M-2019-2568471

Dan Ocko, 4081 Wimbledon Drive, Harrisburg, PA 17112

August 27, 2019

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: 8/08/2019 Opinion and Order against Liberty Power

Dear Secretary Chiavetta:

Enclosed are my comments on the PUC's proposed Opinion and Order Against Liberty Power and referenced attachments which include a newspaper article about Connecticut's enforcement actions against Liberty Power and the actual enforcement action.

I believe that the proposed Opinion and Order against Liberty Power does not represent an adequate response to protect retail electric customers in Pennsylvania as authorized by the laws of the Commonwealth of Pennsylvania and the rules of the PA Public Utility Commission. Apparently while this settlement was being negotiated or being presented to the board, I received multiple illegal and deceptive marketing calls from an electric power company that identified themselves upon questioning first as PPL but finally identified themselves as LP Power. There is no retail electric supplier named LP Power registered with the PUC.

Following the PUC's own press release on July 11, 2019 entitled "PUC Urges Consumers to be Conscious of Utility Account Security with Telemarketing Sales Calls, Encourages Continual Review of Bill Statements and Online Account Activity" I attempted to call the PUC and after being unable to talk to someone on the phone after multiple extended calls, I then filed on a detailed online complaint about LP Power but then received an email by PUC staff that they would not investigate this matter because I did not identify the power company.

Shortly after the rejection by the PUC, I received additional calls from "LP Power". I told the callers that I could not switch to LP Power because I was a customer of "Liberty Power." The caller didn't try to immediately switch me to another power company but responded that they were Liberty Power. In additional calls, I described additional power companies but when I asked if they were Liberty Power, the callers again identified themselves as Liberty Power.

Shortly after receiving the first of these additional deceptive calls, I received a copy of the press release of this proposed Opinion and Order against Liberty Power. The proposed order describes deceptive and illegal marketing practices done by Liberty Power or their 3rd party telemarketing companies in the past but states that the companies used by Liberty Power were fired or terminated. The proposed Opinion and Order has an incredibly small fine, penalty or

compensation and does not suspend Liberty Power's ability to market to Pennsylvania customers.

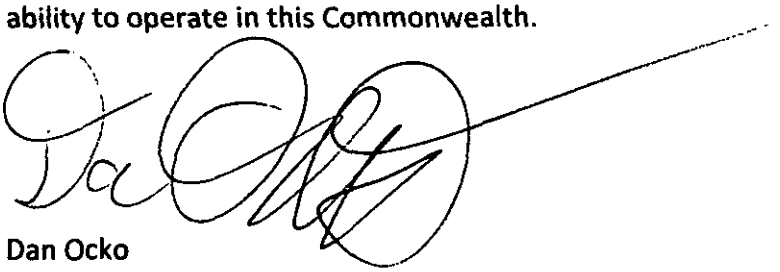
It is remarkable that while the PUC and Liberty Power attorneys were negotiating and proposing this opinion and order for illegal conduct a few years old that I was subjected to the exact same types of deceptive tactics in the summer of 2019.

In the last few months, PUC put out a press release saying that it would have zero tolerance for electric retail marketers who violate some of its rules. This proposed order is the exact opposite of zero tolerances-it is acceptance of illegal tactics. I am filing these comments because the PUC said it is asking consumers to report illegal actions and telling them it will take action.

I note for the record and enclose a newspaper article and PURA order for Connecticut where Liberty Power was fined $1.5 million dollars with a proposed suspension of the ability to market for activities that are both similar to what is described in this order a few years ago and what appears to have occurred to me over the summer and continued to just a few days ago.

We are on a do not call list and the phone number and the account I have for power does not receive calls from the other power companies offering service in this Commonwealth. In addition, the companies were using robocallers and fake caller ID. Obviously, by using fake caller ID and a deceptive business name, the callers make it difficult to identify who they are. But on multiple occasions, they self-identified themselves as representing Liberty Power.

I urge the Commission to take whatever appropriate action necessary to protect the consumers of this Commonwealth and this docket is an appropriate way to ask and demand immediate additional disclosures from Liberty Power on their telemarketing practices and whether or not their company or its agents or continuing to use illegal or deceptive practices described in this docket and to authorize or impose additional investigations, penalties and suspensions of their ability to operate in this Commonwealth.



Dan Ocko

TheMiddletownPress
https://www.middletownpress.com/business/article/Finding-flagrant-abuses-CT-tees-up-1-5M-13969224.php

Finding 'flagrant' abuses, CT tees up $1.5M fine on electricity biller

By Alexander Soule **Published 4:53 pm EDT, Tuesday, June 11, 2019**

Liberty Power CEO David He Connecticut and other states at a September 2014 conference in West Palm Be of the intent to fine Liberty Power $1.5 million for y's arguments otherwise. (File press photo via

Connecticut officials rejected a Florida electricity seller's defense of its marketing practices, keeping intact a proposed $1.5 million penalty pending any additional feedback and indicating it could have imposed an exponentially larger fine under state law.

The state Public Utilities Regulatory Authority served **notice** last September of its intent to fine

Liberty Power, after an investigation into numerous complaints by state residents that the company enrolled them for electricity service by obtaining their consent through deceptive means. PURA stated that Liberty transgressions continued even after the investigation commenced in 2016.

Liberty Power bills households and businesses for electricity service as an alternative to standard-offer rates from transmission utilities like Eversource Energy and United Illuminating, with the Fort Lauderdale, Fla.-based company generating $30.4 million in Connecticut revenue in 2017.

The state's consumer counsel Elin Swanson Katz estimated at $7.7 million over three years between 2015 and 2017 the excess amount paid by Liberty Power customers, if compared to what they could have paid for standard-offer rates from Eversource or United Illuminating.

Liberty Power was founded in 2001, with CEO David Hernandez having received entrepreneurship awards from the U.S. Hispanic Chamber of Commerce and Hispanic Business Magazine in recognition of Liberty Power's rapid growth.

In a 30-page analysis based on an investigation that included several hearings and analysis of hundreds of transcripts for telemarketing and door-to-door sales calls, PURA Commissioners John Betkowski III and Michael Caron determined that Liberty Power violated nearly a dozen regulations under Connecticut law, from misrepresenting rates and assigning termination fees above the state-mandated threshold; to encouraging the impression that the company was calling as an agent of Eversource.

The PURA commissioners brushed aside as "words on paper that look good but are not followed" a 37-page defense by Liberty Power of quality-control procedures it says it maintains, and said a witness the company provided to respond to questions was largely unable to provide information.

"Liberty sprints these customers through an enrollment process at a dizzying speed," Caron and Betkowski stated in the PURA draft decision. "The record shows that Liberty engages with customers in a deceptive way that misrepresents what is occurring and leaves the customer with little time to realize what has occurred. ... One is left with the impression the customers do not understand the transaction."

PURA indicated that it could have imposed a penalty well in excess of $8 million, but that it instead is banning Liberty from actively soliciting customers in Connecticut for six months, though the company would continue to be allowed to accept enrollments passively through its website. PURA stated it will audit Liberty's marketing calls for a full year after it is allowed to resume its active enrollment activities in Connecticut.

A Liberty executive told Hearst Connecticut Media the company has improved on a "complaint scorecard" maintained by PURA and that it disagrees with the findings, without saying whether the company plans to take any additional legal steps to escape the penalty. The company had argued during the proceeding that PURA lacked authority under Connecticut law to impose a fine.

"Liberty Power has fully cooperated with ... PURA during the course of this proceeding, providing extensive materials and insights into the many programmatic and continuous improvements that the (company) has made, and demonstrating the robustness of its quality assurance program," stated Tim LoCascio, director of marketing and business planning, in an email response. "We believe the evidence in the record does not support the level of sanctions that have been set forth in PURA's proposed final decision. Liberty Power remains committed to an excellent customer experience and being in full compliance with applicable laws and regulations."

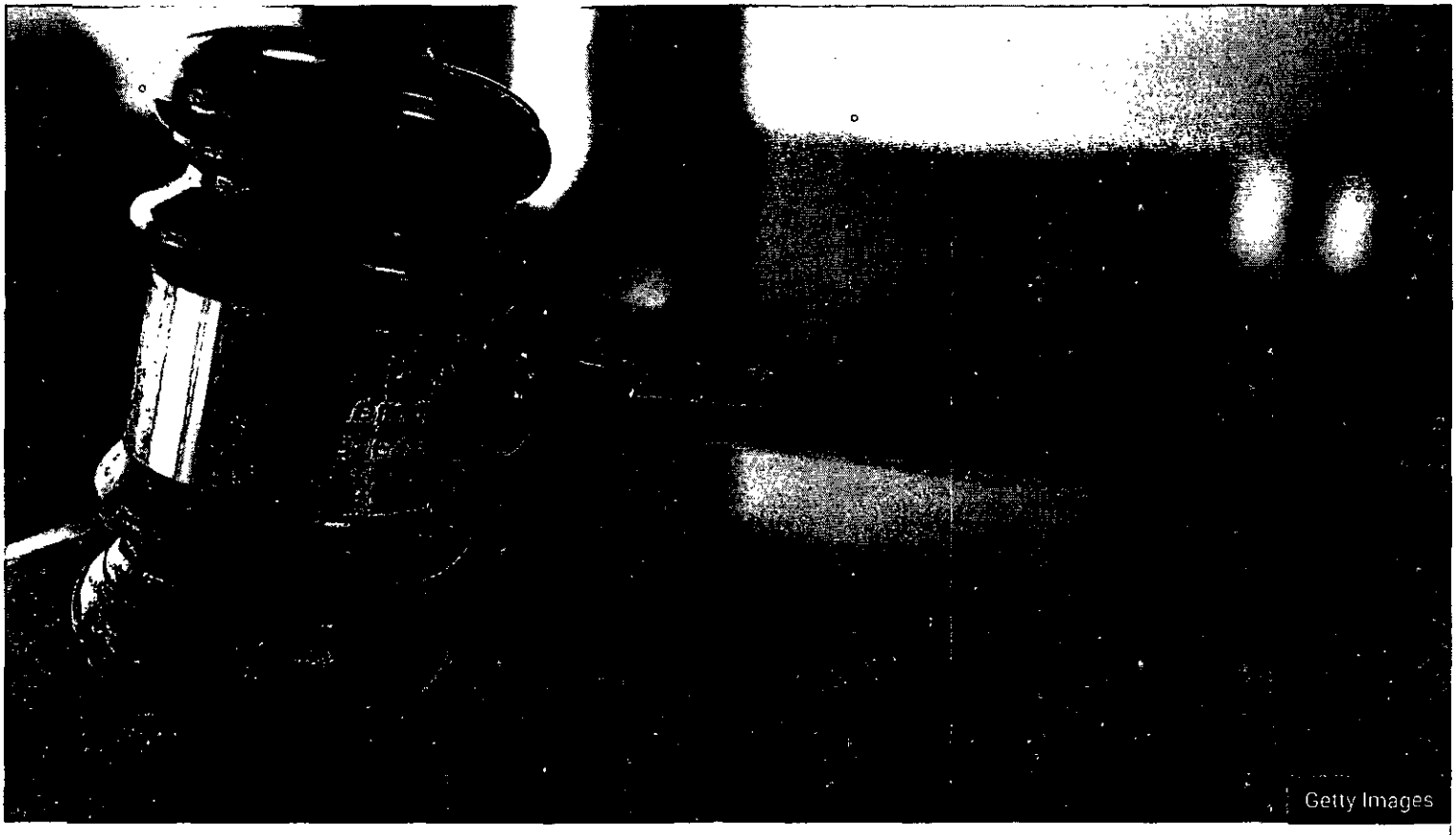
The PURA notice comes on the heels of calls by Katz and Connecticut Attorney General William Tong to bar electricity billers from auto-renewing customer contracts in Connecticut, on grounds companies have repeatedly violated state rules. In February, PURA indicated its intent to impose a $1.5 million penalty on Houston-based Direct Energy after similar complaints.

