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Via Electronic Filing

September 30, 2020

Jeffrey R. Gaudiosi, Esq.
Executive Secretary
Public Utilities Regulatory Authority
10 Franklin Square
New Britain, CT 06051

Re: Docket No. 16-12-29: PURA Development of Voluntary Renewable Options Program

Dear Mr. Gaudiosi:

Attached are the Written Exceptions of Retail Energy Supply Association ("RESA") in response to the Public Utilities Regulatory Authority's ("PURA") September 9, 2020 Proposed Final Decision in the above-referenced docket. RESA requests oral argument.

I certify that a copy hereof has been sent to all participants of record as reflected on PURA's service list. In accordance with PURA's instructions, we are filing "only an electronic copy through the PURA Web Filing System."[1]

Please feel free to contact me if you have any questions or require further information. Thank you.

Sincerely,

Joey Lee Miranda

Attachment

Copy to: Service List

[1] *See* Fifth Ruling on Temporarily Suspending Filing Paper Copies (Jun. 19, 2020).

STATE OF CONNECTICUT

PUBLIC UTILITIES REGULATORY AUTHORITY

PURA DEVELOPMENT OF VOLUNTARY RENEWABLE OPTIONS PROGRAM	:	DOCKET NO. 16-12-29
	:	
	:	SEPTEMBER 30, 2020

WRITTEN EXCEPTIONS OF RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association ("RESA")[1] hereby submits its Written Exceptions in response to the Public Utilities Regulatory Authority's ("Authority") September 9, 2020 Proposed Final Decision ("Proposed Decision") in the above-referenced docket.[2] RESA supports increased transparency and education about voluntary renewable offers. However, for all the reasons set forth more fully below, the Authority should avoid limiting customer choice. ***RESA requests oral argument***.

PROCEDURAL BACKGROUND

On December 20, 2016, the Authority opened this proceeding to "establish a new program to replace the Connecticut Clean Energy Option Program that was terminated" by its December 21, 2016 Decision in Docket No. 10-05-07RE01.[3] The original Connecticut Clean Energy Option Program ("CEOP") allowed Standard Service customers to purchase renewable

[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 (Sep. 9, 2020).

[3] Request to Establish a New Docket on PURA's Own Motion (Dec. 20, 2016).

energy credits ("RECs") from suppliers selected and at prices derived through a request for proposal process run by the electric distribution companies ("EDCs").[4]

Over the years, outside of the CEOP, competitive suppliers developed, marketed, and provided electric supply options that contain renewable energy in addition to the minimum renewable portfolio standard ("RPS") requirements ("VROs").[5] Nearly three years after the proceeding was originally opened, on November 21, 2019, the Authority revised the purpose of the docket "to develop standards for a new Connecticut Clean Energy Option Program that will govern ***all*** voluntary renewable offerings and disclosure labels reflecting such offerings . . . ."[6]

On November 26, 2019, the Authority issued a Notice of Request for Written Comments and presented a proposal that would modify the CEOP to govern all VROs billed through utility consolidated billing (including VROs offered by electric suppliers).[7] The Authority also requested comment on the sample disclosure label attached to the First Notice ("Proposed Disclosure Label").[8] In response to the First Notice, various stakeholders, including RESA, filed comments.[9]

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[4] *See, generally, e.g.*, Docket No. 03-07-16, *Investigation of Alternative Transitional Standard Offer Services for United Illuminating and CL&P Customers*, Second Interim Decision (Oct. 20, 2004); Docket No. 07-01-09, *DPUC Consideration of the Connecticut Clean Energy Options Program for 2008*, Interim Decision (Sep. 27, 2007). At the time of these decisions, the Authority was known as the Department of Public Utility Control ("DPUC").

[5] *See* Notice of Request for Written Comments (Nov. 26, 2019) ("First Notice"), at 1.

[6] Request to Establish a New Docket on PURA's Own Motion (Nov. 21, 2019) (emphasis added).

[7] *See* First Notice, at 2.

[8] *See id.* at 4, 5.

[9] Comments of Retail Energy Supply Association (Dec. 20, 2019); Connecticut Greenbank Response to PURA Request for Written Comments (Jan. 8, 2020); Written Comments of 3Degrees Group Inc., Sterling Planet, and Community Energy, Inc. (Dec. 18, 2019); Written Comments of Choice Energy, LLC and Town Square Energy, LLC (Dec. 20, 2019); Comments of Vistra Energy Corp. (Dec. 20, 2019); Written Comments of Direct Energy Services, LLC and Direct Energy Business, LLC (Dec. 20, 2019); Comments of the Office of Consumer Counsel (Dec. 20, 2019); Bureau of Energy and Technology Policy of the Department of Energy and Environmental Protection's Written Comments (Dec. 20, 2019) ("DEEP First Notice Comments"); Written Comments of The Connecticut Light and Power Company d/b/a Eversource Energy (Dec. 20, 2019); Written Comments of CleanChoice Energy, Inc. (Dec. 20, 2019); Written Comments of Putnam Hydropower Inc. (Dec. 20, 2019); Written Comments of Starion Energy, Inc. (Dec. 20, 2019); Written Comments of The United Illuminating Company (Dec. 20, 2019).

On January 29, 2020, the Authority issued a Second Notice of Request for Written Comments and presented a revised proposal ("Revised Proposal").[10] The Revised Proposal would: (a) make changes to the rules for the CEOP; and (b) would only allow suppliers to bill REC only VROs and VROs bundled with generation supply through utility consolidated billing ("UCB") if they met certain requirements.[11] In response to the Second Notice, various stakeholders, including RESA, filed comments.[12]

On June 15, 2020, the Authority issued a Third Notice of Request for Written Comments.[13] In the Third Notice, the Authority requested comments on whether the disclosure label established through the Authority's Docket No. 07-05-33 February 27, 2008 Decision and the Proposed Disclosure Label should be combined into one document to present information in a more readily-accessible manner to customers.[14] In response to the Third Notice, various stakeholders filed comments.[15]

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[10] *See* Second Notice of Request for Written Comments (Jan. 29, 2020), at 1.

[11] *See id.*

[12] Comments of Retail Energy Supply Association re Second Notice of Request for Written Comments (Feb. 12, 2020); Written Comments of 3Degrees Group Inc., Sterling Planet, and Community Energy, Inc. (Feb. 12, 2020); Bureau of Energy and Technology Policy of the Department of Energy and Environmental Protection's Written Comments (Feb. 12, 2020); Written Comments of Starion Energy, Inc. (Feb. 12, 2020); Written Comments of The Connecticut Light and Power Company d/b/a Eversource Energy (Feb. 13, 2020); Written Comments of The United Illuminating Company (Feb. 12, 2020).

[13] *See* Third Notice of Request for Written Comments (Jun. 15, 2020).

[14] *See id.* at 1.

