to Testimony of Richard J. Hudson, Jr (May 22, 2019); Revisions to Testimony of Richard J. Hudson, Jr. on Behalf of Retail Energy Supply Association (Aug. 14, 2019).

[7] Notice of Hearing (Jul. 9, 2019).

[8] *See* LFE Requests 1 through 5 (Jul. 25, 2019).

[9] Eversource Responses to LFE-3, LFE-5 (Jul. 25, 2019); Eversource Response to LFE-4 (Jul. 26, 2019); UI Responses to LFE-3 through LFE-5 (Jul. 25, 2019).

[10] *See* Time Schedule (Date of Last Revision: Dec. 2, 2019).

[11] *See* UI Revised LFE-4 (Aug. 30, 2019).

[12] Brief of the Department of Energy and Environmental Protection, Bureau of Energy and Technology Policy (Sep. 16, 2019); Brief of the Office of Consumer Counsel (Sep. 16, 2019); Brief of Retail Energy Supply Association (Sep. 16, 2019); Brief of William Tong, Attorney General for the State of Connecticut (Sep. 16, 2019).

On December 2, 2019, the Authority issued the Proposed Decision.[15] RESA now hereby submits its exceptions to the Proposed Decision.

LEGAL STANDARD

Connecticut General Statutes section 16-245o(m) authorizes the Authority to "initiate a docket to review the feasibility, costs and benefits of placing" all Hardship Customers of electric suppliers on Standard Service.[16] After conducting such a proceeding, the Authority may order that such customers be placed on Standard Service.[17] If the Authority does so, it must reopen this docket at least every two years.[18]

Hardship Customers are defined as customers:

> (1) who are hardship cases for purposes of subdivision (3) of subsection (b) of section 16-262c, (2) having moneys due and owing deducted from such customers' bills by the electric distribution company pursuant to subdivision (4) of subsection (b) of section 16-262c, (3) receiving other financial assistance from an electric distribution company, or (4) who are otherwise protected by law from shutoff of electricity services.[19]

For the purposes of this definition, "hardship cases" include, without limitation:

> (i) A customer receiving local, state or federal public assistance; (ii) a customer whose sole source of financial support is Social Security, United States Department of Veterans Affairs or unemployment compensation benefits; (iii) a customer who is head of the household and is unemployed, and

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[13] Reply Brief of the Department of Energy and Environmental Protection, Bureau of Energy and Technology Policy (Sep. 23, 2019); Reply Brief of the Office of Consumer Counsel (Sep. 23, 2019); Reply Brief of Retail Energy Supply Association (Sep. 23, 2019); Reply Brief of William Tong, Attorney General for the State of Connecticut (Sep. 23, 2019).

[14] Letter in Lieu of Brief of Direct Energy Business, LLC and Direct Energy Services, LLC (Sep. 16, 2019); Letter in Lieu of Brief of The Connecticut Light and Power Company d/b/a Eversource Energy (Sep. 16, 2019); Letter in Lieu of Brief of The United Illuminating Company (Sep. 16, 2019); Letter in Lieu of Reply Brief of Direct Energy Business, LLC and Direct Energy Services, LLC (Sep. 23, 2019); Letter in Lieu of Reply Brief of The Connecticut Light and Power Company d/b/a Eversource Energy (Sep. 23, 2019); Letter in Lieu of Reply Brief of The United Illuminating Company (Sep. 23, 2019).

[15] *See* Proposed Decision.

[16] *See* Conn. Gen. Stat. § 16-245o(m).

[17] *See id*.

[18] *See id*.

[19] *See id.*

> the household income is less than three hundred per cent of the poverty level determined by the federal government; (iv) a customer who is seriously ill or who has a household member who is seriously ill; (v) a customer whose income falls below one hundred twenty-five per cent of the poverty level determined by the federal government; and (vi) a customer whose circumstances threaten a deprivation of food and the necessities of life for himself or dependent children if payment of a delinquent bill is required.[20]

ARGUMENT

All customers should have the right to choose the source of their retail electric supply. Transferring Hardship Customers currently being served by electric suppliers to Standard Service violates the Contracts Clause of the United States Constitution and substantive due process. For the reasons discussed more fully below, the Authority should permit Hardship Customers to continue to maintain their right to choose an electric supplier and decline to place such customers on Standard Service. If the Authority nevertheless orders all Hardship Customers placed on Standard Service, it should: (i) delay this transfer until July 1, 2020, when Standard Service rates change; and (ii) create a distinct tariff rate schedule for Hardship Customers.

