STATE OF CONNECTICUT

PUBLIC UTILITIES REGULATORY AUTHORITY
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051

DOCKET NO. 13-07-17 PURA INVESTIGATION INTO DIRECT ENERGY SERVICES, LLC'S TRADE PRACTICES

May 1, 2019

By the following Commissioners:

Michael A. Caron
John W. Betkoski, III

DECISION

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DECISION

I. INTRODUCTION

A. SUMMARY

In this Decision, the Public Utilities Regulatory Authority (PURA or Authority) determines that Direct Energy Services, LLC (Direct) has failed to comply with Conn. Gen. Stat. §§ 16-245, 16-245o, 16-245s, and 42-110b, by: 1) misstating standard service price; 2) not stating in its marketing that it did not represent an electric distribution company (EDC); 3) not explaining the purpose of its solicitations; 4) misrepresenting cancellation fees; 5) using undefined terms and not accurately explaining rates; 6) implying customers must choose a supplier; 7) misleading customers into believing generation charges were the total bill; 8) coaching customers and answering questions through the third-party verification (TPV) process; 9) charging excessive cancellation fees; 10) not directly training its third-party agents; 11) engaging in other unfair and deceptive marketing practices, including but not limited to, making misleading statements in its marketing; 12) not having Spanish marketing materials available when conducting solicitations and sales; and 13) not having Spanish-language contracts available when conducting solicitations and sales, resulting in invalid contracts.

Pursuant to Conn. Gen. Stat. §§ 16-41, 16-245(k), 16-245o(k), and 16-245u, Direct is assessed a civil penalty in the amount of one million five hundred thousand dollars ($1,500,000) for violations of Conn. Gen. Stat. §§ 16-245, 16-245o, 16-245s, and 42-110b; Direct is prohibited from accepting new residential customers and/or marketing to residential customers via any means other than online enrollments for six months; and Direct must submit to auditing of all marketing by the Authority for one year after the end of the six-month prohibition on accepting new customers.

B. BACKGROUND OF THE PROCEEDING

On June 7, 2006, the Authority granted Direct an electric supplier license. Decision in Docket No. 06-03-06, Application of Direct Energy Services, LLC for an Electric Supplier License. On July 12, 2013, and in response to ongoing customer complaints received by PURA, the Authority initiated the instant proceeding to investigate alleged facts, alleged conduct, and consumer complaints, that if proven true would be violations of Conn. Gen. Stat. §§ 16-245o and 16-245s as well as the Connecticut Unfair and Deceptive Trade Practices Act, § 42-110b. On August 13, 2013, pursuant to Conn. Gen. Stat. §§ 16-41, 16-245, 16-245t, and 16-245u, the Office of Consumer Counsel (OCC) petitioned the Authority to commence an investigation into the municipal marketing program (MMP) of Direct, concerning alleged abuses and mishandling of its customer enrollments in connection with this program. On June 15, 2015, the Authority issued a ruling indicating that it would investigate the issues raised in the OCC petition concerning the MMP in the instant Docket.

On September 11, 2018, pursuant to Conn. Gen. Stat. §§ 16-41, 16-245(k), 16-245o(k), and 16-245u, the Authority issued a Notice of Violation and Assessment of Civil Penalty (NOV) against Direct in the amount of one million five hundred thousand dollars

($1,500,000), a prohibition on accepting new customers for six months, and auditing of marketing calls for one year after the end of the six-month prohibition. By letter dated December 10, 2018, Direct elected to forgo its right to a hearing pursuant to Conn. Gen. Stat. § 16-41(d) without waiving its right to contest the NOV.

C. CONDUCT OF THE PROCEEDING

By its own motion, the Authority established the above-referenced docket on July 16, 2013. The Authority conducted hearings concerning this matter on March 22, 2016, May 27, 2016, June 30, 2016, and October 25, 2016. On September 11, 2018, the Authority issued a Notice of Violation and Assessment of Civil Penalty against Direct in the amount of one million five hundred thousand dollars ($1,500,000), a prohibition on accepting new customers for six months, and auditing of marketing calls for one year after the end of the six-month prohibition. By letter dated December 10, 2018, Direct elected to forgo its right to a hearing pursuant to Conn. Gen. Stat. § 16-41(d) without waiving its right to contest the NOV.

D. PARTIES AND INTERVENORS OR PARTICIPANTS

The Authority recognized the following as Parties to the proceeding: Direct Energy Services, 24 Gary Drive, Westfield, MA 01085; The Connecticut Light and Power Company d/b/a Eversource Energy (CL&P), P.O. Box 270, Hartford, CT 06141-0270; The United Illuminating Company (UI), P.O. Box 1564, New Haven, CT 06506-0901; the Office of Consumer Counsel (OCC), Ten Franklin Square, New Britain, CT 06051; the Commissioner of the Department of Energy and Environmental Protection (DEEP), 79 Elm Street, Hartford, CT 06106. The Authority recognized as an Intervenor the Connecticut Attorney General, 10 Franklin Square, New Britain, CT 06051.

II. AUTHORITY ANALYSIS

Based on the Authority's investigation, it finds that Direct failed to comply with Conn. Gen. Stat. §§ 16-245, 16-245o, 16-245s, and 42-110b, by: 1) misstating standard service price; 2) not stating in its marketing that it did not represent an EDC; 3) not explaining the purpose of its solicitations; 4) misrepresenting cancellation fees; 5) using undefined terms and not accurately explaining rates; 6) implying customers must choose a supplier; 7) misleading customers into believing generation charges were the total bill; 8) coaching customers and answering questions through the third-party verification (TPV) process; 9) charging excessive cancellation fees; 10) not directly training its third-party agents; 11) engaging in other unfair and deceptive marketing practices, including but not limited to, making misleading statements in its marketing; 12) not having Spanish marketing materials available when conducting solicitations and sales; and 13) not having Spanish-language contracts available when conducting solicitations and sales, resulting in invalid contracts.

A. DIRECT VIOLATED CONN. GEN. STAT. § 16-245O(H)(3)(B)(I) BY NOT STATING AND BY MISSTATING THE PRICE OF STANDARD SERVICE

Conn. Gen. Stat. § 16-245o(h)(3)(B)(i) requires any electric supplier to accurately disclose the price of standard service. The record contains marketing calls made by Direct in which its agents misstate or mischaracterize the price of standard service. Tr., pp. 837-853; Late Filed Exhibit 2C, p. 31; Late Filed Exhibit 2A, p. 121.[1] ("[For] Connecticut Light & Power themselves about 16 cents is what they're predicting at the top of the year."). Direct concedes in its Reply Brief that its "agents misstated the future Standard Service rate." Direct Reply Brief, p. 15. Whether these misstatements were purposeful or accidental is irrelevant to the legal violation. The law requires Direct to accurately state the standard service rate and Direct did not do so.

Direct consistently characterizes standard service as a variable rate in its marketing. Late Filed Exhibit 2C, pp. 139-41, 144, 365, 377, 460, 554, 556, 614 and 632. *See also*, *Id*. at p. 400 ("[W]hen you just have Eversource as your company and no supplier, then that means Eversource can charge you whatever they want to on your bill…"). Standard service is procured in six-month contracts and therefore is, by definition, a fixed rate for a minimum of six-month intervals.[2] It is not a variable rate as Direct's agents consistently characterized it, nor can a rate be made variable by basis of comparison.

Direct argues that when an agent describes standard service as a variable rate "she is speaking colloquially." Direct Reply Brief, p. 24. This argument does not provide a legal excuse. First, the Authority notes the volume of Direct's marketing calls in which the agents used the term variable rate. Second, under such a "colloquial" definition, any rate that ever changes could be termed variable. Going forward, Direct should train its agents to refrain from using language regarding variable rates in any description of standard service rates to avoid misleading customers in violation of Conn. Gen. Stat. § 16-245o(h)(3)(B)(i).[3] The Authority considers every reference to standard service as a variable rate and every misstatement of standard service price a statutory violation and bases its penalty in this decision on such violations enumerated herein.

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[1] Later in this exchange Direct can be heard saying, "[W]ith CL&P if you – if you didn't renew, you know, you will revert back to them eventually. And, you know, like I said, their rates are going to go up to about 16 cents." p. 126. Customers do not revert to an EDC without affirmative action and CL&P has not charged a 16-cent rate at any time applicable in this docket.

[2] Direct attempts to argue in its Brief that standard service is variable because it changes every six months, which sometimes is more often than Direct's contracts change. Brief p. 45-46. Direct's argument is to no avail. Variable is not a relative term. Nor would Direct want it to be; otherwise its nine-month contract would be variable relative to another supplier's twelve-month contract, which would mean Direct's nine-month contract was illegal.

[3] The Authority notes it is not "colloquial" to describe standard service as, "Now, if you haven't chosen a supplier, sir, then your rate right now is a variable rate on your bill. It changes month to month." Late Filed Exhibit 2C, p. 365. Describing a change as "month to month" is specific, inaccurate, and most importantly, deceptive. Equally deceptive, and not colloquial, is, "Eversource can monopolize on your rate. That means that one month you can be at 10 cents per kilowatt hour, the next month you can be at 12 cents per kilowatt hour, and there's nothing you'll be able to do about it, because that's the rate that they choose to have for you." p. 377.

Furthermore, Direct's agents did not always disclose the standard service rate as required by Conn. Gen. Stat. § 16-245o(h)(3)(i), which states, "When advertising or disclosing the price for electricity, the electric supplier, aggregator or agent of an electric supplier or aggregator shall (i) disclose the electric distribution company's current charges, including the competitive transition assessment and the systems benefits charge, for that customer class.", In opposition to this violation, Direct cites to an Authority correspondence from 2000 for the proposition that suppliers do not have to disclose the price of standard service. Brief p. 42, citing to Docket No. 99-03-35, DPUC Determination of The United Illuminating Company's Standard Offer, July 6, 2000 Correspondence, p. 3. Direct waived its right to rely on the correspondence by not presenting it into the record as evidence before or during the hearing and giving parties the opportunity to hold discovery and cross-examination on it or present their own testimony.

Nevertheless, Direct incorrectly interprets this nineteen-year old correspondence. The Authority's July 2000 correspondence was written under a different set of facts and circumstances than existed at the time of customer solicitations at issue in this proceeding. The correspondence addressed "average current charges," which were "weighted for each customer by class by total billable sales per rate class." As further stated in the correspondence, "average customer charges per customer class will fluctuate annually according to sales." In 2000, standard service was procured in multi-year contracts, a much different situation in terms of price comparison than at the time of the customer solicitations at issue in this proceeding when the price of standard service was calculated, set, and published by the Authority in a proceeding at different intervals during the calendar year. As a result, at all times relevant to the customer solicitations at issue in this proceeding, the standard service prices set by the Authority were this publicly available to suppliers.[4] Consequently, the issues with calculating an average standard service price that existed at the time of the July 2000 correspondence no longer existed at the time of these violations. Therefore, the July 2000 correspondence is not relevant and applicable to the facts in this proceeding. At the time of the violations at issue in this proceeding, the Authority finds that the price of standard service electricity was publicly available and could and should have been provided during the customer solicitations. Direct's failure to provide the standard service price violated the statute.