[15] Starion Energy, Inc.'s Written Comments re Third Notice of Request for Written Comments (Jun. 23, 2020); Written Comments of the Bureau of Energy and Technology Policy of the Department of Energy and Environmental Protection (Jun. 23, 2020); Written Comments of Constellation NewEnergy, Inc. (Jun. 22, 2020); Written Comments of the Office of Consumer Counsel (Jun. 23, 2020); Written Comments of The Connecticut Light and Power Company d/b/a Eversource Energy (Jun. 23, 2020); Written Comments of The United Illuminating Company (Jun. 23, 2020).

On June 24, 2020, the Authority held a hearing.[16] Thereafter, various participants filed briefs[17] and reply briefs.[18] On September 9, 2020, the Authority issued the Proposed Decision, which would, among other things, limit VROs that can be billed through UCB to those that meet certain technology and locational requirements.[19] RESA now hereby files its Written Exceptions to the Proposed Decision.

ARGUMENT

The current competitive market for VROs[20] is vibrant. Customers have a broad array of choices available, from VROs supported by nationally sourced RECs to VROs supported by New England RECs.[21] These choices have developed over time in response to customer demand. Despite the fact that the market reflects customer preferences as evidenced by the products they purchase, the Proposed Decision seeks to place artificial and unnecessary limitations on customer choice based solely on conjecture and assumptions about what customers want or based on a paternalistic view of what customers should want.[22] Instead of limiting the choices

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[16] *See* Hearing Transcript ("Tr.").

[17] Brief of the Department of Energy and Environmental Protection's Bureau of Energy and Technology Policy (Jul. 9, 2020); Brief of the Office of Consumer Counsel (Jul. 9, 2020); Brief of Starion Energy, Inc. (Jul. 9, 2020); Brief of The United Illuminating Company (Jul. 9, 2020); Sterling Planet Brief (Jul. 8, 2020); *see also* Letter in Lieu of Brief of The Connecticut Light and Power Company d/b/a Eversource Energy (Jul. 14, 2020).

[18] Reply Brief of Starion Energy, Inc. (Jul. 16, 2020); Sterling Planet and Community Energy Inc. Reply Brief (Jul. 15, 2020); *see also* Letter in Lieu of Reply Brief of The Connecticut Light and Power Company d/b/a Eversource Energy (Jul. 17, 2020); Letter in Lieu of a Reply Brief of the Office of Consumer Counsel (Jul. 17, 2020); Letter in Lieu of Reply Brief of The United Illuminating Company (Jul. 17, 2020).

[19] *See, generally*, Proposed Decision.

[20] The Proposed Decision distinguished between CEOP voluntary renewable offerings, which it characterized as "CEOP" or "CEOP" offers (*see, e.g.*, Proposed Decision, at 3) and "REC-only" offers (*see, e.g.*, Proposed Decision, at 10), and suppliers' voluntary renewable offerings. *See, e.g.*, Proposed Decision, at 9-10. Because electric suppliers that are not CEOP suppliers may seek to offer REC-only products as well, to avoid confusion, the Authority should use unambiguous terms to describe the successor to the CEOP.

[21] *See, e.g.*, Tr. at 76; *see also, e.g.*, Connecticut Rate Board, https://www.energizect.com/compare-energy-suppliers (last visited Sep. 30, 2020) (displaying VROs at various price points and for varying contract lengths).

[22] *See, generally*¸ Record.

available to consumers,[23] the Authority should increase transparency and consumer education about VROs in a manner consistent with federal and state law. For example, the Authority should enhance the Connecticut Rate Board to provide additional information about VROs. However, the Authority should not require suppliers, in their marketing, to make confusing distinctions between "renewable energy credits" and "renewable energy" that run counter to Connecticut law and federal consumer protection regulations.[24]

I. THE AUTHORITY'S DECISION MUST BE BASED ON SUBSTANTIAL EVIDENCE IN THE RECORD

As the Authority is aware, it is subject to the Uniform Administrative Procedures Act.[25] As a consequence, in a contested case, such as the instant docket,[26] the Authority must afford all parties the UAPA's procedural protections.[27] Similarly, the Authority must follow the UAPA's requirements in reaching its final decision.[28]

Among other things, the final decision must be based on substantial evidence,[29] in the record,[30] and must include findings of fact and conclusions of law necessary to it.[31] The "substantial evidence rule is similar to the sufficiency of the evidence standard applied in judicial

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[23] *Cf.* 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*, Connecticut Residents' Comments (criticizing lack of choice).

[24] *Compare* Proposed Decision, at 27 *with* 16 CFR 260.15(a).

[25] *See* Conn. Gen. Stat. § 4-166 *et seq.* ("UAPA").

[26] *See* Revised Notice of Proceeding (Nov. 26, 2019), at 1, 2 (acknowledging that the instant docket is a contested case).

[27] *See, e.g.*, Conn. Gen. Stat. § 4-177c(a) (providing for the presentation of evidence and the cross-examination of witnesses).

[28] *See* Conn. Gen. Stat. § 4-180 (setting requirements for agency final decisions).

[29] *See* Conn. Gen. Stat. § 4-183(j) (An agency decision can be found to be clearly erroneous if it is not supported by "reliable, probative, and substantial evidence on the whole record."); *Bialowas v. Comm'r of Motor Vehicles*, 44 Conn. App. 702, 708-09 (1997).

[30] *See* Conn. Gen. Stat. § 4-180(c).

[31] *See id.* ("A final decision in a contested case shall be in writing or orally stated on the record and, if adverse to a party, shall include the agency's findings of fact and conclusions of law necessary to its decision, including the specific provisions of the general statutes or of regulations adopted by the agency upon which the agency bases its decision.").

review of jury verdicts, and evidence is sufficient to sustain an agency finding if it affords a substantial basis of fact from which the fact in issue can be reasonably inferred . . . ."[32] The Connecticut Supreme Court has repeatedly held that "mere speculation, or general concerns do not qualify as substantial evidence."[33] Further,

> [s]ubstantial and competent evidence is that which carries conviction. It is such as a reasonable mind might accept as adequate to support a conclusion. It means something more than a mere scintilla and must do more than create suspicion of the existence of the fact to be established.[34]

Although the substantial evidence test allows an administrative agency to resolve inconsistencies in the evidence and make credibility determinations, if there is ***no*** evidence to support an administrative agency's factual finding, that finding fails to satisfy the substantial evidence test.[35] The test requires something beyond conclusory and general statements in the record.[36]

Further, the parties to a proceeding must have the opportunity to conduct cross-examination.[37] In fact, "[d]ue process of law requires that the parties involved have an

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[32] *Fairwindct, Inc. v. Conn. Siting Council*, 313 Conn. 669, 689 (2014) (*citing Sweetman v. State Elections Enforcement Commission*, 249 Conn. 296, 331-32 (1999) (citations omitted; emphasis omitted; internal quotation marks omitted)).

[33] *See River Bend Assocs. v. Conservation & Inland Wetlands Comm'n*, 269 Conn. 57, 71 (2004) ("[M]ere speculation, or general concerns do not qualify as substantial evidence.") (*citing Conn. Fund for the Env't, Inc. v. Stamford*, 192 Conn. 247, 250 (1984)).

