

*Via Electronic Filing*

September 17, 2020

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

**Re: Docket No. 20-01-02: Administrative Proceeding to Review The United Illuminating Company's Standard Service and Supplier of Last Resort Service 2020 Procurement Results and Rates**


Dear Mr. Gaudiosi:

Provided herewith please find the Brief of Retail Energy Supply Association in connection with the above-referenced matter.

I certify that a copy hereof has been sent to all participants of record as reflected on the Public Utilities Regulatory Authority's ("PURA's") service list. In accordance with PURA's instructions, I am filing "only an electronic copy through the PURA Web Filing System."<sup>1</sup>

Please do not hesitate to contact me if you have any questions. Thank you.

Sincerely,

  
Brian E. Calabrese

Copy to: Service List

Attachment

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<sup>1</sup> See Fifth Ruling on Temporarily Suspending Filing Paper Copies (Jun. 19, 2020).

**STATE OF CONNECTICUT**

**PUBLIC UTILITIES REGULATORY AUTHORITY**

ADMINISTRATIVE PROCEEDING TO : DOCKET NO. 20-01-02  
REVIEW THE UNITED :  
ILLUMINATING COMPANY’S :  
STANDARD SERVICE AND SUPPLIER :  
OF LAST RESORT SERVICE 2020 :  
PROCUREMENT RESULTS AND :  
RATES : SEPTEMBER 17, 2020

**BRIEF OF RETAIL ENERGY SUPPLY ASSOCIATION**

The Retail Energy Supply Association (“RESA”)<sup>1</sup> hereby files its Brief in response to the Public Utilities Regulatory Authority’s (“Authority”) September 8, 2020 Notice of Request for Briefs.<sup>2</sup>

**BACKGROUND**

The Authority opened the instant docket to review procurement results and to consider approval of The United Illuminating Company’s (“UI”) proposed Standard Service and Last Resort Service rates.<sup>3</sup> On May 1, 2020, UI filed for approval of its supply rates (i.e., the Generation Service Charge and Bypassable Federally Mandated Congestion Charge rates for Standard Service and Last Resort Service) to be effective July 1, 2020.<sup>4</sup> On May 11, 2020, the Authority approved UI’s proposed changes to its supply rates.<sup>5</sup>

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<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

<sup>2</sup> Notice of Request for Briefs (Sep. 8, 2020) (“Notice”).

<sup>3</sup> Notice of Proceeding (Jan. 15, 2020).

<sup>4</sup> UI Compliance Filing (May 1, 2020) (“May 1 Rate Filing”).

<sup>5</sup> See Authority Correspondence (May 11, 2020), at 3.

On July 21, 2020, UI filed for approval of an increase in its transmission (“TRA”) and nonbypassable federally mandated congestion charge (“NBFMCC”) rates to be effective August 1, 2020.<sup>6</sup> The NBFMCC rate increase was driven primarily by payments associated with power purchase agreements (“PPAs”) for the Millstone Nuclear Power Station (“Millstone”).<sup>7</sup> The Authority held a hearing to consider UI’s proposed increases on September 4, 2020.<sup>8</sup>

Following the hearing, the Authority requested briefs on several topics,<sup>9</sup> including whether Connecticut General Statutes section 16a-3m “dictates the EDCs’ [Electric Distribution Companies’] disposition of Millstone generated energy, specifically addressing whether the sale of Millstone generated energy directly to standard service customers is prohibited and whether the statute defines what constitutes the ‘net costs’ of the PPAs.”<sup>10</sup> RESA now hereby files its Brief on this issue.

## ARGUMENT

For any agreement entered into pursuant to Connecticut General Statutes section 16a-3m(e)(2):

The net costs of any such agreement, including costs incurred by the electric distribution company under the agreement and reasonable costs incurred by the electric distribution company in connection with the agreement, shall be recovered on a timely basis through a nonbypassable fully reconciling component of electric rates for all customers of the electric distribution company. Any net revenues from the sale of products purchased in accordance with long-term contracts entered into pursuant to this section shall be credited

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<sup>6</sup> Motion No. 2 (Jul. 21, 2020) (“Motion No. 2”). UI also submitted these rates as a compliance filing in the instant docket and as a compliance filing and as a motion (Motion No. 5) in Docket No. 20-03-02, *PURA Annual Review of the Rate Adjustment Mechanisms of The United Illuminating Company*.