I. CUSTOMERS SHOULD NOT BE FORCED TO PAY MORE FOR ELECTRIC SERVICE

When Hardship Customers enroll with electric suppliers, they make a choice. Through the Proposed Decision, not only would the Authority take away that choice, it would compel tens of thousands consumers to take service from the EDCs. For a significant number of customers, this would result in those customers paying ***more*** for electricity. As a consequence, these customers may "have paid more for electric service than they would have . . . and . . . not received commensurate value for this overpayment."[21] In fact, it is undisputed that Standard

[20] Conn. Gen. Stat. § 16-262c(b)(3).

[21] *Cf.* Proposed Decision, at 1.

Service does not provide any value added benefits.[22] As a consequence, in many cases, compelling customers to take such service will require them to pay more and deprive them of benefits for which they freely contracted.[23]

The retail electric supply market enables Connecticut customers to make choices about their retail electric supply. By being able to evaluate and select their retail electric supply, Connecticut customers are able to make informed decisions about the best way to meet their individual needs, just like they make decisions about purchasing other products and services. Customers may choose from Standard Service to an array of competitive retail electric supply options. These competitive retail electric options may have prices lower than Standard Service rates,[24] may offer more renewable energy content than the statutory minimum,[25] may include additional, value-added features,[26] and may provide long-term stable pricing over terms significantly longer than the six-month term of Standard Service.[27] Hardship Customers are no less deserving of the freedom to choose their own electric supply than other customers. Thus, rather than compelling Hardship Customers to purchase Standard Service by administrative decree and cancelling electric supply contracts that they freely and deliberately entered into, the Authority should continue to allow Hardship Customers to shop for electric supply.

The undisputed evidence in this proceeding demonstrates that significant numbers of Hardship Customer bills reflect savings over Standard Service. When the Authority relied on the

[22] *See* RESA Testimony, at 40-65 (discussing value-added components included in supplier service, but not included in Standard Service).

[23] *Id.* at 41 (listing value-added components included in supplier service).

[24] *See* RESA Testimony, at 15 (Between January and March 2019, 47.3% to 52.3% of the electric supplier billed prices for Hardship Customers in the UI service territory were lower than the Standard Service rate); *see also* OCC Testimony, at 26 (indicating that 22% of bills for Hardship Customers served by electric suppliers in the period studied by the OCC (i.e., 133,192 bills) reflected savings over Standard Service).

[25] *See* RESA Testimony, at 52-59.

[26] *See id.* at 49-52.

[27] *See id.* at 41-48.

OCC's testimony about pricing during October 2016 to September 2018,[28] it ignored evidence about savings realized by Hardship Customers in more recent periods. For example, between January and March 2019, 38% to 41% of the electric supplier billed prices for Hardship Customers in the Eversource service territory were lower than the Standard Service rate.[29] In the UI service territory, for this same period, the proportion of Hardship Customers receiving savings was even higher. Between January and March 2019, 47.3% to 52.3% of the electric supplier billed prices for Hardship Customers in the UI service territory were lower than the Standard Service rate.[30] Every single one of these customers would have been billed more if (s)he had been compelled to take Standard Service during these months. Thus, the OCC's analysis is not "indicative of the amount of continued savings that could be recognized in the future if hardship customers were returned to standard service."[31] Further, even in the period of time studied by the OCC (i.e., October 2016 to September 2018), tens of thousands of Hardship Customer bills reflected savings over Standard Service.[32]

These customers should be allowed to continue to receive the benefits for which they contracted. They should not be compelled to pay more by purchasing Standard Service. Thus, if despite the foregoing, the Authority requires Hardship Customers to be placed on Standard Service, it should, as has been done in other states,[33] allow those customers to receive, and enroll

[28] Proposed Decision, at 8.

[29] *See* RESA Testimony, at 16.

[30] *See id.* at 15.

[31] Proposed Decision, at 8.

[32] *See* OCC Testimony, at 26 (indicating that 22% of bills for Hardship Customers served by electric suppliers in OCC Study Period (i.e., 133,192 bills) reflected savings over Standard Service).

