LFE-003 Q:

To the extent that the witness can, from the Company's perspective, provide the Company's understanding of and perspective on RRU-034 contract timing [extension agreement] anticipated depreciation issues as related. (Requested of GenConn)

LFE-003 A:

The Contract for Differences is a legal document and interpretation of the provisions therein requires a legal opinion. However, to facilitate the objectives of this proceeding reviewing the computation of the Company's annual revenue requirement, the Company provides the following response in coordination with PURA's request. In doing so, the Company does not intend to provide a legal interpretation and objects to any use of this answer as a legal proposition. With that caveat, the Company's response is as follows:

As outlined below, the stated terms of the Contracts for Differences ("CfD") contemplate a sequence of events dictating the circumstances by which an extension of the CfDs can occur, as well as the steps that will be taken subsequent to a finding by PURA that it will extend the CfD. These steps are as follows:

1. The Buyer (i.e., Eversource) must "notify PURA in writing seven hundred and thirty days before the end of the thirty year term" of the CfDs that PURA "has three hundred and sixty five days to exercise the option" to extend the CfDs (Section 12.11(b));
2. At "any time three hundred and sixty five days before the end of the thirty-year term" of the CfDs, PURA can "notify the Supplier and Buyer in writing that [PURA] elects to extend" the CfDs for a "term not to exceed ten years, unless the Supplier" (i.e., GenConn) "consents to a longer term" (Section 12.11(a));[1]
3. If PURA extends the CfDs, the Company "must submit a new cost of service plan that includes, but is not limited to, any new capital investments" needed to maintain the plants for the extended term and "in compliance with the terms" of the CfDs, updated operating and maintenance costs and other changes (Section 12.11(d)).

[1] Although the CfDs do not specify a process for this extension, it is likely that PURA will institute a process by which it would evaluate the determination whether or not to extend the CfDs.

4. PURA will issue a final decision on the updated cost of service plan establishing the first revenue requirement for the extended phase of the CfD in an annual rate case prior to the expiration of the initial CfD term (Section 12.11(d)).

The contract provisions establishing these steps, as a legal matter, indicate that PURA cannot make adjustments to the current revenue requirement assuming *the expectation* that extension will occur in the future because any future extension of the CfDs is completely speculative, unless and until the contract prerequisites are fulfilled.

Please refer to RRU-034 Attachments 1 and 2, respectively, for the Contracts for Differences ("CfDs") between GenConn Devon LLC and The Connecticut Light and Power Company and GenConn Middletown LLC and The Connecticut Light and Power Company.

Consistent with Section 5.1, the CfDs became effective on the later of ten calendar days after the date of approval by the Department of Public Utility Control, PURA's predecessor, or "October 16, 2008 if no appeal is taken, or if an appeal is taken, when the appeal is finally resolved and no further appeals can be taken." For GenConn Middletown, the CfD was filed in compliance with Order No. 1 of Docket No. 08-08-01 on October 6, 2008.[2] PURA approved the GenConn Middletown CfD on October 7, 2008.[3] For GenConn Devon, the CfD was filed in compliance with Order No. 1 of Docket No. 08-01-01 on August 4, 2008, and again on September 3, 2008.[4] PURA approved the GenConn Devon CfD on September 4, 2008.[5] Accordingly, both CfDs were filed with, and approved by, PURA.

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[2] See Docket No. 08-01-01, October 6, 2008 CL&P Compliance Filing, available at: https://www.dpuc.state.ct.us/dockhistpre1900.nsf/8e6fc37a54110e3e852576190052b64d/40e74de8291d9bdb852582cc004df11c?OpenDocument

[3] See Docket No. 08-08-01, October 7, 2008 Correspondence from DPUC Executive Secretary, available at: https://www.dpuc.state.ct.us/dockhistpre1900.nsf/8e6fc37a54110e3e852576190052b64d/b2680e67396bc7ce852582cc004df116?OpenDocument

[4] See Docket No. 08-08-01, August 5, 2008 CL&P Compliance Filing, available at: https://www.dpuc.state.ct.us/dockhistpre1900.nsf/8e6fc37a54110e3e852576190052b64d/7e0ceabbba911f45852582cc004def85?OpenDocument; see also Docket No. 08-08-01, September 3, 2008 CL&P Compliance Filing, available at: https://www.dpuc.state.ct.us/dockhistpre1900.nsf/8e6fc37a54110e3e852576190052b64d/56841d33bf0629f6852582cc004def99?OpenDocument

[5] See Docket No. 08-08-01, September 4, 2008 Correspondence from DPUC Executive Secretary, available at: https://www.dpuc.state.ct.us/dockhistpre1900.nsf/8e6fc37a54110e3e852576190052b64d/9a27a3d3be8b5516852582cc004df0fa?OpenDocument