Alex.Soule@scni.com; 203-842-2545; @casoulman

LOCAL

New York State Reaches Settlement With Energy Service Company That Illegally Deceived Consumers: AG

Published Apr 11, 2018 at 5:22 PM | Updated at 5:33 PM EDT on Apr 11, 2018



WHAT TO KNOW

- NY reached a half a million dollar settlement with an energy service company that illegally deceived consumers in the state, officials say
- $550,000 settlement with Liberty Power Holdings was reached as part of an ongoing investigation into energy service companies
- The Attorney General's Office says Liberty falsely promised consumers lower prices and switched their service provider without their consent

New York reached a half a million dollar settlement with an energy service company that illegally deceived consumers in the state, authorities say.

New York Attorney General Eric Schneiderman said Wednesday that a $550,000 settlement with Liberty Power Holdings was reached as part of an ongoing investigation into energy service companies (ESCO) that allegedly uncovered the company's contractors and subcontractors lured New York City and Westchester area consumers with false promises of savings but then charged them pricey early termination fees of $200 or more when they tried to get out of their contracts.

The Attorney General's Office says that sales representatives used deceptive means to enroll consumers, including claiming to represent a consumer's current utility provider.The company allegedly also switched customers' service providers without their consent.

Top Tri-State News Photos

Liberty conducted door-to-door sales and telemarketing targeting customers primarily serviced by: Con Edison in New York; Con Edison in Westchester; Niagara Mohawk Power; Central Hudson Gas & Electric; Orange & Rockland Utilities; Rochester Gas & Electric; and New York State Electric & Gas Corp.

According to the settlement, Liberty will implement new restrictions on their marketing practices to prevent future frauds and pay $550,000, which will be used to refund eligible consumers.

"Today's settlement returns more than half a million dollars to consumers who were deceived by Liberty,

which falsely promised savings and enrolled consumers without their consent," said Schneiderman in a statement. "My office will not tolerate exploitative businesses that prey on unsuspecting New Yorkers and their hard-earned cash."

- INVESTIGATIVE **Loudspeaker Exploit Raises Questions About Security in NY**

The Attorney General's continuing investigation into ESCOs has recovered more than $5 million for consumers, including almost $2 million to customers of Columbia Utilities Power, more than $1 million to customers of HIKO Energy and $800,000 to customers of Energy Plus Holdings and Energy Plus Natural Gas.

In 2013, the Public Service Commission suspended Liberty's authorization to conduct door-to-door marketing in New York, the first time such an enforcement action was taken against an energy service company in New York. Although Liberty subsequently revised its marketing program, as recently as 2017 the Commission allegedly continued to receive complaints about the company's sales practices.

- **CDC Probes E. Coli Mystery Outbreak in NJ, CT, More States**

Energy service companies purchase energy on the open market and then sell it to consumers. Utilities still deliver the energy to consumers, but consumers can choose to purchase their energy directly from the utility or through an ESCO. Liberty used its status as an ESCO to charge its customers higher prices than they would have paid if they purchased energy from their utilities, the Attorney General's Office says.

The settlement requires Liberty to pay more than half a million dollars for consumer refunds.

"The settlement also requires Liberty to take measures to prevent deceptive practices in the future, including adequate training of customer service representatives, recording communications between customers and sales representatives that result in a sale, refraining from misleading marketing and advertising that implies savings, regularly monitoring customer service calls, and implementing appropriate disciplinary procedures for violations of the law," according to the Attorney General's Office.

Impacted New Yorkers can submit complaints online or by phone at 800-771-7755.

STATE OF CONNECTICUT

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

DOCKET NO. 06-12-07RE07 APPLICATION OF LIBERTY POWER HOLDINGS, LLC FOR AN ELECTRIC SUPPLIER LICENSE - REVIEW OF ALLEGATIONS OF CONSUMER PROTECTION VIOLATIONS

July 31, 2019

By the following Commissioners:

Michael A. Caron
John W. Betkoski, III

DECISION

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DECISION

I. INTRODUCTION

A. SUMMARY

Pursuant to the provisions of §§ 16-41, 16-245, 16-245o, and 16-245u of the General Statutes of Connecticut (Conn. Gen. Stat.), the Public Utilities Regulatory Authority (Authority or PURA) finds Liberty Holdings, LLC (Liberty or Company) violated Conn. Gen. Stat. §§ 16-245(c), 16-245(g)(2), 16-245o(f)(2), 16-245o(h)(1), 16-245o(h)(2), 16-245o(h)(3), 16-245o(h)(4), 16-245o(h)(7), 16-245o(j), 16-245s, and 42-110b by: 1) entering into contracts containing early termination fees in excess of fifty dollars; 2) not identifying Liberty in its marketing; 3) not indicating Liberty does not represent an electric distribution company (EDC); 4) not explaining the purpose of its solicitations; 5) indicating its rates are all-inclusive; 6) implying in marketing that a customer must choose a supplier; 7) misrepresenting an EDC's rate; 8) not correctly explaining all rates; 9) not following proper third-party verification procedures; 10) not directly training its third-party agents; and 11) employing unfair and deceptive marketing, including but not limited to the violations listed above. The Authority fines Liberty one million five hundred thousand dollars ($1,500,000), prohibits it from accepting new residential customers and/or marketing to residential customers via any means other than online enrollments for six months pursuant to Conn. Gen. Stat. § 16-245(k) and § 16-245o(k), and will audit Liberty's marketing for one year after it resumes marketing to new customers.

B. BACKGROUND OF THE PROCEEDING

On February 16, 2007, the Authority granted Liberty an electric supplier license. Decision, Docket No. 06-12-07, Application of Liberty Power Holdings, LLC for an Electric Supplier License. On June 27, 2016, in response to ongoing customer complaints received by PURA, the Authority provided Notice to Liberty of alleged facts, alleged conduct, and consumer complaints, that if proven true would be violations of Conn. Gen. Stat. §§ 16-245o(h)(7)(A) and 16-245o(f)(2) as well as the Connecticut Unfair Trade Practices Act. Liberty responded to the Authority's Notice in August 2016. August 19, 2016 Liberty Response. Finding Liberty's response insufficient, the Authority reopened Docket No. 06-12-07 on September 7, 2017, pursuant to Conn. Gen. Stat. §§ 16-245, 16-245o, 16-245u, 16-245t, 16-245s, 16-41 and 4-182. The Authority stated that it had been presented with numerous customer allegations including complaints that Liberty had (a) engaged in the enrollment of electric generation service without the customer's approval, (b) used deceptive or misleading sales tactics during telemarketing and door-to-door enrollment processes, and/or (c) charged early termination fees in excess of amounts authorized by law.

On September 12, 2018, pursuant to Conn. Gen. Stat. §§ 16-41, 16-245, 16-245o, and 16-245u, the Authority issued a Notice of Violation and Assessment of Civil Penalty (NOV) against Liberty 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 Notice of

Hearing dated October 11, 2018, the Authority conducted a hearing on the NOV on November 15, 2018.

C. CONDUCT OF THE PROCEEDING

By its own motion the Authority reopened the above-referenced docket on September 7, 2017. The Authority conducted hearings concerning this matter on June 19, 20, and 21, 2018, July 23, 24, 26, and 27, 2018, and November 15, 2018. On September 12, 2018, the Authority issued a Notice of Violation and Assessment of Civil Penalty against Liberty 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.

D. PARTIES AND INTERVENORS

The Authority recognized the following as Parties to the proceeding: Liberty Power Holdings, LLC, 2100 W. Cypress Creek Road, Suite 130, Fort Lauderdale, FL 33309; 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.

II. AUTHORITY ANALYSIS

Based on the Authority's investigation, it finds that Liberty failed to comply with Conn. Gen. Stat. §§ 16-245(c), 16-245(g)(2), 16-245o(f)(2), 16-245o(h)(1), 16-245o(h)(2), 16-245o(h)(3), 16-245o(h)(4), 16-245o(h)(7), 16-245o(j), 16-245s, and 42-110b, by: 1) entering into contracts containing early termination fees in excess of fifty dollars; 2) not identifying Liberty in its marketing; 3) not indicating Liberty does not represent an electric distribution company (EDC); 4) not explaining the purpose of its solicitations; 5) indicating its rates are all-inclusive; 6) implying in marketing that a customer must choose a supplier; 7) misrepresenting an EDC's rate; 8) not correctly explaining all rates; 9) not following proper third-party verification procedures; 10) not directly training its third-party agents; and 11) employing unfair and deceptive marketing, including but not limited to the violations listed above.

A. LIBERTY VIOLATED CONN. GEN. STAT. § 16-245O(H)(7)(A) BY ENTERING INTO 26,217 CONTRACTS CONTAINING EARLY TERMINATION FEES IN EXCESS OF FIFTY DOLLARS.

Conn. Gen. Stat. § 16-245o(h)(7)(A) states, "No contract for electric general services by an electric supplier shall require a residential customer to pay any fee for termination or early cancellation for a contract in excess of fifty dollars..."

Liberty admitted in its Responses that it entered into 26,217 contracts with early termination fees of one hundred dollars. Response to Interrogatory CA-1. Each of these contracts violated Conn. Gen. Stat. § 16-245o(h)(7)(A) by stating within the contract that a residential customer shall pay a termination fee in excess of fifty dollars.

Liberty proffers that it did not actually charge a customer a termination fee greater than fifty dollars, but this argument is misplaced. The statute does not limit itself to prohibiting a supplier from *charging* a termination fee greater than fifty dollars; the statute prohibits any contract from indicating a customer would be required to pay a termination fee greater than fifty dollars. Liberty's contracts did exactly that. An early termination fee of greater than fifty dollars (in this case, double that amount) would affect a customer's calculus of whether or not they should terminate a contract. That Liberty never charged a customer more than fifty dollars misses the point. Liberty could not possibly know how many customers chose not to terminate their contracts early because their contract indicated an illegal termination fee. It would frustrate the purpose of the statute to hold that Liberty could enter into contracts providing for illegal termination fees as long as it did not actually charge those fees to customers.[1]

B. LIBERTY'S MARKETING PRACTICES VIOLATED CONN. GEN. STAT. §§ 16-245(C), 16-245(G)(2), 16-245O(H)(1), 16-245O(H)(2), 16-245O(H)(3), 16-245O(H)(4), 16-245O(J), 16-245S, 16-245U, AND 42-110B.

To begin, Liberty posits the argument that the Authority had to prove Liberty's marketing intended to solicit customers with a demand of one hundred kilowatts or less for Liberty's actions to have committed these statutory violations. The Authority can dispose of this argument before it analyzes the specific violations. 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 Liberty well knows, that residential customers do not have a demand greater than one hundred kilowatts. It would be impossible for Liberty to conduct door-to-door residential marketing in the areas in which it marketed and telemarketing to residential customers and engage with a residential customer with a maximum demand of greater than one hundred kilowatts. Liberty's argument is not grounded in reality or knowledge of residential electric customers.

Liberty also argues that Conn. Gen. Stat. § 16-245o is a penal statute and should be construed in favor of Liberty. Written Exceptions, p. 9-17. This argument is incorrect. Conn. Gen. Stat. § 16-245o is a remedial statute, enacted by the legislature in response to problems in the electric supplier market. *See* Connecticut House Transcript, June 7, 2011 (stating that much of what is now Section 16-245o(h), "protects consumers..." and thereafter delineating the ways the amendment protected consumers). Section 16-245o is based on Conn. Gen. Stat. § 42-110b (CUPTA).[2] Like CUTPA, Conn. Gen. Stat.

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[1] The Authority disagrees with Liberty's judgment that early termination fees are not "material to the consumer's decision." Transcript p. 715, Line 2. Moreover, the Authority is particularly concerned that Liberty does not find the misrepresentation of early termination fees "very problematic." *Id.* at p. 714-15 ("I certainly believe that there's certain statements that are more material, you know, than others...Or Liberty Power stating that the early termination fees are potentially greater than they actually are in Connecticut. To me, I don't believe that is material to the consumer's decision. So, very problematic? It's inaccurate.").

[2] Conn. Gen. Stat. § 16-245o states that a violation thereof is also considered a violation of CUTPA and § 16-245 conditions licensure on compliance with CUTPA.

