STATE OF CONNECTICUT

PUBLIC UTILITIES REGULATORY AUTHORITY

DPUC REVIEW OF THE CURRENT STATUS OF THE COMPETITIVE SUPPLIER AND AGGREGATOR MARKET IN CONNECTICUT AND MARKETING PRACTICES AND CONDUCT OF PARTICIPANTS IN THAT MARKET	:	DOCKET NO. 10-06-24
	:	AUGUST 5, 2011

JOINT BRIEF OF DOMINION RETAIL, INC. AND RETAIL ENERGY SUPPLY ASSOCIATION

Dominion Retail, Inc. ("Dominion") and the Retail Energy Supply Association ("RESA")[1] (collectively, the "Suppliers") hereby respectfully submit this joint brief in accordance with the schedule established by the Public Utilities Regulatory Authority ("Authority") in connection with the above-referenced proceeding.

INTRODUCTION

On June 21, 2010, the Authority[2] opened this proceeding "to review the current status of the competitive supplier and aggregator market in Connecticut." *See* Request to Establish a New Docket on DPUC's Own Motion, dated June 17, 2010. Subsequently, after an opportunity for comment and a hearing, on March 16, 2011, the Authority issued a Final Decision, which

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[1] RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant Energy Northeast LLC and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

[2] At the time this proceeding was opened, the Authority was known as the Department of Public Utility Control ("DPUC" or "Department").

addressed the following issues: (a) Electric Supplier/Electric Aggregator relationships; (b) marketing/sales practices; (c) the Electric Supplier referral program; (d) the Authority's Rate Board; (e) disclosure labels; (f) three-way call center inquiries; (g) direct billing by Electric Suppliers; and (h) mid-cycle enrollments and price changes. *See, generally,* Final Decision, dated March 16, 2011 ("Decision"). As part of the Decision, the Authority also established a working group "for the purpose of having a mechanism in place to reach collaborative agreements and resolution of common issues . . . among the [Electric] Suppliers, Aggregators, EDCs [electric distribution companies] and any other interested persons." Decision at 31. Since the Decision was issued, the Authority has conducted three working group meetings to address various matters related to the competitive retail electric market.

During the previous legislative session, the General Assembly passed Public Act 11-80, *An Act Concerning the Establishment of the Department of Energy and Environmental Protection and Planning for Connecticut's Energy Future* (the "Act"). The Act addressed some of the same matters that the Authority addressed in the Decision. On July 12, 2011, the Authority held a working group meeting ("Working Group Meeting") to discuss some of these issues and offered the participants the opportunity to submit briefs on the matters discussed at the meeting. The Suppliers hereby submit their brief in accordance with the schedule established by the Authority.

ARGUMENT

The Suppliers commend the Authority for its continued efforts to evaluate the competitive retail electric market in Connecticut and request that the Authority issue the clarifications discussed below.

I. AGENCY RELATIONSHIPS

In the Decision, the Authority defined the term "agent" as:

> any person, whether an employee, representative, independent contractor, broker, marketer, vendor, sales conduit through multi-level marketing, or member of any organization, who (A) has contracted with, or has been directly authorized by, a Supplier or Aggregator to conduct marketing or sales activities or to enroll customers on behalf of the Supplier or Aggregator; or (B) has received compensation, in any form, from a Supplier or Aggregator for any activities relating to the sales or marketing of the Supplier or Aggregator's electric generation services or the referral, enrollment or servicing of customers on behalf of the Supplier or Aggregator.

Decision at 39 (Appendix A).

The Decision also required that each Electric Supplier and Electric Aggregator submit a compliance filing identifying any other Electric Supplier or Electric Aggregator with whom it had an agency relationship. Decision at 37, Order 5. In response to requests for clarifications raised during the Authority's April 1, 2011 working group meeting in this proceeding, the Authority subsequently issued a clarification that it was "only interested in exclusive, contractual relationships between Suppliers and Aggregators. This order is not meant to include payments made to Aggregators that have gathered customers for Suppliers that are offering competitive pricing." Notice of Directive and Working Group Meeting, dated April 12, 2011 ("Notice").