Direct also argues the statute applies only to written communications. The statute makes no such distinction. Instead, it provides a blanket requirement that a supplier must disclose the EDC's current charges when the supplier is advertising or disclosing the prices of electricity and, when advertising in writing, the supplier has further obligations. It tortures the consumer protection statute to read a disclosure requirement into only written advertisements but not into verbal ones.

The plain language of the statute is clear. If Direct was unsure as to the statute's requirements, it should have sought clarification from the Authority prior to conducting its marketing. Based on the foregoing, Direct did not accurately disclose the price of standard service in violation of Conn. Gen. Stat. § 16-245o(h)(3)(i). However, the

[4] Direct cannot be heard to argue, as it attempts to in its Brief, that it is unaware of the standard service rate, which is made public by the Authority. Brief p. 43.

Authority will not rely upon violations of not disclosing standard service when assessing the civil penalty, prohibition, or further monitoring in this decision.

B. DIRECT VIOLATED CONN. GEN. STAT. § 16-245O(H)(2)(A) BY NOT STATING IT DID NOT REPRESENT THE EDC

Conn. Gen. Stat. § 16-245o(h)(2)(A) states that "for any sale or solicitation" a supplier or its agent must "provide a statement that the person does not represent an electric distribution company" in addition to identifying the supplier the marketer represents. Direct does not always provide this statement in its marketing calls. *See, e.g.,* Late Filed Exhibit 2C, pp. 148, 595 ("I'm an energy adviser. I'm working with your electric company."). The legislature placed an affirmative obligation on suppliers not only to identify themselves in their marketing, but also to make it clear that the supplier was not affiliated with an EDC. Direct's failure to identify itself clearly in its marketing violates Conn. Gen. Stat. § 16-245o(h)(2)(A). Furthermore, Direct's failure to have its salespersons provide a direct, explicit statement in the beginning of its sales communications expressly identifying that the person is calling on behalf of Direct Energy, an electric supplier, is a violation Conn. Gen. Stat. § 16-245o(h)(2)(A) due to the way Direct's marketing then proceeds in a deceptive manner.

Direct has violated Conn. Gen. Stat. § 16-245o(h)(2)(A) by its salespersons using language in many of Direct's calls implying that Direct represents an EDC. This implication comes in differing forms. In some cases, Direct first tells a customer it is "an energy adviser working with your electric company." Late Filed Exhibit 2C, pp. 199 and 595. The statutory violation occurs once Direct has made such a statement. Direct cannot cure the violation by later stating its name in the sales solicitation conversation. *See e.g*., Late Filed Exhibit 2C pp. 116-118 (customer hands the phone to her son and says that Eversource is calling); pp. 36 and 37 (Direct clarifies its role for the first time as it is sending the customer to the third-party verification and the customer does not understand what is occurring).

In other cases, Direct states, "[W]e're calling about the information on your Eversource electric bill on page 1. Have you reviewed that information by chance?" and then instructs the customer to get her Eversource bill. *Id*. at 664. The way Direct begins these types of calls implies that the call is sanctioned by or on behalf of Eversource.

In yet other cases, Direct states, "We're the supplier for Eversource's energy choice program," that it is part of *Eversource's* program for its customers "that allows you to have the lowest rate possible on your bill by choosing a supplier," or that the EDCs "encourage, you know, their customers to choose a supplier." *Id*. at 118, 208-09, 449, 485, 603. Once again, Direct stating its name does not cure any violation that may have occurred due to the salesperson implying that the call is from someone associated with the EDC, implying that Direct is the sole supplier working with an EDC, or implying that the EDC wants the customer to choose that supplier. Direct cannot rely on back-end compliance in a sales call of identifying itself by company name and as an electric supplier, after the salesperson may have violated the statute at the outset and during prior conversation by not stating that the caller was not representing an EDC, or by using language that strongly implies the call was from or authorized on behalf of an EDC

Direct argues that the statute places no temporal requirements on when the agent must indicate she is calling on behalf of Direct. Brief p. 22. The Authority is not placing a temporal requirement on Direct. The Authority finds that Direct's practice of deceiving the customer into thinking the call is from her EDC *and then* mentioning Direct's name causes the customer to believe the call is from the EDC and that Direct is calling on behalf of or as part of the EDC. It is exceptionally difficult to undo such a deception and the Authority did not find any recording or transcript in which Direct honestly attempted to undo such a deception. To the contrary, Direct appeared to rely on the deception to proceed with the sale.

Direct's argument misses the purpose of Conn. Gen. Stat. § 16-245o as a consumer protection statute. While the legislature did not place a temporal requirement on the supplier's marketing, neither did the legislature intend for a supplier to deceive a customer throughout the call and then state its name once at the end of the call to claim it met its burden. The statute envisions that a customer will understand what is occurring as a result of the marketing call, and that is a very low bar Direct consistently fails to clear.[5]

C. DIRECT VIOLATED CONN. GEN. STAT. § 16-245O(H)(2)(A) BY NOT EXPLAINING THE PURPOSE OF ITS SOLICITATIONS.

Conn. Gen. Stat. § 16-245o(h)(2)(A) requires every supplier and/or its agent to "explain the purpose" of their solicitations. Direct did not explain the purpose of its marketing calls and thus violated the statute. *See, e.g.,* Late Filed Exhibit 2C, p. 21 ("The reason for the call is to let you know as of the next available meter reading with your Connecticut Light & Power Eversource electric account, if you still qualify, you'll be receiving a low fixed rate that is going to be about 25 percent lower than the regular rate and it's also going to make -- it's also going to be good for nine months if you qualify for through free state program.").

The Authority finds that Direct intentionally misrepresented the purpose of its solicitations. For example, "Well, we're not calling you to switch anything. We're actually calling you about the information on your Eversource bill regarding the energy choice program." *Id*. at p. 525. Or, when asked if the caller was a telemarketer, Direct said, "No, I'm not at all." *Id*. at p. 208. The Authority interprets the statute to require the salesperson to identify as being affiliated with an electric supplier, and not the EDC, and to clearly state that the purpose of the call is to solicit sales, i.e. to offer the customer electric services. This example, and others like it, do not meet the statutory requirements, and therefore, constitute violations.

The following exchanges are examples of violations of Conn. Gen. Stat. § 16-245o(h)(2)(A): When a customer states, "No, I'm not interested in changing," the agent's

[5] This is illustrated in a confusing exchange in Late Filed Exhibit 2-C, p. 35. The customer complains that if the company is doing business in Connecticut it should be calling from Connecticut, to which Direct inexplicably responds, "Well, of course, with Eversource, we've price protected Eversource … So the company, you know, we work hand in hand with the State of Connecticut." The customer then goes on to say, "I mean, you got an office up here in Hartford. You changed name from AT&T to Eversource…" Clearly the customer thought he was talking to Eversource.

responds: “Well, no, you don’t change anything. Everything stays the same. Your utility company’s still going to be your utility company.” The customer protests, “I’m not interested, though.” The agent continues and the customer questions, “Get my electricity from a different provider, correct, that’s what this phone call is about?” The agent answers, “No not - - no, you’re still going to get your electric from Eversource.” Only when the customer says, “Is this what you’re calling about, changing the generation company? Yes or no. It’s a simple answer,” does the agent state, “We are an authorized supplier to Eversource.” *Id*. at pp. 77-79. Even at this point, however, the agent still does not explain the purpose of the solicitation, and that after the customer had to badger the agent into revealing what little information he did. *See also*, *Id*. at p. 555 (“Are you trying to get me change companies? THE AGENT (Drenda): No, ma'am, this is the same bill, same service. Again, this is Eversource's energy choice program.”). These phones call exemplify what the legislature was trying to prevent when it set forth the requirements in Conn. Gen. Stat. § 16-245o(h)(2)(A).

Direct reads the marketing cited above and inexplicably argues that it is acceptable. For example, Direct argues that after saying, “Well, we're not calling you to switch anything. We're actually calling you about the information on your Eversource bill regarding the energy choice program,” it somehow helps if the agent then says, “you get the same bill from Eversource, the same service. You still pay them.” Brief at p. 31, quoting Late Filed Exhibit 2C, p. 526-27. Direct appears oblivious to the fact that after its agent told the customer it was not switching her, saying the customer gets the same bill from Eversource only solidifies the assumption the call is not resulting in a switch to a supplier. Furthermore, Direct argues that after saying, “Well, no, you don’t change anything. Everything stays the same. Your utility company’s still going to be your utility company,” it helps if the agent continues, “They’re still going to deliver to you, read your meter, handle your emergency needs, and they’d be the only one that would ever bill you. None of that changes.” Brief at p. 32, quoting Late Filed Exhibit 2C at p. 77. Once again, the additional information only goes to support the Authority’s interpretation. A customer hearing an explanation that nothing is changing unsurprisingly thinks nothing is changing.

As exemplified above, Direct labors under the misguided assumption that providing accurate information about Topic B after deceiving the customer about Topic A is an acceptable means of conducting a sales call. The Authority disagrees. The statement that “nothing changes” as a result of the solicitation cannot be made true by also saying Eversource remains the customer’s utility. Something does change as a result of the solicitation and customers engaging with Direct would not be aware of it.

Direct attempts to argue that it could not know the statute required it to “clearly state the purpose of the call [was] to solicit sales, i.e., to offer the customer electric services.” Brief at p. 30. The statute states that the supplier must “explain the purpose of the solicitation.” Conn. Gen. Stat. § 16-245o(h)(2)(A)(iii). The Authority finds it unbelievable that Direct does not realize the purpose of its calls is to solicit sales and offer a customer electric service. Direct knew what conduct it should have avoided and chose not to avoid that conduct. It cannot now hide behind feigned ignorance.

D. DIRECT VIOLATED CONN. GEN. STAT. § 16-245O(H)(2)(A) AND § 16-245O(H)(7)(A) BY MISREPRESENTING CANCELLATION FEES.

Conn. Gen. Stat. § 16-245o(h)(2)(A) requires every supplier and/or its agent to explain all fees during any solicitation. Conn. Gen. Stat. § 16-245o(h)(7)(A) indicates that no supplier may charge a termination fee in excess of fifty dollars. Direct violated both of these statutes by misstating to customers that other suppliers did not have a cancellation fee or that other suppliers had cancellation fees in excess of fifty dollars.