§ 16-245o should be "liberally construed in favor of those whom the legislature intended to benefit." *Andover Ltd. Partnership I v. Bd. of Tax Review*, 232 Conn. 392, 396, 655 A.2d 759 (1995); *see also* Conn. Gen. Stat. § 42-110b(d) ("It is the intention of the legislature that this chapter be remedial and be so construed."); *Hinchliffe v. Am. Motors Corp.*, 164 Conn. 607, 615 n. 4, 440 A.2d 810 (1981) (noting CUTPA is remedial and should be construed liberally in favor of consumers). Conn. Gen. Stat. § 16-245o was intended to benefit consumers and to protect them from the very tactics at issue in this investigation. The statute must be "construed to effect is purpose." *See State v. Cutler*, 33 Conn. Supp. 158, 161 (Conn. Ct. of Common Pleas 1976).

As a remedial statute, Section 16-245o is not required to specifically delineate each and every act it proscribes. Conn. Gen. Stat. § 16-245o not only mirrors CUTPA, but refers to CUTPA within it; therefore Authority looks to CUTPA to assist with its interpretation of Conn. Gen. Stat. § 16-245o. "CUTPA embraces a broader standard of conduct more flexible than traditional common law claims and does not require proof of intent to deceive, to mislead or to defraud." *Muniz v. Kravis*, 59 Conn. App. 704, (Conn. App. Ct. 2005). "The Connecticut General Assembly deliberately chose not to define the scope of unfair or deceptive acts proscribed by CUTPA so that courts might develop a body of law responsive to the marketplace practices that actually generate such complaints. For that reason CUTPA commands that in construing what conduct the act prohibits, courts should be guided by interpretations of the Federal Trade Commission Act (FTCA), 15 U.S.C. 45(a)(1)." *Id.*

Under the FTCA, "The deception need not be made with intent to deceive; it is enough that the representations or practices were likely to mislead consumers acting reasonably." *Federal Trade Comm'n v. Moses*, 913 F.3d 297, 306 (2d Cir. 2019). As the Court noted, "Imposing a more rigid knowledge requirement would be inconsistent with the policies behind the FTCA." *Id.* Therefore, to prove a violation of the FTCA, one must show only three elements: "[1] a representation, omission, or practice, that [2] is likely to mislead consumers acting reasonably under the circumstances, and [3], the representation, omission, or practice is material." *Id.* This test is similar to the test for liability under CUTPA, as detailed above. *See Artie's Auto Body, Inc. v. Hartford Fire Ins. Co.*, No. X08-CV03-0196141S, 2009 WL 3737931 at *4 (Conn. Super. Ct. 2009).

Applying the same standard to Conn. Gen. Stat. § 16-245o, Liberty's arguments that it did not violate the statute because the statute does not delineate every bad act Liberty performed are to no avail. The Authority is allowed to interpret the statute in a manner to effectuate is purpose and has done so in this decision. *See Cutler*, 33 Conn. Supp. at 161.

1. The record contains numerous examples of Liberty's marketing violating Conn. Gen. Stat. § 16-245o(h)(2)(A) by not identifying Liberty as the marketer, not indicating Liberty does not represent an electric distribution company (EDC), and not explaining the purpose of the solicitation.

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

> For any sale or solicitation, including from any person representing such electrical supplier, aggregator or agent of an electric supplier or aggregator (i) identify the person and the electric generation services company or companies the person represents; (ii) provide a statement that the person does not represent an electric distribution company; (iii) explain the purpose of the solicitation; and (iv) explain all rates, fees, variable charges and terms and conditions for the services provided.[3]

In the sample of phone calls provided to the Authority, the Authority notes that the transcripts and recordings follow the same pattern: without telling a customer they would be switching to a different supplier, Liberty quickly asks for the customer's EDC account number, states a rate, and without pause, proceeds into the enrollment. Rarely in the audio recordings or transcripts does Liberty ask a customer if they want to enroll with Liberty or change electric suppliers. Rarely in the recordings or transcripts does Liberty inform a customer that the purpose of the call is for the customer to change their electric supplier. This method produces marketing in which various combinations of Conn. Gen. Stat. § 16-245o(h)(2)(A) requirements are not met, as illustrated below.

Liberty often does not meet the most basic standard of stating that its marketing is from Liberty.[4] In some calls, the customer never hears Liberty's name, an undeniable violation of the law. *See e.g.*, Response to Interrogatory CA-36, Re-filed Attachment B-1. In other calls, if the customer hears Liberty's name at all, it is later in the call, after Liberty has begun either: by stating the agent's name and that they are an "energy consultant,"[5]; by stating that it is calling "in regard to the benefit on your electric bill" [6]; or by stating, "Ma'am, this call is in regards to your Eversource electric bill to check if today you qualify to get the benefits."[7]

For example:

> Liberty: Good afternoon. I'd like to speak with the person who handles the electric bill, please.
>
> Customer: Uh, well does there seem to be somethin' wrong?

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[3] Conn. Gen. Stat. § 16-245o(h)(1) says, "Any third-party agent who contracts with or is otherwise compensated by an electric supplier to sell electric general services shall be a legal agent of the electric supplier." Therefore, Liberty is responsible for the actions of all agents acting on its behalf.

[4] In the hearing, Liberty stated that it assumed but could not verify that field agents state they are from Liberty. Liberty assumed customers were aware of the supplier because agents were supposed to wear "their Liberty Power branded IDs, which there they also wear their lanyards every single day" and the contract stated it was from Liberty. Transcript p. 300, Lines 1-2. The statute requires the agent to identify the supplier they represent. *Assuming* agents are properly identified is insufficient. Liberty's practice does not ensure proper identification of field agents.

[5] *See e.g.*, Response to Interrogatory OCC-12, Attachment B-9, Line 15; Response to Interrogatory CA-38, Attachments 50, 161, 194, 201, 214, 254, 348

[6] *See e.g.*, Response to Interrogatory CA-38, Attachment 63, 194, 201, 348

[7] *See e.g.*, Response to Interrogatory OCC-12, Attachment C-2, Lines 19-20; Response to Interrogatory CA-38, Attachments 25, 214. *See also*, Response to Interrogatory CA-38, Attachments 63, 216, 409 (Liberty states that the call is about the customer's electric bill); Response to Interrogatory CA-38, Attachment 161 (Liberty states that the call is about the customer's light bill).

> Liberty: Uh, no this is a courtesy call for the Eversource account about, uh, price protection on the cost of your electricity.
>
> Customer: Yes.
>
> Liberty: This is about the Energy Program Connecticut made available to you. My name is Chelsea Eckert calling on behalf of Liberty Power. It's an authorized green energy supplier utility company Eversource - calls recorded. Like I said, your account qualifies for a new price protected rate guaranteed to stay the same in the next 15 months.

Response to Interrogatory OCC-46, Attachment A, Lines 13-27. Calls such as this and the others cited above illustrate Liberty's method of progressing through calls either without identifying the call is from Liberty or without identifying the purpose of the call, or both, and then telling the customer to write down the supplier for Eversource – Liberty Power. *Id.* Any reasonable customer receiving such a call would be confused and think the call is from Eversource and Eversource is stating the name of its supplier, which is patently untrue.

Alternatively, Liberty has stated to customers, "I'm calling all Connecticut electric customers for Eversource because you may qualify for price protection on the cost of your electricity." Response to Interrogatory CA-35, Re-filed Attachment D-1, Lines 23-25. Even though the quote occurs after the representative has stated he is from Liberty, it still states that Liberty is calling *for* Eversource, which is not only untrue, but violates the legal requirement that Liberty indicate it does not represent an EDC. Such sales tactics produce the opposite result and cause a reasonable customer to think Liberty does represent an EDC.

> Another example:
>
> Liberty: "And as you have been a very wonderful customer with Eversource, you have also qualified for a fifty-dollar (inaudible) gift card that will be mailed to your mailing address with your upcoming month Eversource bills....
>
> Customer: "And where are you calling from?"
>
> Liberty: "Well ma'am I'm calling you from. ... Yes, I'm calling you from a certified and authorized supplier for Eversource.

Response to Interrogatory OCC-12, Attachment B-1, Lines 46-57. Liberty's response to the customer's question about where the agent was calling from violated Conn. Gen. Stat. § 16-245o(h)(2)(A), which requires the supplier to identify itself in marketing calls and state that the supplier does not represent an EDC. The Authority recognizes that Liberty's agent began this particular call by stating he was "an energy consultant with Liberty Power," [8] but he did not say that Liberty Power does not represent an EDC, repeatedly

[8] If the caller had to inquire whom the call was from, clearly Liberty's initial identification was ineffective.

mentioned Eversource, and said the gift card would be mailed with the Eversource bill, implying the gift card was from Eversource. Furthermore, when questioned, the agent hesitated and answered using Eversource's name, not Liberty's, again implying Liberty was affiliated with the EDC. This demonstrates one of the many difficulties with Liberty's telemarketing as demonstrated by the sales calls in the record of this docket: rarely does any sales call comply with *every* aspect of the law.

Unfortunately, such an example is not isolated. In another call, the customer specifically asked, "And who is this through?," to which Liberty replied, "We are a supplier for Eversource," rather than stating its own name. Response to Interrogatory CA-35, Re-filed Attachment D-2, Lines 39-41. In another, the customer states, "You know, I do business with Eversource. I don't want to change," to which Liberty responds, "No, no, ma'am. You're not changing. Let me help you. You're not changing...Liberty Power is just our certified supplier company." Response to Interrogatory CA-38, Attachment 50, Transcript p. 65-66. The Authority notes the last example not only is untrue, but Liberty says it is "*our* certified supplier," implying the call is from Eversource and Liberty is Eversource's certified supplier.

Likewise, the record is replete with sales calls wherein Liberty never honestly indicates the purpose of any of the solicitations:

> Liberty: [M]y name is Renee B with Liberty and we're on a recorded line. Uh, we're calling regarding your Eversource bill for the home on Sherwood Drive.
>
> Customer: Yes.
>
> Liberty: Um, Emma, we're calling to let you now that your Eversource account now qualifies to receive protection on it um, from rate increases along with your new low rate. Now I just need to make sure we get everything in the system correctly and get you confirmation number...
>
> Customer: Is this insurance?
>
> Liberty: Excuse me?
>
> Customer: Is this the insurance on the Eversource?
>
> Liberty: This is for y- this is um, to make sure that um, your Eversource account won't be affected by the upcoming rate increases, and to get you on a low fixed rate for the next two years....

Response to Interrogatory CA-36, Attachment G-1, Lines 21-30. Here, the agent mentions the name Liberty, but nothing else. A reasonable customer would have no idea what Liberty is without it being identified as an electric supplier; Liberty implies the call is affiliated with Eversource; and Liberty never honestly states the purpose of the call, which is to get the customer to switch to Liberty as a supplier.

In another example, Liberty does not identify itself at the start of the call and then tells the customer that she is "qualified to get a fixed rate from [sic] Eversource bill for next two years." Response to Interrogatory CA-38, Attachment 161. Again, Conn. Gen. Stat. § 16-245o(h)(2)(A) requires a supplier to identify itself in the marketing call, state the supplier does not represent an EDC, and state the purpose of the solicitation. Mentioning Liberty's name as part of the final process before transferring the customer to the third-party verification (TPV), as was done in this particular instance, does not meet statutory obligations. As the Authority has held, a supplier may not "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 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." Decision dated May 1, 2019, Docket No. 13-07-17, PURA Investigation into Direct Energy Services, LLC's Trade Practices, p. 5. Liberty's method of telemarketing appears to be specifically designed to cause the customer to believe such inaccuracies.

As a result, confusion abounds throughout Liberty's telesales calls:

> Customer: Well now, you if you're working with uh uh the uh what do you call them?
>
> Liberty: Eversource.
>
> Customer: Yeah Eversource. If you working with them you know what rate they charged me last time...

Response to CA-35, Re-filed Attachment D-2, Lines 73-78. Here, Liberty not only did not take the opportunity to clarify that it was not working with Eversource, but it continued misrepresenting that it was.

