STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY

March 18, 2021
In reply, please refer to:
Docket No. 16-03-08RE01
Motion No. 11

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Re: 16-03-08RE01 - Petition of Windham Solar LLC for Approval of a Power Purchase Agreement Between Windham Solar LLC and The Connecticut Light and Power Company d/b/a Eversource Energy – Voluntary Remand

Dear Attorneys Pace, Melone, Hollander, and Minikowski:

The Public Utilities Regulatory Authority (Authority or PURA) acknowledges receipt of the joint motion to approve settlement implementation and request for resolution of unresolved details submitted by Connecticut Light and Power Company d/b/a Eversource Energy (Eversource); Windham Solar LLC, Ecos Energy LLC, and PLH LLC (collectively, the Windham Affiliates); the Office of the Attorney General (AG); and the Office of Consumer Counsel (OCC) on December 18, 2020 (Motion No. 11). On July 30, 2020, the Authority conditionally approved the settlement in principle in this matter, filed as Motion No. 9 in the above-captioned docket.

In Motion No. 11, Eversource, the Windham Affiliates, the AG, and the OCC summarize the settlement relating to four pending lawsuits before Connecticut courts, a pending rulemaking proceeding before the Authority, Freedom of Information Act claims, and other matters described therein. The Settlement Agreement, provided as Attachment 2 of Motion No. 11, resolves the pending court and administrative agency claims raised by the Windham Affiliates against the following defendants: Eversource, the Authority, and the OCC. However, the parties represent that despite good faith efforts to negotiate a power purchase agreement (PPA) template for the purchase of energy from the Windham Affiliates, there are unresolved issues that they submit to the Authority for

resolution. Motion No. 11, pp. 8-9. The parties request that the Authority issue a letter order that approves the Settlement Agreement, resolves the open issues in the PPA based on position statements from Eversource and the Windham Affiliates, resolves the open issue on the address of two renewable energy credit (REC) projects based on position statements from Eversource and Windham Affiliates, and provides certain language necessary for Regulatory Approval as defined under the terms of the Settlement Agreement. Id., pp. 9-10. In response to Motion No. 11, the Authority issued interrogatories on March 5, 2021.

The Authority fully reviewed Motion No. 11, the Settlement Agreement, other attachments to Motion No. 11, including the position statements from Eversource and Windham Affiliates on all open issues, and the responses to Interrogatories EL-11 and EL-12. The Authority provides its regulatory approval of the Settlement Agreement conditioned upon the incorporation of revisions articulated in the response to Interrogatory EL-11 and the resolutions ordered below. As articulated in the Authority's Ruling to Motion No. 9, the Authority's status as a defendant in the litigation that is the subject of the Settlement Agreement requires the Authority to be a party to the Settlement Agreement. Therefore, the settlement will not be effective until such time as a revised Settlement Agreement is submitted to the Authority and executed by the Authority and all other signatory parties.

The Authority reviewed the PPA Template and the open issues and position statements relating to the PPA Template. Motion No. 11, Attachments 3.a, 3.b, and 4. The Authority resolves the open issues as follows. On the issue of "Other Program Benefits," Eversource proposes that the Seller have an early termination right without forfeiture of security or the payment of a termination charge only in the event that the Seller provides notice that the Seller is participating in the Connecticut Virtual Net Metering (VNM) Program. The Windham Affiliates argue that they should not be penalized for switching to some other long-term tariff or program other than VNM, if such tariff or program becomes available during the term of the contemplated PPA. Eversource and the Windham Affiliates agree that Eversource will not pay twice for energy in any circumstance. In addition to the VNM early termination right as provided in the PPA Template, the Authority determines that Windham Affiliates should also have an early termination right without forfeiture of security or the payment of a termination charge for any future state-administered program or tariff that becomes effective January 1, 2022, or thereafter, if the project is both eligible for such future program or tariff and an agreement pursuant to such future program or tariff has been secured during the term of the PPA.