[33] *See, e.g.*, State of New York Public Service Commission Case 12-M-0476, *Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in New York State*; Case 98-M-1343, *In the Matter of Retail Access Business Rules*; Case 06-M-0647, *In the Matter of Energy Service Company Price Reporting Requirements*; Case 98-M-0667, *In the Matter of Electronic Data Interchange*, Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies (Dec. 16, 2016) ("NY Order"), at 24-25 (permitting suppliers to serve customers participating in utility low-income assistance programs if the suppliers can provide a guaranteed savings).

in, service with electric suppliers that provides guaranteed savings compared to Standard Service. In this way, all Hardship Customers will "only pay for the ***lowest cost*** supply option available rather than more costly supply options."[34]

II. THE CONTRACTS CLAUSE OF THE UNITED STATES CONSTITUTION PROHIBITS TRANSFERRING HARDSHIP CUSTOMERS CURRENTLY BEING SERVED BY ELECTRIC SUPPLIERS TO STANDARD SERVICE

The Proposed Decision concluded that transferring Hardship Customers currently being served by electric suppliers to Standard Service does not violate Article I, Section 10 of the United States Constitution ("Contracts Clause").[35] On the contrary, the Contracts Clause prohibits transferring such customers to Standard Service because doing so substantially infringes Hardship Customers' and electric suppliers' contractual expectations without serving a legitimate public purpose or using reasonable and necessary means to do so.

A. Transferring Hardship Customers To Standard Service Will Impair Contractual Relationships

The Contracts Clause provides, in pertinent part: "No State shall . . . pass any . . . law impairing the obligation of contracts."[36] A law violates the Contracts Clause if it operates "as a substantial impairment of a contractual relationship."[37] This determination requires the evaluation of "three components: whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial."[38] There is no dispute that: (a) each electric supplier has a contractual relationship with each of its

[34] Proposed Decision, at 9 (emphasis added).

[35] *See* Proposed Decision, at 11.

[36] U.S. Const. art. I, § 10.

[37] *General Motors Corp. v. Romein*, 503 U.S. 181, 186 (citation omitted); *see also Serrano v. Aetna Ins. Co.*, 233 Conn. 437, 447 (1995).

[38] *General Motors*, 503 U.S. at 186; *see also Serrano*, 233 Conn. at 447.

customers;[39] and (b) ordering that all Hardship Customers be returned to Standard Service before the expiration of their contracts would impair the contractual relationships between each of those customers and his or her electric supplier because it will disrupt the current expectations and obligations of each customer and each supplier under those contractual relationships.[40]

In the Second Circuit, courts have developed a three-prong test to ascertain whether a law impermissibly encroaches upon contract rights: (1) is the contractual impairment substantial?; if so, (2) does the law serve a legitimate public purpose such as remedying a general social or economic problem; and (3) if such purpose is demonstrated, are the means chosen to accomplish this purpose reasonable and necessary.[41]

B. The Impairment Will Be Substantial

Under the first prong, "[t]he primary consideration in determining whether the impairment is substantial is the extent to which reasonable expectations under the contract have been disrupted."[42] However, where a "plaintiff could anticipate, expect, or foresee the governmental action at the time of contract execution, the plaintiff will ordinarily not be able to prevail."[43]

Here, the impairment will be substantial because it will frustrate customers' and electric suppliers' reasonable contractual expectations (i.e., that both will complete and comply with the terms of their contracts and receive the benefits thereof).[44] Additionally, both Hardship

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[39] *See, e.g.*, Conn. Gen. Stat. § 16-245o(f)(2) ("Each electric supplier shall provide each customer with a demand of less than one hundred kilowatts, a written contract that conforms with the provisions of this section . . . .").

[40] *See Stoneridge Apts., Co. v. Lindsay*, 303 F. Supp. 677, 679 (S.D.N.Y. 1969) ("The [Contract Clause] is clearly intended to protect benefits and rights of a party under a contract . . . .").

[41] *Buffalo Teachers Fed'n v. Tobe*, 464 F.3d 362, 368 (2d Cir. 2006); *see Alliance of Auto. Mfrs., Inc. v. Currey*, 984 F. Supp. 2d 32, 54 (D. Conn. 2013).

[42] *Sanitation & Recycling Indus., Inc. v. City of New York*, 107 F.3d 985, 993 (2d Cir. 1997).

[43] *Sal Tinnerello & Sons, Inc. v. Town of Stonington*, 141 F.3d 46, 53 (2d Cir. 1998).

[44] *See Norfolk & W. Ry. Co. v. Am. Train Dispatchers Ass'n*, 499 U.S. 117, 129 (1991) ("The obligation of a contract is the law which binds the parties to perform their agreement.") (internal quotation marks omitted).