Even when Liberty does identify itself at the start of the call, it continues in a deceptive manner. For example,

> Liberty: Hi there, sir, my name is Cara Carlson, I'm with Liberty Power. I was calling you to speak to the person who handles your electric account. Would that be you?
>
> Customer: W-what is this regarding?
>
> Liberty: Your Eversource electric bill?
>
> Customer: Yes.
>
> Liberty: Ok, great. Just so you know the call is recorded. Uh, we were just notifying you that as of your next meter reading, your account's gonna get a new low rate and that would have price protection for the next 24 months. Uh the reason we were contacting you was so that we can verify your information, so everything gets supplied to the correct account. So, I just

needed you to grab a copy of the electric bill and a pen. It just takes a couple minutes and I'll get you back to your day.

Response to Interrogatory CA-36, Re-Filed Attachment H-1, Lines 19-30. The fact that Liberty identifies itself in the call does nothing to cure Liberty's deceptive actions of not honestly identifying what the call was regarding even after the customer asked, implying that the transaction was going to occur regardless of the customer's input, and implying that it was sanctioned by Eversource.

The evidence in the record indicates that Liberty employs even more illegal methods in its door-to-door sales, sometimes outright lying to customers:

Customer: What does that mean?

Liberty: It's just stating you're gonna be having Liberty Power as the energy supply.

Customer: Oh, I don't want to be changing the uh, uh...

Liberty: You're not changing anything. You're staying with Eversource.

Customer: Yeah but I don't want to change the supply, too.

Liberty: Um, you're not changing anything. We're, we're the supplier for Eversource. We're just...

Customer: The rate may change.

Liberty: No, the rate is going to be stabilized. It's going to be a fixed rate, so you know what the rate will be every month on your rate. That's what we are out here doing today so the rate is not going to change. Nothing on your bill is going to change.

Response to Interrogatory CA-37, Re-Filed Attachment B-93, Lines 13-24. The customer in this instance plainly stated to Liberty that he did not want to change his supplier. Instead of respecting his wishes, Liberty lied to him to represent that he was not changing anything.[9]

In all of the marketing cited above in which Liberty does not indicate up front that it is the marketer, the customer is left to reasonably assume the call is from their EDC because Liberty invokes the EDC's name early in the call and tells the customer to get their EDC bill to verify the account to which the benefits should be applied. Liberty argues that the statute places no temporal requirements on when the agent must indicate she is calling on behalf of Liberty. Brief p. 47. The Authority is not placing a temporal requirement on Liberty. The Authority finds that a customer who hears Liberty's name

[9] As previously noted, such deception is not confined to door-to-door marketing. The evidence indicates that Liberty also indicates to telemarketing customers, "You're not changing." *See, e.g.*, Response to Interrogatory CA-38, Attachment 50, Transcript pp. 65-66.

after hearing the call is from Eversource will think Liberty is calling on behalf of Eversource or working with Eversource to assist the customer. The Authority finds that, once this misinformation or misimpression is given to a customer, it is difficult, if not impossible, to undo the harm caused to the customer resulting directly from the salesperson's failure to communicate clearly and unequivocally, from the start of the solicitation, that the salesperson is calling on behalf of Liberty for the purpose of offering electric generation service from Liberty.. The record indicates Liberty's salespersons rarely, if ever, attempt to undo any initial customer misimpression or misunderstanding about who the salesperson is actually making a sales call on behalf of. To the contrary, Liberty's salespersons capitalize on the customer's initial lack of clarity about who the salesperson represents to make a sale. Then, the salesperson mentions Liberty's name only when it overloads the customer with information immediately prior to sending them to the TPV. Because of Liberty's marketing practices, customers appear to believe (and a reasonable customer would believe) that Eversource is calling to direct them to a supplier and they willingly go along with what they think is a call from Eversource.

Liberty argues that it can demonstrate it "cured" a customer's misunderstanding if "the customer says, or otherwise indicates, that he or she understands." Brief p. 58. To that end, Liberty points to a customer saying she will have to call Eversource about a question about a wire. *Id.* at footnote 391, (citing Response to Interrogatory OCC-46, Attachment A, p. 51). This argument demonstrates that Liberty either does not understand the effects of its deception or attempts to gloss over them. Of course a deceived customer understands what she thinks, but what she thinks is incorrect. In this example, the customer incorrectly thinks that Liberty is associated with her EDC and she is supposed to retain Liberty as her supplier. That the customer understands the difference between who works on her wires and who is her supplier is immaterial. The point is that the customer has been deceived as to the entirety of the transaction, and the record illustrates that Liberty does nothing to "cure" the misunderstanding in the case it cited or numerous others in the record.

Liberty argues that "to the extent a Marketing Representative deviates from Liberty Power's script ... that deviation is a discrete issue." Brief p. 45. This argument is not grounded in reality. In only two interrogatory responses, representing only 39 marketing calls, the Authority found over one hundred violations of Section 16-245o(h)(2) alone, and eight times that many total statutory violations.[10] Such volume of violations is anything but "discrete." To the contrary, the evidence indicates that Liberty's method of marketing violates Conn. Gen. Stat. § 16-245o, which requires that customers know the entity with which they are dealing and the purpose of the solicitation. Not only do Liberty's marketing methods violate the letter of the law, they violate the spirit of it as well, which is to ensure that customers are aware of their actions and are not deceived into a supplier transaction they do not understand.

The Authority notes that these violations occurred over a multi-year time span. Liberty argues in its Response in Opposition to Motion 24 that it no longer violates these

[10] See Exhibit A attached to this Decision, citing to a total of 832 statutory violations in only 39 transcripts. Using only the 208 underlying violations in Exhibit A (i.e., not also accounting that the violations constitute CUTPA, licensing, and Conn. Gen. Stat. § 16-245o(h)(4) violations), an examination of 39 marketing calls revels an average of more than five statutory violations per call.

laws. Response p.5. That Liberty has so flagrantly violated the laws in the past, and especially while it was under investigation, is sufficient to warrant a substantial penalty, but the record indicates Liberty's violations continue. Throughout 2017 and into 2018 the Authority has continued to receive complaints about similar marketing tactics from Liberty. The audio recordings obtained from Liberty in response to more recent complaints indicate the same illegal techniques as illustrated above: Late Filed Exhibit 1; Transcript p. 144, Lines 19-25. Despite its protesting, the evidence indicates that Liberty has not resolved its failures to identify itself as the caller, to disassociate itself from an EDC, and to inform a customer of the purpose of the solicitation.

2. Liberty's marketing violates Conn. Gen. Stat. § 16-245o(h)(3) by indicating the rate Liberty offers is all-inclusive, by implying a customer must choose a supplier, and by misrepresenting an EDC's rate.

Conn. Gen. Stat. §16-245o(h)(3) states:

> No electric supplier, aggregator or agent of an electric supplier or aggregator shall (A) advertise or disclose the price of electricity to mislead a reasonable person into believing that the electric general services portion of the bill will be the total bill amount for the delivery of electricity to the customer's location, or (B) make any statement, oral or written, suggesting a prospective customer is required to choose a supplier. 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. . . ."

Liberty's marketing has violated each of these legal requirements.

a. The record shows that Liberty has represented that its rate is all-inclusive.

Liberty has informed customers in calls that its rate is all-inclusive:

Liberty: [I]t's ten point nine cents per kilo watt an hour....

Customer: But I think I pay lower already. Um, I think I pay point eight, I don't know.

Liberty: But not with the distribution as well. This is an all-inclusive rate, so it's all that....

... Customer: Ok, so the supplier rate I'm paying now is eight point nine seven.

Liberty: Right and that's not with the distribution rate and stuff like that as well.

Customer: Right, cause the standard service rate is nine point five five five.

> Liberty: Right and you got to add all those together and understand that's not inclusive with it.
>
> Customer: Oh.
>
> Liberty: But this is an all-inclusive rate, so you're not going to be dealing with any of that. You'll still pay, you'll still of course pay the gross receipt tax and stuff like that, but you're not paying the distribution and all separate charges like that.

Response to Interrogatory CA-35, Re-Filed Attachment G-1, Lines 52-73. As if actively misrepresenting to a customer that its rate was all-inclusive were not bad enough, Liberty then went on to explain its misrepresentation and deceive the customer even further. This example illustrates that Liberty's agents are misrepresenting its rates as all-inclusive and that Liberty does not ensure its agents understand and correctly represent the product they are selling.[11]

b. Liberty has represented and/or implied that customers must choose a supplier.

In many of the calls provided in the record of this proceeding, Liberty misrepresents to potential customers that they must choose a supplier. This violates Conn. Gen. Stat. § 16-245o(h)(3)(B), which forbids "suggesting a prospective customer is required to choose a supplier." Liberty's transcripts show both active and implied misrepresentations in this regard. For example, Liberty states to potential customers that they do not have a supplier on the bill, tells them that as a result they are paying two generation service charges, and then tells them Liberty will "fix" the problem by putting a supplier on the bill. Response to Interrogatory CA-37, Re-filled Attachment B-156, Lines 9-12 ("Um right now you don't have a supplier on the bill so again you're paying two generation service charges."). *See also*, Response to Interrogatory CA-37, Re-Filed Attachments B-157-158 (indicating a supplier should be on the bill).

Equally false, Liberty has misrepresented either directly or by implication that its product is required by the state or is mandatory. For example, Liberty representatives have stated, "...so there has to be protection onto the uh, onto the electric bill, if there's no protection, the state gets onto us." Response to Interrogatory CA-37, Re-Filed Attachment B-66, Lines 93-94. In another example:

> Customer: Is it mandatory or something?
>
> Liberty: What is mandatory? That you have to pay for the cancellation fee?
>
> Customer: No, um this enrolling.
>
> Liberty: No, the supply portion you have to pay for that. The price protection is free. It's a free program.

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[11] *See* Conn. Gen. Stat. § 16-245o(h)(1), stating that suppliers are responsible for their agents.

Interrogatory CA-37, Re-Filed Attachment B-83, Lines 113-117. Here, the customer is confused about whether or not he is required to enroll with Liberty. Rather than directly answering his question, Liberty gives him a nonanswer by saying he has to pay for the supply portion, thus implying he must get a supplier. The simple and honest answer to the customer's question was, "No, enrollment with a supplier is not mandatory."

Replete throughout Liberty's audio recordings and transcripts submitted as part of Liberty's responses to interrogatories is another method of marketing that equally violates the statute. In its sales calls, Liberty quickly dives into the interactions implying that a customer must proceed with the transaction. Liberty does not ask customers if they are interested in changing suppliers and does not clarify during its sales calls that a customer is changing suppliers. Before gaining customer assent to the transaction, Liberty begins directing potential customers to provide their account information so that it can be "verified." The implication for customers is that their assent is not required, because at this stage, Liberty has done nothing to indicate to the customer that they are actually engaged in a voluntary sales transaction. Liberty's marketing proceeds as if the customer must accept Liberty's offer. *See e.g.*, Response to Interrogatory CA-36, Re-Filed Attachment H-1, Lines 19-30 ("[W]e were just notifying you that as of your next meter reading, your account's gonna get a new low rate and that would have price protection for the next 24 months. Uh the reason we were contacting you was so that we can verify your information, so everything gets supplied to the correct account."); *See also*, Exhibit A to this Decision. Connecticut law does not require a customer to choose an electric supplier and a supplier's marketing technique that expressly or implicitly falsely leads or coerces customers into believing they must choose a supplier violates Conn. Gen. Stat. § 16-245o(h)(3).

c. Liberty does not disclose the correct edc charge in its marketing.