[34] *Fenn Mfg. v. Comm'n on Human Rights & Opportunities*, 1994 Conn. Super. LEXIS 361, *19 (1994) (*citing Ed v. Comm'n on Human Rights & Opportunities*, 176 Conn. 533, 539 (1979)).

[35] *Morrissey v. Conn. Dep't of Pub. Util. Control*, 2002 Conn. Super. LEXIS 1071, *16 (2002).

[36] *Dolgner v. Alander*, 237 Conn. 272, 281-82 (1996).

[37] *See* Conn. Gen. Stat. § 4-177c(a) ("In a contested case, each party and the agency conducting the proceeding shall be afforded the opportunity (1) to inspect and copy relevant and material records, papers and documents not in the possession of the party or such agency, except as otherwise provided by federal law or any other provision of the general statutes, and (2) at a hearing, to respond, to cross-examine other parties, intervenors, and witnesses, and to present evidence and argument on all issues involved."); *see also* Conn. Gen. Stat. § 4-178 ("In contested cases . . . a party and such agency may conduct cross-examinations required for a full and true disclosure of the facts . . . .").

opportunity to know the facts on which the commission is asked to act, to cross-examine witnesses and to offer rebuttal evidence."[38]

Nevertheless, aspects of the Proposed Decision are ***not based on evidence*** in the record and are based on materials from parties that did not make witnesses available for cross-examination. For example, findings and conclusions in the Proposed Decision are based on written comments submitted by the Department of Energy and Environmental Protection ("DEEP") and the Office of Consumer Counsel ("OCC").[39] However, as the Authority has previously concluded, comments do not constitute "evidence."[40] The DEEP and OCC comments on which the Proposed Decision relied could have been adopted by witnesses at the hearing,[41] subjected to cross-examination, and thereafter admitted into the evidentiary record.[42] But, they were not.[43] As a consequence, the parties to this proceeding were denied their statutory right to cross-examine the materials on which the Authority now intends to rely for its decision.[44] The reliance on these materials to support the Proposed Decision's findings and conclusions infringes on the protections afforded the parties to this proceeding by the UAPA and on their rights to due

[38] *Pizzola v. Planning and Zoning Comm'n*, 167 Conn. 202, 207 (1974); *see also Grimes v. Conservation Comm'n*, 243 Conn. 266, 274 (1997); *Huck v. Inland Wetlands & Watercourses Agency*, 203 Conn. 525, 536 (1987) ("Due process of law requires not only that there be due notice of the hearing but that at the hearing the parties involved have a right to produce relevant evidence, and an opportunity to know the facts on which the agency is asked to act, to cross-examine witnesses and to offer rebuttal evidence.") (citations omitted).

[39] *See* Proposed Decision, at 5, 20, 21.

[40] Docket No. 14-07-20, *PURA Development and Implementation of Marketing Standards and Sales Practices by Electric Suppliers,* Motion No. 4 Ruling ("Written Comments are not evidence . . . .").

[41] At the hearing, DEEP's legal counsel observed that he was "not a witness." Tr. at 122.

[42] *Cf.* Conn. Gen. Stat. § 4-177c(a) ("In a contested case, each party and the agency conducting the proceeding shall be afforded the opportunity . . . at a hearing, to respond, to cross-examine other parties, intervenors, and witnesses, and to present evidence and argument on all issues involved.").

[43] *See, generally*, Tr. In fact, DEEP specifically noted that it did not make a witness available to testify at the hearing. Tr. at 62 ("We don't have a witness to testify, and this is a hearing.").

[44] *See* Conn. Gen. Stat. § 4-177c(a) ("In a contested case, each party and the agency conducting the proceeding shall be afforded the opportunity . . . at a hearing, to respond, to cross-examine other parties, intervenors, and witnesses, and to present evidence and argument on all issues involved."); *see also* Conn. Gen. Stat. § 4-178 (authorizing cross-examination "for a full and true disclosure of the facts").

process and fundamental fairness.[45] Further, even if they constituted evidence (which RESA disputes), the comments of the OCC and DEEP are simply "conclusory and general statements," which do not rise to the level of "substantial evidence" and, thus, are insufficient to support the Authority's findings and conclusions.[46]

II. THERE IS NO EVIDENCE TO SUPPORT IMPOSING GEOGRAPHIC RESTRICTIONS ON RECS

The Proposed Decision would impose geographic restrictions on the RECs that can be used to support VROs billed through UCB.[47] In particular, suppliers would be required to use RECs "sourced from NEPOOL GIS or the adjacent control areas of New York and PJM."[48] However, the evidence on the record does not support this restriction. In reaching this conclusion, the Authority relied on comments asserting that VRO RECs "sourced from outside New England do not effectively further Connecticut's clean energy goals."[49] These comments

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[45] *See* Conn. Gen. Stat. § 4-177c(a); *Pizzola*, 167 Conn. at 207; *see also Grimes*, 243 Conn. at 273-74 (recognizing a common-law right to fundamental fairness in administrative hearings and requiring that conduct of a hearing not violate the "fundamentals of natural justice."); *Huck*, 203 Conn. at 536 (same); *Conn. Fund for Env't, Inc. v. Stamford*, 192 Conn. 247, 249 (1984) (citation omitted).

[46] *Dolgner*, 237 Conn. at 281-82; *see also River Bend Assocs.*, 269 Conn. at 71 ("[M]ere speculation, or general concerns do not qualify as substantial evidence.") (citation omitted); Conn. Gen. Stat. § 4-183(j) (An agency decision can be found to be clearly erroneous if it is not supported by "reliable, probative, and substantial evidence on the whole record.").

[47] *See* Proposed Decision, at 7. The Proposed Decision also would "require that certificates used to fulfill REC-only and VRO obligations, but settled through other tracking systems, must follow the NEPOOL GIS [New England Power Pool Generation Information System] settlement requirements." Proposed Decision, at 9. Although they operate in a similar way, each tracking system has its own set of rules. *Compare* New England Power Pool Generation Information System Operating Rules (eff. Jul. 1, 2020) (available at: https://www.nepoolgis.com/wp-content/uploads/sites/3/2020/07/GIS-Operating-Rules-Effective-7-1-20.doc) (last visited Sep. 30, 2020) ("NEPOOL GIS Rules") *with* New York Generation Tracking System (NYGATS) Operating Rules Version 2.3 (May 1, 2020) (available at: https://www.nyserda.ny.gov/-/media/Files/Programs/NYGATS/Operating-Rules.pdf) (last visited Sep. 30, 2020) ("NY GATS Rules"); PJM-EIS Generation Attribute Tracking System (GATS) Operating Rules Revision 11 (Sep. 24, 2020) (available at: https://www.pjm-eis.com/~/media/pjm-eis/documents/gats-operating-rules.ashx) (last visited Sep. 30, 2020) ("PJM GATS Rules"). However, even the slightest difference in the settlement requirements could operate to prohibit RECs sourced from New York or the PJM footprint from being used to satisfy VRO obligations. Thus, the Authority should remove this provision from the Proposed Decision.

[48] Proposed Decision, at 7.