<sup>7</sup> See UI Response to Interrogatory AG-3 (Aug. 14, 2020); cf. Docket No. 18-05-04, *PURA Implementation of June Special Session Public Act 17-3*, Second Interim Decision (Sep. 18, 2019) (“Millstone PPA Decision”) (approving, among other things, UI’s power purchase agreement for Millstone power).

<sup>8</sup> See Motion No. 2 Ruling (Jul. 29, 2020) (“Motion No. 2 Ruling”); Notice, at 1. The Motion No. 2 Ruling was also docketed as a ruling on Motion No. 5 in Docket No. 20-03-02, *PURA Annual Review of the Rate Adjustment Mechanisms of The United Illuminating Company*.

<sup>9</sup> See Notice, at 1.

<sup>10</sup> *Id.*

to customers through the same nonbypassable fully reconciling rate component for all customers of the contracting electric distribution company.<sup>11</sup>

Because the Millstone PPA is an agreement entered into pursuant to Connecticut General Statutes section 16a-3m(e)(2) that was approved by the Authority,<sup>12</sup> its net costs are to be recovered through a “nonbypassable” fully reconciling component of electric rates from “all” UI customers.<sup>13</sup> Thus, recovering these costs from only a portion of UI’s customers (such as the portion enrolled on Standard Service) or through a bypassable charge (such as the Standard Service Generation Service Charge) is inconsistent with the plain language of the statute.<sup>14</sup> In fact, if the legislature intended the EDCs to be able to use the energy procured from agreements entered into pursuant to Connecticut General Statutes section 16a-3m, it knew how to and would have done so explicitly.<sup>15</sup>

Moreover, the net costs of agreements entered into pursuant to Connecticut General Statutes section 16a-3m(e)(3), as well as any net revenues, are best recovered from (or, as applicable, credited to) all EDC customers, as contemplated by the Millstone PPA Decision.<sup>16</sup> Using the Millstone PPA to supply Standard Service, whether directly, by selling energy procured via the PPA to Standard Service customers, or indirectly by assigning net costs and net

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<sup>11</sup> Conn. Gen. Stat. § 16a-3m(e)(3).

<sup>12</sup> See Millstone PPA Decision, at 25 (approving the Millstone PPA).

<sup>13</sup> Accord Conn. Gen. Stat. § 16a-3m(e)(3).

<sup>14</sup> Accord Conn. Gen. Stat. § 1-2z (“The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes.”); *Doe v. Manson*, 183 Conn. 183, 186 (1981) (“The intent of the legislature is to be found in the meaning of the words of the statute; that is, in what the legislature actually did say, not in what it meant to say.”) (citations omitted).

<sup>15</sup> *Perry v. Perry*, 312 Conn. 600, 624 (2014) (“[I]t is a well settled principle of statutory construction that the legislature knows how to convey its intent expressly or to use broader or limiting terms when it chooses to do so.”) (internal quotations and citations omitted).

<sup>16</sup> See Millstone PPA Decision, at 23 (“The Authority authorizes the EDCs to reconcile the costs and revenues of the Agreements through the NBFMCC charge . . .”).

revenues associated with the PPA to Standard Service, could distort the retail electric supply market in Connecticut and have deleterious effects on customers.

Fundamentally, supplying Standard Service with energy purchased under a long-term agreement, such as the Millstone PPA (or another PPA), could change the level and volatility of Standard Service rates. For example, doing so would make Standard Service less of a market-based generation supply product,<sup>17</sup> contrary to the statutory goal that Standard Service reflect “underlying wholesale market prices over time.”<sup>18</sup> Instead, the rates charged to Standard Service customers would be more a reflection of the PPA rates and less a reflection of market prices. As a result, significant changes could arise between Standard Service rates and the prices of more market-based generation supply products offered by electric suppliers. Such changes could render Standard Service rates anomalous and unusual.<sup>19</sup>

Further, to ensure that they could offer products that customers might choose over Standard Service, suppliers might be required to make changes to their wholesale procurement strategies and pricing strategies, which could change the types of generation supply products being offered in the retail supply market or even the number of participants in the market. For example, some suppliers choose to sell longer-term electric supply products.<sup>20</sup> However, if

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<sup>17</sup> If the Authority is inclined to make changes to Standard Service, it should do so only as part of a comprehensive evaluation of the existing procurement plan and a full inquiry into the costs that should be properly recovered through the Generation Service Charge for customers enrolled on Standard Service, including ensuring that cost components that should be recovered through the Generation Service Charge are not recovered in delivery rates.