Section 113 of the Act also defines what qualifies as a principal-agent relationship between an Electric Supplier and a third party. In particular, Section 113 provides, in relevant part:

> Any third-party agent who contracts with or is otherwise compensated by an electric supplier ***to sell*** electric generation services shall be a legal agent of the electric supplier. No third-party agent may sell electric generation services ***on behalf of*** an electric supplier unless (A) the third-party agent is an employee or independent contractor of such electric supplier, and (B) the third-party agent has received appropriate training directly from such electric supplier.

P.A. 11-80, § 113(f)(1) (emphasis added). Because the definition of "agent" in the Decision varies from the provisions of the Act, during the Working Group Meeting, the Authority sought input on what types of arrangements create an agency relationship under this statutory provision.

As was explained during the Working Group Meeting, in addition to Electric Suppliers, there are essentially three types of entities that offer to sell electric generation services to customers: (a) sales representatives (e.g., telemarketers, etc.) (b) Electric Aggregators; and (c) brokers/consultants ("Brokers").[3] As discussed more fully below, while sales representatives qualify as "agents" of Electric Suppliers, neither Electric Aggregators nor Brokers qualify as "agents" of Electric Suppliers.

A. Sales Representatives Qualify As Agents Of Electric Suppliers.

Sales representatives are persons or entities that have been retained by an Electric Supplier "to sell electric generation services" on behalf of an Electric Supplier. During the Working Group Meeting, all of the participants agreed that any person or entity that has been so retained, whether as an employee or independent contractor, would qualify as an "agent" of an Electric Supplier. Thus, for instance, in house sales representatives, external sales representatives and marketing companies, whether performing direct marketing, telemarketing or door-to-door marketing, would qualify as an "agent" of an Electric Supplier under both the Decision and the Act.

[3] During the Working Group Meeting, the Office of Consumer Counsel ("OCC") argued that, in addition to Electric Suppliers, there are only ***two*** types of third parties that offer to sell electric generation services to customers: Electric Aggregators and "agents." However, the OCC's view ignores the plain language of the statute that provides that only those entities that enter into an agreement or are compensated by an Electric Supplier "to sell" electric generation services qualify as agents and only entities that gather together customers "to purchase" electric generation services are Electric Aggregators. However, there is a universe of third party entities that are compensated "to purchase" electric generation services on behalf of a single customer (i.e., Brokers). These entities are neither Electric Aggregators nor "agents."

B. Electric Aggregators Do Not Qualify As Agents Of Electric Suppliers.

During the Working Group Meeting, all of the participants also agreed that Electric Aggregators do ***not*** qualify as "agents" of Electric Suppliers. Electric Aggregators are entities that are independently registered with the Authority and who bring together groups of customers to negotiate contracts on the customer's behalf with Electric Suppliers. *See* Conn. Gen. Stat. § 16-1(31) (defining Electric Aggregator); Conn. Gen. Stat. § 16-245 (requiring registration of Electric Aggregators). In the Decision, the Authority clarified that, because Electric Aggregators are acting ***on behalf of*** customers, they are not and cannot act as agents of Electric Suppliers. *See* Decision at 5-7. There is nothing in the Act that requires a change in this ruling. In fact, the Act specifically provides that only entities that contract with or are compensated by an Electric Supplier "to ***sell*** electric generation services" qualify as agents of Electric Suppliers. By definition, Electric Aggregators are acting on behalf of groups of customers to "***purchase*** electric generation services." Conn. Gen. Stat. § 16-1(31) (defining "Electric Aggregator," in relevant part, as an entity that "gathers together electric customers for the purpose of negotiating the ***purchase*** of electric generation services from an electric supplier.") (emphasis added). Thus, by definition, Electric Aggregators are not "agents" of Electric Suppliers.