Direct admitted during hearings that its agents do not contact other suppliers regarding their cancellation fees, but that any information it gives regarding another supplier it gains from public information available on the Rate Board.[6] Tr., pp. 435 and 436. Despite this admission, Direct agents can be heard telling customers that they will ensure the customer does not have a cancellation fee or saying it "doesn't look like" they have a cancellation fee. Late Filed Exhibit 4, Attachment A, P. Nye Sales Call, *Id*. Attachment B at 2-3; Late Filed Exhibit 2A, p. 64; Late Filed Exhibit 2C, p. 606. Contrary to Direct's assertions, checking information publicly available on the Rate Board does not constitute ensuring that a customer does not have a cancellation fee associated with his particular contract.

Moreover, Direct misstated to customers that other suppliers could have a cancellation fee in excess of fifty dollars or that it was illegal to have a cancellation fee in Connecticut. Late Filed Exhibit 4, Attachment B, pp. 465 and 466; Late Filed Exhibit 2C, pp. 58-59, 378, 386, 465 and 466. The Authority finds that it is illegal marketing to state that another supplier has an excessive cancellation fee to trick a customer into not signing with that supplier, and that it is also illegal marketing to imply that another supplier is engaging in illegal behavior by having a cancellation fee at all. Direct attempts to argue that such statements can be qualified by words like "probably" and "my understanding." Use of the language "probably" and "my understanding" to qualify statements does not cure any related incorrect or misleading statements constituting violations of the statute.

E. DIRECT VIOLATED CONN. GEN. STAT. § 16-245O(H)(2)(A) BY USING THE UNDEFINED TERM "PRICE PROTECTION" AND NOT ACCURATELY EXPLAINING RATES.

Conn. Gen. Stat. § 16-245o(h)(2)(A)(iii) requires suppliers to "explain all rates, fees, variable charges and terms and conditions for the services provided." Direct used the phrase "price protection" in much of its marketing without ever explaining to a customer what the term meant. *See e.g*., Late Filed Exhibit 2C, p. 667 ("You don't have no price protection on the bill, so we do want to get the price protection applied at 7.49 cents per kilowatt hour for the next nine months, you know, since you don't have any protection."). A reasonable customer would not understand what "price protection" means, or worse still, would understand it to mean that Direct was protecting them from higher charges. As a result, the Authority finds that Direct violated Conn. Gen. Stat. § 16-245o(h)(2)(A)(iii).

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[6] The Rate Board is found on the website www.energizect.com and, differentiating by EDC and account type, lists standard service price as well as other supplier offers current as of that day, including term of rate, and cancellation and enrollment fees.

Direct argues that "the evidence in the record demonstrates the phrase "price protection" is used to convey price stability, not savings." Direct Reply Brief, p. 24. The Authority notes that the "evidence in the record" to which Direct cites is the testimony of its own witnesses explaining the definition of price protection. *Id*. While one would hope Direct's own management would know the definition of the term, their knowledge does little good to the average customer on the other end of a marketing call if the agent does not explain specifically what the term "price protection" entails, including whether or not there is a price cap or fixed price for a guaranteed term.[7]

Direct also violated the statute by not accurately explaining all rates. For example, Direct stated during its marketing, "Before the nine months is up, we're going to send you a letter within the last 30 days to renew at a lower fixed rate, so you never have to worry about your rate going up." Late Filed Exhibit 2C, p. 463. The Authority finds that this statement is misleading because Direct explained its current rate in the context of a contract that would only lower and never increase. Direct was not offering the customer a guarantee that in nine months it would renew her at a lower rate. Nor was Direct going to lock the customer into a permanent deal in which her rate would "never" go up. Furthermore, Direct told the same customer in the same marketing call, "[Y]ou're never going to be at 9.99 again unless you decide that you're going to stay on a variable rate." *Id*. at 465. Without accurately explaining to the customer that her renewal rate could, and likely would, be different than her current enrollment rate, Direct's practice would deceptively induce a customer into a contract when the customer does not understand the rates to be charged, in violation of Conn. Gen. Stat. § 16-245o(h)(2)(A)(iii).

F. DIRECT VIOLATED CONN. GEN. STAT. § 16-245O(H)(3)(B) BY IMPLYING A CUSTOMER MUST CHOOSE AN ELECTRIC SUPPLIER.

Conn. Gen. Stat. § 16-245o(h)(3)(B) states that a supplier shall not "make any statement, oral or written, suggesting a prospective customer is required to choose a supplier." In violation of the statute, Direct's marketing suggests a customer must choose a supplier. For example, in one call Direct states, "I do have to reach out to the whole state of Connecticut that has Eversource, so we have to go ahead and get it going." Late Filed Exhibit 2C, pp. 116-118. Or Direct states, "Because this is for all Eversource customers, the whole state of Connecticut. All customers are getting their price protected rate, because of the Energy Choice." *Id.* at 145; *see also*, *Id*. at 632 and 633. "Well, the information – the information is actually on your bill, ma'am, so you've already been mailed the information. You're already in the program, ma'am." *Id*. at 403 (on the contrary, customers must actively choose a supplier to be "in the program."). "It's mandated statewide, you know, because of the state of Connecticut…" *Id*. at 616-17.[8] Worse still, "because [EDCs] actually encourage, you know, their customers to choose a

[7] Direct continued this line of argument in its Brief, offering, "When sales agents referred to price protection, they meant that the price the customer would pay for the term of the contract would be stable." Brief p. 36. Once again, the Authority would hope Direct's agents knew the definition of the term. It was their lack of explaining the term to customers that caused the violation.

[8] Direct argues that "immediately before the quoted language the sales agent stated: "Because, you know, the State's deregulation law, there's nothing to get out of." Brief p. 37 and footnote 252. The Authority concedes the quoted language and thinks that makes the statement *even worse*. It is alarming that Direct thinks having an agent say there's "nothing to get out of" somehow does not cause a customer to think a supplier choice is required.

supplier." *Id*. at 118, 377 and 398. Such statements suggest that a customer must engage in the transaction. These representations made by Direct sales agents violated Conn. Gen. Stat. § 16-245o(h)(3)(B).

Furthermore, most of Direct's calls involved an introduction that violated Conn. Gen. Stat. § 16-245o(h)(2)(A) and then violated Conn. Gen. Stat. § 16-245o(h)(3)(B) by a sequence of instructions that imply that the person must sign up with a supplier. The first instruction directs that the customer retrieve her electric bill. After the customer gets her bill, Direct then signs her up for service. Direct does not ask the customer if she wants to switch suppliers; instead it implies that she must switch suppliers by proceeding through the transaction at a dizzying speed that is confusing to customers and barely gives them time to process what is occurring, much less object. These types of call procedures that instruct a customer to take certain actions in sequence, such as retrieving their bill, imply to a customer that she must complete the requested actions, including engaging in a conversation with the caller when customer is not fully informed that the conversation is actually a sales transaction to enroll the customer for supplier services.

The Authority must address the gross misstatement Direct argues in its Brief – that customers are encouraged to choose a supplier. Customers are not *encouraged* to choose a supplier. The law instituting competitive supply *allows* a customer to choose a supplier. Allowing and encouraging are two different verbs and Direct's marketing should reflect the difference.

G. DIRECT VIOLATED CONN. GEN. STAT. § 16-245O(H)(3)(A) BY MISLEADING A CUSTOMER INTO BELIEVING THE ELECTRIC GENERATION SERVICES PORTION OF THE BILL WOULD BE THE TOTAL BILL AMOUNT.

Conn. Gen. Stat. § 16-245o(h)(3)(B) prohibits a supplier from advertising or disclosing the price of electricity in a manner that would "mislead a reasonable person into believing that the electric generations services portion of the bill will be the total amount." Direct violated this statute by misleading customers into thinking Direct's charge would be the sole charge on their bill.

The following is an example of a statutory violation. A customer attempts to rebuff Direct's offer, only to be pressed by Direct's agent. When the customer states that she already has a better deal and is looking at her bill to attempt to understand the charges, the agent says, "A lot of the companies have a delivery charge and they have a customer charge and they have a recovery charge." Late Filed Exhibit 2C, p. 65. The customer, untrusting but confused, asks the agent, "You don't charge the transition charges, distribution --," to which the agent responds, "Ours is a flat rate. We don't charge anything else." *Id*. at p. 66. While what the agent said is technically true, it is not true in the context of the customer's question or of how it was being presented to the customer. The Authority finds that Direct was actively convincing this customer that the supplier she currently was with did charge her additional charges that Direct would not charge. By the end of the salesperson's lengthy explanation, the customer appears convinced that the rate Direct is quoting her is the entirety of her price, whereas the rate she currently receives from her supplier, which happens to be lower than Direct's rate, is not the entirety of her price. *See also*, *Id*. at p. 591 ("THE CUSTOMER (Joanne): And there's no other charges that you charge? THE AGENT (Clarice): No. No, everything is included in our

rate. The 7.49 times your kilowatts, that's all you'll see on the bill with us as the supplier.").[9] These calls violate Conn. Gen. Stat. § 16-245o(h)(3)(B).

H. DIRECT VIOLATED CONN. GEN. STAT. § 16-245S BY COACHING ITS CUSTOMERS AND ANSWERING QUESTIONS THROUGH THIRD-PARTY VERIFICATION.

Conn. Gen. Stat. § 16-245s states that a customer's selection of a supplier must be confirmed through a TPV process or other means.[10] The statute then goes on to describe the TPV process, stating that it "shall obtain the customer's oral confirmation regarding the change," a third-party verifier must be independent from the supplier, not indirectly or directly controlled or managed by the supplier, and that the third-party verifier must reside in facilities physically separate from the supplier. In short, the legislature attempted to ensure that the TPV process was independent of the supplier so that the process could not be tainted. Direct selected third-party verification as its means of confirmation.

The Authority finds that Direct's TPV process does not meet the legal requirements for TPV. The transcripts of the recorded sales calls show that Direct routinely remained on the line or with the customer, specifically telling the customer what to say in advance of the TPV, and answering customer questions throughout the TPV. *See, e.g*., Late Filed Exhibit 2C, pp. 162-63, 188, 578, p. 274 (Interrupting the TPV, Direct's agent says, "All you have to do is answer with a clear yes. If you ask them a question, they're going to hang up on you," to which the customer responds, "So I have to say yes; right?"). The TPV is meant to be a safeguard to ensure the customer understands the transaction with the supplier. Coaching a customer undermines this safeguard. If a customer has questions during a TPV, the customer does not understand the transaction, a clear sign that the TPV should not be occurring. The manner in which Direct coaches the customer and participates in the TPV violates the statute in that it undermines the TPV from serving as a truly independent third-party verification that the customer understands the nature of the transaction and the customer's intent to switch suppliers. *See e.g*., *id*. at pp. 48-53 (customer asks five pages of questions *after* the TPV is completed).