When Liberty references the charge for EDC standard service, it does not always disclose the correct charge. For example, Liberty has misrepresented the standard service rate, which is subject to change every six months and is publicly noticed in advance of such change, as "a variable rate that can fluctuate on a moment's notice." Response to Interrogatory OCC-12, Attachment B-1, Lines 40-41; Response to Interrogatory OCC-12, Attachment B-4, Lines 40-42; Response to Interrogatory OCC-46, Attachment A, Lines 176-177 ("Now that's the regular variable rate for Eversource. Now with their variable rate it historically increases.").[12] In another example, Liberty stated, "Right now, with Eversource, you're between fourteen and fifteen cents per kilowatt hour. Come the winter months it's going to between eighteen to twenty." Response to CA-35, Re-Filed Attachment D-2, Lines 65-66. All parts of this statement were untrue. The call was made in May 2016, during which time Eversource was charging 9.555 cents per kWh and Eversource had not filed to raise its rates to between eighteen and twenty cents the

[12] It is untrue that standard service price always increases. *See* Motion 28, Exhibits A-C. Furthermore, Conn. Gen. Stat. § 16-245o(g)(4) banned variable rate contracts entered into after October 1, 2015, so standard service could not be variable.

winter in. In fact, Eversource lowered its standard service generation rates during the winter to which Liberty referred.[13]

At times, Liberty's deceptive practices are even more blatant when comparing its rate to the standard service rate. In one call, Liberty goes to the trouble to tell the customer to find the standard service rate on her bill. The customer tells Liberty the standard service rate is "7.874," to which Liberty replies, "I'm giving you only 0.11907." Response to Interrogatory CA-38, Attachment 216, Transcript p. 101, Lines 23-25. The customer's rate is not seven *dollars* per kilowatt hour, it is seven *cents* per kilowatt hour. Capitalizing on the customer's misunderstanding, Liberty represents to her that it is giving her a savings, and a substantial one at that. This exemplifies the type of predatory actions the law means to prohibit.

In several other calls, Liberty tells the customer that they are getting them a better rate; however, a comparison to standard service rates at the time of the call indicates that Liberty was not truthful with the customer and was not giving them a better rate. *See* Response to OCC-12, Attachments B-1 through C-19 (selling a customer a rate higher than standard service).

In all of the above circumstances, Liberty violated the law by not correctly disclosing the standard service rate, by implying or stating its rate was better than standard service when it was not, and by implying (and often directly stating) the customer was paying a variable rate when on standard service.

Liberty argues, quite unbelievably, that it did not know the correct standard service rate. Brief p. 71. The Authority will not entertain an argument from a supplier that it is unaware of the publicly-noticed standard service rate. Furthermore, Liberty argues, "Referring to standard service as 'variable' may be nothing more than an unartful way of explaining that Standard Service rates fluctuate more frequently than Liberty Power twelve-month and twenty-four fixed price contracts." *Id.* p. 72. First, Liberty should be cautious when arguing variability is relative; such an argument would imply any contract it offers for less than twelve months would be variable as well, a distinct violation of the law. Second, it is more than "unartful" to use the term "variable" to scare a customer into thinking standard service is going to precipitously increase at any moment – it is, in short, deceptive and dishonest.

Furthermore, the evidence in the record indicates that Liberty rarely discloses the EDC's standard service charge as required by Conn. Gen. Stat. § 16-245o(h)(3). In opposition to this violation, Liberty cites to an Authority correspondence from 2000 for the proposition that suppliers do not have to disclose the price of standard service. Brief p. 70-71, citing to Docket No. 99-03-35, DPUC Determination of The United Illuminating Company's Standard Offer, July 6, 2000 Correspondence, p. 3. Liberty 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.

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[13] Eversource's standard service rate was 6.606 from July 1, 2016 through December 31, 2016, and 7.874 from January 1, 2017 through June 30, 2017. *See* Motion 28, Exhibits A-C. Eversource has not charged between eighteen and twenty cents for standard service at any time applicable to this investigation.

Nevertheless, Liberty 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. 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. Liberty's failure to provide the standard service price violated the statute.

Liberty also argues the statute applies only to written communications. Liberty's Written Exceptions, p. 21. 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 Liberty 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, Liberty did not accurately disclose the price of standard service in violation of Conn. Gen. Stat. § 16-245o(h)(3)(i). However, the Authority will not rely upon violations of not disclosing standard service when assessing the civil penalty, prohibition, or further monitoring in this decision.

3. Liberty violated Conn. Gen. Stat. § 16-245o(h)(2)(A) by not correctly explaining all rates.

In addition to misrepresenting the standard service rate, Liberty misrepresents rates of its competitors. Liberty confirmed during the hearings that its agents do not know the rate a customer is paying, yet in its calls, Liberty appears to clairvoyantly know the customer's rate: "Okay, y-you're probably paying about 13 cents per Kilowatt Hour ... And that 13 cents will go up and down... you're not under agreement with another supplier are you? ... You're not locked into anything because it's a variable rate, okay? It goes up and down." Response to Interrogatory CA-36, Attachment E-1, Lines 184-190. Liberty could not have known the customer's rate, whether it was variable (once again, Connecticut has not permitted variable rates for new contracts since 2015), and whether the customer was on standard service or with another supplier unless they were told by the customer. Moreover, since suppliers offer a large variety of rates to customers, it

would be impressive for Liberty's agent to accurately associate a random customer's contract with a competitor's 13- cent rate.

Liberty has also stated, "I'm not-it-it doesn't really-that doesn't really matter because that-that price is gonna go up. It almost never goes down. I mean-it's always gonna go up. And then you're gonna be stuck paying this because it's a variable rate, it goes up and down with the market." Response to CA-36, Re-Filed Attachment E-1, Lines 160-163. Liberty had no way of knowing if such a statement was accurate.[14] In a similar exchange, Liberty tells the customer it "will supply you electricity at the rate of 0.11641. So you will be getting -- stop getting the high rate of electricity. You will just pay that better rate of electricity." Response to Interrogatory CA-38, Attachment 50, Transcript p. 69. Once again, Liberty had no way of knowing if this statement was true, and if the customer was with standard service, the statement was false, as standard service rate at the time Liberty made this statement was $0.06606.[15]

Furthermore, Liberty indicates to customers that they are paying a "higher rate," without ever questioning the rate the customers are paying. Response to Interrogatory CA-38, Attachment 348. As indicated, Liberty has no way of knowing the rate any customer is paying, and if the customer were on standard service then Liberty's rate was the higher rate and Liberty made an active misrepresentation.

Liberty argues that the statute does not require it to disclose all terms of other suppliers' services. While Liberty is correct, Liberty cannot falsely explain "all rates, fees ... terms and conditions" of another supplier's offer. If Liberty voluntarily explains another supplier's rates, then it must abide by the statute and ensure its explanation is accurate. The record contains evidence that Liberty violated this requirement.

4. Liberty violated Conn. Gen. Stat. § 16-245s by not following proper third-party verification procedures.

Conn. Gen. Stat. § 16-245s requires that a supplier must engage in a process to confirm a customer's enrollment. Liberty has opted for third-party verification under Conn. Gen. Stat. § 16-245s(a)(1). As part of this process, "the third-party verification company shall obtain the customer's oral confirmation regarding the change..." Conn. Gen. Stat. § 16-245s(b)(2). The third-party verification company should be "independent from the supplier that seeks to provide the new service." Conn. Gen. Stat. § 16-245s(b)(2)(A). The purpose of this independence is to ensure that customers are aware of the transaction

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[14] In this particular call, it is unclear whether the customer was on standard service or with another supplier. However, Connecticut has not allowed variable rates for new contracts since 2015, so it is unlikely the customer was paying a variable rate, and the customer definitely was not paying a variable rate on standard service. Also, the standard service price does not always go up. In fact, the standard service price went down between April 2016, when this telesales call was made, and its mid-year change in July 2016.

[15] Response to Interrogatory CA-46 indicates the call in CA-38, Attachment 50 was made on December 2, 2016. Eversource standard service rate at the time was 6.606 and United Illuminating was 8.0224. Standard service rates increased in January 2017 to 7.874 and 9.2641 respectively, both still below Liberty's offer of savings. *See* Motion 28, Exhibits B and C.

into which they are entering and slamming does not occur. Liberty violates both the letter and the spirit of the law.

When a customer indicates that they do not wish to continue with the verification, Liberty should stop the process, which the record shows it does not do. For example:

> Liberty: ...Like I told you, after stating your name just reply all the questions with a simple Yes or No to get your confirmation number. You can start the verification.
>
> Customer: Oh my God, I got somebody else. I don't feel right.
>
> Verifier: Hi my name is Ariana.
>
> Liberty: Just give me only...you will be done in just 1 minute, you can start the verification.

Response to Interrogatory OCC-12, Attachment B-9, Lines 359-368. The customer indicated that she was not comfortable and thus the enrollment should have stopped. Instead, Liberty's agent pushes the customer to continue with the process.

Liberty argues that the statute does not require it to stop a TPV when a customer indicates she does not wish to continue. Brief p. 78. It is a ridiculous argument that a statute passed to protect customers from unwanted changes to their supplier would not require a TPV end when the customer indicates she does not wish to continue. Furthermore, the Authority is alarmed at any supplier advocating for a marketing system that requires Connecticut residents to hang up because the marketer refuses to listen to them. The Authority expects licensed suppliers to demonstrate more respect for their Connecticut customers. The Authority finds it to be a violation of the "oral confirmation requirement" of Conn. Gen. Stat. § 16-245s(b)(2) if the marketer or third-party telephone verifier refuses to end a marketing call or proceeds with the third-party verification process after a customer has expressed a desire to not proceed with enrollment or to complete the verification process or the customer is unable to answer the third-party verification questions without coaching from marketer during the verification process. Any supplier contract enrollment obtained or third-party verification conducted under such circumstances is invalid because the required "oral confirmation" is invalid.

Additionally, Liberty's transcripts and recordings are replete with examples of Liberty coaching customers about what to say in the verification. For example,

> Verifier: ...It states, Liberty Power will supply your electricity to this account at a rate of 0.11004 per Kilowatt Hour, is this correct?
>
> Customer: I guess so, I can't find anything on this that I can refer to.
>
> Verifier: Okay, Ma'am. I'm sorry, in order to proceed I need a Yes or No please.
>
> Customer: I guess Yes.

> Verifier: Okay we cannot accept that, we would need either a Ye-
>
> Liberty: Okay, Emma?
>
> Customer: Yes.
>
> Liberty: Honey, it's me Renee Botifont (sp?) Back on the phone with you all they simply want Emma, that's the new rate we're giving you is 0.11004.
>
> Customer: Okay.
>
> Liberty:... So, when they just ask you a question, just answer all the questions- most of the-except the Email address and when you state your name, just answer the questions with a simple Yes or No, okay? If I've done my job correctly, just answer with a Yes, okay?

Response to Interrogatory CA-36, Attachment G-1, Lines 413-446. This particular example has several problems. First, the verification attempts to continue despite the customer not being able to answer the questions, clearly violating Liberty's own policy of discontinuing a TPV if a customer asks questions. *See* Response to Interrogatory CA-31, Attachment A. Second, Liberty's agent then steps in to tell the customer exactly what to say. Third, if the purpose of third-party verification is to ensure customers understand the transaction, a customer that has to be coached as to what to say cannot possibly have understood the transaction. Yet the majority of Liberty's audio recordings and transcripts contain this very sort of coaching, which Liberty embraces.[16] Liberty tells potential customers how to respond to every question to ensure the verification is complete. Such coaching undermines the very purpose of an independent verification, a process Liberty testified it relies upon to ensure a valid enrollment.

Regarding the particular transcript cited above, Liberty argues that "the Marketing Representative did not tell the customer exactly how to respond to the Verifier." Brief p. 82. The Authority is left to wonder what transcript Liberty is reading to come to that conclusion. Saying "just answer with a Yes, okay?" rather clearly instructs the customer how to answer. Such methods are only a small step from Liberty answering the TPV questions for the customer, yet are miles from the purpose of an independent verification.

The record contains examples of Liberty instructing customers that they cannot ask the verifier questions. Response to Interrogatory CA-36, Lines 315-316 ("[T]hey're gonna talk with you now, just answer with a Yes or No and hold all your questions, okay?"); Late Filed Exhibit 1, Transcript p. 166, Lines 17-18 ("But just to save your time and my time please don't ask any questions."). A customer that has a question should

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[16] Liberty stated, "The agent does set expectations in terms of, you know, what is going to be asked during the third-party verification," but disavowed providing a script telling the agents how to prepare the customers. Transcript p. 743. The Authority finds this unbelievable. Every telesales and field marketing call follows the same pattern of the agent quickly running through each of the TPV questions and telling the customer what to say. It is a mathematical improbability that all agents came to this same process without benefit of instruction.

still be engaged with Liberty and should not be in the verification process. It violates the purpose of an independent verification if Liberty puts off a customer's questions until after enrollment.