C. Brokers Do Not Qualify As Agents Of Electric Suppliers.

Similar to Electric Aggregators, Brokers act on behalf of customers and, thus, are not "agents" of Electric Suppliers. As explained during the Working Group Meeting, Brokers are entities that act on behalf of customers in making energy management decisions, including without limitation, evaluating and making recommendations regarding the customers' electric generation supply options and negotiating contracts for the provision of electric generation

service on behalf of customers.[4] When acting in this capacity, Brokers perform almost an identical function to that of Electric Aggregators. However, in performing these functions, Brokers are typically acting on behalf of a single customer, rather than a group of customers. Similar to Electric Aggregators, in exchange for providing their services, depending on the terms of the agreement between the Broker and the customer, the Broker is typically compensated by the customer in one of two ways: (a) directly from the customer as a set fee; or (b) through the inclusion of the Broker's fee in the per kilowatt hour ("kWh") charge that the customer pays the selected Electric Supplier. In the latter circumstances, the Electric Supplier simply acts as a conduit for the payment of the fee from the customer to the Broker (i.e., the Electric Supplier receives the Broker's fee from the customer and then passes that fee along to the Broker). Thus, the customer, not the Electric Supplier, is compensating the Broker. Accordingly, the Broker is not compensated to sell; rather it is compensated "to purchase" electric generation services on behalf of the customer.

In these situations, the Electric Supplier and the Broker will also enter into an agreement. This agreement, however, will be for a very limited purpose; namely, to allow the Broker to obtain pricing information from the Electric Supplier and to provide for the pass through from the customer to the Broker of the Broker's fee. Under the agreement, the Electric Supplier cannot require the Broker to bring any customers to it and the Electric Supplier has no obligation to accept any customers brought to it by the Broker. However, in the event the Broker does bring a customer to the Electric Supplier and the Electric Supplier accepts that customer, the Electric Supplier will then act as the conduit for the payment of the fee from the customer to the

[4] Depending on the scope of the agreement between the customer and the Broker, the Broker may also perform other services for the customer, such as evaluating and making recommendations regarding energy efficiency and/or distributed generation options.

Broker. Thus, although the Electric Supplier is acting as the conduit for the payment of the Broker's fee, the Electric Supplier is not compensating the Broker for selling electric generation services; instead, the customer is compensating the broker for purchasing electric generation services on the customer's behalf. Accordingly, Brokers are ***not*** agents of Electric Suppliers.

D. Independent Entities That Purchase Electric Generation Services On Behalf Of Customers Are Not Agents Of Electric Suppliers.

While the participants at the Working Group Meeting focused on the three types of entities discussed above (i.e., sales representatives, Electric Aggregators and Brokers), as the retail competitive electric market continues to evolve, different types of third party entities (i.e., entities that are not customers or Electric Suppliers) could appear. Thus, rather than defining what constitutes an "agent" by the term used to describe a particular type of entity (e.g., sales representative, etc.), the Suppliers recommend that the Authority define the term "agent" by clarifying the types of relationships that create an agency relationship and specifying the factors that it will consider in determining if such a relationship exists.

The Connecticut Supreme Court has found that "[t]he existence of an agency relationship is a question of fact." *Wesley v. Schaller Subaru, Inc.*, 277 Conn. 526, 543 (2006). In particular, the following three elements must be present to show the existence of such a relationship: "(1) a manifestation by the principal that the agent will act for him; (2) acceptance by the agent of the undertaking; and (3) an understanding between the parties that the principal will be in control of the undertaking." *Id.* During the Working Group Meeting, the OCC argued that the definition of "agent" in Section 113 of the Act "trumps" the common law. The Suppliers disagree.

Moreover, even if the OCC were correct (which the Suppliers dispute), the Act specifically provides that a third party only qualifies as an agent when it enters into a contract or is compensated "***to sell*** electric generation services." P.A. 11-80, §113(f)(1). Thus, as discussed

above, since both Electric Aggregators and Brokers are compensated "to purchase electric generation services" on behalf of customers, neither would qualify as "agents" of Electric Suppliers. Similarly, should another type of third party entity be retained ***by a customer*** to assist it in ***purchasing*** electric generation services, such an entity also would ***not*** qualify as an "agent" of an Electric Supplier. Accordingly, in order to reduce uncertainty in the marketplace, Suppliers request that the Authority clarify that to the extent the business arrangement between an Electric Supplier and a third party is similar to the type of arrangement between an Electric Aggregator, Electric Supplier and customer, there would ***not*** be an agency relationship between the Electric Supplier and the third party. Conversely, to the extent the business arrangement between an Electric Supplier and a third party is similar to the type of arrangement between an Electric Supplier, sales representative and customer, there would be an agency relationship between the Electric Supplier and the third party.

