

280 Trumbull Street
Hartford, CT 06103-3597
Main (860) 275-8200
Fax (860) 275-8299
jmiranda@rc.com
Direct (860) 275-8227

Also admitted in District of
Columbia and Massachusetts

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October 7, 2011

Kimberley J. Santopietro
Executive Secretary
Public Utilities Regulatory Authority
10 Franklin Square
New Britain, CT 06051

**Re: Docket No. 10-06-24: 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**

Dear Ms. Santopietro:

Enclosed please find the Retail Energy Supply Association Motion to Reopen the
Record in connection with the above-referenced matter.

I certify that a copy hereof has been sent on this date to all participants of record as
reflected on the Public Utilities Regulatory Authority's (Authority) service list as of
this date. A copy has also been filed with the Authority as an electronic web filing
and is complete.

Please do not hesitate to contact me or David Bogan of my office (860-275-8262) if
you have any questions or require additional information. Thank you.

Very truly yours,



Joey Lee Miranda

Enclosure

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DPUC REVIEW OF THE CURRENT STATUS : DOCKET NO. 10-06-24
OF THE COMPETITIVE SUPPLIER AND :
AGGREGATOR MARKET IN CONNECTICUT :
AND MARKETING PRACTICES AND :
CONDUCT OF PARTICIPANTS IN THAT :
MARKET : OCTOBER 7, 2011

**RETAIL ENERGY SUPPLY ASSOCIATION
MOTION TO REOPEN RECORD**

The Retail Energy Supply Association (“RESA”)¹ hereby moves the Public Utilities Regulatory Authority (“Authority”) to reopen the record in connection with the above-referenced proceeding for the reasons more particularly set forth below. RESA further requests that the Authority postpone the deadline for the submission of written exceptions until such time as it has issued a ruling on the motion.

BACKGROUND

On June 21, 2010, the Authority² 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 addressed the following issues: (a) Electric Supplier/Electric Aggregator relationships; (b)

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 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”).

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 on April 1, 2011, April 27, 2011 and July 12, 2011.

During the most recent 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 and reply briefs on the matters discussed at the meeting.

On September 29, 2011, the Authority issued a Draft Decision that, *inter alia*, purported to clarify what types of entities qualify as "legal agents" of electric suppliers pursuant to the Act. *See* Draft Decision, dated September 29, 2011 ("Draft Decision"). On October 4, 2011, the Authority issued a Notice of Written Exceptions, Briefs and Oral Arguments ("Notice"). Pursuant to the Notice, written exceptions are due by October 11, 2011. For the reasons discussed more fully below, RESA now hereby moves the Authority to reopen the record in this

proceeding and postpone the deadline for the submission of written exceptions until such time as it has issued a ruling on the motion.

MOTION TO REOPEN RECORD

In the Decision, the Authority established the 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 (emphasis added). Using this collaborative approach, the Authority has been able to resolve matters related to the mechanics of the implementation of the Decision and resolve issues on which the participants could reach consensus. For instance, at the April 1, 2011 working group meeting, the participants discussed compliance filings, the Rate Board, billing format and mid-cycle enrollment/price change issues. Following that meeting, the Authority issued a Notice of Directive and Working Group meeting that set forth the Authority’s directives with respect to the compliance requirements of the Decision and on matters which the parties were able to reach consensus. *See* Notice of Directive and Working Group Meeting, dated April 12, 2011.

With respect to more substantive issues on which the participants could not reach agreement, the Authority specifically stated that it would “*adjudicate if need be, any issues that cannot be resolved by the working group.*” Decision at 31 (emphasis added). As the Authority is aware and as noted in the Draft Decision, there is *substantial disagreement* among participants regarding the types of entities that would qualify as “legal agents” of electric suppliers pursuant to the Act. *See* Draft Decision at 3-7 (setting forth the opposing positions of the Office of Consumer Counsel and RESA). Since there was significant disagreement surrounding the issue and a consensus could not be reached, consistent with the Decision, the

Authority should then have provided a forum for a full adjudication before issuing the Draft Decision.

Moreover, the notice of the Working Group Meeting did not sufficiently advise interested stakeholders of the issues that would be considered. The notice of the July 12, 2011 meeting only included the following agenda items:

- Section 113 of Public Act 11-80: Whether independent contractors who are contracted with or otherwise compensated by suppliers under “Brokers” or “independent contractor” agreements to perform sales, marketing or solicitation would be considered “third-party agents” under subsection (f);
- Supplier-Aggregator Relationship: Whether P.A. 11-80 affects the Authority’s rulings in the March 16, 2011 Decision in this Docket;
- Compliance Regarding Order No. 5 in the March 16, 2011 Decision in this Docket; and
- Status of the Order Imposing Stay issued by the Authority on March 30, 2011, in this Docket.

See Notice of Working Group Meeting, dated July 8, 2011. However, as the Authority is aware, numerous other items were discussed during the meeting, including the use of automatic invalidation clauses, which were also the subject of the Draft Decision.

Furthermore, based on the Authority’s stated position that it would adjudicate matters on which there was disagreement and the Authority’s past practice, interested stakeholders could have reasonably believed that the Authority would only issue directives on items which related to the mechanics of the implementation of the Decision or on which participants had reached consensus. As such, some stakeholders may not have participated in the Working Group Meeting expecting that more substantive issues or issues on which there was disagreement would be subject to further proceedings with a full opportunity for a review of the issues.

While this proceeding is not a contested case, in the Draft Decision, the Authority makes determinations that affect the substantive rights and obligations of electric suppliers, customers and other participants in the competitive retail electric market and, as discussed during the

Working Group Meeting, that will have a significant impact on that market. Yet, the Authority did not provide an opportunity for a full and fair hearing on the issues involving all potentially interested stakeholders.

Because the Authority did not provide proper notice of the issues under consideration and did not offer participants an opportunity for a full adjudication of the issues, RESA and other interested stakeholders were not afforded appropriate due process. *Cf. Tele Tech of Connecticut Corp. v. Department of Pub. Util. Control*, 270 Conn. 778 (2004). Accordingly, before issuing a final decision, RESA hereby moves the Authority to reopen the record in this proceeding and requests that the Authority conduct a duly noticed evidentiary hearing on the issues at which all interested stakeholders, including customers, have an opportunity to fully adjudicate the issues.

CONCLUSION

For all of the foregoing reasons before issuing a final decision, RESA hereby moves the Authority to reopen the record in this proceeding and requests that the Authority conduct a duly noticed evidentiary hearing on the issues. RESA further requests that the Authority postpone the deadline for the submission of written exceptions until such time as it has issued a ruling on the motion.

Respectfully submitted,
RETAIL ENERGY SUPPLY ASSOCIATION

JL Miranda

By:

Joey Lee Miranda
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103
Phone: (860) 275-8200
Fax: (860) 275-8299
E-Mail: jmiranda@rc.com

CERTIFICATION

I hereby certify that, a copy of the foregoing was sent to all participants of record, on this
7th day of October 2011.

A handwritten signature in cursive script that reads "Joey Lee Miranda". The signature is written in black ink and is positioned above a horizontal line.

Joey Lee Miranda