Future program or tariff designs are undetermined at this juncture, and any eligibility criteria will be considered within the context of program or tariff design proceedings. The Authority determines it is appropriate to provide this flexibility within the context of this specific settlement; this determination shall not be precedent for any other PPAs subject to Authority review and approval. The Authority directs Eversource and Windham Affiliates to revise the PPA Template such that Windham Affiliates will have an early termination right without forfeiture of security or the payment of a termination charge

for any future state-administered program or tariff that becomes effective January 1, 2022, or thereafter, if the project is both eligible for such future program or tariff and an agreement under such future program or tariff has been secured during the term of the PPA. On all other open issues concerning the PPA Template discussed in Attachment 4, the Authority resolves these issues in favor of the Eversource position statements. The Authority further directs the PPA Template to be revised consistent with the revisions articulated in the response to Interrogatory EL-12.

The Authority reviewed the open issue and position statements relating to the address of two REC projects. Motion No. 11, Attachment 5. The Authority finds that the open issue relating to the address of the Dayton Solar project (Contract L9-3771) and the Clinton Solar f/k/a Pepaug Solar project (Contract L9-3030) are not requests to move project location, but rather reflect the final assignment of the address by the town and a scrivener's error, respectively. For purposes of implementing the Settlement Agreement only, the Authority directs Eversource to accept the address of 31 Plainfield Pike Road, Plainfield, Connecticut, for the Dayton Solar project (Contract L9-3771) and to accept the address of 1240 Voluntown Road, Griswold, Connecticut, for the Clinton Solar f/k/a Pepaug Solar project (Contract L9-3030). After execution of the Settlement Agreement, Eversource and Windham Affiliates shall amend the respective REC contracts to reflect these address changes. The Authority restricts the amendment to the REC contracts to include only the address change, and the Authority does not consent to any other modification of the REC contracts. Further, the Authority's determination on the address issue, specific to the settlement implementation contemplated herein, shall not serve as precedent for any other proposed address change contemplated by Windham Affiliates or by any other REC project developer.

In implementing Section 18, Waiver and Modification, of an executed PPA for a project, the Authority finds that it will be prudent for Eversource to obtain PURA's regulatory approval for (1) any material amendment or any material waiver, and (2) any amendment or waiver for which Eversource is uncertain about a PURA materiality finding. To provide guidance to Eversource, the Authority finds that material amendments and waivers requiring PURA's regulatory approval include, but are not limited to, amendments or waivers that: alter the unit price of the contract; modify contract maximum amount or the buyer's percentage entitlement under the contract; or any proposals pursuant to Section 19.7 of the Agreement, which address alleged changes in law, accounting treatment, or subsequent judicial or regulatory action. Furthermore, the Authority directs Eversource to notify the Authority through a filing in this docket of any such amendment or waiver it deems as non-material not later than thirty (30) days prior to the effective date of the amendment or waiver *or* as soon as reasonably possible thereafter.

The prudently incurred net costs of the Settlement Agreement, including the LREC/ZREC Contracts and the energy purchase agreements described in the Settlement Agreement, shall be recovered through a non-bypassable rate component. At present, the Authority expects this will occur via the non-bypassable federally mandated congestion charge (NBFMCC), which is reviewed and set periodically in an annual rate

adjustment mechanism (RAM) proceeding. The Authority authorizes Eversource to seek cost recovery of the net costs through the NBFMCC in the annual RAM proceeding.

If there are any other issues upon which the parties do not agree or changes other than those changes as directed herein, the parties must file an additional motion articulating such issues or changes for the Authority's review and approval. The Authority requires monthly updates in this docket, on the first day of the month or the next business day thereafter, on the status of finalizing and executing the revised documents. The Authority directs Eversource and the Windham Affiliates to work with the AG and the OCC to finalize the revised Settlement Agreement, revised attachments, and revised PPA Template. The Authority directs the parties to file the finalized, executed revised Settlement Agreement; revised attachments; revised PPA Template; and finalized, executed PPAs as compliance in this docket.

Sincerely,

PUBLIC UTILITIES REGULATORY AUTHORITY



Jeffrey R. Gaudiosi, Esq.
Executive Secretary

cc: Service List