Further, the Suppliers request that the Authority provide guidance on what factors it will consider in determining whether a particular business arrangement between an Electric Supplier and a third party creates an agency relationship. In particular, as discussed at the Working Group Meeting, the Suppliers request that the Authority consider the following in evaluating whether an agency relationship exists between an Electric Supplier and a third party:

- Does the Electric Supplier have the ability to require the third party to bring it customers or otherwise direct the action of the third party regarding the sale or offer for sale of electric generation services?
- Does the third party have an obligation to bring customers to the Electric Supplier or otherwise do anything on behalf of the Electric Supplier regarding the sale or offer for sale of electric generation services?
- Does the third party entity have an exclusive relationship with the Electric Supplier?

Moreover, the Suppliers request that the Authority clarify that: (a) if the answer to all of these questions is no, then the third party is ***not*** an agent of the Electric Supplier; and (b) if the

answer to all of these questions is yes, then the third party ***is*** an agent of the Electric Supplier. In those cases in which the answer is not clear based on the three factors described above, the Suppliers urge the Authority to consider the specific factual circumstances of the business arrangement between the customer, the Electric Supplier and the third party to determine whether or not there is an agency relationship. *See Wesley*, 277 Conn. at 543 (finding that whether there is an agency relationship is a question of fact).

In making this determination, the Suppliers encourage the Authority to look to the language of the agreement, if any, between the Electric Supplier and the third party. For instance, does the agreement between the Electric Supplier and the third party specifically provide that:

- the third party is acting for the benefit of or as the agent for the customer;
- the third party has no authority to act for or on behalf of or to bind the Electric Supplier to any contract, representation, or any other matter;
- the third party has no obligation to offer to sell the Electric Supplier's product or to bring customers to the Electric Supplier;
- the Electric Supplier has no obligation to accept customers brought to it by the third party; and
- the compensation to be paid to the third party is determined by the third party and/or the customer?

Furthermore, the Suppliers request that the Authority clarify that: (a) if the answer to all of these questions is yes, then the third party is ***not*** an agent of the Electric Supplier; and (b) if the answer to all of these questions is no, then the third party ***is*** an agent of the Electric Supplier.

Since the ultimate finding of whether an agency relationship exists presents a question of fact, *Wesley*, 277 Conn. at 543, the Suppliers request that the Authority issue the clarifications described herein in order to provide Electric Suppliers with a framework under which they can

better understand the implications of their relationships with third parties in the retail electric market and structure those relationships to avoid running afoul of the Act or the Decision.

II. POWERS OF ATTORNEY

In the Decision, the Authority concluded that Electric Aggregators are not authorized to: (a) enter into Power of Attorney ("POA") agreements with customers; or (b) enroll customers with an Electric Supplier on any customers' behalf. *See* Decision at 7-8 and 38 (Orders 8 & 9). In support of this conclusion, the Authority found that "the law contemplates that Aggregators aggregate customers' individual electric loads of consumption to negotiate for better prices with Suppliers; however, once terms and prices have been negotiated, Aggregators must step out of the process and the Suppliers and Customers must, directly or individually, enter into their own contractual relationship." Decision at 8. Subsequently, pending guidance from the General Assembly, the Authority issued a decision implementing "a temporary stay on . . . Orders 8 and 9 [of the Decision] and on the ruling prohibiting Power of Attorney agreements between Aggregators and customers." Order Imposing Stay, dated March 30, 2011. However, the General Assembly did not address whether or not an Electric Aggregator could use a POA to enroll customers with an Electric Supplier.

The Suppliers submit that the General Assembly failed to address this particular issue because there is already legislation that authorizes the use of POAs. In particular, the Connecticut Statutory Short Form Power of Attorney Act, Connecticut General Statutes section 1-42 *et seq.* ("POA Act"), "expressly permits the use of any . . . form of power of attorney desired by the parties concerned" for a wide variety of purposes, including without limitation, entering into transactions for real estate, goods, commodities, business operations, insurance, claims and litigation and "all other matters." Conn. Gen. Stat. § 1-43. Thus, the use of POAs is expressly permitted by statute.