Direct argues that the statute does not prohibit a supplier from coaching a customer through a TPV. This argument perverts the purpose of an *independent* third-party verification. If the supplier is allowed to engage with the customer during the TPV, the TPV is, by definition, no longer independent. As a result, the Authority finds that Direct violated Conn. Gen. Stat. § 16-245s.

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[9] Once again, Direct argues in its Brief that this exchange is acceptable. Brief at p. 41. The Authority disagrees. Direct represented to the customer that she would see no other charges on the bill. Stating "with us as the supplier" does nothing to cure this inaccuracy. Direct did not explain these were only the supplier charges and the distribution charges would be added. The Authority finds that a reasonable customer would be confused by this exchange.

[10] The other means are receipt of a written confirmation received in the mail from the customer after the customer has received an information package confirming any telephone agreement; the customer signs a document fully explaining the nature and effect of the change in service; or the customer's consent is obtained through electronic means, including, but not limited to, a computer transaction.

I. DIRECT VIOLATED CONN. GEN. STAT. § 16-245O(H)(7)(A) BY CHARGING CUSTOMERS MORE THAN FIFTY DOLLARS WHEN CANCELLING A CONTRACT.

Conn. Gen. Stat. § 16-245o(h)(7)(A) states that, "No contract for electric generation services by an electric supplier shall require a residential customer to pay any free for termination or early cancellation of a contract in excess of fifty dollars…" Direct violated this statute by collecting a cancellation fee of $200 from customers who received a Nest Thermostat upon enrollment.

Direct argues that this fee was not associated with a contract for electric generation services and was a device recovery fee, not a cancellation fee. This argument is based on semantics and has no merit.[11] The fee was associated with a contract for electric generation services. Receiving the Nest thermostat was part of the process of completing a contract for electric generation services with Direct. Direct did not enter into a separate contract with customers for the sole purpose of providing them with a thermostat. Even if it had, the cancellation of the contract for electric generation services is what precipitated the $200 fee. Direct cannot honestly argue that it did not charge a customer a $200 fee after the customer cancelled his contract. Such a scheme undermines the purpose of limiting the early termination fee, which is to allow customers to more readily switch suppliers, or return to standard service.

J. DIRECT VIOLATED CONN. GEN. STAT. § 16-245O(H)(1) BY NOT DIRECTLY TRAINING ITS THIRD-PARTY AGENTS.

Conn. Gen. Stat. § 16-245o(h)(1) requires any third-party agent selling electric generation services on behalf of an electric supplier be "an employee or independent contractor of such electric supplier, and (B) the third-party agent has received appropriate training direct from such electric supplier." The law is clear – suppliers must directly train anyone selling electric generation services on their behalf.

Direct admits in its testimony and in its Reply Brief that it does not directly train its third-party agents. Instead, "the third-party vendor who employs those agents provides the training." Direct Reply Brief, p. 36. Based on the foregoing, the Authority finds that Direct violated § 16-245o(h)(1).

Direct attempts to circumvent the law by arguing that it does not contract with agents, but rather with third-party vendors; therefore, it is not required to train the agents because it has no contract with them. Applying Direct's logic to the statute, the third-party vendor could sell on Direct's behalf, but no employee of the third-party vendor could sell on Direct's behalf because Direct has not contracted with the employees. The Authority finds that Direct's logic produces absurd results.

Direct also argues that no "statute, regulation, or Authority order defines what constitutes 'directly.'" Brief p. 48. The Authority is not required to adjudicate every statutory requirement or every word in a statute in order to give it effect. Moreover, as the Authority recently ruled in a similar context, a claim of ignorance of the law or mistake

[11] Even Direct's agents termed it an early termination fee. "Yeah, early termination fee for that – for that Nest Thermostat." Late Filed Exhibit 2A p. 78.

of law is no defense. *See* Final Decision dated Aug. 9, 2016, Docket No. 06-12-07RE05, Application of Liberty Power Holdings, LLC for an Electric Supplier License- Rebilling, Attachment A, p. 9.[12]

"Terms in a statute are to be assigned their ordinary meaning, unless context dictates otherwise..." (Citation omitted; internal quotation marks omitted.) *Helmedach v. Comm'r of Correction*, 168 Conn. App. 439, 459 (2016). Here, context does not dictate otherwise. The statute says the third-party agents must receive "training directly from such electric supplier." Direct's misguided attempts to muddy the definition of "directly" are to no avail. To interpret the statute in any way other than requiring the electric supplier to train its third-party agents would read language out of the statute.

Furthermore, the purpose of the statute was to avoid the situation Direct created – where it practiced lax oversight, delegated training of its agents, and customers were harmed as a result thereof. The Authority finds that Direct violated the statute, and as a result of its violation, customers were harmed.

K. DIRECT VIOLATED CONN. GEN. STAT. §§ 16-245O(H)(4), 16-245O(J), 16-245(G)(2), AND 42-110B BY ENGAGING IN UNFAIR AND DECEPTIVE MARKETING.

Conn. Gen. Stat. § 16-245o(j) makes any violation of § 16-245o a violation of the Connecticut Unfair Trade Practices Act (CUTPA), Conn. Gen. Stat. §42-110b. Conn. Gen. Stat. § 16-245s(c) does the same. Conn. Gen. Stat. § 16-245(g) conditions a supplier's license on its compliance with CUTPA. Therefore, all violations of §§ 16-245o and 16-245s cited above are also automatically violations of CUTPA and of the conditions on which a supplier holds a license under § 16-245(g).

In addition to automatically violating CUTPA due to Conn. Gen. Stat. §§ 16-245o and 16-245s violations, Conn. Gen. Stat. § 16-245o(h)(4) precludes suppliers from engaging in "any deceptive acts or practices, in the marketing, sale or solicitation of electric generation services." Because alleged violations of CUTPA and § 16-245o(h)(4) both involve proof of an unfair or deceptive practice and have the same requirements, the Authority will examine alleged violations of these statutes simultaneously.

"The purpose of CUTPA is to protect the public from unfair practices in the conduct of any trade or commerce." *Richards v. Direct Energy Servs., LLC,* 120 F. Supp. 3d 148, 157 (D. Conn. 2015) (citing *Willow Springs Condo. Ass'n, Inc. v. Seventh BRT Dev. Corp.*, 245 Conn. 1, 42 (1998) (citation omitted). "CUTPA, by its own terms applies to a broad spectrum of commercial activity" and "must be liberally construed in favor of those whom the legislature intended to benefit." *Larsen Chelsey Realty Co. v. Larsen*, 232 Conn. 480, 492 (1995) (quoting *Concept Associates, Ltd. v. Board of Tax Review,* 229 Conn. 618, 623, 642 A.2d 1186 (1994)).

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[12] "Any claim of ignorance of the law is no defense. A mistake of law cannot exonerate one who has an intention to do that which the law prohibits. *Atlas Realty Corp. v. House*, 123 Conn. 94, 100-01, 192 A. 564, (1937); *Provident Book v. Lewitt*, 84 Conn. App. 204, 210, 852 A.2d 852, cert. den., 271 Conn. 924, 859 A.2d 580 (2004)." *Commission on Human Rights and Opportunities v. Forvil*, No. HBR1007639, 2009 WL 1959263 at *3 (Conn. Super. June 4, 2009)."

Connecticut courts use the cigarette rule when determining if a practice is unfair under CUTPA: "(1) [w]hether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise — in other words, is it within at least the penumbra of some common law, statutory or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive or unscrupulous; [and] (3) whether it causes substantial injury to consumers, [competitors or other businesspersons] . . . ." *Naples v. Keystone Bldg. & Dev. Corp.*, 295 Conn. 214, 227-28 (2010). A practice need not meet all three criteria to be deemed unfair; "[a] practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three." *Id.*

Under CUTPA, if a plaintiff has successfully alleged an unfair practice, the plaintiff also has successfully alleged a deceptive one. *Direct Energy Servs., LLC*, 120 F. Supp. 3d at 158 n. 4 (citing *Daddona v. Liberty Mobile Home Sales, Inc.*, 209 Conn. 243, 254 (1988)). Moreover, "a violation of CUTPA may be established by showing either an actual deceptive practice . . . or a practice amounting to a violation of public policy." *Glazer v. Dress Barn, Inc.,* 274 Conn. 33, 82 (2003). A practice is deceptive if three requirements are met. "First, there must be a representation, omission, or other practice likely to mislead consumers. Second, the consumers must interpret the message reasonably under the circumstances. Third, the misleading representation, omission, or practice must be material—that is, likely to affect consumer decisions or conduct." *Caldor, Inc. v. Heslin*, 215 Conn. 590, 597 (1990) (citing *Figgie International, Inc.*, 107 F.T.C. 313, 374 (1986)).

"The issue of whether a business practice is unfair generally presents 'a question of fact.'" *Drena v. Bank of America, N.A.*, 2017 WL 6614094 at *7 (Dist. Conn. Dec. 27, 2017) (citing *DeMotses v. Leonard Schwartz Nissan, Inc.*, 578 A.2d 144, 146 (Conn. App. Ct. (1990)). Deception under CUTPA does not require proof of intent, and includes a broader range of conduct than common law claims for fraud or misrepresentation. *Direct Energy Servs.*, 120 F. Supp. at 158 (citing *Muniz v. Kravis*, 59 Conn. App. 704, 713 (Conn. App. Ct. 2000)). Furthermore, CUTPA does not require reliance or that the representation became part of the basis of the bargain. *See, e.g., Hinchliffe v. Am. Motors Corp.*, 184 Conn. 607, 617 (1981).

Direct's marketing actions are both deceptive and unfair under CUTPA definitions, i.e. the practices cited above were deceptive in that they contained a "representation, omission, or other practice likely to mislead customers." *Caldor*, 215 Conn. at 597 (misrepresenting standard service rates and cancellation fees; not stating Direct did not represent an EDC; not explaining the purpose of the calls; using an undefined term; implying customers must choose a supplier). Further, contrary to Direct's arguments, customers were quite likely to take Direct's statements at face value and be deceived by Direct's representations – when Direct said that standard service was a particular price or was variable, it was reasonable for a customer to assume standard service was that price or constantly changed; when Direct used the EDC's name first in the phone call, a customer could reasonably assume the call was from the EDC; when Direct said another supplier had an exorbitant cancellation rate, a customer was reasonable to assume she would be heavily penalized for going with that supplier; when Direct stated it had to contact all Eversource customers and get their savings going, a customer was reasonable

to think he must sign up with the supplier. All of these representations involve money or the implication that the call was from the EDC, both of which would directly affect a customer's conduct.

