

*Via Electronic Filing*

February 2, 2023

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

Re: **Docket No. 14-07-20RE01: PURA Development and Implementation of Marketing Standards and Sales Practices by Electric Suppliers – Revised Standards**

Dear Mr. Gaudiosi:

Attached please find the Retail Energy Supply Association’s Motion for Declaratory Ruling Proceeding and Extension of Time in connection with the above-referenced matter.

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

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

Sincerely,

  
Joey Lee Miranda

Attachment

Copy to: Service List

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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**

PURA DEVELOPMENT AND : DOCKET NO. 14-07-20RE01  
IMPLEMENTATION OF MARKETING :  
STANDARDS AND SALES PRACTICES BY :  
ELECTRIC SUPPLIERS - REVISED :  
STANDARDS : FEBRUARY 2, 2023

**RETAIL ENERGY SUPPLY ASSOCIATION’S  
MOTION FOR DECLARATORY RULING PROCEEDING AND  
EXTENSION OF TIME**

The Retail Energy Supply Association (“RESA”)<sup>1</sup> hereby requests that the Public Utilities Regulatory Authority (“Authority”) open a declaratory ruling proceeding to consider the Office of Education, Outreach and Enforcement’s (“EOE”) January 26, 2023 Motion for Clarification.<sup>2</sup> In addition, RESA requests that the Authority grant parties a two week extension of time from the date of the Authority’s ruling on this motion to file a substantive response to the EOE Motion.

**BACKGROUND**

On January 26, 2023, EOE filed the Motion requesting that the Authority clarify that only two types of entities – aggregators and agents - can enroll customers with suppliers.<sup>3</sup> The motion, if granted, will result in a *de facto* determination that any entity that is not an aggregator that enrolls customers with a supplier is, by default, a third-party agent of the supplier. Because the Motion seeks to determine the applicability of a provision of the Connecticut General Statutes to

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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> Motion No. 16 (Jan. 26, 2023) (“Motion”).

<sup>3</sup> *Id.*

a specific set of circumstances, RESA hereby files this Motion requesting that the Authority open a declaratory ruling proceeding.

## MOTION

Connecticut General Statutes section 4-176 provides, in pertinent part:

Any person may petition an agency, or an agency may on its own motion initiate a proceeding, for a declaratory ruling as to the validity of any regulation, or the applicability to specified circumstances of a provision of the general statutes, a regulation, or a final decision on a matter within the jurisdiction of the agency.<sup>4</sup>

EOE's Motion requests that the Authority determine the applicability of a provision of the general statutes (i.e., Conn. Gen. Stat. § 16-145o(h)(1)) to a specific set of circumstances (i.e., who is authorized to enroll customers with electric suppliers).<sup>5</sup> As a consequence, the issue should be considered in the context of a declaratory ruling proceeding in which the Authority provides those whose legal rights, duties and privileges will be specifically affected by the Authority's decision an opportunity to be heard.<sup>6</sup>

Moreover, the opening of a declaratory ruling proceeding will ensure that the issue is decided in accordance with the requirements of the Uniform Administrative Procedures Act and not in the context of a proceeding in which the Authority issued a final decision more than eighteen (18) months ago.<sup>7</sup> For instance, by opening a declaratory ruling proceeding, the Authority can ensure that notice that the Authority is considering the Motion is given to as many of the stakeholders whose legal interests will be implicated by the Authority's decision as

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<sup>4</sup> Conn. Gen. Stat. § 4-176(a).

<sup>5</sup> *See generally*, EOE Motion.

<sup>6</sup> *Cf.* Conn Gen. Stat. § 4-176(d).