[49] *See id.* at 5 (*quoting* DEEP First Notice Comments, at 1).

are not evidence.[50] Moreover, the evidence on the record actually demonstrates that RECs sourced from beyond New England, New York, and the PJM footprint benefit Connecticut, advance Connecticut's clean energy goals, and respond to customer interest. Consequently, the Authority should not limit the geographic regions from which the RECs supporting VROs may be sourced.

Connecticut is a "tailpipe state."[51] Pollution comes into Connecticut "from down wind"[52] and generally from the west.[53] Thus, supporting renewable energy in Pennsylvania, a state west of Connecticut, "helps clean up Connecticut's air."[54] However, air pollution does not respect state, or even country, borders and can have effects in Connecticut from across the country and even around the world.[55] Furthermore, there is no evidence suggesting that supporting renewable energy in other states does not help clean Connecticut's air.[56] In fact, the State of Connecticut has brought lawsuits alleging that power plants from much farther south and west than Pennsylvania and outside of the ISO New England, New York and PJM territories are public nuisances that contribute to climate change that adversely affects the citizens of Connecticut.[57]

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[50] Docket No. 14-07-20, *PURA Development and Implementation of Marketing Standards and Sales Practices by Electric Suppliers,* Motion No. 4 Ruling (Nov. 19, 2014) ("Written Comments are not evidence . . . .").

[51] Tr. at 50.

[52] *Id.*

[53] *See id.* at 49 ("And also, if we take a look at our air flow and things of that nature, the air flow into Connecticut tends to come, winds tend to blow from the west towards Connecticut.").

[54] *Id.* at 50.

[55] *See, e.g.*, C. Dempsey, Those aren't clouds: Smoke from West Coast fires is over Connecticut Wednesday, *Hartford Courant* (Sep. 16, 2020) (available at: https://www.courant.com/breaking-news/hc-br-hartford-connecticut-wildfire-smoke-haze-20200915-6lty6l7x5rauzoj6ia4xl5nghe-story.html) (last visited Sep. 30, 2020); *cf.* T. Di Liberto, Dust from the Sahara Desert stretches across the tropical Atlantic Ocean in late June/early July 2018, NOAA Climate.gov, https://www.climate.gov/news-features/event-tracker/dust-sahara-desert-stretches-across-tropical-atlantic-ocean-late (Jul. 13, 2018) (last visited Sep. 30, 2020).

[56] *See, generally*, Record.

[57] *See, e.g., State of Connecticut v. American Electric Power Company, Inc.*, 406 F. Supp. 2d 265 (2005) (seeking to abate public nuisance from, *inter alia*, Minnesota, Wisconsin, North Dakota, South Dakota, Colorado, Texas and New Mexico power plants to reduce the risk of threat and injury to Connecticut's citizens and residents from global warming).

Hence, there is no evidence in the record to support the Authority's finding that "resources in Canada or further west or south of New York and PJM are unlikely to provide any measurable benefits toward Connecticut's renewable energy goals."[58] As a consequence, this finding cannot be used to support imposing artificial geographic restrictions on the RECs that can be used to support VROs billed through UCB.[59]

Moreover, Connecticut's clean energy goals are not motivated solely by local concerns.[60] Rather, they are motivated by, and designed as a response to, ***global*** climate change. Connecticut's seminal climate legislation is entitled An Act Concerning Connecticut Global Warming Solutions.[61] In addition, the Governor's Executive Order No. 3, which calls for analyzing pathways and recommending strategies for achieving a 100% zero carbon target for the electric sector by 2040,[62] is expressly premised on responding to challenges "affecting global climate."[63] Prohibiting Connecticut customers from supporting renewable energy outside of New England, New York and PJM detracts from Connecticut's goals of fighting global climate change and mitigating the effects of global climate change on Connecticut residents.[64]

Further, customers are choosing VROs supported with nationally sourced RECs even when other VROs are available. In fact, customers appreciate the flexibility to purchase VROs

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[58] *See* Proposed Decision, at 7.

[59] *Cf.* Conn. Gen. Stat. § 4-183(j) (An agency decision can be found to be clearly erroneous if it is not supported by "reliable, probative, and substantial evidence on the whole record."); *Bialowas*, 44 Conn. App. at 708-09.

[60] *See, e.g., State of Connecticut v. American Electric Power Company, Inc.*, 406 F. Supp. 2d 265 (2005) (seeking to abate public nuisance from, *inter alia*, Minnesota, Wisconsin, North Dakota, South Dakota, Colorado, Texas and New Mexico power plants to reduce the risk of threat and injury to Connecticut's citizens and residents from global warming).

[61] *See* P.A. 08-98, An Act Concerning Connecticut Global Warming Solutions.

[62] *See* Executive Order No. 3 (Sep. 3, 2019), at 4-5.

[63] *See Id.* at 1.

[64] *Cf. State of Connecticut v. American Electric Power Company, Inc.*, 406 F. Supp. 2d 265 (2005) (seeking to abate public nuisance from, *inter alia*, Minnesota, Wisconsin, North Dakota, South Dakota, Colorado, Texas and New Mexico power plants to reduce the risk of threat and injury to Connecticut's citizens and residents from global warming).

supported by RECs from different regions.[65] Starion Energy, Inc. ("Starion") offers two VROs in Connecticut, one sourced from RECs generated nationally, and one sourced from RECs generated in New England.[66] Some customers choose the nationally-sourced VRO, while other customers choose the New England-sourced VRO.[67] Thus, the evidence in the record establishes that Connecticut customers not only intend to but, in fact, actually buy VROs sourced from locations throughout the United States even when a New England-sourced VRO is readily available to them.[68] Denying customers access to nationally-sourced VROs would frustrate their ability to choose products that they prefer and eliminate the support for the State's climate and renewable energy goals that such products provide.[69]

Ultimately, VROs are ***voluntary*** products. They are not non-bypassable aspects of utility service that customers have no option but to receive. Rather, customers can choose to purchase VROs, or not to purchase them.[70] If customers think that VROs generally, or VROs sourced with RECs from particular locations, do not meet their needs, they will elect not to purchase them,

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[65] *See* Tr. at 73-74.

[66] *See id*.

[67] *See id*. at 74.

[68] The Proposed Decision cited the DEEP First Notice Comments, which suggested that VROs supported by RECs generated outside New England "'***may*** not align with customers' intent when choosing electric supply options beyond the RPS.'" *See* Proposed Decision, at 5 (*quoting* DEEP First Notice Comments, at 3) (emphasis added); *see also* Proposed Decision, at 8. The DEEP statements are nothing more conclusory statements based on speculation that do not constitute "substantial evidence" and were not subject to cross-examination in violation of due process and fundamental fairness. *See* Docket No. 14-07-20, *PURA Development and Implementation of Marketing Standards and Sales Practices by Electric Suppliers,* Motion No. 4 Ruling (Nov. 19, 2014) ("Written Comments are not evidence . . . ."); *River Bend Assocs.*, 269 Conn. at 71 ("[M]ere speculation, or general concerns do not qualify as substantial evidence.") (citation omitted); Tr. at 62 ("We don't have a witness to testify, and this is a hearing"); *Huck*, 203 Conn. at 536 ("Due process of law requires not only that there be due notice of the hearing but that at the hearing the parties involved have a right to produce relevant evidence, and an opportunity to know the facts on which the agency is asked to act, to cross-examine witnesses and to offer rebuttal evidence.") (citations omitted). Moreover, the actual evidence in the record demonstrates that Connecticut customers do distinguish and choose between nationally-sourced and New England-sourced VROs. *See, e.g.,* Tr. at 73-74.