<sup>18</sup> See Conn. Gen. Stat. § 16-244c(a)(3) (mandating that the Standard Service procurement plan “require that the portfolio of service contracts be procured in such manner and duration as the authority determines to be most likely to produce just, reasonable and reasonably stable retail rates while reflecting underlying wholesale market prices over time”). In fact, Standard Service is to be designed to “invite competition” and avoid “unusual, anomalous, or excessive pricing.” *Id.* Using the energy procured through the Millstone PPA to serve Standard Service customers would also run afoul of these statutory requirements. *Accord* Conn. Gen. Stat. § 16-244c(a)(3).

<sup>19</sup> See Conn. Gen. Stat. § 16-244c(a)(3) (requiring the portfolio of contracts supplying Standard Service be assembled in such manner as to avoid “anomalous” and “unusual” pricing).

<sup>20</sup> See Connecticut Rate Board, <https://www.energizect.com/compare-energy-suppliers> (last visited Sep. 17, 2020) (showing retail supply offers with terms of thirty-six months).

Standard Service is supplied via a long-term PPA, and is subject to less fluctuation in its rates than it currently is, the value of longer-term competitive supply products may be reduced, and suppliers that offer them may be required to reassess their strategies or participation in the Connecticut retail electric supply market.

Moreover, suppliers currently offering such longer-term and other electric supply products have made pricing, wholesale procurement, marketing, and other business decisions, and committed resources in certain ways, with a view to competing with Standard Service as it is currently structured through the Authority-approved procurement plan.<sup>21</sup> Making significant changes to the approach for supplying Standard Service, such as by supplying Standard Service with energy purchased under a long-term PPA, would frustrate these business decisions and could diminish the value of the such suppliers' investments and discourage competition, contrary to the goals of Standard Service.<sup>22</sup>

Supplying Standard Service with energy purchased under a long-term PPA also will create a disconnect between retail prices and the wholesale market prices. This disconnect will harm the development of Connecticut's energy markets by sending inaccurate pricing signals to consumers. For a full range of competitive retail options to continue to develop, including competitive demand response and energy efficiency offerings, Standard Service rates should reflect wholesale price signals. This will further the State's goals of sending accurate pricing

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<sup>21</sup> See Docket No. 12-06-02, *Request for PURA Review of Power Procurement Plan*, Decision (Oct. 12, 2012) (approving the Standard Service Power Procurement Plan, with modifications); Docket No. 12-06-02RE01, *Request for PURA Review of Power Procurement Plan - Reopening*, Decision (Aug. 13, 2014) (approving modifications to the Standard Service Power Procurement Plan); Docket No. 12-06-02RE03, *Request for PURA Review of Power Procurement Plan – Review and Amend*, Decision (Dec. 20, 2017) (approving amendments to the Standard Service Power Procurement Plan).

<sup>22</sup> See Conn. Gen. Stat. § 16-244c(a)(3) (requiring the portfolio of contracts supplying Standard Service to “be assembled in such manner as to invite competition”).

signals and encouraging energy efficiency.<sup>23</sup> Because long-term contracts can obscure market signals, consumers focusing on rates set by long-term agreements may not receive the information and incentives that they need in order to make reasoned decisions as to energy efficiency and alternative energy offerings. If customers receive effectively locked-in prices for a long period, they will receive the wrong price signals and may not explore demand-side conservation measures and improvements that they otherwise would.

Further, supplying Standard Service through the Millstone PPA could create significant migration risk. The EDCs are entitled to recover the costs associated with the PPA.<sup>24</sup> Further, if Standard Service is supplied through the PPA, the costs associated therewith would be collected from Standard Service customers.<sup>25</sup> However, if Standard Service rates are generally higher than competitive supply prices, non-hardship customers are more likely to choose a competitive supply product instead of Standard Service.<sup>26</sup> As a result, there would be a smaller customer base from which to recover the costs of the PPA, which would then necessarily lead to even a further increase in the Standard Service. Once again, prompting more customers to migrate to competitive supply. Ultimately, leaving a potentially very small number of customers from

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<sup>23</sup> See Comprehensive Energy Strategy (Feb. 8, 2018), at 60 (describing the importance of demand response and its reliance on market signals).

<sup>24</sup> See Docket No. 20-09-08, *Petition of the Department of Energy and Environmental Protection for a Declaratory Ruling Regarding Cost Recovery of the Electric Distribution Companies Under CONN. GEN. STAT. §§ 16a-3m AND 16a-3n*, Declaratory Ruling (Sep. 16, 2020), at 6 (“[T]he Authority affirms that, pursuant to the plain language of Conn. Gen. Stat. §§ 16a-3m(d)(3) and 16a-3n(d), the net costs of [the PPAs], including costs incurred by the electric distribution companies under the agreement and reasonable costs incurred by the electric distribution companies in connection with the agreement, shall be recovered on a timely basis through the NBFMCC.”) (emphasis in original; internal quotation marks and brackets omitted).