Liberty claims that a third party verification "imposes ***only one*** obligation on electric suppliers": that they connect "the customer by telephone to the third-party verification company or by arranging for the third-party verification company to call the resident to confirm the sale." Written Exceptions p. 13 (emphasis in original). The Authority is unconvinced. The third-party verification, according to the statute, is meant to "obtain the customer's oral confirmation regarding the change." The purpose of this oral confirmation is to ensure the customer is aware of the transaction into which he is entering and understands it. Liberty's interpretation hollows the customer protection from the statute and renders the third-party verification meaningless.

Liberty's third-party verification violations are made worse by Liberty's consistent reliance on a "downstream process" to protect customers. Transcript p. 264, Lines 16-17, p. 665-66. As Liberty testified throughout the hearing, it relied on the TPV as a large part of its quality assurance, assuming that a customer that completes a TPV is a customer that wanted to be enrolled. Transcript p. 301, Lines 20-23. When confronted with TPVs illustrating customers asking questions, a clear violation of Liberty's internal policy, Liberty waffled and testified that the customer needed to ask the question more than once or ask it in a specific way.[17] As much as the Authority is alarmed by Liberty's reliance on a "downstream process" to correct for any legal violations that may have occurred during the sales call, it is even more troubled by a "downstream process" that requires magic words to work.

5. Liberty violated Conn. Gen. Stat. § 16-245o(h)(1) by not directly training its third-party agents.

In its responses to interrogatories and in the hearings, Liberty admits that it does not directly train all of its third-party agents. Liberty states that, "A telesales or field sales channel agent soliciting on behalf of Liberty Power must be trained and certified directly by a Liberty Power Corporate Trainer or a Certified Liberty Power Sales Channel Trainer who has successfully completed the Liberty Power Certified Sales Channel Trainer Program." Response to Interrogatory CA-24. A "Sales Channel" is also known as a third-party vendor, i.e., Liberty trains someone at the vendor and then that person trains their own staff. As explained by Liberty's panel at the hearing, Liberty relies on its third-party vendors to train new agents that join a campaign after the campaign is in progress. Late-filed Exhibit Hearing Transcript, p. 71-72. Liberty's practice of not directly training all of its third-party agents violates Conn. Gen. Stat. §16-245o(h)(1). Conn. Gen. Stat. §16-245o(h)(1) states, "[n]o third party agent may sell electric generation services on behalf of an electric supplier unless . . . (B) the third-party agent has received appropriate

[17] In Response to CA-35, Attachment G-2, Lines 193-210, the customer says on multiple occasions that "the numbers are not right," and "I'm still doing research because I'm really not sure that you guys aren't scamming me." When the third-party verifier presses the customer for an answer, the customer says, "Yes, I'm really losing my patience with this stuff." Liberty testified this was sufficient affirmation because the customer indicated twice that she was willing to proceed despite all of her other answers. Transcript pp. 657-663. The Authority has serious concerns regarding a "downstream process" that allows such a customer to pass through a TPV.

training *directly* from such electric supplier" (emphasis added). Liberty's panel admitted during the hearing that Connecticut law requires a supplier directly to train its agents and that it had not begun this process until the second quarter of 2018, the time period during which the hearings in this matter were held. Transcript p. 65-66; 71-72. Liberty cannot now honestly be heard to argue that it "has always trained its Marketing Representatives directly." Brief p. 87.

Liberty also argues that no "statute, regulation, or Authority order defines what constitutes 'directly.'" Brief p. 86. 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 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.[18]

"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." Liberty'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 the word "directly" out of the statute.

The purpose behind the statutory requirement for suppliers to directly train their sales agents is to ensure suppliers actively manage their marketing and protect the public from the types of deceptive and misleading sales tactics at issue in this case. Had Liberty upheld its legal responsibility in this regard over the past several years, it might have avoided the present issues. Instead, it eschewed its responsibility and delegated training to a third party vendor in violation of the law.

6. Liberty's marketing is a deceptive and unfair trade practice and violates Conn. Gen. Stat. §§ 16-245(g)(2), 16-245o(h)(4), 16-245o(j), 16-245u, and 42-110b.

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).

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[18] "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)."

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 CUTPA violations and § 16-245o(h)(4) violations all involve determining the existence of an unfair or deceptive practice and have the same requirements, the Authority will examine 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)).

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).

The examples of Liberty's marketing practices cited throughout this Decision meet all criteria of deceptive marketing. The record shows that Liberty's marketing is likely to mislead customers in several ways: Liberty does not state in all calls that the call is from Liberty; Liberty often invokes Eversource's name in a way that implies Liberty is affiliated with Eversource; Liberty indicates or implies it is the sole supplier for Eversource; Liberty misrepresents the EDC standard service rates and that the EDC standard service rate is variable; Liberty implies that customers must engage in the transaction and pushes customers to provide their account information prior to obtaining informed consent; Liberty often implies that customers must have a supplier; and Liberty sometimes misrepresents its own rates as being all-inclusive and being lower than standard service. A reasonable customer would interpret all of these practices the following ways: a reasonable customer would think that when Liberty begins a phone call by saying it is calling about his Eversource bill without also clearly stating where they are calling from, Liberty is affiliated with Eversource; a reasonable customer would think that when Liberty states it is "calling you from a certified and authorized supplier for Eversource," that Liberty is affiliated with Eversource; a reasonable customer would think that when Liberty states it is *the* supplier for Eversource, that Liberty is the sole supplier for Eversource; a reasonable customer would think that when Liberty says she has a variable rate her rate constantly, or at least frequently, varies; a reasonable customer would think that when he is promised an "all-inclusive rate" the rate includes every charge; and a reasonable customer would think that when a call begins by invoking Eversource's name, asks for her Eversource account number, and then begins an enrollment process, that she is required to engage in this transaction for Eversource. Finally, all of these examples, which are not a comprehensive collection of the myriad violations in the record of this docket, affect consumer decisions and conduct because they implicate costs or engagement with an EDC.

Likewise, the record shows that Liberty's actions were unfair. All of the above-cited violations were not only unlawful, but they offend the very policies behind the statutes. It is both unscrupulous and unethical to lie to a customer about standard service rates, to use the name of the EDC at the beginning of a phone call that a customer would assume the call is from the EDC, to use undefined terms to lure in customers, and to imply customers must choose a supplier. Most significantly, it is both unscrupulous and unethical to call a customer and never state that the purpose of the call is to get them to switch suppliers, to never ask if they want to switch suppliers, and when they say they do not want to switch, to tell them that they are not in fact switching suppliers, and then switch their supplier. All of these acts injure the very customers the statutory scheme was meant to protect.

The evidence indicates these or similar CUTPA violations are ongoing. Late Filed Exhibit 1; Transcript p. 155, Lines 15-16. A particularly egregious example is Liberty's call to J. Abercrombie. In this call, placed on June 22, 2017, the customer specifically tells Liberty that she wants "to see something in writing" before she switches suppliers. Liberty tells her that she will receive documents in the mail and can cancel within three days after receiving those documents. Liberty then proceeds to enroll the customer despite her saying that she did not want to switch. The customer clearly indicated to Liberty that she wanted to see something in writing *before* she switched to Liberty. Liberty's answer was to deceive her into thinking she would see something in writing before she switched, but instead switch her immediately and require her to undo the

action upon receiving paperwork. *See also*, Late Filed Exhibit 1; Transcript p. 163, Lines 4-9 (customer says she wants "to think it over," and Liberty insists on enrolling her and sending the paperwork, requiring her to cancel rather than consider whether or not she wishes to enroll).

The record indicates that in the past and through the present, Liberty has deceived customers into thinking that nothing is changing as a result of their interaction with Liberty. When customers protest that they do not want to switch, Liberty answers that everything "will remain the same." Late Filed Exhibit 1; Transcript p. 162, Lines 18-25, p. 163, Lines 1-3; *See also*, Interrogatory CA-38, Attachment 50, Transcript pp. 65-66 ("You're not changing."). It does little good for Liberty to add into the final clause of the last sentence of its entire marketing pitch that Liberty will show as the supplier on Eversource's bill after it spent several minutes purporting that nothing will change and the customer will still receive the same Eversource bill. A reasonable customer would think that "everything will remain the same" except that they are getting a lower rate or "price protection," and not realize they are signing up with a different supplier and a different, frequently more costly, rate.

The Authority has read dozens of Liberty transcripts and listened to hundreds of Liberty telesales and door-to-door sales calls, and a clear modus operandi appears: Liberty begins the conversation with the potential customer by stating the purpose of the call is to see if the customer "qualifies for benefits" (or some similarly deceptive phrase), Liberty asks two questions regarding solar panels and government benefits, then exclaims congratulations and praise that the customer has qualified. Sometimes without clarifying that Liberty is the caller and rarely clarifying the purpose of the call, Liberty sprints these customers through an enrollment process at a dizzying speed. The record shows that Liberty engages with customers in a deceptive way that misrepresents what is occurring and leaves the customer with little time to realize what has occurred.

At oral arguments, Liberty claimed it had a right to cure under CUTPA. To begin, the Authority reads neither of the cases to which Liberty cited as guaranteeing a right to cure.[19] The Authority is unclear if Liberty is arguing it has the right to cure its CUTPA violations on a transactional basis (i.e., cure the CUTPA violation in each, individual marketing transaction) or on a global basis (i.e., cure it's the CUPTA violations systemic throughout its marketing). Neither argument is to any avail, nor does the record indicate Liberty attempted to cure in either manner. As the Authority noted in this decision, the marketing violations cited herein are difficult, if not impossible, to undo. The deceptions build upon themselves throughout the marketing, beginning with the reference to the EDC at the beginning of the call and culminating with the implication that a customer must engage in the transaction, often with other violations occurring in between. The mention of a Liberty's name at the end of the call does not undo the deception; based on the rest of the call the customer merely believes Liberty is associated with the EDC. Therefore, Liberty cannot claim its eleventh-hour insertion of its name cures a marketing call replete with statutory violations. Furthermore, the Authority remains unconvinced by the scant

[19] Liberty cited to *Naples v. Keystone Building and Dev. Corp.*, 295 Conn 214, 229 (2010) and *Bentley v. Greensky Trade Credit, LLC*, 156 F. Supp. 3d, 274, 288-89 (D. Conn. 2015). The Authority finds these cases inapposite.

evidence Liberty presented to show that it has cured the systemic deception in its marketing tactics.

7. Summary of Violations

A complete picture of the gravity of Liberty's violations is available when one reads several of the transcripts or listens to several of the audio recordings. A pattern of deception emerges. When reading and hearing Liberty's marketing calls, one is left with the impression the customers do not understand the transaction. This is illustrated succinctly in Liberty's marketing to Emma B. Response to Interrogatory CA-36, Attachment G-1.[20] When Emma asks if the call involves insurance for Eversource, Liberty never answers negatively, tells Emma to get her bill, and proceeds with the enrollment process with Emma clearly not following the transaction. *Id.* at Lines 34-43. Obviously realizing that Emma is not able to understand everything that is occurring, Liberty's agent asks, "Do y-um do you have a friend or someone that can help you look over it, um...?" *Id.* at Lines 240-241. Emma's response is, "Uh, well, yea m-my son but he doesn't live in Connecticut, he lives in Rhode Island." *Id.* at 243. Losing her compunction, the agent then proceeds with the enrollment, "Right, well I'm sure you're gonna be very happy with this, um this is to help you okay?" *Id.* at 246-247.[21] The Authority is deeply concerned that Liberty would cite to this telemarketing call as an example of a call in which Liberty was honest and the customer was not deceived. Brief at p. 60. Such an argument reflects Liberty's questionable ethics and capabilities when it comes to marketing.

Liberty argued in its Response in Opposition to Motion 24 that it has "no current or continuing set of problems with Liberty Power's sales and solicitation activities." Response p. 5. Unfortunately, the evidence indicates otherwise. The interrogatories gathered only information from 2015 through mid-2017. The lack of information about current violations in the interrogatory responses is due only to the timeframe about which the interrogatories inquired. Contrary to Liberty's assertion, the Authority has noticed several violations occurring throughout 2017. *See* Notice of Admitted Evidence dated May 10, 2018.[22] Many of these complaints contain clear legal violations and are now part of the record in this case. *Id.*

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[20] The first portion of this telemarketing call is transcribed in subsection (a) of this Decision.