[69] *Accord* Tr. at 73-74.

[70] *Cf.* Tr. at 16 ("[A]ll EDC customers in Connecticut are paying for the Millstone PPA . . . ."); 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*, Connecticut Residents' Comments (criticizing lack of choice).

and the market will react by offering products that customers actually want.[71] However, if due to artificial restrictions on the market, the only products available are those that do not satisfy the customers' needs or are those at price points beyond what customers are willing to pay, they simply will not purchase VROs. Thus, imposing restrictions on what customers can purchase will not guarantee they will actually purchase those products. In fact, there are price points for voluntary renewable products that customers support,[72] but other price points that customers will not support.[73] Geographic restrictions imposed on the RECs that can be used to support VROs that can be billed through UCB could cause prices for these products to rise to levels that customers simply will not pay.[74] This will reduce customer participation in the voluntary renewable market[75] and, as a consequence, actually frustrate Connecticut's clean energy and climate goals. Accordingly, the Authority should not impose geographic restrictions on the RECs that can be used to satisfy VRO obligations.

III. THE EVIDENCE DOES NOT SUPPORT IMPOSING RESOURCE TYPE RESTRICTIONS ON RECS

The Proposed Decision also would impose resource-type restrictions on the RECs associated with VROs billed through UCB.[76] In particular, suppliers would be required to use RECs meeting the standards for Connecticut Class I renewable energy sources (as defined by Connecticut General Statutes section 16-1).[77] However, the evidence does not justify this restriction. Instead, it demonstrates that imposing resource type restrictions will increase VRO

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[71] *Accord* Tr. at 73-74.

[72] *See id*. at 100 (identifying CEOP prices that customers pay).

[73] *See, e.g.*, *id*. at 48, 109-11.

[74] *See, e.g.*, *id*. at 109-11.; *cf.* Tr. at 48 ("The problem with that is that the cost of the program would be such, because we're competing with compliance RECs, that no one would enroll in it.").

[75] *Id.*

[76] *See* Proposed Decision, at 7.

[77] *See id.* at 9.

costs, discourage customer participation in the voluntary renewable market, and negatively affect Connecticut's goals of supporting "sustainable local renewable energy sources."[78]

Restrictions on VRO eligible technologies will further constrain the supply of available RECs and, as a consequence, further increase the cost to purchase those RECs.[79] In addition, imposing restrictions on the types of products that customers can purchase will not guarantee they will actually purchase those products. In fact, there are price points for voluntary renewable products that customers support,[80] but other price points that customers will not support.[81] Resource restrictions imposed on the RECs that can be used to support VROs could cause prices for these products to rise to levels that customers simply will not pay.[82] This will reduce customer participation in the voluntary renewable market[83] and, as a consequence, actually frustrate Connecticut's clean energy and climate goals.

Moreover, imposing a requirement that VROs be supported by Connecticut Class I eligible technologies could reduce the offerings available to consumers, including offerings that support Connecticut clean energy resources. Such a restriction would prevent a VRO from being supported by RECs based solely on the legislative classification of those RECs for purposes of the mandatory RPS requirements. However, if the Authority imposes a Connecticut Class I eligible technology-source restriction, suppliers will not be able to offer voluntary products to Connecticut customers supported by certain in-state RECs (e.g., from hydro facilities that started

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[78] *See* First Notice.

[79] *See* Tr. at 129 (testifying that constraints on RECs used to support VROs based on region and technology would "very likely have price implications").

[80] *See id*. at 100 (identifying CEOP prices that customers pay).

[81] *See, e.g.*, *id*. at 48, 109-11.

[82] *See, e.g.*, *id.* at 109-11; *cf. id*. at 48 ("The problem with that is that the cost of the program would be such, because we're competing with compliance RECs, that no one would enroll in it.").

[83] *Id.* at 48, 109-11.

operation before July 1, 2003)[84] even though those resources support the State's climate and renewable energy goals. This will reduce the options available to consumers, increase the price of RECs for VROs, and reduce investment in Connecticut's resources, jobs, and economy.[85]

Further, if eligible source types for VROs are determined by Connecticut's statutory renewable resource definitions, any subsequent change to those statutory definitions could affect the eligibility of certain RECs to support suppliers' VROs. The Connecticut renewable definitions are not static.[86] In certain instances, a statutory change could render a generation source ineligible to be used to support VRO obligations.[87] This could frustrate customers' contractual expectations. For instance, if a customer entered into a two-year agreement that included a VRO[88] and the General Assembly changed the Class I definition in the first year of the agreement to remove the eligibility of a certain technology, the product may no longer qualify as a VRO. This would be especially problematic if the supplier were required to identify the particular resource types and/or specific geographic locations from which it intended to satisfy the VRO at the time of contracting[89] because those resources may no longer qualify as Class I eligible technologies. As a consequence, the supplier would be required to purchase RECs from other resources. These resources may not have been identified to the consumer at the

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[84] *See* Conn. Gen. Stat. § 16-1(20).

[85] If, contrary to the UAPA and Authority precedent, the Authority treats comments that have not been adopted by witnesses subject to cross-examination as comparable to record evidence, it should note the comments of Putnam Hydropower Inc, which observe that its 650 kW hydropower plant, which has been operated since 1987, would be excluded from supplying RECs to Connecticut VROs, if the Authority imposes resource type restrictions on the RECs supporting VROs. *See* Comments of Putnam Hydropower Inc (Dec. 20, 2019).

[86] *See* P.A. 01-204 (redefining Class I renewable source); P.A. 03-135 (same); P.A. 03-221 (same); P.A. 13-303 (same); P.A. 18-50 (same).

[87] *See* Tr. at 74 ("And limiting it based on a definition that's subject to change based on legislation is difficult because you could offer a product and then, you know, a fuel source may no longer be considered Class I eligible.").

[88] *Cf.* Connecticut Rate Board, https://www.energizect.com/compare-energy-suppliers (last visited Sep. 30, 2020) (displaying VROs with 24-month terms).

[89] *See* Proposed Decision, at 22.

time of contracting and may not be available in the same geographic location as those that the supplier originally intended to use.[90] Thus, the customers' expectations would be frustrated and the supplier's contractual obligations would not be met. Additionally, the technologies that satisfied the new Class I definition may not be available at the same price.[91] Thus, rather than restricting the technologies eligible to be used to satisfy VRO obligations to those that would qualify as a Connecticut Class I renewable energy source, the Authority should permit suppliers to use technologies that qualify as renewables in the jurisdictions from which the RECs are purchased[92] to satisfy their VRO obligations.