<sup>25</sup> Cf. Notice, at 1 (requesting comments on the potential “sale of Millstone generated energy” to Standard Service customers).

<sup>26</sup> Unlike other customers, however, hardship customers would be unable to avoid higher Standard Service rates by switching to competitive supply. See Docket No. 18-06-02, *Review of Feasibility, Costs and Benefits of Placing Certain Customers on Standard Service Pursuant to Conn. Gen. Stat. § 16-245o(m)*, Decision (Dec. 18, 2019) (the “Hardship Customer Order”), at 18 (ordering hardship customers returned to Standard Service and ordering the EDCs to implement measures to prevent hardship customers from enrolling with an electric supplier). Consequently, hardship customers might bear the burden of higher Standard Service rates disproportionately. This outcome would be contrary to the intent of the Hardship Customer Order, which emphasized cost savings. See *id.*

whom the costs could be recovered. Consequently, significant amounts of deferred costs could develop that might not be reasonably recovered from the remaining Standard Service customers and might need to be addressed in some extraordinary way. Further, if such costs are deferred for recovery over a significant amount of time, the existence of such deferred costs, and the need to recover them, could ensure that Standard Service rates must remain at elevated levels even when costs associated with the PPA are less than the price of energy in the market.

RESA appreciates the appeal of supplying Standard Service from the energy procured under long-term PPAs and recovering the associated costs from Standard Service customers. Indeed, doing so would prevent customers who have made choices to receive generation supply from an electric supplier from bearing responsibility for energy supply costs that they did not choose to incur. Nevertheless, supplying Standard Service directly from the energy procured under the PPA unreasonably injects significant uncertainty into the retail electric supply market and imposes significant risks on Standard Service customers. By contrast, the current process of recovering the net cost of PPAs from all customers through the NBFMCC,<sup>27</sup> is a balanced, neutral approach that will not distort the retail supply market. All customers alike bear the expense, and receive the benefits, and are able to participate in the competitive retail supply market according to their own preferences.

RESA also appreciates the Authority's concern with the effects of UI's proposed rate increase.<sup>28</sup> The Authority has various options to mitigate those effects in the short term,<sup>29</sup> such as collecting under-recoveries over a longer period of time. That said, extending the amortization

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<sup>27</sup> See Conn. Gen. Stat. § 16a-3m(e)(3).

<sup>28</sup> See Motion No. 2 Ruling.

<sup>29</sup> See, e.g., UI response to Late-Filed Exhibit No. 9 (Sep. 15, 2020) (describing mechanisms that could be used to decrease customer rates in the near term).



period for these under-recoveries calls for close scrutiny of carrying costs. For example, the Authority could consider whether calculating carrying charges on a rate less than UI's weighted average cost of capital is reasonable.<sup>30</sup>

More broadly, the issues in this proceeding emphasize the critical need for customers and other market participants to be provided with transparent, sufficiently detailed information about EDC rates and rate increases. Specifically identifying PPA costs as line items on customer bills will advance this goal and increase transparency and customer awareness of these costs. Yet, the Authority should not limit its efforts to ensure transparency in EDC rates and rate increases to such measures. Rather, it should enhance its scrutiny of all of the rate components considered in this and comparable dockets, including the NBFMCC and Standard Service rates. Doing so will ensure that customers are adequately informed, prevent bundled rate components from obscuring the full effects of decisions affecting those rates, and allow costs to be properly allocated between generation service rates and delivery rates.

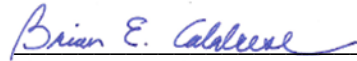
### **CONCLUSION**

For all the foregoing reasons, the Authority should not permit the sale of Millstone generated energy to Standard Service customers.

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<sup>30</sup> Cf. UI response to Late-Filed Exhibit No. 5 (Sep. 15, 2020) (calculating the carrying charges for amortizing Millstone PPA-associated under-recoveries using UI's weighted average cost of capital and using a 2% carrying charge).

Respectfully submitted,  
RETAIL ENERGY SUPPLY  
ASSOCIATION

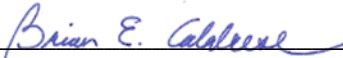


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**CERTIFICATION**

I certify that a copy of the foregoing was sent to all participants of record on this 17th day of September 2020.

  
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Brian E. Calabrese