Customers and electric suppliers could incur substantial losses. For example, as demonstrated in both the OCC Testimony and RESA Testimony, tens of thousands of Hardship Customers served by electric suppliers are receiving service pursuant to contracts that provide those customers with significant value, like savings compared to Standard Service.[45] If those customers are returned to Standard Service, they will lose that value.[46] For instance, customers who have been billed at competitive supply prices lower than Standard Service rates will pay more for electric supply.[47]

In addition, if Hardship Customers are returned to Standard Service, suppliers will not receive the revenues currently expected from those contracts. Moreover, the Proposed Decision would prohibit electric suppliers from collecting early termination fees ("ETFs") from Hardship Customers who are transferred to Standard Service.[48] However, even if suppliers were permitted to collect these ETFs, these ETFs may not be sufficient to allow electric suppliers to cover the costs that they incur when providing service to customers because electric suppliers frequently incur substantially higher costs to acquire these customers and for the hedges to serve those customers.[49] If customers are not required to pay ETFs specified by contract, the losses that electric suppliers could suffer will be even more significant. Consequently, ordering Hardship Customers who are currently served by electric suppliers to be returned to Standard Service

[45] *See* RESA Testimony, at 23-31, 40-65 (describing the value Hardship Customers receive from electric supplier product offerings); RESA Testimony, at 15 (Between January and March 2019, 47.3% to 52.3% of the electric supplier billed prices for Hardship Customers in the UI service territory were lower than the Standard Service rate); *see also* OCC Testimony, at 26 (indicating that 22% of bills for Hardship Customers served by electric suppliers in the period studied by the OCC (i.e., 133,192 bills) reflected savings over Standard Service).

[46] *See* OCC Testimony, at 26 (testifying that 22% of bills issued to Hardship Customers during the period studied resulted in customer savings); RESA Testimony, at 23-31, 40-65 (describing the value Hardship Customers receive from electric supplier product offerings).

[47] *See* RESA Testimony, at 15 (Between January and March 2019, 47.3% to 52.3% of the electric supplier billed prices for Hardship Customers in the UI service territory were lower than the Standard Service rate); *see also* OCC Testimony, at 26 (indicating that 22% of bills for Hardship Customers served by electric suppliers in the period studied by the OCC (i.e., 133,192 bills) reflected savings over Standard Service).

[48] *See* Proposed Decision, at 12.

[49] *Cf.* RESA Testimony, at 75 ("Suppliers must procure energy and related services in the wholesale energy markets to hedge their retail load positions. These procurement activities carry a significant cost.").

without paying required termination fees would substantially impair electric suppliers' contractual rights.

The Contracts Clause protects each and every contract entered into by an individual Hardship Customer and an electric supplier.[50] In the instant proceeding, because the actual impairment depends on facts and circumstances unique to each contract, the full extent of the impairment that will be forced upon each customer and supplier cannot be understood without reviewing each individual contracting arrangement,[51] including the impact on each customer[52] and on the underlying obligations of the suppliers serving those customers.[53] Doing so, however, would be a significant undertaking, since tens of thousands of Hardship Customers may be enrolled on competitive supply.[54] The potential scope of this undertaking makes transferring Hardship Customers to Standard Service unfeasible.

C. Suppliers Could Not Reasonably Anticipate Or Plan For The Impairment

Despite this impairment, the Authority concluded that forcing customers to take Standard Service will not violate the Contracts Clause because "[s]uppliers have known for five years that there was a possibility hardship customers could be returned to standard service, yet they voluntarily continued contracting with hardship customers and in doing so received a premium for those contracts."[55] Because Connecticut General Statutes section 16-245o(m) does not

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[50] *General Motors*, 503 U.S. at 186; *see also Serrano*, 233 Conn. at 447.

[51] *See Sal Tinnerello & Sons, Inc.*, 141 F.3d at 53 (observing that an analysis of specific contracts may be needed to determine if the contracts were substantially impaired).

[52] *See* RESA Testimony, at 15 (Between January and March 2019, 47.3% to 52.3% of the electric supplier billed prices for Hardship Customers in the UI service territory were lower than the Standard Service rate); RESA Testimony, at 23-31, 40-65 (describing the value Hardship Customers receive from electric supplier product offerings); *see also* OCC Testimony, at 26 (indicating that 22% of bills for Hardship Customers served by electric suppliers in the period studied by the OCC (i.e., 133,192 bills) reflected savings over Standard Service).

[53] *See* RESA Testimony, at 75 (describing the power procurement costs incurred by electric suppliers to serve customers).

[54] *See* RESA Testimony, at 15-16 (indicating that, for each month between the months of December 2018 and March 2019, thousands of bills were issued to Hardship Customers for competitive supply).