In response to concerns about resource-type restrictions on the RECs supporting VROs billed through UCB, the Proposed Decision advised parties "believ[ing] the definition of Class I does not adequately represent the resources necessary to ensure Connecticut meets its clean energy goals" to seek relief from the legislature.[93] This is an impractical and inefficient approach, particularly because the Authority (not the General Assembly) has decided that resources using Connecticut Class I technologies are the ***sole*** resources that can be used to satisfy Connecticut's clean energy goals through the purchase of voluntary products. In fact, the General Assembly has specifically recognized that other resources can help satisfy those goals by creating definitions and standards for Class II and Class III resources.[94] Further, DEEP has also expressly recognized that resources that do not satisfy any of those statutory definitions can help

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[90] *Cf.* Proposed Decision, at 22 (requiring, "*prior to* enrolling a customer in a contract," identification of the types of sources from which RECs will be obtained to satisfy VRO obligations) (emphasis in original).

[91] While competitive suppliers may have contractual and legal means to address change of law circumstances, these mechanisms will have a direct and immediate financial effect on customers that will be subject to new and unanticipated charges that are not within their budgets. Moreover, such unexpected changes would undermine the consumers' underlying confidence that the VRO market can provide and deliver the type of pricing and products they desire and have contracted to meet their needs.

[92] *Cf.* PJM GATS Rules, at 11 ("Individual states may create different definitions of renewable Certificates.").

[93] *See* Proposed Decision, at 9.

[94] *See* Conn. Gen. Stat. § 16-1(21), (38); Conn. Gen. Stat. § 16-245a; Conn. Gen. Stat. § 16-243q.

support Connecticut's clean energy goals.[95] The Authority should follow the lead of those charged with creating energy policy and recognize that resources beyond those using Class I technologies support the State's goals.

Moreover, having the legislature modify the statutory definition of "Class I renewable energy source" would have broader implications than simply affecting the RECs that could be used to support VROs—it would affect the RECs that could be used for mandatory RPS compliance.[96] RESA does not know, and the record does not indicate,[97] whether the legislature would support statutory changes affecting mandatory RPS compliance, especially when such changes would be motivated by a goal of allowing customers purchasing ***voluntary*** products to purchase the products that they want. Moreover, allowing customers to voluntarily purchase the products that they want does not require any changes to the statutes affecting the RPS. It simply requires the Authority in its decision in this proceeding to recognize that there are voluntary renewable products that customers want that are supported by RECs that may not be able to be used for mandatory RPS compliance[98] and allowing customers the freedom to purchase those products, if they choose to do so.

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[95] *See, e.g.,* Comprehensive Energy Strategy (Feb. 8, 2018), Strategy 3(B) (identifying procurements from nuclear and hydro facilities as means to "[g]row and sustain renewable and zero-carbon generation in state and region"). In fact, DEEP specifically removed proposed restrictions on VROs similar to those in Proposed Decision when it adopted the Comprehensive Energy Strategy. *Compare* 2017 Comprehensive Energy Strategy (Draft: Jul. 26, 2017), at 79-80 *with* Comprehensive Energy Strategy (Feb. 8, 2018), at 43-44.

[96] *See, e.g.*, Conn. Gen. Stat. § 16-245a(a)(16) ("On and after January 1, 2021, not less than twenty-two and one-half per cent of the total output or services of any such supplier or distribution company shall be generated from Class I renewable energy sources and an additional four per cent of the total output or services shall be from Class I or Class II renewable energy sources").

[97] *See, generally*, Record.

[98] *See, e.g.,* Tr. at 73-74.

IV. CUSTOMERS SHOULD RECEIVE CLEAR, TRANSPARENT INFORMATION ABOUT VROS THAT IS CONSISTENT WITH CONNECTICUT AND FEDERAL LAW

Consistent with the scope of the Authority's statutory powers,[99] RESA supports providing customers with additional information about VROs on the Rate Board and through modifications to the disclosure label and applauds the Authority for recognizing the value of a working group[100] in developing a meaningful and understandable disclosure label. RESA encourages the Authority to adopt measures that increase transparency and provide consumers with additional education, rather than restricting customer choice in the voluntary renewables market. Enhancing the information that the Rate Board provides about VROs would further the Authority's goal of increased transparency. For instance, like Massachusetts,[101] the Authority could modify the Rate Board[102] to highlight particular aspects of VROs, such as support from RECs generated by particular facility types or in particular regions. In addition, the Rate Board could be updated to provide information about the resource type and general location of the

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[99] *See* Conn. Gen. Stat. § 16-245o(h)(5). Significantly, while Connecticut General Statutes sections 16-245o(h)(5) requires suppliers to disclose to the Authority the amount of RECs, if any, they will purchase other than required RECs, where those additional RECs are being sourced from, and the types of renewable energy sources that will be purchased, it does not set any restrictions on the geographic region or the resource type of the RECs that can acutally be used to support VROs, or empower the Authority to do so. *See* Conn. Gen. Stat. § 16-245o(h)(5); *see also* Conn. Gen. Stat. § 16-245o(h)(6) (requiring disclosures to customers of renewable energy content in VROs). As a consequence, the Authority does not have the power to impose such restrictions. *See Waterbury v. Comm'n on Human Rights & Opportunities*, 160 Conn. 226, 230-31 (1971) ("It is clear that an administrative body must act strictly within its statutory authority . . . . It cannot modify, abridge or otherwise change the statutory provisions under which it acquires authority unless the statutes expressly grant it that power.") (internal citations omitted); *Salmon Brook Convalescent Home v. Commission on Hospitals & Health Care*, 177 Conn. 356, 363 (1979) (holding that "the power of an administrative agency to prescribe rules and regulations under a statute is not the power to make law, but only the power to adopt regulations to carry into effect the will of the legislature as expressed by the statute.").

[100] *See* Proposed Decision, at 21-22.

[101] *See* D.P.U. 14-140-F, Energy Switch Massachusetts Website Rules (Oct. 17, 2017), § IV(B)(2) (available at: https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/9172893) (last visited Sep. 30, 2020) (specifically identifying whether all of the product's voluntary renewable resources are Class I resources).

[102] *Cf.* Conn. Gen. Stat. § 16-244d(b)(2) ("On or before July 1, 2017, and every two years thereafter, the authority shall review the rate board Internet web site and make any improvements to ensure such Internet web site remains a progressive tool for customers to compare pricing policies and charges among electric suppliers."); Tr. at 52 (contemplating expanding the Rate Board to include CEOP voluntary renewable products).

facilities producing the RECs included in VROs billed through UCB. Currently, the Rate Board does not provide this information. In fact, it identifies only the percentage of renewable energy in an offer.[103] Thus, customers cannot easily distinguish between or compare VROs. The Authority could also develop new ways of presenting information to customers, such as using maps on disclosure labels to show the geographic region from which RECs are being sourced.[104] All of these efforts will educate consumers and increase transparency.