Nevertheless, in the Decision, the Authority concluded that, because Connecticut General Statutes section 16-1(31) provides that "customers contract for electric generation services directly with an electric supplier," the use of POAs was specifically prohibited. Decision at 8. Pursuant to the POA Act, the "language conferring general authority with respect to all other matters shall be construed to mean that the principal authorizes the agent to act as ***an alter ego*** of the principal with respect to any matters and affairs not enumerated . . . ." Conn. Gen. Stat. § 1-55 (emphasis added). Thus, once an Electric Aggregator has been provided a POA by a customer, the Electric Aggregator for all authorized purpose is acting as the customer's "alter ego." *See, e.g.,* Conn. Gen. Stat. § 1-55. Accordingly, when a duly authorized Electric Aggregator contracts with an Electric Supplier on behalf of a customer, the customer is contracting directly with the Electric Supplier. It is a basic tenet of statutory construction that statutes should be read in harmony if possible. *See Nizzardo v. State Traffic Comm'n*, 259 Conn. 131, 157 (2002) (explaining that "courts have been said to be under a duty to construe statutes harmoniously where that can reasonably be done.") (internal quotation marks omitted). By permitting duly authorized Electric Aggregators to enter into contracts with Electric Suppliers on behalf of customers, the Authority can ensure that the definition of Electric Aggregator and the provisions of the POA Act can be read in harmony.

Moreover, the POA provides a useful tool to Electric Aggregators and a benefit to consumers. An "Electric Aggregator" is defined, in relevant part, as a person or entity "that gathers together electric customers for the purpose of ***negotiating*** the purchase of electric generation services from an electric supplier." Conn. Gen. Stat. § 16-1(31) (emphasis added). If an Electric Aggregator could not use POAs to enroll customers on whose behalf it has negotiated a specified price and/or set of contract terms with an Electric Supplier, Electric Suppliers would

face the risk that one or more customers would drop out of the pool of customers on which it based its price and contract terms. As a consequence, Electric Suppliers would: (a) refuse to negotiate with Electric Aggregators, making these statutorily authorized entities obsolete; (b) build a premium into the price they would be willing to negotiate with Electric Aggregators in order to account for the risk that one or more of the customers in the pool would not sign the negotiated contract with the Electric Supplier; thereby, increasing the price customers will ultimately pay for electric generation services; and/or (c) be less willing to negotiate otherwise favorable contract terms that would be available if the Electric Supplier could expect that it would ultimately serve the entire pool of customers on whose behalf the Electric Aggregator was negotiating. Thus, as explained during the Working Group Meeting, because an Electric Supplier negotiates pricing and other contract terms with an Electric Aggregator based on the load profile of the ***entire pool*** of customers on whose behalf the Electric Aggregator is negotiating the purchase of electric generation services, the POA provides a useful tool to Electric Aggregators and a benefit to consumers. Accordingly, the Suppliers encourage the Authority to issue an order implementing a permanent stay of Orders 8 and 9 of the Decision and of the ruling prohibiting POA agreements between Electric Aggregators and customers.

III. AUTOMATIC INVALIDATION CLAUSES

In connection with an undocketed matter, the Authority is currently investigating the use by ResCom Energy, LLC ("ResCom") of the following so called "automatic invalidation clause" in some of its agreements:

> "For your (the customer's) protection, to prevent slamming or unauthorized switching of your service, no third party may cancel this agreement on your behalf. Third party cancellations or attempted cancellations will automatically be considered invalid and rejected unless we receive notification directly from you in writing or via email to cancellation@getpositiveenergy.com prior to Positive Energy receiving a cancellation request."

See Undocketed Correspondence, dated May 27, 2011, from the Authority to ResCom re: Contract Clause, at 1. During the Working Group Meeting, Authority Staff requested that the participants provide comments regarding the validity of such automatic invalidation clauses.

The hallmark of any competitive market is the ability of two entities to enter into agreements on any legally permissible terms to which they mutually agree. Thus, generally, the Suppliers support the inclusion of all legally permissible, mutually acceptable terms in a contract between a customer and an Electric Supplier, including terms that provide for notice and other procedures necessary to ensure that both parties receive the benefit of the bargain.