Likewise, Direct's actions were unfair in that customers could reasonably conclude that all of the above-cited actions were violations of the statutes, were unlawful and offend the very policies behind the statutes, and are immoral, unethical and unscrupulous. These reasonable conclusions could be based on record evidence regarding misrepresentations made to customers about standard service or another supplier's termination fee, use of the name of the EDC so many times at the beginning of a phone call that a customer would assume the call is from the EDC, using language that misrepresents or implies the supplier's price is cheaper or capped, using language that implies customers must choose a supplier, and calling customers and never stating that the purpose of the call is to get them to switch suppliers and never expressly asking if they want to switch suppliers. The Authority finds that all of these acts injure the very customers the statutory scheme was meant to protect.

In addition to the actions cited above, other aspects of Direct's marketing violate CUTPA. First, Direct does not make it clear in its marketing that at the end of the exchange a customer will have signed a contract with Direct and the customer must actively rescind that contract during the rescission period to get out of the deal. *See e.g.,* Late Filed Exhibit 2C, p. 152 ([Y]ou're not signing any contracts."); p. 354 (Customer states, "I'd like to discuss it with my wife first," to which Direct responds, "Yes, sir. Well, what's happening, sir, we're just basically sending the information to you in writing, that's it."); p. 17 (When the customer states that she will be on vacation and cannot respond to the written information within three business days, Direct says, "All we do today is just go through the clerical information, a third-party verification, that way can you get your confirmation number, and that's basically it. That's so we can go ahead and secure the rate and get everything out to you in writing."). For the few customers that do understand Direct's methods, Direct attempts to make misrepresentations to get them to sign up anyhow. For example, in one exchange the customer asked, "If I decide I have to call you back; correct?" *Id*. at p. 62. Rather than simply answering her question with a "yes" or "no," Direct responds with lengthy discussion about state law and TPV, to which the customer then says, "[J]ust because you send me a letter, I don't want it until you hear from me. If you don't hear from me, I don't want you to sign me up, that's the whole thing." *Id*. at p. 64. Direct responds by saying, "Well, by law we can't sign you up today, that's what I'm saying," and after more back-and-forth with the customer Direct says, "I can't take a decision today, that's what I'm saying." *Id*. The customer continues to insist that she does not want to sign up that day, but Direct says, "This is the whole purpose of the program is to get it in writing so that you can make a comparison." *Id*. The customer in this exchange made it clear that she did not want to sign up with Direct that day, but Direct relentlessly misrepresented to her that she was not signing up, even though the process the sales agent sought to take the customer through was the process used for signing up customers.[13]

[13] The entire exchange with this customer is an example of a CUTPA violation. The caller: 1) deceived the customer regarding signing up; 2) misrepresented that its rate was all-inclusive; 3) provided false information about suppliers not being able to charge a cancellation fee in Connecticut; and 4) used all of these deceptions to convince her to sign up for a higher rate. Late Filed Exhibit 2C, pp. 56-74.

The Authority finds that Direct makes misleading statements during its marketing. For example, when the customer looks at her bill and says she sees "1942.00 kWh" Direct tells her that means she is "paying 19.42 cents per kWh." Late Filed Exhibit 4, Attachment A, J. Ritchie Sales Call. Direct's statement was wholly incorrect; the customer had *used* 1942 kWh during that billing cycle. Another example: "Sometimes when you don't pick a supplier, your utility picks a supplier for you, especially if the rates are high." Late Filed Exhibit 2C at p. 266. Not only is Direct's statement inaccurate, but it is designed to cause a customer to rush to leave a utility she thought was specifically picking a high rate. *See also, id*. at p. 670 (In response to the customer saying that Sunwave was her supplier and complaining that her rates were high, Direct says, "If you didn't choose a supplier, then someone chose that -- your utility chose one for you."). Equally bad: "This program is through the state of Connecticut and Eversource. So they're strongly recommending that you get a supplier." *Id*. at 377; 398 ("This – this program is through Eversource, ma'am. They're strongly recommending that you choose a supplier, so you have a fixed rate on your bill."). Neither the State nor Eversource has ever recommended, much less strongly recommended, that a customer get a supplier.[14] Again, "Even though you may not use a lot of electricity in the summer, that rate automatically goes up because it's summertime. Summertime and wintertime are where the rates go up on your light bill …" *Id*. at 380. The Authority has reason to believe that Direct's statements are untrue (standard service sometimes goes down in July) and deceive the customer into thinking Direct is offering him a deal because his standard service rate "automatically goes up because it's summertime." Direct can also be heard telling customers that it takes up to three months for other suppliers to show up on their bills and during that three months the customer "can rescind the offer." The customer does not have three months to rescind an offer and might incur a cancellation fee (of which Direct admitted it would have no knowledge) when they try to rescind the offer two or three months after signing up.

Finally, the Authority finds that Direct ran an entire marketing scheme regarding a Nest thermostat that misrepresented savings and attempted to effect an end-around the legal requirements regarding an early termination fee. Direct argues that it did not misrepresent the savings the Nest thermostat could offer, but the math it offers to back up its argument is quite creative. Direct argues that because a customer possibly could save up to 12% on heating bills and 15% on cooling bills, that means the customer would save "on average, twenty-five percent (25%) to twenty-seven percent (27%)." Direct Reply Brief, p. 61. The only way a customer could save 27% would be if she were saving both 12% and 15% *at the same time*, which would mean she would have to run both her heating and cooling system at once – a process one would have to assume would never happen and would not generate savings.[15] These types of actions found throughout the Authority's investigation in this docket deceive customers and constitute CUTPA violations.

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[14] It is incredible and inaccurate for Direct to argue that because the state allows for competitive supply, it therefore encourages customers to engage in competitive supply.

[15] Assuming a customer runs heat for six months and cooling for six months, a customer would save 12% for six months and 15% for six months. Direct's 27% assertion to the contrary, the customer would save 13.5% in an average year (12x6=72, 15x6=90, 90+72=162/12=13.5). The Authority makes no claims regarding whether a customer would actually save 13.5% using such a thermostat, especially since most customers have some months of the year in which heat or air use is curtailed or eliminated.

L. DIRECT VIOLATED CONN. GEN. STAT. § 16-245O(H)(2)(B)(III) BY NOT HAVING SPANISH MATERIAL AVAILABLE IN ITS DOOR-TO-DOOR SOLICITATIONS

Conn. Gen. Stat § 16-245o(h)(2)(B) states:

> ***For door-to-door sales*** to customers with a maximum demand of one hundred kilowatts, which shall include the sale of electric generation services ***in which the electric supplier***, aggregator ***or agent*** of an electric supplier or aggregator ***solicits the sale and receives the customer's agreement or offer to purchase at a place other than the seller's place of business***, **be conducted** (i) in accordance with any municipal and local ordinances regarding door-to-door solicitations, (ii) between the hours of ten o'clock a.m. and six o'clock p.m. unless the customer schedules an earlier or later appointment, and (iii) ***with both English and Spanish written materials available***. (emphasis added)

Direct admitted during the hearings that it did not carry Spanish marketing materials with it during its door-to-door campaigns. Tr. pp. 274, 460, 864 and 865.

Section 16-245o(h)(2)(B) applies to any door-door sale process where the solicitation and sales are conducted at a place other than the seller's place of business. Direct claims that not carrying Spanish marketing materials with it during its door-to-door solicitations is not a violation of Conn. Gen. Stat § 16-245o(h)(2)(B). Direct argues that the statute distinguishes between sales and solicitations, and that the statute only requires that Spanish-language materials be made available for door-to-door sales, but does not require Spanish materials for the actual solicitations leading up to the door-to-door sales. Direct Reply Brief, pp. 3-5.

The language of the statute, however, supports no such distinction. The requirement to make Spanish-language materials available applies to all door-to-door sales attempts where the seller intends to solicit and enter into a sales agreement at a place other than the seller's place of business, whether or not the sales solicitation culminates in an actual sale. "When construing a statute, '[o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature.... In seeking to determine that meaning, General Statutes § 1–2z directs us first to consider the text of the statute itself and its relationship to other statutes." *Kasica v. Town of Columbia*, 309 Conn. 85, 93 (2013). The text of the statute in the instant case refers to sales in which the supplier "solicits the sale." Conn. Gen. Stat. § 16-245o(h)(2)(B). Therefore, the plain language of the statute in question includes both sales and solicitations, contrary to Direct's argument.

Direct's reading of the statute would produce absurd and unintended results. For example, a supplier could conduct door-to-door solicitations that violate municipal and local ordinances as long as those solicitations did not culminate in a sale. A supplier could also conduct a door-to-door solicitation at midnight, but must wait until ten a.m. to culminate the sale. The legislature intended to prohibit, not permit, these practices. The plain language of subsection (h)(2) of the statute demonstrates clear legislative intent that the requirements listed in the statue apply to "[a]ll solicitations and sales" using door-to-

door techniques where the seller solicits and seeks to enter sales agreements outside of the seller's place of business. This is evidenced by the other requirements listed in (h)(2)(B) that pertain to the solicitation, such as limiting soliciting to certain hours of the day and requiring the display of appropriate identification. The word "materials" referred to in (h)(2)(B) is not limited to sales agreements but also includes any informational materials used by door-to-door sales persons to solicit and enter into sales agreements.

Contrary to Direct's argument in its brief, the NOV's interpretation of the statute is straightforward: all door-to-door solicitations must have both English and Spanish written materials available. The statute does not qualify the requirement based on whether or not the supplier intends to solicit in Spanish and the Authority will not read such a qualification into the statute. The plain language of the statute requires a supplier to have both English and Spanish written materials available for all door-to-door marketing; if a supplier finds that requirement unreasonable, it can choose not to engage in door-to-door marketing.

Direct argues that any non-compliance is harmless since Direct claims that it does not solicit Spanish-speaking customers. First, the Authority notes that the statute requires Direct to make Spanish materials available whether Direct intends to solicit Spanish-speaking customers or not. Moreover, Direct cannot know the language the customer speaks when it begins a door-to-door sale, and there is no evidence in the record that Direct ceases a door-to-door sale when it encounters a Spanish-speaking customer. To the contrary, the evidence presented in the hearing indicated that Direct solicits prospective Spanish-speaking customers that understand "little English." Tr., p. 739.

Furthermore, Direct posits the argument that the Authority had to prove Direct's door-to-door marketing intended to solicit customers with a demand of one hundred kilowatts or less. The language in the statute is meant to distinguish between marketing to residential customers, whose average demand is significantly less than one hundred kilowatts, and business customers, whose average demand is greater. Conn. Gen. Stat. § 4-178 allows the Authority to use its "experience, technical competence, and specialized knowledge" to evaluate the evidence. The Authority's knowledge and experience indicate, as Direct well knows, that residential customers do not have a demand greater than one hundred kilowatts. It would be impossible for Direct to conduct door-to-door residential marketing in the areas in which it marketed and engage with a residential customer with a maximum demand of greater than one hundred kilowatts. Direct's argument is not grounded in reality or knowledge of residential electric customers.