The Authority, however, should not impose restrictions on supplier marketing that are inconsistent with Connecticut law, federal law, and the law of other states and that will only lead to customer confusion. The Proposed Decision provides that "the supplier may not market [a VRO] as 'renewable energy' unless the offer is supported by an ownership interest in or PPA for a renewable source used to serve the contract."[105] However, this is inconsistent with Connecticut law, federal law, and the law of other states.

As of January 1, 2020, in Connecticut

> not less than twenty-one per cent of the total output or services of any . . . supplier . . . shall be ***generated*** from Class I renewable energy sources and an additional four per cent of the total output or services shall be from Class I or Class II ***renewable energy*** sources . . . .[106]

[103] *See* Connecticut Rate Board, https://www.energizect.com/compare-energy-suppliers (last visited Sep. 30, 2020). The "Other Information" section for some offers advises potential customers to contact the supplier regarding the renewable energy content of the offer. *See id.* However, that requires customers to visit one or more additional websites or call one or more suppliers.

[104] For example, a disclosure label could contain a map of the United States and mark (with shading or highlighting) the states or regions from which RECs supporting a VRO would be sourced. A map showing RECs sourced from the PJM footprint might reflect PJM's system maps. *See* PJM, Maps, https://www.pjm.com/library/maps.aspx (last visited Sep. 30, 2020).

[105] Proposed Decision, at 27.

[106] Conn. Gen. Stat. § 16-245a(a)(15) (emphasis added); *see also* Conn. Agencies Regs. § 16-245a-1(a) (requiring suppliers to report "the percent of total electricity output or services ***generated*** from Class I and Class II renewable energy sources") (emphasis added).

A supplier satisfies these requirements "by purchasing ***certificates*** issued by the New England Power Pool Generation Information System."[107] Thus, for purposes of the RPS, RECs are an acceptable and, in fact, the only acceptable means by which to demonstrate a supplier has "generated" energy from "renewable energy sources."[108] However, if the Proposed Decision is adopted in final, those same suppliers will not be able to advertise a VRO (i.e., voluntary ***renewable*** offer) as "renewable energy" unless they have entitlements to both the RECs and the energy from a particular facility.[109] This is inconsistent with how the legislature specifically authorized suppliers to evidence the generation of renewable energy in the State of Connecticut.

Moreover, this inconsistency will decrease transparency and only serve to confuse customers in direct contravention of the legislature's intent. In order to increase transparency, the General Assembly has specifically required suppliers to disclose the "renewable energy content" of VROs.[110] However, if the Proposed Decision is adopted as final,[111] unless a supplier has entitlements to the energy and RECs from a particular facility, its VRO product would have ***no*** "renewable energy content." As a consequence, instead of increasing transparency, the Authority will actually create inconsistencies and confusion that will thwart the intent of the legislature,[112] DEEP,[113] and the Authority itself.[114]

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[107] Conn. Gen. Stat. § 16-245a(b)(1) (emphasis added); *see also* Conn. Agencies Regs. § 16-245a-1(c) (requiring a supplier's RPS compliance report to "be based ***exclusively*** on certificates issued by the NEPOOL GIS") (emphasis added).

[108] *Id.*

[109] Proposed Decision, at 27.

[110] Conn. Gen. Stat. § 16-245o(h)(6).

[111] Proposed Decision, at 27.

[112] *See* Conn. Gen. Stat. § 16-245o(h)(5), (6).

[113] *See* Comprehensive Energy Strategy (Feb. 8, 2018), at 43-44 (seeking to "[e]nhance transparency of voluntary renewable energy products").

[114] Proposed Decision, at 20 (seeking to present information in a way that will "lead to greater transparency and consumer understanding of the VRO program and product offerings").

The Proposed Decision is also inconsistent with federal law and the law of other states. The Federal Trade Commission ("FTC") has determined that products may be advertised as being made with "renewable energy" as long as any non-renewable energy use is matched with RECs.[115] Similarly, the United States Environmental Protection Agency has concluded that "RECs substantiate the claim that you are using a specific number of megawatt-hours of renewable electricity from a zero-emissions renewable resource."[116] Likewise, the Vermont Attorney General and Department of Public Service have determined:

> Renewable energy certificates or renewable energy credits ("RECs") ***are what make*** solar ***a "green" or renewable energy resource***—they are certificates that track the source of the renewable energy and are the ***legal attribute*** of renewable energy. The nature of electricity is that it is physically untraceable. Once generated, the electricity flows into a common pool where it cannot be physically traced to its source or end use. The system of tracking attributes via RECs is the ***only legal way*** of characterizing the "renewability" of different sources of electricity. RECs can be separated, or "unbundled," from the electric output and sold to anyone, such as to a utility that needs renewable credits to comply with a state renewable portfolio standard. Whoever buys the RECs has paid an extra cost to bring renewable energy to the grid and ***has the only legal claim that their energy is renewable***.[117]

Thus, the Proposed Decision's conclusions that a product can only be described as "renewable energy" if the supplier has entitlements to both the RECs <u>and</u> energy from a renewable resource is inconsistent with federal law and that of other states. This will also create confusion.

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[115] 16 CFR 260.15(a) ("A marketer should not make unqualified renewable energy claims, directly or by implication, if fossil fuel, or electricity derived from fossil fuel, is used to manufacture any part of the advertised item or is used to power any part of the advertised service, ***unless the marketer has matched such non-renewable energy use with renewable energy certificates***.") (emphasis added).

[116] *See* United States Environmental Protection Agency, Green Power Partnership, Making Environmental Claims, https://www.epa.gov/greenpower/making-environmental-claims (last visited Sep. 30, 2020) (emphasis removed).

[117] *See* Guidance for Third-Party Solar Projects, https://ago.vermont.gov/wp-content/uploads/2018/01/Guidance-on-Solar-Marketing.pdf (last visited Sep. 30, 2020) ("VT Guidance"), at 1 (emphasis added).

No other New England state defines "renewable energy" in the manner the Authority proposes.[118] Thus, if the Proposed Decision is adopted in final, suppliers selling to customers with homes or business in multiple states will be able to advertise a VRO in all of the other New England states as a "renewable energy" product but will not be able to call it a "renewable energy" product in Connecticut.[119] However, customers will not understand this artificially created distinction. As a consequence, Connecticut consumers seeking to support "renewable energy" may simply forgo purchasing VROs supported solely by RECs; thereby, decreasing Connecticut customers' support of renewable resources and frustrating Connecticut's clean energy goals.

Moreover, because of these inconsistencies, the Proposed Decision's restrictions on the description of REC-supported VROs as "renewable energy" could lead to potentially absurd results. For example, if a supplier sells a VRO that matches 100% of a customer's usage with RECs, if the Proposed Decision is adopted in final, the supplier would be prohibited from marketing the VRO as "renewable energy."[120] However, the customer ***could*** describe the products that it produces from the facility supplied by the same exact VRO as "made with renewable energy."[121] Such a situation would be simply incongruous.