The Suppliers are not aware of any statute, regulation or Authority decision that prohibits the use of automatic invalidation clauses. As The Connecticut Light and Power Company ("CL&P") pointed out in response to a recent inquiry from the Authority in connection with the ResCom investigation:

> In its Final Decision in Docket No. 98-06-17, *DPUC Investigation into Billing and Metering Protocols and Appropriate Cost-Sharing Allocation among Electric Distribution Companies and Electric Suppliers, (Jan. 13, 1999),* the Department did ***not*** specifically address the drop process by a supplier or customer. However, the Department did reference the Electronic Data Exchange Standards for Electric Deregulation in the State of Connecticut ("EDE Report") and adopted the EDE Report as a starting point for ***protocols and standard*** for electronic data interchange between electric suppliers and EDCs.

See Undocketed Correspondence, dated June 19, 2011, from CL&P to the Authority re: Response of The Connecticut Light and Power Company to Questions Requested in a Letter Dated May 27, 2011 Regarding ResCom Energy, LLC Automatic Invalidation Contract Clause ("CL&P Response"), at 1 (emphasis added). The CL&P Response also cited the following provision from the EDE Report:

> **Customer Initiated Drop:** If a Customer desires to drop a Supplier other than through enrolling with a new Supplier, the Customer may inform the Distribution Company or the Electric Supplier. If the Customer informs the

> Distribution Company directly, generation service may be terminated within two business days for residential customers; for other customers, generation service shall be terminated on the date of the Customer's next scheduled meter read.

CL&P Response at 2. However, as CL&P pointed out, the EDE Report does ***not*** have the force of law. Thus, there is nothing that prohibits the use of "automatic invalidation clauses."

IV. TIME OF USE PRICING

Section 104 of the Act requires Electric Suppliers, as a condition of maintaining their licenses, to offer a time-of-use ("TOU") price option to customers. The option must include a two-part price "designed to achieve an overall minimization of customer bills by encouraging the reduction of consumption during the most energy intense hours of the day." P.A. 11-80, § 104. The Electric Supplier must also file its TOU prices with the Authority. *Id.*

Prior to the Working Group Meeting, TransCanada Power Marketing Ltd. ("TransCanada") requested that the Authority provide guidance on this new requirement. *See* Correspondence, dated July 11, 2011, from TransCanada to the Authority ("TransCanada Request"), at 1. In particular, TransCanada requested guidance on what exactly needs to be filed with the Authority to comply with this provision of the Act: all TOU prices or just TOU prices that are generally available. *Id.* Further, during the Working Group Meeting, the Suppliers requested that the Authority clarify the timeframe by which Electric Suppliers will be required to offer TOU prices. In addition, the Suppliers request that the Authority also clarify that the Act does not restrict Electric Suppliers to only offering two-part TOU prices (i.e., that Electric Suppliers are permitted to offer multi-part TOU prices, such as hourly TOU price options).

A. Electric Suppliers Should Only Be Required To File Generally Available TOU Prices With The Authority.

Section 104 of the Act requires that Electric Suppliers must file their TOU prices with the Authority. As the Authority is aware, Electric Suppliers offer a variety of pricing options to

customers. Some of these pricing options are generally available and others are individually negotiated based on a customer's particular needs. Indeed, as stated in the TransCanada Request, many suppliers' commercial and industrial customer price offerings are created and tailored for specific customers and/or accounts and are not made generally available. Thus, absent clarification it remains unclear how suppliers who do not generate general or standard price offerings can feasibly file TOU prices with the Authority without generating substantial administrative burden and widespread customer confusion as to what a posted TOU price is supposed to represent.

Pursuant to the Decision, Electric Suppliers are required to submit their generally available pricing options to the Authority for posting on the Rate Board. Decision at 22-23. Thus, to the extent an Electric Supplier is offering generally available TOU pricing options, those will be submitted to the Authority as required by the Decision. However, to both ensure reduction of the administrative burden associated with the Section 104 filing requirement and prevention of customer confusion as to what a posted TOU price represents, the Suppliers request that the Authority clarify that the submission of generally available TOU prices to the Authority for posting on the Rate Board will satisfy the filing requirements of Section 104 of the Act.

B. Electric Suppliers Will Not Be Required To Offer TOU Prices Until The Necessary Infrastructure To Support Such Pricing Structures Is Available.