[55] Proposed Decision, at 11.

require the Authority to return Hardship Customers with existing contracts with electric suppliers to Standard Service,[56] neither electric suppliers nor Hardship Customers could "anticipate, expect, or foresee" that the Authority would seek to terminate their contracts before their natural expiration dates. Moreover, suppliers had no reason to believe that the Authority would not only impair their contractual rights but would also prohibit suppliers from collecting early termination fees. Electric suppliers could not have foreseen that the Authority would impose such a condition. In fact, Connecticut law expressly authorizes electric suppliers to include fifty-dollar ($50.00) ETFs in residential customer contracts.[57]

Further, the Authority found that "[s]uppliers cannot now feign surprise at a contingency they were aware of and could have planned for."[58] However, this finding fails to recognize that there was no reasonable way for suppliers to plan for this contingency. The undisputed evidence establishes that suppliers do ***not*** know which customers are hardship and which are not.[59] As a consequence, the only way suppliers could "plan for this contingency" is to refrain from entering into ***any*** contracts during the past five years; thereby, taking away choice from all customers.

D. Transferring Hardship Customers To Standard Service Does Not Serve A Significant And Legitimate Public Purpose

When a state law constitutes substantial impairment, the state must show a significant and legitimate public purpose behind the law.[60] A legitimate public purpose is one "aimed at remedying an important general social or economic problem . . . ."[61] The Proposed Decision

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[56] *See* Conn. Gen. Stat. § 16-245o(m) ("[T]he authority ***may***, in a final decision issued pursuant to this subsection, order all such customers to be placed on standard service.") (emphasis added).

[57] *See* Conn. Gen. Stat. § 16-245o(h)(7).

[58] Proposed Decision, at 11,

[59] *See* Hearing Transcript, at 121, 126.

[60] *Buffalo Teachers Fed'n*, 464 F.3d at 368 (*citing Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411–12 (1983); *Sanitation & Recycling Indus., Inc. v. City of New York*, 107 F.3d 985, 993 (2d Cir. 1997)).

[61] *Buffalo Teachers Fed'n*, 464 F.3d at 368.

identified the purposes to be served by transferring Hardship Customers to Standard Service as saving Connecticut ratepayers extra costs, allowing "a greater amount public funds to become available to directly benefit the hardship customers for whom the funds are established," and "sav[ing] the majority of hardship customers the extra money they are paying to third-party suppliers."[62] However, as the record here demonstrates, the return of Hardship Customers to Standard Service could actually harm tens of thousands of Hardship Customers and deprive them of the savings and other value that they receive through their contracts with electric suppliers.[63] As a consequence, a substantial portion of Hardship Customers[64] may "have paid more for electric service than they would have . . . and . . . not received commensurate value for this overpayment"[65] negatively impacting all ratepayers.[66] Thus, returning Hardship Customers currently served by electric suppliers to Standard Service does not serve a legitimate public purpose.

Moreover, restricting Hardship Customers to Standard Service substantially undermines legitimate public purposes embodied in other Connecticut energy policies, such as the promotion of renewable energy and the encouragement of conservation.[67] Although the Proposed Decision finds that "[t]he evidence in this docket did not indicate that hardship customers contract with a

[62] Proposed Decision, at 11.

[63] *See* RESA Testimony, at 15 (Between January and March 2019, 47.3% to 52.3% of the electric supplier billed prices for Hardship Customers in the UI service territory were lower than the Standard Service rate); RESA Testimony, at 23-31, 40-65 (describing the value Hardship Customers receive from electric supplier product offerings); *see also* OCC Testimony, at 26 (indicating that 22% of bills for Hardship Customers served by electric suppliers in the period studied by the OCC (i.e., 133,192 bills) reflected savings over Standard Service).

[64] *See* RESA Testimony, at 15 (Between January and March 2019, 47.3% to 52.3% of the electric supplier billed prices for Hardship Customers in the UI service territory were lower than the Standard Service rate).

[65] *Cf.* Proposed Decision, at 1.

[66] *Id.* ("This overpayment affects not only the hardship customers, but all Connecticut ratepayers contributing to the hardship payments.").