The Proposed Decision also concludes that it would be reasonable "to display information as representing a renewable source for an offer if the supplier owns, or has a PPA with, these resources and is using them to supply the electricity for the offer."[122] As a practical

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[118] *See, e.g.,* VT Guidance, at 1; 65-407-305 Me. Code. R. § 4(A)(7) (allowing RECs to be used to substantiate renewable energy marketing claims); N.H. Rev. Stat. Ann. § 374-F:3.V(f)(4) (same).

[119] *Compare, e.g., id. with* Proposed Decision, at 27.

[120] *See* Proposed Decision, at 28.

[121] *See* 16 CFR 260.15(a), (c).

[122] Proposed Decision, at 27 (emphasis in original).

matter, this condition could only be met with on-premises behind-the-meter resources.[123] In all other instances, the energy produced by renewable generating facilities flows to the grid and becomes part of the system mix used to supply all customers.[124] Thus, even if a supplier actually owned a grid-connected generating unit and contracted with its customers to supply them with energy from that generating unit, the supplier still only could provide renewable energy attributes to its customers through RECs.[125] As a consequence, the Proposed Decision's condition that renewable resources are actually used to supply the electricity in order for the VRO to be described as using "renewable energy" would have the practical effect of preventing suppliers from describing almost all VROs as "renewable energy" products. Moreover, this restriction is also inconsistent with Connecticut law. The General Assembly has specifically recognized that both grid-side and behind-the-meter resources can qualify as a "Class I ***renewable energy*** source."[126]

Ultimately, RESA supports the Authority's "attempts to increase consumer awareness about the REC market, ensure Connecticut consumers receive renewable energy products that further the state's clean energy goals, and ensure that customers fully understand the REC products offered in excess of the RPS mandate for which they are paying a premium."[127] However, in doing so, the Authority should not render meaningless the well-established definition of "renewable energy" as set forth in Connecticut, federal, and other states' laws. Instead, the Authority should educate consumers about the definition of "renewable energy" and

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[123] *See* Tr. at 88.

[124] *See id.*

[125] *See id*. at 88-89.

[126] *See* Conn. Gen. Stat. § 16-1(20) (recognizing "electrical generation, ***including*** distributed generation") (emphasis added).

[127] Proposed Decision, at 2.

explain the distinctions between various product offerings through the Rate Board, the disclosure label, and other means.

V. REASONABLE THIRD-PARTY VERIFICATION REQUIREMENTS ARE APPROPRIATE

The Proposed Decision would require that VRO sales and REC settlements be verified by an independent third party.[128] RESA has no objection to this requirement. However, the Authority should ensure that the verification requirements are sufficiently clear to avoid confusion and not so onerous as to impose unnecessary costs on consumers.

For example, the Proposed Decision requires that "suppliers support VRO claims through ***audited*** VRO sales and certificate settlement verification data."[129] To do so, suppliers could use Green-e or engage a "similar third party ***auditor***."[130] While RESA does not object to a requirement that VRO sales and REC retirement verifications be conducted by an independent third-party, the use of the terms "audit" and "auditors" implies that the verification must be conducted by public accountants to specified standards.[131] Those standards are significantly more stringent and costly than what otherwise would be necessary for an independent third-party to "attest to the accuracy of information."[132] Further, there is no evidence in the record that suppliers have failed to provide accurate information about their VRO sales or REC retirements that would warrant imposing such strict and costly standards.[133]

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[128] *See* Proposed Decision, at 19.

[129] *Id.* at 20 (emphasis added).

[130] *Id.* (emphasis added).

[131] *See, e.g.,* The American Institute of Certified Public Accountants, Audit and Attest Standards, https://www.aicpa.org/research/standards/auditattest.html (last visited Sep. 30, 2020).

[132] *See* Proposed Decision, at 20

[133] *See, generally,* Record.

Moreover, there are already established tracking and verification systems in place ***throughout*** the United States that ensure that suppliers can account for all RECs purchased and retired to support VROs and that prevent double counting.[134] The NEPOOL GIS, New York Generation Attributes Tracking System ("NY GATS"), PJM Environmental Information Services Generation Attributes Tracking System ("PJM GATS"), and Electric Reliability Council of Texas ("ERCOT") all have processes in place that ensure that double counting does not occur.[135] Other states and regions also have similar systems.[136] Once RECs are retired in any of these systems, they cannot be used or retired elsewhere.[137] Because these robust tracking systems are in place, which suppliers do not control, there is no benefit in establishing an "audit" requirement. Thus, RESA requests that, in the final decision, the Authority replace the references to "audit" and "auditors" with "verification" and "verifiers."

[134] *See* Tr. at 43-44.

[135] *See, e.g.*, NEPOOL GIS Rules, R. 3.5(a) (providing that, at the end of a Trading Period, "all Reserved Certificates in the Reserved Certificate account shall be retired and shall no longer be available for further transfer, and their attributes shall not be included in any Residual Mix Certificates"); NY GATS Rules, at 77 ("The NYGATS is a generation attribute registry and software application program that (i) creates Certificates to uniquely define each MWh of energy and associated Attributes generated in or imported into New York; (ii) creates Certificates that are imported to the registry without accompanying energy; (iii) tracks said Certificates and (iv) prevents double counting."); ERCOT Nodal Protocols Section 14: State of Texas Renewable Energy Credit Trading Program (Nov. 1, 2019) (available at: http://www.ercot.com/content/wcm/current_guides/53528/14-110119_Nodal.docx) (last visited Sep. 30, 2020), R. 14.10(1) ("ERCOT shall retire such RECs or Compliance Premiums by removing them from the party's REC trading account and retiring the unique serial number, thus rendering the REC or Compliance Premium unusable for any other purpose."); PJM GATS Rules, R. 12.5 (addressing means to prevent double counting of imported/exported RECs).

[136] *See, e.g.,* Midwest Renewable Energy Tracking System ("M-RETS") Operating Procedures (eff. Jan. 1, 2020) (available at: https://www.mrets.org/wp-content/uploads/2020/04/M-RETS-Operating-Procedures-2020.pdf) (last visited Sep. 30, 2020), § 4.2.7 ("Once an Organization completes the retirement, they cannot later change the retirement reason. This prevents the Certificate from being subject to a double claim").

[137] *See* Tr. at 45 ("There's no way, once you retire [RECs], that they could be used or double counted elsewhere."); *see also, e.g.,* M-RETS Operating Procedures, § 4.6.5 ("M-RETS can only export Certificates to a Compatible Certificate Tracking System. For Certificates that are exported, the cooperative agreements between the tracking systems handle how to prevent double counting.").

CONCLUSION

For all the foregoing reasons, the Authority should continue to afford customers an array of VRO choices that meet their individual goals and needs.

Respectfully submitted,
RETAIL ENERGY SUPPLY ASSOCIATION

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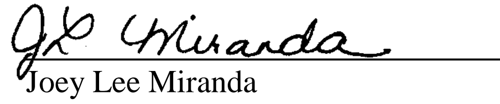
CERTIFICATION

I hereby certify that a copy of the foregoing was sent to all participants of record on this 30th day of September 2020.



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