[21] Liberty helped by increasing Emma's rate to 0.11004 cents per kWh for twenty-four months. Response to Interrogatory CA-36 Attachment G-1, Lines 164-165. Emma responded to the offer with the following: "2 years. I'll be dead by then....I turned 90...I don't know whether this is worth it or not." *Id.* at Lines 262-270.

[22] Liberty argues in its Response in Opposition to Motion 24 that it requested the Authority re-rate its complaints (i.e., declare complaints against Liberty baseless) but that the Authority refused due to this pending docket. First, the Authority notes that Liberty requested re-rating of 31 complaints in 2017 and 3 in 2018, which leaves 63 remaining complaints for 2017 and 12 for 2018. Second, Liberty's requests for re-rating all came within a one-week time frame in March 2018, curiously timed to coincide with this docket reaching its culmination. Third, it would be ill-advised for the Authority to re-rate any complaint it has not thoroughly reviewed, and some of those it has reviewed not only do not warrant re-rating, but the recordings thereof supplied by Liberty have been admitted as evidence against it. As a result, it is both bold and inaccurate for Liberty to assume that all complaints it seeks to have re-rated are invalid. Fourth, it is entirely appropriate for the Authority not to re-rate outstanding complaints against a supplier that may become part of a pending docket. Finally, the Authority did not state that it was "suspending the practice," as Liberty quite inaccurately asserts. It stated that it would "get back" to Liberty later.

Furthermore, the Authority questions both Liberty's and OCC's reliance on complaints as the sole indicator of legal violations. The number of complaints the Authority receives against a supplier, while frequently signaling a problem, cannot indicate the breadth or depth of CUTPA-style violations because these violations rely on deceit. A review of the record in this docket indicates numerous illegal marketing calls, yet few complaints were filed regarding those particular calls. This is not surprising. If a customer does not realize they are signing up with Liberty or does not realize they are not engaging with an EDC, they would not know to complain. Liberty's deceptive marketing creates the conditions in which customers do not realize they have been deceived.

The information gathered throughout this investigation gives the Authority reason to believe that one of the causes of Liberty's deceptive marketing is that Liberty consistently does not bother to enforce its internal policies. For example, Liberty's stated policy is to start a field sales recording at the knock on the door, but field sales recordings clearly do not start at the knock and Liberty testified that it had never abided by that policy. Response to OCC-34, Attachment A, p. 22. Liberty requires a TPV to be discontinued if the customer asks a question, but the record indicates examples of this policy being violated. Response to Interrogatory CA-31, Attachment A; Response to Interrogatory CA-36, Attachment G-1, Lines 413-446; Response to Interrogatory OCC-46, Attachment A, Lines 672-678. Liberty's guidance regarding elderly customers states, "DO NOT SELL to them if you're not sure they understood 100% of what you said and know they are signing up with Liberty Power as their electric supplier," yet this Decision is replete with examples to the contrary. Response to Interrogatory CA-24 Refiled Attachment A; *See e.g.,* Response to Interrogatory CA-36, Attachment G-1. Liberty's policy is to require a sales agent to be trained before they sell to Spanish customers and not to allow a translator, yet Liberty sells to customers who speak English so poorly someone else in their household has to function as the translator, even going so far as to function as the translator during the TPV. Response to Interrogatories CA-3, Attachment A, p.22; OCC-34; CA-37, Attachment B-123; OCC-12, Attachment C-7. Liberty has conceded Connecticut does not allow variable rates, yet allows its agents to refer to standard service as a variable rate. Response to Interrogatory CA-3 Attachment B, p. 18; Response to Interrogatory OCC-46 Attachment A Lines 176-77, 211. Response to Interrogatory OCC-12, Attachment B-1, Lines 40-41; Response to Interrogatory OCC-12, Attachment B-4, Lines 40-42. More prevalently, Liberty's policy states, "Never say you're representing the electric distribution company or utility, you're contacting the customer on behalf of the utility, or use any name or acronym similar to the utility name," yet this Decision has cited numerous times Liberty has violated this policy. Response to Interrogatory CA-3, Attachment A, p. 22.[23]

Liberty proffered throughout the hearings that its written policies differ from its practices because it communicates everything verbally and rarely puts things in writing, which is why it was unable to produce any documentation of its policy changes. Transcript p. 543-44, Lines 11-18 ("Information is not always disseminated, you know, in writing."); *see e.g.*, Transcript p. 522-23, 731. First, a supplier acknowledging its written policies

[23] Liberty admitted during the June hearings that it did not know if statements in its training guides were true. Transcript p. 510 ("[T]hat statement that is on the page...is not necessarily a true statement...So I have no idea if that statement is true or not."). The Authority notes this lack of care in Liberty's preparation of its training guides.

are inaccurate causes concern to the Authority, especially after the supplier submitted those policies as its responses to discovery requests in an unqualified manner, only to reveal the policies were not followed during cross examination during the hearing. Second, Liberty testified that it has one hundred sixty-five employees in its office, which does not account for its numerous sales agents and sales vendors located off site, many overseas. *Transcript* p. 544, Line 2. That Liberty attempts to verbally communicate all of its policy changes to hundreds of people demonstrates either an outright untruth or clear evidence of a lack of managerial capabilities. Because of a lack of a written record, the Authority is left to wonder what exactly Liberty does convey to its sales agents and vendors.[24]

Liberty's Brief details Liberty's quality control procedures for the first thirty-seven pages, and then heavily relies on them as a defense throughout. The Brief mirrors Liberty's policies – words on paper that look good but are not followed. It is irrelevant what Liberty's scripts or procedures require if Liberty has not bothered to ensure they are implemented. As Liberty admitted in the hearings, the policies are not new. They have existed since 2014, throughout the time Liberty committed the violations cited herein. Yet, to document literally hundreds of violations the Authority needed only to review two small interrogatory responses.[25] The evidence indicates that, contrary to Liberty's arguments, its quality control procedures are ineffective.

Throughout its oral argument, Liberty conceded that the Authority could find its marketing deceptive, but the marketing still did not violate Conn. Gen. Stat. § 16-245o. See 7/8/19 Tr., p. 1209 ("Again, whether or not the Authority believes that's deceptive, that is a whole separate distinct inquiry..."), p. 1210 ("The Authority may believe that certain practices were deceptive..."), p. 1212 (regarding third-party verification procedures, "Again the Authority may determine that it is deceptive and has other issues with that particular issue..."), p. 1213 ("Again, as I said, the Authority may find that it rises to the level of a deceptive practice or have some other issue with it under some other statute..."). It is concerning that Liberty believes Section 16-245o does not protect customers from the deceptive marketing documented in this decision. It is even more concerning that Liberty interprets Section 16-245o in a manner to eviscerate the Authority's ability to protect customers. The legislature passed Section 16-245o to ensure suppliers did not engage in the very behaviors found in this investigation and the Authority will continue to interpret the statute in a manner that supports its legislative purpose.

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[24] The Authority notes that Liberty's attempts to bring its written policies into agreement with its practices are lackluster at best. Liberty indicated that it updated its Field Sales Script on June 20, 2018, during the course of the initial hearings, due to what it learned in those hearings. Although Liberty supposedly updated its script to eliminate the disparity between the *practice* of field sales agent turning on the tablet recording after the customer returned with the bill and the *instruction* to begin the field sales recording prior to the knock on the customer's door, the update still tells agents to say the tablet is recording at the beginning of the marketing exchange. Late-Filed Exhibit 7, Attachment B, p. 1. Even after revision, Liberty's Field Sales Script still does not reflect in writing what Liberty claims its practice is. Such efforts leave the Authority to doubt that Liberty really ""has used ... what it has learned in this proceeding to enhance further its operations." Brief p. 4.

[25] Exhibit A reviews the responses to CA-36 and OCC-12, which total 39 sales calls. These were relatively small interrogatory responses, as compared to CA-37, which contained 158 sales calls, or CA-38, which contained 419 sales calls. Violations from CA-37 and CA-38, as well as other responses are cited throughout this decision.

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 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 civil penalties, the Authority takes into account the criteria specified in § 16-245-6 of the Regulations of Connecticut State Agencies (Conn. Agencies Regs.), which requires the PURA to consider certain factors when determining the appropriate sanction for violation of any licensing requirement:

1. appropriateness of the sanction or fine to the size of the business of the person charged;
2. gravity of the violation;
3. number of past violations by the person charged;
4. good faith effort to achieve compliance;
5. 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.

Liberty's Connecticut gross revenue in 2017 was $30,412,314. Response to Interrogatory OCC-81, Attachment A. Thirty million dollars is a significant amount of revenue to have made from Connecticut customers while Liberty shirked its legal obligations. The penalty the Authority has assessed is appropriate when the significance of Liberty's violations is compared with its gross revenues.[26]

The Authority uncovered evidence of grave, systemic violations by Liberty in the present case. Even with extensive discovery (the Authority issued fifty interrogatories to Liberty and OCC issued eighty-two interrogatories to Liberty), one is left with the impression that the Authority has uncovered but the tip of the iceberg. Liberty's marketing violations are emblematic of the type of deceptive and unfair marketing practices that the law is intended to prevent and the Authority has worked hard to eradicate.

The Authority sought several of Liberty's marketing recordings as part of the instant docket. The dates of the recordings the Authority sought were based solely on the fact the Authority knew Liberty had conducted marketing on that day. In short, they were random days, not days on which the Authority knew violations had occurred. Liberty has proffered that it has an abundance of quality assurance controls to monitor its marketing, yet when the Authority examined calls from a few random days it found enough violations to substantiate a twenty-seven page notice of violation. Examining only two interrogatory responses lead to documentation of 832 violations in Exhibit A attached hereto. That leads the Authority to conclude that Liberty's quality controls are completely ineffective, either because they are incapable of recognizing a marketing call that violates Connecticut law or because there is not sufficient follow up with agents to ensure the deceptive practices do not continue, or both.

Liberty proffered several times in the July 24, 2018, hearing that it had changed many of its practices as a result of the "Assurance of Discontinuance" it signed in New York. This appears to be Liberty's manner of operation – violate the law until forced to comply by a regulatory authority, then cite to changed practices in an attempt to escape repercussions. A supplier that waits until it is implicated in an investigation to change its behavior is not a supplier exhibiting a concern for customers. Moreover, the Authority notes that much of what Liberty changed was its policies, but as illustrated, Liberty's policies substantially differ from its practices.

Liberty's systemic failure to enforce its own policies illustrates how Liberty attempts to shield itself with its policies while encouraging quite different practices. Liberty admitted at the hearing that it did not follow the written policies it supplied as interrogatory responses. Liberty's admissions undercut all of its written policies. The Authority is left to

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[26] Liberty argues that gross revenues "are not an appropriate basis on which to determine the appropriateness of a penalty." Brief p. 112-113. 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. Liberty'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).

believe that Liberty writes the policies simply to defend itself from allegations of wrongdoing and to placate regulators who attempt to investigate it. Moreover, when presented with evidence of blatant violations of statutes during the hearings in this matter, Liberty often tried to excuse the behavior of its agents. *See e.g.*, Transcript p. 657-663. Such actions do not indicate a good-faith effort to achieve compliance, nor the ability to ensure future compliance.

The Authority also notes that Liberty has exhibited a disrespect for this adjudicative body and this investigation. Liberty designated the same witness as responsible for all of its interrogatory answers, but hearings clearly revealed she had limited to no knowledge of many of the interrogatories. OCC's first series of questions to Liberty during the hearings illustrated that Liberty did not provide its regulatory and compliance personnel as part of the hearing panel and that the panel had not reviewed the interrogatory questions prior to the hearing. Transcript p. 467, Lines 20-21 ("There's the primary resource for regulatory and compliance --- is not on this panel."), p. 471-473, 718-719. Multiple times the panel indicated that it was not familiar with a document in the record or if the document was correct. *See e.g.*, Transcript p. 475-76. Throughout the hearing, it was shown that Liberty supplied inaccurate information in its interrogatory answers – information that was readily contradicted by its witnesses. This leads the Authority to wonder who prepared Liberty's interrogatory answers and if Liberty takes seriously its obligations regarding candor to this tribunal. Moreover, Liberty revised many of its interrogatory answers multiple times (the last revision coming at 8:16 p.m. the night before the first hearing), not due to updates in policies, but due either to inaccuracies in the original answers or Liberty's desire to tweak the answers to serve its needs. Liberty hid behind the volume of interrogatories (a volume of which the Authority was well aware as it read and studied every interrogatory prior to the hearings) and claimed that it was not required to leave no stone unturned in responding to an interrogatory. Transcripts p. 266. Yet during the hearing Liberty witnesses were able to recall multiple incidents that should have been revealed in interrogatory answers. The Authority doubts it would require unearthing any stones to find information so readily recalled when questioned.