[67] *See* RESA Testimony, at 40-65.

supplier to purchase clean energy,"[68] this is simply incorrect. In fact, RESA specifically presented evidence that Hardship Customers do, indeed, purchase products with one hundred percent (100%) renewable content.[69]

E. Transferring Hardship Customers To Standard Service Is Not Reasonable And Necessary

Moreover, the mere existence of a legitimate public purpose does not end the relevant inquiry. Rather, "the means chosen to accomplish this purpose [must be] reasonable and necessary."[70] To satisfy this standard,

> it must be shown that the state did (1) "consider impairing the ... contracts on par with other policy alternatives" or (2) not "impose a drastic impairment when an evident and more moderate course would serve its purpose equally well," nor (3) act unreasonably "in light of the surrounding circumstances."[71]

In this case, returning existing Hardship Customers to Standard Service is not appropriate "in light of the surrounding circumstances" as it will result in the loss of the value that tens of thousands of Hardship Customers receive from their contracts with electric suppliers.[72] Forcing Hardship Customers who are receiving service from electric suppliers at prices lower than the Standard Service rate[73] to enroll on Standard Service will increase, and not reduce, these customers' costs contrary to the Proposed Decision's stated purpose of providing savings to

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[68] Proposed Decision, at 10.

[69] *See* RESA Testimony, at 57-58 (testifying that Verde Energy markets exclusively 100% green energy products to residential customers and that Verde Energy was the supplier for 30,402 Eversource Hardship Customer bills and 13,429 UI Hardship Customer bills during the period studied by the OCC).

[70] *See Buffalo Teachers Fed'n*, 464 F.3d at 368.

[71] *Id.* at 371 (*quoting U.S. Trust Co. v. New Jersey*, 431 U.S. 1, 30-31 (1977)).

[72] *See* RESA Testimony, at 15 (Between January and March 2019, 47.3% to 52.3% of the electric supplier billed prices for Hardship Customers in the UI service territory were lower than the Standard Service rate); RESA Testimony, at 23-31, 40-65 (describing the value Hardship Customers receive from electric supplier product offerings); *see also* OCC Testimony, at 26 (indicating that 22% of bills for Hardship Customers served by electric suppliers in the period studied by the OCC (i.e., 133,192 bills) reflected savings over Standard Service).

[73] *See* RESA Testimony, at 15 (Between January and March 2019, 47.3% to 52.3% of the electric supplier billed prices for Hardship Customers in the UI service territory were lower than the Standard Service rate); *see also* OCC Testimony, at 26 (indicating that 22% of bills for Hardship Customers served by electric suppliers in the period studied by the OCC (i.e., 133,192 bills) reflected savings over Standard Service).

these customers.[74] Further, there are significantly less drastic alternatives available, [75] including imposing the prohibition prospectively;[76] thereby, avoiding substantially impairing existing contractual arrangements. Thus, returning Hardship Customers to Standard Service is not reasonable or necessary.

III. COMPELLING HARDSHIP CUSTOMERS TO TAKE STANDARD SERVICE VIOLATES SUBSTANTIVE DUE PROCESS

Regulatory action affecting Hardship Customer contracts is also subject to substantive due process requirements.[77] Substantive due process requires that economic regulation be rationally related to a legitimate state purpose.[78] Transferring all Hardship Customers to Standard Service is not rationally related to such a purpose. As noted, the Proposed Decision identified the purposes to be served by transferring Hardship Customers to Standard Service as saving Connecticut ratepayers extra costs, allowing "a greater amount public funds to become available to directly benefit the hardship customers for whom the funds are established," and "sav[ing] the majority of hardship customers the extra money they are paying to third-party suppliers."[79] However, the evidence demonstrates that tens of thousands of bills of Hardship Customers being served by electric suppliers reflected savings compared to Standard Service.[80] Transferring Hardship Customers receiving such bills to Standard Service would cause them to receive

[74] *See* Proposed Decision, at 11.

[75] *See* RESA Testimony, at 80-81 (describing less drastic alternatives, including alternatives implemented by other states).

[76] *See, e.g.,* NY Order, at 20-21 (implementing a prohibition on supplier service to customers participating in utility low-income assistance programs at the expiration of such customers' then-existing supplier agreements).

[77] *See* U.S. Const. Amend. XIV; Conn. Const. art. I, § 8; *Real Estate Listing Service, Inc. v. Connecticut Real Estate Com.*, 179 Conn. 128, 136 (1979) ("It has long been recognized that the right to make contracts is embraced in the concept of liberty under the due process clause of the fourteenth amendment to the United States constitution.").

[78] *See Fair Cadillac-Oldsmobile Isuzu Partnership v. Bailey*, 229 Conn. 312, 319; *Real Estate listing Service, Inc.*, 179 Conn. at 137.

[79] Proposed Decision, at 11.