Based on the foregoing, Direct has violated Conn. Gen. Stat § 16-245o(h)(2)(B) by failing to make Spanish-language materials available during door-to-door solicitations and sales.

M. DIRECT'S CONTRACTS WITH SPANISH-LANGUAGE CUSTOMERS ARE INVALID BECAUSE DIRECT DID NOT PROVIDE CONTRACTS IN SPANISH

Conn. Gen. Stat. § 16-245o(f)(2) states:

> No electric supplier shall provide electric generation services unless the customer has signed a service contract or consents to such services by one

> of the following: (A) An independent third-party telephone verification; (B) receipt of a written confirmation received in the mail from the customer after the customer has received an information package confirming any telephone agreement; (C) the customer signs a contract that conforms with the provisions of this section; or (D) the customer's consent is obtained through electronic means, including, but not limited to, a computer transaction.

Furthermore, the statute states, "Each electric supplier shall provide each customer … a written contract that conforms with the provisions of this section." The statute requires that the contract must comply with the provisions of the entire section; that is, each customer must receive a contract that conforms with all of Conn. Gen. Stat. § 16-245o, including § 16-245o(h)(2)(B)(iii), which requires suppliers provide Spanish written materials. As established, Direct did not provide any customer a contract in Spanish. Tr., pp. 274, 460, 864 and 865.

Direct argues that because a Spanish-speaking customer was able to say their name in English and say the English word "yes" in response to questions in an English TPV process, the customer can knowingly consent to the content of an English contract. It requires little understanding of English to say one's name and to say "yes" when a salesperson instructs you to say "yes." The evidence presented in the hearing showed that Spanish-speaking customers completing the TPV process "understood little English." Tr., p. 739.[16] The Authority rejects Direct's assertion that someone who completes an English TPV and signs an English contract must understand English. The statute required Direct to provide Spanish-language contracts to native Spanish speakers. Direct has failed to do so. Direct, therefore, has violated the statute in each instance in which it failed to do so.

Once again, Direct posits the misplaced argument that the Authority did not prove "Direct Energy enrolled customers with a maximum demand of one hundred kilowatts or less." Brief of Direct Energy, filed January 18, 2019, p. 16. Direct serves residential customers as well as business customers. *Every* residential customer Direct enrolled had a maximum demand of one hundred kilowatts or less.

Based on the foregoing, Direct did not provide a written contract that conforms with Section 16-245o, that is provide Spanish language contracts to Spanish language customers, in violation of Conn. Gen. Stat. § 16-245o(f)(2).[17]

N. SUMMARY

Direct's Brief mirrors its management's attitude throughout the hearing. Direct feigns ignorance, claiming it did not know what conduct it must avoid, and therefore

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[16] Direct argues that a Spanish-speaking customer could have said "no" just as easily as "yes." This argument ignores that a salesperson has instructed a customer to say "yes" in a TPV. Late Filed Exhibit 2, Attachment A, p. 187; Late File Exhibit 4.

[17] The statute does not differentiate based on how well a Spanish-speaking customer can speak English. The Authority not only will not draw such a line, but doubts any door-to-door marketer's ability to make such an assessment at the time of the sale. If the customer preferred Spanish materials, the statute required they be offered them.

cannot be penalized for violating the statutes cited in this Decision. This argument betrays the company's inability to conduct legal marketing. The NOV did not prescribe a particular way in which the solicitations must occur. Instead, the NOV cited all of the ways in which Direct conducted solicitations that were deceptive. The purpose of Conn. Gen. Stat. § 16-245o is to ensure a customer understands the transaction and has sufficient information to engage in it. The Authority is alarmed if Direct claims it did not realize a customer signing up with it as a result of its marketing was supposed to recognize she was changing suppliers.

Inexplicably, Direct reads the statutory provisions that require it to explain the purpose of the call, and explain who the caller is, not to require that a customer engaging with the agent know she is switching electric suppliers. Direct's vehement argument against meeting such a requirement illustrates how little it cares about the customers to which it is marketing. How deceptive must Direct's marketing be if it avoids asking a customer if she wants to switch suppliers?

As it did in the hearing, Direct's Brief attempts to rely on its training materials and marketing scripts as a shield, but this reliance is misplaced. Training materials and marketing scripts are only as good as their implementation. The Authority has reviewed a substantial amount of Direct's marketing and finds that the training materials and marketing scripts are not implemented. Appropriate words on a page are no substitution for actual enforcement of requirements.

Direct's callousness toward its marketing violations was exhibited repeatedly throughout the hearings. Direct's management displayed no regard for the customers affected and displayed no contrition for the company's actions. After hearing days of testimony, reviewing hundreds of pages of transcripts, and listening to numerous audio recordings of marketing calls, the Authority concluded that Direct was willing to employ whatever means necessary to gain customers. Its Brief only confirms that conclusion.

Direct argues repeatedly that the Authority does not cite exactly how many violations Direct purportedly committed. The Authority reviewed only a small sample of Direct's many marketing calls and found violations throughout them. As the Attorney General pointed out in his brief, "Virtually every transcript of the sales calls provided in this proceeding contained some combination of these prohibited deceptive and misleading statements." Brief of William Tong, Attorney General, State of Connecticut, filed January 18, 2019, p. 2.

Furthermore, Direct claims in its Brief that it wants the entirety of the solicitation to be considered. Brief p. 64. The Authority encourages *everyone* to review the entirety of *every* transcript and *every* audio recording in this record and evaluate Direct's marketing accordingly. The Authority did so, and concluded that Direct's marketing violates Connecticut law, preys upon Connecticut customers, and undermines the competitive supply market.

The Authority has attached as Exhibit A as sample of 199 events that it finds resulted in 769 violations of the statutes governing supplier conduct and the Connecticut Unfair Trade Practices Act. Exhibit A is based on a review of only LFE 2C. In only <u>one</u> subsection of only <u>one</u> late-filed exhibit, the Authority found <u>almost two hundred</u>

underlying violations, all but nine of which also qualify as additional violations of the three deceptive marketing statutes cited herein.[18] Therefore, the number of violations found in one late filed exhibit alone constitutes more than five times the number of violations necessary to sustain the penalty the Authority imposed in its NOV. The record in this docket is only a small, representative sample of Direct's marketing. It is difficult for Direct to argue its violations are not prevalent or that the record is not replete with violations when so many can be found in such a small sample. Moreover, it undermines Direct's claims that it can monitor its own marketing if it is unable to find any violations on its own when looking in such a rich environment.

As Direct repeats throughout its Brief, the record is voluminous. Exhibit A, as noted, documents violations in only a portion of the record. If Direct wishes for the Authority to specifically document every violation and calculate a more appropriate and precise penalty amount based on all of the evidence in the record, Direct should be aware the Authority may exercise its discretion to issue a revised NOV, reopen the record, conduct a more comprehensive hearing, and levy a penalty for every violation found, rather than a penalty based on just the representative sample of violations identified in Exhibit A.

III. VIOLATION DETAILS

Conn. Gen. Stat. § 16-245 provides in pertinent parts:

> (g) As conditions of continued licensure . . . (2) the licensee shall comply with the Connecticut Unfair Trade Practices Act and applicable regulations . . .
>
> (k) Any licensee who fails to comply with a license condition or who violates any provision of this section . . . shall be subject to civil penalties by the Public Utilities Regulatory Authority in accordance with section 16-41, or the suspension or revocation of such license or a prohibition on accepting new customers...

Conn. Gen. Stat. § 16-245o(k) provides, in pertinent part:

> Any violation or failure to comply with any provision of this section shall be subject to (1) civil penalties by the authority in accordance with section 16-41, (2) suspension or revocation of an electric supplier or aggregator's license, or (3) a prohibition on accepting new customers…

Conn. Gen. Stat. § 16-41(a) provides, in pertinent part:

> Each…electric supplier…and its officers, agents and employees…shall obey, observe and comply with all applicable provisions of this title and each

[18] As explained previously, all violations of any part of Conn. Gen. Stat. § 16-245o also constitute a violation of CUTPA (Conn. Gen. Stat. § 42-110b), which is a violation of a licensing condition contained in Conn. Gen. Stat. § 16-245(g). Furthermore, all but nine of the violations cited in Exhibit A constitute deceptive practices, which also constitute violations of Conn. Gen. Stat. § 16-245o(h)(4).

> applicable order made or applicable regulations adopted by the Public Utilities Regulatory Authority by virtue of this title as long as the same remains in force. Any such…electric supplier…which the authority finds has failed to obey or comply with any such provision of this title, order or regulation shall be fined by order of the authority in accordance with the penalty prescribed for the violated provision of this title or, if no penalty is prescribed, not more than ten thousand dollars for each offense… Each distinct violation of any such provision of this title, order or regulation shall be deemed a separate offense….

In assessing the civil penalty, the Authority took into account Conn. Agencies Regs. § 16-245-6, which requires the Authority to consider, when determining the appropriate sanction for violation of any licensing requirement:

(1) The appropriateness of the sanction or fine to the size of the business of the person charged;
(2) The gravity of the violation;
(3) The number of past violations by the person charged;
(4) The good faith effort to achieve compliance;
(5) The proposed programs and procedures to ensure compliance in the future; and,
(6) Such other factors deemed appropriate and material to the particular circumstances of the violation.

Direct earned $54,918,600 in CT gross revenues in 2017. A fine of one million five hundred thousand dollars is appropriate given the volume of business done by Direct.[19]

The Authority finds that the violations cited herein are particularly grave. Deceptive marketing violations go to the heart of the electric supplier market. The Connecticut legislature set forth a statutory scheme to balance the benefits of electric supply with the customer protections necessary to facilitate a fair market. If suppliers are allowed to systemically violate the legal protections, it erodes confidence in the entire supplier market system. The Authority's response to such violations should be commensurate to the harm they cause to customers and to the market as a whole.

Direct has demonstrated no good faith effort to remedy the currently alleged violations, nor has it shown that it intends to alter its actions to achieve future compliance. Based on the Authority's review of only a small, random sample of Direct's sales solicitations, the Authority finds that Direct repeatedly engaged in a pattern of conduct, described in the sections above, in violation of the various consumer protection statutes cited above. Direct's marketing system is flawed and likely to harm customers. Direct does not to comply with legal requirements regarding Spanish contracts or what it must represent, may represent, and cannot represent in the content of its sales solicitations.

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[19] Direct argues that gross revenues "are not the proper basis on which to determine the appropriateness of a penalty." Brief p. 71. The Authority disagrees. Gross revenues are what a company earns from customers in a particular state. Net revenues reflect how a company runs its business after receiving the gross revenues. Direct's argument implies that a penalty should be worse for a company that runs its business well (has higher net revenues) than a company that does not (has lower net revenues).

Furthermore, Direct has not properly investigated and resolved legitimate customer complaints.