In addition to being filed with and approved by PURA, the CfDs each incorporate PURA's findings with respect to capital structure and depreciation. As defined in the CfD's the "Annual Fixed Revenue Requirement" is equal to the allowable annual rate of recovery of the Supplier's[6] capital costs, plus allowable annual fixed operation and maintenance costs, and any other recoverable costs consistent with Section 50 of the Act as detained by the DPUC in rate case decisions in accordance with the Decision.[7] The "Decision," or Criteria Decision, is specifically incorporated into the CfD consistent with Section 12.7,[8] and states that PURA will:

> In reviewing what costs are reasonable for purposes of setting the cost of service from time to time, the Department will **use the project's actual debt/equity levels when determining returns and revenue requirements**.

Criteria Decision, at 33 (emphasis added). The Criteria Decision is also clear that:

> Depreciation expense for each project will be determined on a straight-line basis over 30 years for ratemaking purposes (normalization) with any difference between book and tax expense reflected as Accumulated Deferred Income Taxes (ADIT) to be recorded as a rate base item.

Id. at 30.

Consistent with Section 6.1 of the CfDs, the Monthly Contract Price is equal to 1/12th of the Annual Fixed Revenue Requirement, as determined by the DPUC. Accordingly, the CfD is clear that the AFRR will use the Company's actual debt/equity levels when determining revenue requirements, and that the depreciation rates were initially set at a 30 year straight-line basis to align with the term of the CfD.

With respect to options to extend the CfDs, Section 12.11(a) provides that PURA, DPUC's successor, can at any time three hundred and sixty five days before the end of the thirty-year term of the agreement, notify the Supplier (GenConn) and Buyer (CL&P) in writing that it elects to extend the Agreement for a term of 10 years unless the Supplier consents to a longer term. If the

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[6] The term "Supplier" is defined as the entity that, pursuant to the CfD is assuming the obligations of bidding a specified quantity of Capacity into the ISO-NE Markets for the Term of the CfD, here GenConn Devon and GenConn Middletown. See RRU-034 Attachments 1 and 2, at Section 1.

[7] The term "Decision" refers to the Final Decision dated December 14, 2007 in Docket No. 07-08-24. See RRU-034 Attachments 1 and 2, at Section 1.

[8] Section 12.7 of the CfDs provides that the CfDs, along with the DPUC's decisions and orders relating to Section 50 of the Act, i.e., the Criteria Decision and Award Decision, constitute the entire agreement between the parties relating to the subject matter.

term is extended, all terms and conditions of the CfD will apply to the extended term consistent with Section 12.11(c).

Section 12.11(d) of the CfDs provides that if the term of the CfD is extended, the Supplier must "submit a new cost-of-service plan that includes, but is not limited to, any new capital investment and increased operations and maintenance costs associated with keeping the facility in operation and in compliance with the terms" of the CfD during the extended term. The "Supplier can also propose amendments to the CfD as part of such a cost-of-service plan" filing. PURA "must issue a decision on the new cost-of-service plan" in the "annual rate case prior to the expiration of the initial Term." The Company anticipates that a new cost-of-service plan submitted consistent with Section 12.11 of the CfDs would incorporate updated O&M expenses, and necessary capital investments to maintain the level of service provided for under the CfD, and would realign depreciation rates to the updated term of the CfD. As noted above, that new plan has not been developed nor is there any evidence in this case of what the updated plan would entail, and accordingly it would be wholly inappropriate to adjust the Company's 2027 revenue requirements filing on the basis of a future potential extension.

Section 12.11(e) provides that, "if [PURA] has exercised its option to extend" the CfD consistent with Section 12.11(a), then PURA "may also elect to cause Supplier to sell all movable fixtures, equipment, and fixture components of the Facility … to The United Illuminating Company or its successor," if UI or its successor possesses an ownership interest at the time the PURA exercises that option. Section 12.11(e) also provides that the price would be equal to:

> (a) the sum of (i) the negative salvage value of the Facility and (ii) any un-depreciation capital costs previously approved by PURA with respect to the Facility or (b) such lesser amount as PURA and Suppler shall have agreed upon.

Section 12.11(e) does not apply to the current CfDs, and by its terms applies only if PURA extends the term of the CfDs.

With respect to a determination by PURA to extend the CfD, the Company posits that this may occur at the latest in the Company's 2040 and 2041 revenue requirements filings for Devon and Middletown, respectively, which would be filed in 2039 and 2040. That said, the Company understands from discussion at the evidentiary hearings that PURA is interested in assessing information earlier to inform future decisions on CfD extension. As noted in the Company's response to LFE-004, it would be more appropriate for GenConn to provide additional information and to have discussions with PURA regarding potential extension beginning in approximately five years, placing those discussions in the final one-third of the life of the CfDs.