<sup>7</sup> *See* Decision (May 6, 2020).

possible.<sup>8</sup> For example, although the Motion seeks to clarify who can enroll customers with suppliers,<sup>9</sup> the service list does not include all licensed suppliers.<sup>10</sup> As a consequence, not all suppliers have received notice that the Authority is considering the EOE Motion. In addition, despite the fact that the Motion also seeks to clarify permissible compensation for aggregators,<sup>11</sup> not a single registered aggregator is included on the service list for this docket.<sup>12</sup>

Further, in 2011, when the provision codified at Connecticut General Statutes section 16-245o(h)(1) was originally added to the Connecticut General Statutes,<sup>13</sup> the Authority considered clarifying which entities would qualify as agents of suppliers.<sup>14</sup> As part of that process, the Authority received significant input from a wide variety of stakeholders whose legal rights,

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<sup>8</sup> Conn. Gen. Stat. § 4-176(c) (“Within thirty days after receipt of a petition for a declaratory ruling, an agency shall give notice of the petition to all persons to whom notice is required by any provision of law and to all persons who have requested notice of declaratory ruling petitions on the subject matter of the petition.”).

<sup>9</sup> *See, e.g.*, EOE Motion, at 2 (“EOE wishes to clarify that suppliers may not accept enrollments from and/or through websites that are not either registered as the supplier’s agent (as indicated on their Form 6) or who have received a Connecticut aggregator certificate.”).

<sup>10</sup> *Compare* Service List (available at: [https://www.dpuc.state.ct.us/dpucservlist.nsf/\\$FormSL-WebServiceListView?OpenForm&Count=1000&RestrictToCategory=14-07-20RE01](https://www.dpuc.state.ct.us/dpucservlist.nsf/$FormSL-WebServiceListView?OpenForm&Count=1000&RestrictToCategory=14-07-20RE01)) (last visited Feb. 1, 2023) with List of Approved Suppliers and Aggregators (available at: [https://www.dpuc.state.ct.us/electric.nsf/\\$FormByElectricApplicantsView?OpenForm&Start=1&Count=1000&ExpandView](https://www.dpuc.state.ct.us/electric.nsf/$FormByElectricApplicantsView?OpenForm&Start=1&Count=1000&ExpandView)) (last visited Feb. 1, 2023).

<sup>11</sup> *See, e.g.*, EOE Motion, at 3 (“EOE further seeks to clarify that suppliers may not compensate registered aggregators.”).

<sup>12</sup> *Compare* Service List (available at: [https://www.dpuc.state.ct.us/dpucservlist.nsf/\\$FormSL-WebServiceListView?OpenForm&Count=1000&RestrictToCategory=14-07-20RE01](https://www.dpuc.state.ct.us/dpucservlist.nsf/$FormSL-WebServiceListView?OpenForm&Count=1000&RestrictToCategory=14-07-20RE01)) (last visited Feb. 1, 2023) with List of Approved Suppliers and Aggregators (available at: [https://www.dpuc.state.ct.us/electric.nsf/\\$FormByElectricApplicantsView?OpenForm&Start=1&Count=1000&ExpandView](https://www.dpuc.state.ct.us/electric.nsf/$FormByElectricApplicantsView?OpenForm&Start=1&Count=1000&ExpandView)) (last visited Feb. 1, 2023).

<sup>13</sup> *See* P.A. 11-80, § 113(f)(1). The provision has been amended since it was originally adopted but the language that was being considered in 2011 is nearly identical to language that still exists in the relevant statutory provision. *Compare* P.A. 11-80, § 113(f)(1) (“Any third-party agent who contracts with or is otherwise compensated by an electric supplier to sell electric generation services shall be a legal agent of the electric supplier.”) with Conn. Gen. Stat. § 16-245o(h)(1) (“Any third-party who contracts with or is otherwise compensated by an electric supplier to sell electric generation services . . . shall be a legal agent of the electric supplier.”).

<sup>14</sup> *See generally*, 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*. At the time the proceeding was opened, the Authority was known as the Department of Public Utility Control (“DPUC”). Unfortunately, although the Authority considered the issue, it never issued a final decision. *See generally, id.*

duties and privileges would be substantially impacted by the decision.<sup>15</sup> Despite this, many of the stakeholders that participated in that prior proceeding are not on the service list in this proceeding.<sup>16</sup> As a consequence, those stakeholders may not even be aware that the Authority will once again consider which entities fall within the definition of third-party agent.