Each of the factors described above applies equally to each violation noted herein. Pursuant to Conn. Gen. Stat. § 16-41(a), the Authority has discretion to prescribe up to $10,000 for each offense. The Authority finds that each of the violations cited herein is of equal weight and each warrants the maximum penalty. As described above, Direct's marketing often contains numerous violations, each of which builds upon and depends upon the others. Because all aspects of Direct's marketing were directed toward the same duplicitous result, the violations are equally egregious and warrant the same severe penalty. Deceptive marketing undermines the trust Connecticut residents place in the legislative scheme to which their electric supply has been entrusted. The market cannot work properly if customers are deceived into participating. Furthermore, the Authority will not tolerate Connecticut residents being subjected to deceptive marketing whether or not they ultimately choose to participate with a supplier.

In the instant case, imposing $10,000 per penalty on solely the violations noted in Exhibit A, the resulting monetary penalty would have been $7,690,000[20], and would have been even greater had the Authority assessed a $10,000 penalty for every violation contained in this record. After considering all of the factors set forth in Conn. Agencies Regs. § 16-245-6, the Authority finds that a reduction of the civil penalty to $1,500,000 (one million five hundred thousand dollars) is appropriate, when coupled with a prohibition on accepting new residential customers and continued monitoring of marketing. A penalty at this level is warranted given the duplicitous nature of Direct's business conduct and is necessary to ensure that Direct complies with statutes, regulations, marketing standards and Authority Orders going forward.

Both Conn. Gen. Stat §§ 16-245(k) and 16-245o(k) permit the Authority to prohibit a supplier from accepting new customers if the Authority finds that the supplier has violated § 16-245 or § 16-245o. The Authority finds that a prohibition on accepting new residential customers and/or marketing to residential customers via any means other than online enrollments for six months is an appropriate penalty given the severity of Direct's violations and when coupled with a reduced monetary penalty. Pursuant to the statutory requirements, the Authority offered Direct the opportunity for a hearing regarding this penalty.

Direct argued in its Brief that the Authority may not impose a civil penalty and prohibit Direct from accepting new customers. The Authority disagrees with Direct's statutory interpretation. As Direct itself notes, there is no legislative history indicating the Connecticut General Assembly intended to limit the scope of remedies provided to the Authority with the passage of P.A. 03-135. Had the legislature intended to limit the Authority, it would have so indicated somewhere in the eleven transcripts of testimony on the public act.

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[20] As noted previously, 190 of the 199 penalties documented in Exhibit A constitute an underlying violation plus three additional penalties. Therefore, 190 x 4=760 + 9= 769 x 10,000=7,690,000 (190 underlying violations, 190 CUTPA violations, 190 violations of Conn. Gen. Stat. § 16-245(g), and 190 violations of Conn. Gen. Stat. § 16-245o(h)(4), plus 9 violations of Conn. Gen. Stat. § 16-245s).

As Direct notes, "[o]r may be accorded the meaning of 'and' where the obvious intention of the Legislature will thereby be effectuated." *West Hartford v. T.D. Faulkner Co.*, 126 Conn. 206, 211 (1939). "There is no more elementary rule of statutory construction than that the intention which the legislature has expressed must govern…Consideration may extend, among other things, to the purpose sought to be attained. Thus a broad view … must be taken to obtain a proper concept of legislative objective." *State ex rel. Rourke v. Barbieri*, 139 Conn. 203 (1952)(citations omitted). See also, State v. Cutler, 33 Conn. Supp. 158, 161 (Conn. Court of Common Pleas) ("A statute which is remedial is to be liberally construed to effect its purpose. *Merchants Bank & Trust Co. v. Pettison*, 112 Conn. 652, 655, 153 A. 789; *Bradley v. Fenn*, 103 Conn. 1, 4, 130 A. 126; *Powers v. Hotel Bond Co*., 89 Conn. 143, 146, 93 A. 245. The cardinal rule of statutory interpretation is that the construction must effect the real purpose for which the statute was enacted. *West Hartford v. Thomas D. Faulkner Co.*, 126 Conn. 206, 211, 10 A.2d 592. 'The intent of the lawmakers is the soul of the statute, and the search for this intent we have held to be the guiding star of the court. It must prevail over the literal sense and the precise letter of the language of the statute. . . . When one construction leads to public mischief which another construction will avoid, the latter is to be favored unless the terms of the statute absolutely forbid.' *Bridgeman v. Derby*, 104 Conn. 1, 8, 132 A. 25, 27.) In the present case, Direct's interpretation undermines the legislature's intent. As part of a consumer protection statute, the legislature would not have intended to allow a greater punishment while precluding a lesser. Neither would the legislature, with no testimony thereon, intend to limit the Authority's powers to protect consumers and cite suppliers for violations of the statutes.

In the alternative, the Authority imposes the civil penalty for all of Direct's Conn. Gen. Stat. § 16-245o violations cited herein and imposes the prohibition on accepting new customers for all of Direct's Conn. Gen. Stat. § 16-245 cited herein. This alternative proves the absurd result of Direct's statutory interpretation. Conn. Gen. Stat. § 16-41 allows the Authority to impose a penalty for each separate offense. Therefore, the Authority has the ability to impose both a civil penalty and a prohibition on accepting new customers, whether it does so together or separately.

Direct's alleged violations cause the Authority to question Direct's technical and managerial capacity. The Authority has the obligation under Conn. Gen. Stat. § 16-245 to monitor a supplier's conditions of continued licensure, and therefore has the authority to ensure suppliers meet those conditions. As a result, the Authority will continue to monitor Direct's marketing actions for one year after its prohibition on accepting new customers ends. The Authority will order Direct to maintain complete audio recordings of the entire interaction for all marketing calls made by it or on its behalf by any third party. To ensure Direct complies with all legal requirements, the Authority will periodically request and audit select audio recordings and will require Direct to produce transcripts of those recordings. Upon the Authority's request, Direct will provide the Authority with the dates, times and locations in which it will conduct any form of marketing, including but not limited to telesales, door-to-door, and in-person marketing, and the Authority reserves the right to observe and audit such marketing in person. The Authority will establish other auditing procedures for other forms of marketing in which Direct may engage, including but not limited to, obtaining and reviewing the content of any electronic marketing materials published through internet websites, emails, or texts or any hard copy marketing materials used internally by salespersons, such as sales scripts, and/or distributed to

prospective customers via mail delivery or hand-to-hand delivery. If Direct does not adhere to these monitoring requirements or if the Authority finds violations as a result of monitoring, the Authority will subject Direct to penalties and/or revoke its license.

IV. FINDINGS OF FACT

1. Direct did not have Spanish marketing materials available during its door-to-door campaigns.

2. Direct did not provide Spanish-speaking customers with contracts in Spanish.

3. Direct misstated the standard service rate in its marketing.

4. Direct failed to state the standard service rate in its marketing.

5. Direct failed to state it did not represent the EDC in its marketing.

6. Direct's salespeople implied they represented the EDC in Direct's marketing.

7. Direct did not explain the purpose of is marketing solicitations.

8. Direct intentionally misrepresented the purpose of its marketing solicitations.

9. Direct misrepresented other suppliers' cancellation fees in its marketing.

10. Direct misrepresented that cancellation fees were illegal in its marketing.

11. Direct did not accurately explain its rates.

12. Direct used undefined terms when explaining its rates.

13. Direct's marketing implied a customer must choose an electric supplier.

14. Direct's marketing stated the EDCs encourage a customer to choose an electric supplier.

15. Direct's marketing misled customers into believing the electric generation services portion of the bill would be the total bill amount.

16. Direct coaches its customers through the third-party verification process.

17. Direct instructs its customers how to answer questions in the third-party verification process.

18. Direct charged customers an excessive cancellation fee by charging $200 to recover a Nest thermostat if a customer cancelled her contract with Direct.

19. Direct did not directly train its third-party agents.

20. Direct's marketing was deceptive and unfair.

21. Direct makes misleading statements in its marketing.

V. CONCLUSION AND ORDERS

A. CONCLUSION

The Authority finds that Direct : 1) misstated standard service price; 2) did not state in its marketing that it did not represent an EDC; 3) did not explain the purpose of its solicitations; 4) misrepresented cancellation fees; 5) used undefined terms and did not accurately explain rates; 6) implied customers must choose a supplier; 7) mislead customers into believing generation charges were the total bill; 8) coached customers and answering questions through the third-party verification (TPV) process; 9) charged excessive cancellation fees; 10) did not directly train its third-party agents; 11) engaged in other unfair and deceptive marketing practices, including but not limited to, making misleading statements in its marketing; 12) did not have Spanish marketing materials available when conducting solicitations and sales; and 13) did not have Spanish-language contracts available when conducting solicitations and sales, resulting in invalid contracts.

As described above, the Authority finds that all of the above-enumerated actions constitute violations of several statutes intended to protect customers, Conn. Gen. Stat. §§ 16-245, 16-245o, 16-245s, and 42 110b. Direct is assessed a civil penalty in the amount of one million five hundred thousand dollars ($1,500,000); is prohibited from accepting new residential customers and/or marketing to residential customers via any means other than online enrollments for six months; and for one year after the prohibition ends, must subject itself to auditing of its marketing as described herein.

B. ORDERS

For the following Orders, Direct shall submit one original of the required documentation to the Executive Secretary, 10 Franklin Square, New Britain, Connecticut 06051 and file an electronic version through the Authority's website at www.ct.gov/pura. Submissions filed in compliance with the Authority's Orders must be identified by all three of the following: Docket Number, Title and Order Number. Compliance with orders shall commence and continue as indicated in each specific Order or until the Company requests and the Authority approves that the Company's compliance is no longer required after a certain date.

1. Direct shall be assessed a civil penalty in the sum of $1,500,000. Payment shall be made payable to the "Treasurer, State of Connecticut" and delivered to the Public Utilities Regulatory Authority, Ten Franklin Square, New Britain, CT 06051 no later than 20 days from the date of receipt of this Decision. The payment shall be identified as "13-07-17 NOV Compliance." Documentation of such payment shall be contemporaneously submitted as a compliance filing in this proceeding.

2. Direct shall be prohibited from accepting new residential customers and/or marketing to residential customers via any means other than online enrollments for six months, from May 16, 2019 through November 16, 2019.

3. From November 17, 2019 through November 17, 2020, Direct shall maintain complete audio recordings of the entire interaction for all marketing calls made by it or on its behalf by any third party. Within two weeks of any request by the Authority, Direct shall produce any requested audio recordings and written transcripts thereof. Upon the Authority's request, Direct will provide the Authority with the dates, times, and locations in which it will conduct any form of marketing, including but not limited to telesales, door-to-door, and in-person marketing, and the Authority reserves the right to observe and audit such marketing. The Authority will establish other auditing procedures for other forms of marketing in which Direct may engage, including but not limited to, obtaining and reviewing the content of any electronic marketing materials published through internet websites, emails, or texts or any hard copy marketing materials used internally by salespersons, such as sales scripts, and/or distributed to prospective customers via mail delivery or hand-to-hand delivery.