[80] *See* RESA Testimony, at 15 (Between January and March 2019, 47.3% to 52.3% of the electric supplier billed prices for Hardship Customers in the UI service territory were lower than the Standard Service rate); *see also* OCC Testimony, at 26 (indicating that 22% of bills for Hardship Customers served by electric suppliers in the period studied by the OCC (i.e., 133,192 bills) reflected savings over Standard Service).

service at ***higher*** rates and to pay ***more*** than they would under their existing supply contracts. As a consequence, a substantial portion of Hardship Customers[81] may "have paid more for electric service than they would have . . . and . . . not received commensurate value for this overpayment"[82] negatively impacting all ratepayers.[83] Thus, forcing customers to pay more for their electric supply by compelling them to take Standard Service is not rationally related to the Proposed Decision's stated purposes and violates the substantive due process rights of consumers and suppliers.

IV. IF PURA ORDERS HARDSHIP CUSTOMERS RETURNED TO STANDARD SERVICE, NO SUCH TRANSFER SHOULD TAKE PLACE BEFORE JULY 1, 2020

The Proposed Decision would require Hardship Customers currently receiving service from an electric supplier to be transferred to Standard Service by March 1, 2020.[84] This provision of the Proposed Decision should be revised to ensure that, if Hardship Customers are transferred to Standard Service, this transfer does not occur until July 1, 2020.

Residential Standard Service rates change every six months, on January 1 and July 1.[85] Currently, Standard Service rates have been approved for the six-month period ending June 30, 2020.[86] Hardship Customers have had the opportunity to consider those rates when shopping for electric supply for this six-month period and may have decided to enroll in competitive supply

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[81] *See* RESA Testimony, at 15 (Between January and March 2019, 47.3% to 52.3% of the electric supplier billed prices for Hardship Customers in the UI service territory were lower than the Standard Service rate).

[82] *Cf.* Proposed Decision, at 1.

[83] *Id.* ("This overpayment affects not only the hardship customers, but all Connecticut ratepayers contributing to the hardship payments").

[84] *See* Proposed Decision at 13.

[85] *See, e.g.*, Docket No. 20-01-01, *Administrative Proceeding to Review The Connecticut Light and Power Company's Standard Service and Supplier of Last Resort Service 2020 Procurement Results and Rates*, Authority Correspondence (Nov. 26, 2019) (setting Eversource Standard Service rates for the period January 1, 2020 to June 30, 2020); Docket No. 20-01-02, *Administrative Proceeding to Review The United Illuminating Company's Standard Service and Supplier of Last Resort Service 2020 Procurement Results and Rates*, Authority Correspondence (Nov. 26, 2019) (setting UI Standard Service rates for the period January 1, 2020 to June 30, 2020).

[86] *See id*.

products that have lower prices or other more attractive features. Delaying the transfer of Hardship Customers to Standard Service until after these Standard Service rates have expired (i.e., July 1, 2020) will enable Hardship Customers who made electric supply decisions based on these announced rates to receive the benefits that they expected to receive when they arranged for electric supply for the six-month period ending June 30, 2020.

Further, transferring Hardship Customers to Standard Service has the potential to harm Standard Service suppliers and increase future Standard Service prices. If Hardship Customers are transferred to Standard Service, Standard Service will experience an influx of customers ("reverse migration"). This influx of customers will be significantly higher than normal levels of customer migration to Standard Service and was unexpected when bids to supply Standard Service were submitted and approved.[87] In fact, even if bidders followed developments in the instant proceeding and concluded that there was some possibility that Hardship Customers might be transferred to Standard Service, by the time bids were approved in late October 2019, those bidders had no indication about when any transfer would occur.[88] As a consequence, the winning bidders could not have priced costs associated with a significant influx of Hardship Customers[89] into their bids to supply Standard Service through June 30, 2020. If any transfer of Hardship Customers occurs during the January 1, 2020 to June 30, 2020 Standard Service term, Standard Service suppliers will be unfairly forced to bear these costs. The Authority, however, can avoid creating this inequity by making any transfer of Hardship Customers to Standard Service

[87] *See* Docket No. 19-01-01, *Administrative Proceeding to Review The Connecticut Light and Power Company's Standard Service and Supplier of Last Resort Service 2019 Procurement Results and Rates*, Authority Correspondence (Oct. 22, 2019) (approving Standard Service bids and resulting contracts for Eversource); Docket No. 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*, Authority Correspondence (Oct. 23, 2019) (approving Standard Service bids and resulting contracts for UI).

[88] *See*, *generally*, Record.