Section 104 of the Act became effective on July 1, 2011 - the same day that it was signed into law by the Governor. Thus, neither the EDCs nor Electric Suppliers were given any opportunity to prepare for this requirement. Thus, the Suppliers request that the Authority clarify that Electric Suppliers will not be required to offer TOU pricing structures until the necessary infrastructure to support such pricing structures is available.

It is the Suppliers' understanding that both EDCs currently offer TOU pricing options to their customers. However, it is also the Suppliers' understanding that CL&P does not offer TOU pricing to Electric Suppliers and that it does not currently have the infrastructure available to do so. Thus, even if an Electric Supplier were to offer a TOU pricing option, CL&P customers may not be able to take advantage of such a pricing structure. Thus, the Suppliers request that the Authority clarify that Electric Suppliers will not be required to offer TOU prices until the EDCs have the necessary metering and billing infrastructure to allow customers to take advantage of such pricing options.

Further, because not all Electric Suppliers offered TOU prices prior to the effective date of this statutory provision, some Electric Suppliers require time to develop the necessary infrastructure (e.g., computer programming modifications, etc.) to offer such pricing options. Accordingly, the Suppliers request that the Authority clarify that Electric Suppliers that do not currently have the necessary infrastructure to offer TOU prices immediately will be given sufficient lead time to develop such infrastructure. In particular, the Suppliers request that the Authority clarify that each Electric Supplier will be required to offer TOU prices as soon as it has the necessary infrastructure and that such infrastructure must be developed by all Electric Suppliers by no later than December 31, 2011 or the date by which the EDCs have the necessary infrastructure to allow customers of Electric Suppliers to take advantage of these pricing options, whichever is later.

C. Electric Suppliers Should Be Permitted To Offer Multi-Part TOU Pricing Structures.

Section 104 of the Act requires that Electric Suppliers offer a TOU pricing option that includes "a two-part price that is designed to achieve an overall minimization of customer bills by encouraging the reduction of consumption during the most energy intense hours of the day."

P.A. 11-80, § 104. However, the Act does not require that TOU pricing options be limited to two-part prices and, in some instances, two-part prices will not provide appropriate price signals and/or attractive alternatives to certain customers. For instance, customers with interval meters may be better served by a multi-part TOU price that varies throughout the day or even the hour. Further, to extent a multi-part TOU price would send customers more accurate price signals, those customers may be better incented to take advantage of conservation measures in periods of high demand and correspondingly high prices. Thus, the Suppliers request that the Authority clarify that, to the extent the infrastructure is available to support such options, Electric Suppliers are permitted to offer TOU prices that have ***two or more*** parts so long as such prices are "designed to achieve an overall minimization of customer bills by encouraging the reduction of consumption during the most energy intense hours of the day."

V. ADDITIONAL ISSUES

During the course of the Working Group Meeting, the following additional issues were discussed: (a) disclosure of the applicable EDC's delivery charges when advertising prices to customers; (b) the scope of the limitation on early termination fees; (c) the content of the quarterly bill inserts sent to customers; and (d) document retention requirements.

A. EDC Delivery Charge Disclosures

Section 113 of the Act provides, in relevant part:

> No electric supplier, aggregator or agent of an electric supplier or aggregator shall advertise or disclose the price of electricity to mislead a reasonable person into believing that the electric generation services portion of the bill will be the total bill amount for the delivery of electricity to the customer's location. When advertising or disclosing the price for electricity, the electric supplier, aggregator or agent of an electric supplier or aggregator ***shall also disclose*** the electric distribution company's current charges, including the competitive transition assessment and the systems benefits charge, for that customer class.

P.A. 11-80, § 113(f)(3) (emphasis added). Prior to the Working Group Meeting, TransCanada requested that "the exact information that needs to be disclosed by a supplier to a prospective customer be posted and maintained on a website either by the Authority or by the electric distribution companies." TransCanada Request at 2-3. The Suppliers support this request as it will ensure that customers reviewing Electric Supplier offers are provided the same information by every Electric Supplier regarding delivery service charges and are making comparisons of Electric Supplier offers based on what is actually subject to competition - supply service charges.