As noted above, the motion, if granted, will result in the Authority *de facto* determining that any entity that is not an aggregator that enrolls customers with a supplier is, by default, a third-party agent of the supplier.<sup>17</sup> While the issue, on its face, may seem clear cut, the Authority's decision will have broad reaching implications that are not addressed in the EOE Motion. For example, the Motion fails to recognize that there are various types of entities that act as the customer's agent (e.g., brokers)<sup>18</sup> that, like aggregators, cannot and should not also be characterized as agents of suppliers.<sup>19</sup> However, the Authority has also previously ruled that those entities should not be registered as aggregators<sup>20</sup> - a ruling that has been made only in the context of individual aggregator registration requests and not in a proceeding in which all parties whose legal rights, duties and privileges will be specifically affected have been included. The interplay of all of these issues should be considered by the Authority before ruling on the

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<sup>15</sup> See, e.g., 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*, Written Exceptions to September 29, 2011 Draft Decision.

<sup>16</sup> Compare Service List (available at: [https://www.dpuc.state.ct.us/dpucservlist.nsf/\\$FormSL-WebServiceListView?OpenForm&Count=1000&RestrictToCategory=14-07-20RE01](https://www.dpuc.state.ct.us/dpucservlist.nsf/$FormSL-WebServiceListView?OpenForm&Count=1000&RestrictToCategory=14-07-20RE01)) (last visited Feb. 1, 2023) with Docket No. 10-06-24 Service List (available at: [https://www.dpuc.state.ct.us/dpucservlist.nsf/\\$FormSL-WebServiceListView?OpenForm&Count=1000&RestrictToCategory=10-06-24](https://www.dpuc.state.ct.us/dpucservlist.nsf/$FormSL-WebServiceListView?OpenForm&Count=1000&RestrictToCategory=10-06-24)) (last visited Feb. 1, 2023).

<sup>17</sup> EOE Motion, at 2 (“EOE wishes to clarify that suppliers may not accept enrollments from and/or through websites that are not either registered as the supplier's agent (as indicated on their Form 6) or who have received a Connecticut aggregator certificate.”).

<sup>18</sup> See, e.g., Constellation NewEnergy, Inc. Response to EOE Motion for Clarification (Jan. 31, 2023), at 1-2 (“[T]here is a third category of entity, brokers who represent individual commercial customers who are shopping for competitive suppliers.”).

<sup>19</sup> Accord Docket No. 99-09-21RE01, *Application of Levco Tech, Inc. for an Electric Aggregator License*, Decision (May 18, 2009), at 3 (“As customers' agents, Aggregators may not simultaneously be agents or representatives for Electric Suppliers.”).

<sup>20</sup> Accord, e.g., Docket No. 17-12-42, *Application of Arcadia Power, Inc. for a Certificate of Registration as an Electric Aggregator*, Letter Closing Docket (Feb. 7, 2018).

Motion. Moreover, because of the complexity and significance of these issues,<sup>21</sup> the Authority should seek broad stakeholder input to ensure that it has a complete picture of the implications of its decision. Thus, RESA requests that the Authority open a declaratory ruling proceeding to consider the EOE Motion.

### CONCLUSION

For all of the foregoing reasons, RESA respectfully requests that the Authority open a declaratory ruling proceeding to consider the EOE Motion. In addition, RESA requests that the Authority grant parties a two week extension of time from the date of the Authority's ruling on this motion to file a substantive response to the EOE Motion.

Respectfully Submitted,  
RETAIL ENERGY SUPPLY ASSOCIATION

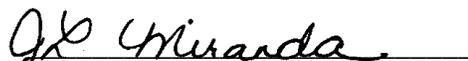
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<sup>21</sup> See, e.g., Docket No. 10-06-24, *DPUC Review of the Current Status of the Competitive Supplier and Aggregator Market in Connecticut and Marketing Practices and Conduct of Participants in that Market*, Joint Brief of Dominion Retail, Inc. and Retail Energy Supply Association (Aug. 5, 2011); Joint Reply Brief of Dominion Retail, Inc. and Retail Energy Supply Association (Aug. 19, 2011); Retail Energy Supply Association Written Exceptions (Nov. 1, 2011).

**CERTIFICATION**

I hereby certify that a copy of the foregoing was sent to all participants of record on this  
2nd day of February 2023.

  
Joey Lee Miranda