[89] *See* RESA Testimony, at 15-16 (indicating that, for each month between the months of December 2018 and March 2019, thousands of bills were issued to Hardship Customers for competitive supply).

effective as of the start of the following Standard Service term (i.e., July 1, 2020) for which supply bids may have not yet been submitted.[90]

If the Authority does not do this and requires the transfer of Hardship Customers to take place by March 1, 2020, it could also adversely affect future Standard Service rates. For instance, future bidders may conclude that supplying Standard Service in Connecticut is subject to heightened risk of regulatory action that, every two years,[91] could either result in higher than expected migration to competitive supply options or reverse migration as the Authority evaluates whether customers can or cannot be served by competitive suppliers. To respond to this increased risk, bidders will likely include risk premiums in their bid prices. Any such risk premiums ultimately will be incorporated into Standard Service rates and passed on to Standard Service customers, including the Hardship Customers on Standard Service. By contrast, delaying the transfer of Hardship Customers to Standard Service until the Standard Service term beginning on July 1, 2020 will enable bidders to appropriately reflect the cost of the expected influx of Hardship Customers and give them confidence in a stable regulatory environment that respects the expectations and assumptions built into their bids.

V. THE AUTHORITY SHOULD CREATE A DISTINCT TARIFF RATE SCHEDULE FOR HARDSHIP CUSTOMERS

The Proposed Decision stated that the EDCs can implement "the ability to identify a hardship customer according to the statutory definition."[92] However, the EDCs do not currently

[90] *See, generally, e.g.*, Docket No. 20-01-01, *Administrative Proceeding to Review The Connecticut Light and Power Company's Standard Service and Supplier of Last Resort Service 2020 Procurement Results and Rates*; Docket No. 20-01-02, *Administrative Proceeding to Review The United Illuminating Company's Standard Service and Supplier of Last Resort Service 2020 Procurement Results and Rates.*

[91] *See* Conn. Gen. Stat. § 16-245o(m) (requiring the Authority to reopen the proceeding every two years).

[92] Proposed Decision, at 10.

classify customers based on the existing statutory definitions.[93] Thus, it is not clear what customers will actually be subject to the prohibition. Further, the Proposed Decision contemplated the use of a "hardship code associated with a customer's name in the EDCs' billing system" to do this.[94] However, suppliers do not have access to these codes.[95] Thus, RESA recommends that, if the Authority bans customer choice for Hardship Customers, it order the EDCs to create a specific rate class for these customers as has been done in other states.[96] In this way, the Authority can obviate the risk that suppliers will attempt to enroll Hardship Customers; thereby, reducing customer frustration and confusion and the administrative burden on the EDCs and suppliers in responding to customer inquiries about rejected enrollments.[97] Moreover, since Eversource's Massachusetts affiliates already have a distinct tariff for hardship customers, creating a similar tariff rate schedule in Connecticut is a workable, practical solution that should not significantly increase costs.

CONCLUSION

For all the foregoing reasons, the Authority should continue to permit Hardship Customers to exercise their right to choose who provides their electric supply and under what terms. Should the Authority, however, decide to force Hardship Customers to take Standard Service, it should do so in a manner that avoids running afoul of the Contracts Clause and

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[93] *Compare* Conn. Gen. Stat. §§ 16-245o(m), 16-262c *with, e.g.*, Eversource Response to Interrogatory RESA-EDC-039 (Apr. 30, 2019) (indicating that "[c]ustomers whose income is at or below sixty percent (60%) of the state income guidelines are classified as hardship in the Eversource service territory"); UI Response to Interrogatory RESA-EDC-043 (Apr. 30, 2019) (indicating that certain customers are classified as Hardship Customers because of "State Median Income Guidelines").

[94] *See* Proposed Decision, at 10.

[95] *See* Hearing Transcript, at 121-22, 126 (indicating that a supplier would not be notified of the fact that a rejection resulted from a prospective customer's being a Hardship Customer).

[96] *See, e.g.*, D.P.U. 88-100, *Eastern Edison Company*, 1988 WL 391504 (Mass. D.P.U. Dec. 30, 1988) (authorizing Rate R-2, a rate providing a discount to qualified customers).

[97] *See* RESA Testimony, at 69 (describing customer frustration resulting from unexpected rejections because of hardship status).

Substantive Due Process and reduces customer confusion and frustration, and the administrative burden on other stakeholders.

Respectfully Submitted,
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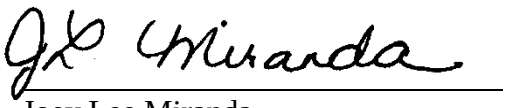
CERTIFICATION

I hereby certify that a copy of the foregoing was sent to all participants of record on this 10th day of December 2019.



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