B. Early Termination Fees

Section 113 of the Act provides, in relevant part:

> No contract for electric generation services by an electric supplier shall require a ***residential customer*** to pay any fee for termination or early cancellation of a contract in excess of (A) one hundred dollars; or (B) twice the estimated bill for energy services for an average month, whichever is less, provided when an electric supplier offers a contract, it provides the residential customer an estimate of such customer's average monthly bill.

P.A. 11-80, § 113(f)(6) (emphasis added). Prior to the Working Group Meeting, TransCanada requested that the Authority clarify the scope of this limitation. In particular, TransCanada requested that the Authority confirm that:

> this provision applies only when the ***contractual counterparty*** with the electric supplier is a residential customer. It would not apply in the circumstance when the contractual counterparty with the electric supplier is a non-residential customer that may happen to have one or more accounts that are classified by the electric distribution company with a residential service class.

TransCanada Request at 3 (emphasis added). Since, in the scenario described by TransCanada the "customer" is not a residential customer, by its plain language, Section 113(f)(6) would not apply. Thus, the Suppliers support TransCanada's request that the Authority clarify that the limitation on early termination fees set forth in Section 113 of the Act does not apply when the

contractual counterparty to the Electric Supplier is a non-residential customer, even if that customer happens to have one or more associated, incidental residential accounts.

C. Bill Inserts

During the Working Group Meeting, Authority Staff asked participants to comment, in their briefs, on the format of the quarterly bill inserts that are currently provided to customers and, in particular, whether pricing information should continue to be included on these inserts.

Connecticut General Statutes section 16-244c(k) provides, in relevant part:

> Each calendar quarter, participating electric suppliers shall be allowed to list qualifying ***electric offers*** to provide electric generation service to residential and small commercial customers with each customer's utility bill. The department shall determine the manner such information is presented in customers' utility bills.

Conn. Gen. Stat. § 16-244c(k)(4) (emphasis added). In its Final Decision, dated October 10, 2007 in Docket No. 05-08-05RE02, *DPUC Investigation into the Process by Which Customers Can Choose an Electric Supplier When Initiating Electric Service – Amended Referral Program* ("Supplier Referral Decision"), the Authority required that:

> the bill inserts shall ***list the price*** and term of each Qualifying Electric Offer as well as a statement indicating that the participating supplier offers other pricing options, including TOU rates and real-time rates (when these become available). In addition, the insert should contain other general information related to retail choice such as, but not limited to, the enrollment process, ability to switch among suppliers, and the opportunity to find general information about "shopping for electricity" at www.ctenergyinfo.com or by calling the Department's toll free Outreach phone number 1-888-922-3782.

Supplier Referral Decision at 13-14 (emphasis added). Subsequently, the Authority revised the bill insert to include not only Qualifying Electric Offers but a listing of all offers posted on the Rate Board.

The Suppliers believe that the current bill insert format, including the listing of Electric Supplier price offers from the Rate Board, continues to provide benefits to consumers. Accordingly, the Suppliers support the continued use of the current bill insert format.

D. Document Retention

Section 113 of the Act provides, in relevant part:

> 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 and maintain records of such signed service contract or consent to service for a period of not less than two years ***from the date of expiration of such contract***, which records shall be provided to the department or the customer upon request.

P.A. 11-80, § 113(e) (emphasis added). During the Working Group Meeting, Levco requested that the Authority clarify that "the date of expiration of such contract" is the date on which the initial term of the contract expires. The Suppliers support this clarification as it will reduce the administrative burden on Electric Suppliers while still providing for the maintenance of the contract/consent for a sufficient period of time to allow the customer and/or the Authority to audit Electric Supplier records to determine that the contract and/or consent complied with applicable statutory and/or regulatory provisions.

CONCLUSION

For all of the foregoing reasons, the Suppliers request that the Authority issue the clarifications discussed above.

Respectfully submitted,
DOMINION RETAIL, INC. and
RETAIL ENERGY SUPPLY ASSOCIATION

By: _____

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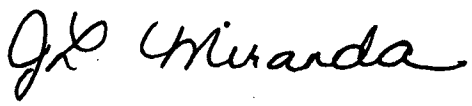
CERTIFICATION

I hereby certify that, a copy of the foregoing was sent to all participants of record, on this 5th day of August 2011.



Joey Lee Miranda