DOCKET NO. 13-07-17 PURA INVESTIGATION INTO DIRECT ENERGY SERVICES, LLC'S TRADE PRACTICES

This Decision is adopted by the following Commissioners:

Michael A. Caron

John W. Betkoski, III

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Public Utilities Regulatory Authority, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

May 1, 2019

Jeffrey R. Gaudiosi, Esq.
Executive Secretary
Public Utilities Regulatory Authority

Date

EXHIBIT A

Violations found in LFE 2, Attachment C. Page and Line numbers refer to page and line numbers designated in the document.

Violations of Conn. Gen. Stat. § 16-245o(h)(3)(B)(i) – misstating standard service
Page 31, Lines 10-11
Page 37, Lines 23-25
Page 66, Lines 17-22
Page 140, Lines 7-9
Page 144, Lines 19-21
Page 365, Lines 7-9
Page 377, Lines 8-10
Page 380, Lines 11-12
Page 381, Lines 6-8
Page 398, Lines 2-4, 16
Page 399, Lines 17-19
Page 400, Lines 15-16
Page 400, Lines 22-24
Page 460, Lines 21-24
Page 528, Lines 6-9
Page 554, Lines 16-18
Page 555, Lines 1-3
Page 556, Lines 20-22
Page 614, Lines 6-9
Page 632, Lines 4-9

These violations of Conn. Gen. Stat. § 16-245o(h)(3)(B)(i) are also violations of Conn. Gen. Stat. § 16-245o(h)(4) because they are "deceptive acts or practices in the marketing, sale or solicitation of electric generation services."

Violations of Conn. Gen. Stat. § 16-245o(h)(2)(A)(i) and (ii) – implying or stating the call is from the EDC
Page 35, Lines 8-12
Page 78, Line 25 through Page 79, Line 1
Page 116, Lines 24-25 through Page 117, Lines 1-2
Page 118, Lines 17-18
Page 139, Lines 21-24
Page 140, Lines 3-9
Page 145, Lines 4-8
Page 148, Lines 11-12
Page 153, Lines 4-6
Page 199, Lines 17-19
Page 208, Lines 2-4
Page 208, Lines 7-10
Page 208, Lines 23-25 through Page 209, Lines 1-3
Page 210, Lines 21-25
Page 211, Lines 11-12, & 15
Page 239, Lines 12-15

Page 241, Lin 25 through Page 242, Line 1
Page 398, Lines 13-16
Page 400, Line 9
Page 449, Lines 12-15
Page 485, Lines 14-15
Page 554, Lines 7-9, 22-23
Page 557, Lines 12-15
Page 588, Lines 9-12
Page 595, Lines 13-14
Page 603, Lines 14-17
Page 613, Lines 16-22
Page 614, Lines 6-7
Page 633, Lines 1-3
Page 635, Lines 7-8
Page 641, Lines 20-22
Page 649, Lines 6-7

These violations of Conn. Gen. Stat. § 16-245o(h)(2)(A)(i) and (ii) are also violations of Conn. Gen. Stat. § 16-245o(h)(4) because they are "deceptive acts or practices in the marketing, sale or solicitation of electric generation services."

Violations of Conn. Gen. Stat. § 16-245o(h)(2)(A)(iii) – Purpose of Solicitation
Page 11, Lines 7-12
Page 17, Lines 7-16
Page 21, Lines 12-20
Page 64, Lines 5-6, 15-16
Page 65, Lines 1-3
Page 77, Lines 8-11, 14-15, 21-23
Page 78, Lines 4-6, 9
Page 80, Lines 9-10, 16
Page 119, Lines 23-25 through Page 120, Lines 1-2
Page 148, Lines 11-15
Page 152, Lines 3-4
Page 159, Lines 10-11
Page 208, Lines 7-10
Page 208, Lines 23-25 through Page 209, Lines 1-3
Page 209, Lines 11-13
Page 211, Lines 10-16
Page 299, Lines 19-22
Page 300, Lines 4-8
Page 344, Lines 16-19
Page 354, Lines 6-18
Page 364, Lines 12-15
Page 377, Lines 3-5
Page 397, Lines 5-12
Page 472, Line 17
Page 525, Lines 14-17
Page 530, Line 8
Page 554, Lines 19-23

Page 555, Lines 1-8
Page 557, Lines 24-25
Page 595, Lines 10-25
Page 603, Lines 10-17
Page 613, Lines 16-19, 21-22, 25 through Page 614, Line 1
Page 614, Lines 5-15
Page 615, Lines 22-25
Page 616, Lines 15-25
Page 617, Lines 15-21
Page 664, Lines 14-16, 19-23
Page 666, Lines 13-20

These violations of Conn. Gen. Stat. § 16-245o(h)(2)(A)(iii) are also violations of Conn. Gen. Stat. § 16-245o(h)(4) because they are "deceptive acts or practices in the marketing, sale or solicitation of electric generation services."

Violations of Conn. Gen. Stat. § 16-245o(h)(2)(A)(iv) & 16-245o(h)(7)(A) – Misstating cancellation fees
Page 58, Lines 23-25 through Page 59, Line 1
Page 378, Lines 2-5
Page 386, Lines 1-5
Page 465, Lines 14-16
Page 466, Lines 12-13
Page 489, Lines 21-25 through Page 490, Lines 1-2
Page 606, Lines 18-19
Page 626, Lines 5-7

These violations of Conn. Gen. Stat. § 16-245o(h)(2)(A)(iv) and 16-245o(h)(7)(A) are also violations of Conn. Gen. Stat. § 16-245o(h)(4) because they are "deceptive acts or practices in the marketing, sale or solicitation of electric generation services."

Violations of Conn. Gen. Stat. § 16-245o(h)(2)(A) – Claiming "price protection" and not explaining rates
Page 69, Lines 11-19
Page 116, Lines 14-15
Page 117, Line 22
Page 140, Lines 7-9
Page 141, Line 9
Page 142, Lines 11-12
Page 144, Lines 14-16
Page 144, Lines 19-22
Page 156, Lines 21-22
Page 173, Line 14
Page 175, Lines 23-24
Page 180, Lines 9-10
Page 181, Lines 12-13
Page 184, Lines 6-7
Page 217, Lines 1-4
Page 299, Lines 19-22

Page 378, Lines 8-10
Page 380, Lines 11-12
Page 401, Lines 4-6
Page 430, Lines 11-13
Page 463, Lines 22-25
Page 465, Lines 5-7
Page 499, Lines 1-2
Page 508, Lines 11-14
Page 518, Lines 4-5, 12-14
Page 519, Lines 3-8
Page 521, Line 14
Page 526, Lines 14-15, 19-20
Page 527, Lines 2-4
Page 530, Lines 6-8
Page 542, Lines 3-6
Page 555, Lines 1-3
Page 570, Lines 20-22
Page 632, Lines 4-9
Page 635, Lines 8-10
Page 639, Lines 4-5
Page 640, Lines 10-11
Page 640, Lines 12-15
Page 651, Lines 7-8
Page 667, Lines 16-17, 23-25
Page 669, Line 21

These violations of Conn. Gen. Stat. § 16-245o(h)(2)(A) are also violations of Conn. Gen. Stat. § 16-245o(h)(4) because they are "deceptive acts or practices in the marketing, sale or solicitation of electric generation services."

Violations of Conn. Gen. Stat. § 16-245o(h)(3)(B) – implying a customer must choose a supplier
Page 11, Lines 7-12
Page 21, Lines 12-20
Page 22, Lines 24-25
Page 35, Lines 13-16
Page 56, Lines 7-12
Page 77, Lines 8-11
Page 78, Lines 4-6
Page 81, Line 25 through Page 82, Lines 1-2
Page 115, Lines 24-25 through Page 116, Lines 1-2
Page 118, Lines 23-25
Page 139, Lines 21-24
Page 140, Lines 4-11
Page 145, Lines 6-8
Page 148, Lines 11-15
Page 151, Lines 19-20
Page 208, Lines 8-10

Page 208, Lines 23-25 through Page 209, Lines 1-3
Page 209, Lines 11-13
Page 210, Lines 21-22
Page 211, Lines 6-16
Page 266, Lines 1-4
Page 299, Lines 19-22
Page 341, Lines 14-16
Page 364, Lines 12-16
Page 374, Lines 20-23
Page 377, Lines 3-5
Page 381, Lines 1-11
Page 398, Lines 13-16
Page 403, Lines 15-17
Page 494, Lines 20-21
Page 525, Lines 14-17
Page 526, Lines 7-12
Page 554, Lines 7-9
Page 554, Lines 16-18
Page 554, Lines 22-23
Page 588, Lines 9-12
Page 595, Lines 11-14
Page 595, Lines 21-25
Page 613, Lines 16-22
Page 614, Lines 8-9
Page 615, Lines 18-19
Page 616, Lines 15-25 through Page 617, Lines 1-2
Page 617, Lines 15-21
Page 633, Lines 1-3
Page 635, Lines 7-8
Page 670, Lines 12-15

These violations of Conn. Gen. Stat. § 16-245o(h)(3)(B) are also violations of Conn. Gen. Stat. § 16-245o(h)(4) because they are “deceptive acts or practices in the marketing, sale or solicitation of electric generation services.”

Violations of Conn. Gen. Stat. § 16-245o(h)(3)(A) – generation portion is total
Page 65, Lines 15-16
Page 66, Lines 1-11
Page 590, Lines 9-21
Page 591, Lines 3-4

These violations of Conn. Gen. Stat. § 16-245o(h)(3)(A) are also violations of Conn. Gen. Stat. § 16-245o(h)(4) because they are “deceptive acts or practices in the marketing, sale or solicitation of electric generation services.”

Violations of Conn. Gen. Stat. § 16-245s
Page 162, Lines 20-25 through Page 163, Lines 1-3
Page 188, Lines 18-25 through Page 189, Lines 1-21
Page 274, Lines 18-25 through Page 275, Lines 1-7

Page 330, Lines 1-14
Page 353, Lines 24-25 through Page 354, Lines 1-2
Page 355, Lines 4-7
Page 472, Lines 10-16
Page 473, Lines 3-5
Page 578, Lines 9-25

All violations of subsections of Conn. Gen. Stat. § 16-245o cited herein are also deemed violations Conn. Gen. Stat. § 42-110b and Conn. Gen. Stat. § 16-245o(j), which states, "Any violation of this section shall be deemed an unfair or deceptive trade practice under subsection (a) of section 42-110b." Furthermore, all violations of Conn. Gen. Stat. § 42-110b are also considered violations of Conn. Gen. Stat. § 16-245(g)(2).