The Authority also notes Liberty's history of noncompliance with other legal obligations. Liberty has recently been subject to another civil penalty for an attempted back-billing scheme that violated Conn. Gen. Stat. § 16-259a(d) and would have generated bills greater than $5,000 for many customers. Docket No. 06-12-07RE05, Application of Liberty Power Holdings, LLC for an Electric Supplier License – Re-billing. This blatant violation, when coupled with the new allegations cited herein, call into question Liberty's managerial capabilities in maintaining its electric supplier license in Connecticut and its dedication to properly serving Connecticut customers.

Liberty's violations in the present case go to the heart of the intent 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 created by the legislature, it erodes confidence in the entire supplier market. The Authority's response to such violations will take into consideration the harm they cause to customers and to the market as a whole.

Each of the factors described in the regulation 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 deceptive marketing violations cited herein is of equal weight and each warrants the maximum penalty. As described above, Liberty's marketing often contains numerous violations, each of which builds upon and depends upon the others. Because all aspects of Liberty'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,[27] the resulting monetary penalty would have been $8,320,000[28], and would be even greater if the Authority assessed a $10,000 penalty for every violation contained in this record.[29] Additionally, the Authority could impose further penalties for the 26,217 contracts containing an excessive termination fee and for Liberty not directly training its agents.

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 Liberty's business conduct and is necessary to ensure that Liberty 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. As detailed above, the Authority finds that Liberty has

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[27] Exhibit A does not include every violation found in this investigation, as illustrated by the fact that this decision documents violations not included in Exhibit A. Instead, the Authority offers Exhibit A solely to illustrate the volume of violations to be found in only two interrogatory responses and to illustrate that the penalty was justified.

[28] 208 penalties documented in Exhibit A constitute an underlying violation plus three additional penalties for each underlying violation (each underlying violation also constitutes a violation of Conn. Gen. Stat. § 16-245o(h)(4), Conn. Gen. Stat. § 16-245o(j), and Conn. Gen. Stat. § 16-245(g)(2)). Therefore, 208 x 4=832 x 10,000=8,320,000. In its oral arguments and Written Exceptions Liberty argued each underlying violation should not constitute further violations, and therefore the penalty was too great. While the Authority disagrees with Liberty's argument, it also finds it irrelevant. At only 208 violations, the penalty still would have been greater than the $1,500,000 imposed.

[29] Liberty argues in its Written Exceptions that it cannot be fined multiples times for violating the same statute in the same telemarketing call. Written Exceptions, p. 30. This is incorrect. Liberty made active misrepresentations in its marketing. While it might be impossible to omit a representation more than once, it is quite possible, as Liberty's telemarketing illustrated, to actively misrepresent the same topic multiple times in the same solicitation. Furthermore, as noted above, Exhibit A is offered solely to illustrate the volume of violations the Authority found in only two interrogatory responses. Liberty's reliance on it as a comprehensive list of violations is misplaced.

violated these legal requirements, and 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 Liberty's violations and when coupled with a reduced monetary penalty.

Liberty argued in its Brief that the Authority may not impose a civil penalty and prohibit it from accepting new customers. The Authority disagrees with Liberty's statutory interpretation and finds that it has the statutory and legal authority to impose both a civil penalty and a prohibition on accepting new customers in at least two different methods. First, the Authority may impose the penalty by reading the violations of each statute together, as it currently has. Alternatively, the Authority may impose the penalty by attaching one type of penalty to each statute.

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. As Liberty 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, Liberty'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.

Even if Liberty's argument were correct, as noted above, the Authority could impose the civil penalty for all of Liberty's Conn. Gen. Stat. § 16-245 violations cited herein and impose the prohibition on accepting new customers for all of Liberty's Conn. Gen. Stat. § 16-245o violations cited herein. This alternative proves the absurd result of Liberty'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. If the Authority were unable to prohibit the acceptance of new

customers and impose fines in response to these violations, the Authority would have taken appropriate action to substantially increase the amount of the fine, as the current fine was set at a lower level, in part, due to the prohibition on accepting new customers also being in place.

Liberty's violations also cause the Authority to question Liberty's technical and managerial capacity. Therefore, the Authority will continue to monitor Liberty's marketing actions for one year from the date that it begins marketing to new customers again (after its prohibition on acceptance of new customers expires). The Authority will direct Liberty to maintain complete audio recordings of the entire interaction for all telemarketing and door-to-door sales calls made by it or on its behalf by any third party. To ensure Liberty complies with all legal requirements, the Authority will periodically request and audit select audio recordings and will require Liberty to produce transcripts of those recordings. Upon the Authority's request, Liberty 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 Liberty 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 Liberty does not adhere to these monitoring requirements or if the Authority finds further violations as a result of monitoring, the Authority will subject Liberty to further penalties and/or begin proceedings to revoke its license.

Conn. Gen. Stat. § 16-245u(b)(5) states that at the conclusion of an investigation, "[I]f the authority finds that facts exist that indicate any violation of state or federal law, it shall transmit such written findings along with supporting information gathered in its instigation" to the Attorney General and Department of Consumer Protection. The Authority has reason to believe that Liberty's marketing has violated state laws, possibly laws in addition to the ones cited herein. As a result, in addition to the penalties included herein, the Authority hereby transmits the findings contained herein and the material gathered in this docket to the Connecticut Attorney General and Department of Consumer Protection for further investigation, if necessary, and appropriate enforcement action.

IV. FINDINGS OF FACT

1. Liberty entered into 26,217 contracts containing early termination fees in excess of fifty dollars

2. Liberty did not always identify itself in its marketing

3. Liberty did not always indicate in its marketing that it does not represent an EDC.

4. Liberty frequently did not explain the purpose of its solicitations.

5. Liberty indicated in its marketing that its rates are all-inclusive.

6. Liberty frequently implied in its marketing that a customer must choose a supplier.

7. Liberty misrepresented standard service rate in its marketing.

8. Liberty did not correctly explain all rates in its marketing.

9. Liberty did not follow proper third-party verification procedures.

10. Liberty did not directly train its third-party agents.

11. Liberty employed unfair and deceptive marketing.

V. CONCLUSION AND ORDERS

A. CONCLUSION

Based on the Authority's investigation, it finds that Liberty failed to comply with Conn. Gen. Stat. §§ 16-245(c), 16-245(g)(2), 16-245o(f)(2), 16-245o(h)(1), 16-245o(h)(2), 16-245o(h)(3), 16-245o(h)(4), 16-245o(h)(7), 16-245o(j), 16-245s, and 42-110b, by: 1) entering into contracts containing early termination fees in excess of fifty dollars; 2) not identifying Liberty in its marketing; 3) not indicating Liberty does not represent an electric distribution company (EDC); 4) not explaining the purpose of its solicitations; 5) indicating its rates are all-inclusive; 6) implying in marketing that a customer must choose a supplier; 7) misrepresenting an EDC's rate; 8) not correctly explaining all rates; 9) not following property third-party verification procedures; 10) not directly training its third-party agents; and 11) employing unfair and deceptive marketing, including but not limited to the violations listed above.

Liberty 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. Payment of the civil penalty shall be made by certified check, bank check, or money order, payable to the order of "Treasurer, State of Connecticut," and delivered to the office of the Public Utilities Regulatory Authority, Ten Franklin Square, New Britain, CT 06051. Pursuant to Liberty's request, payment shall be on the following schedule: $500,000 paid by August 16, 2019; $500,000 paid by November 16, 2019; and $500,000 paid by February 16, 2020. Liberty shall not be allowed to resume accepting residential customers pursuant to Order No. 3 until it has paid the entirety of the penalty.

B. ORDERS

For the following Orders, Liberty 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. Liberty is 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 this Decision. The payment shall be identified as "06-12-07RE07 Decision Compliance". Documentation of such payment shall be contemporaneously submitted as a compliance filing in this proceeding. Payment shall be on the following schedule: $500,000 paid by August 16, 2019; $500,000 paid by November 16, 2019; and $500,000 paid by February 16, 2020. Liberty shall not be allowed to resume accepting residential customers pursuant to Order No. 3 until it has paid the entirety of the penalty.

2. Liberty immediately shall be prohibited from accepting new residential customers and/or marketing to residential customers via any means other than online enrollments from August 16, 2019 through February 16, 2020.

3. From February 17, 2020 through February 17, 2021 Liberty shall maintain full audio recordings of all marketing calls made by it or on its behalf by any third party. Within two weeks of any periodic request by the Authority, Liberty shall produce any requested audio recordings and written transcripts thereof. Upon the Authority's request, Liberty 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 Liberty 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.

Exhibit A

Violations found in Interrogatory CA-36 Response

Violations of Conn. Gen. Stat. § 16-245o(h)(2)(A) – implying or stating the call is affiliated with the EDC
Attachment B-1, p. 1, lines 14-16
Attachment B-1, p. 3, lines 94-98
Attachment C-1, p. 1, lines 41-42
Attachment D-1, p. 4, lines 161-163
Attachment G-1, p. 1, lines 21-23
Attachment G-1, p. 1, lines 34-43
Attachment H-1, p. 1, lines 16-21
Attachment H-1, p. 2, lines 69-70

Violations of Conn. Gen. Stat. § 16-245o(h)(2)(A) – Purpose of Solicitation
Attachment A-1, p.1, lines 18-21
Attachment B-1, p. 1, lines 14-16
Attachment C-1, p. 1, lines 19-21
Attachment D-1, p. 1, lines 18-19
Attachment E-1, p. 1, lines 24-27
Attachment F-1, p. 1, lines 19-20
Attachment F-1, p. 1, lines 34-37
Attachment G-1, p. 1, lines 27-30
Attachment G-1, p. 1, lines 34-43
Attachment H-1, p. 1, lines 21-29
Attachment H-1, p. 2, lines 42-46
Attachment I-1, p. 1, lines 19-21
Attachment J-1, p. 1, lines 17-20
Attachment K-1, p. 1, lines 19-22
Attachment K-1, p. 1, lines 37-38

Violations of Conn. Gen. Stat. § 16-245o(h)(2)(A) & 16-245o(h)(7)(A) – Misstating cancellation fees
Attachment E-1, p. 5, lines 204-210
Attachment E-1, p. 5, lines 221-223

(Exhibit A Continued)

Violations of Conn. Gen. Stat. § 16-245o(h)(2)(A) – Claiming "price protection" and not explaining rates

Attachment E-1, p. 1, lines 24-25
Attachment E-1, p. 2, lines 47 through 57
Attachment E-1, p. 4, line 160-164
Attachment E-1, p. 5, lines 184-185
Attachment E-1, p. 9, lines 387-403
Attachment G-1, p. 1, lines 27-28
Attachment G-1, p. 1, lines 42-43
Attachment G-1. p. 2, lines 57-60
Attachment G-1, p. 2, Lines 64-65
Attachment G-1, p. 2, line 69
Attachment G-1, p. 6, lines 232-233
Attachment H-1, p. 2, lines 44-46
Attachment I-1, p. 3, lines 93-108
Attachment I-1, p. 2, lines 57-68
Attachment K-1, p. 2, lines 65-67
Attachment K-1, p. 2, lines 72-74

Violations of Conn. Gen. Stat. § 16-245o(h)(3)(B) – implying a customer must choose a supplier

Attachment A-1, p. 2-3, lines 51-123
Attachment B-1, p. 1-2
Attachment C-1, p. 1-2
Attachment D-1, p. 1-5
Attachment E-1, p. 1, lines 24-25
Attachment E-1, p. 1, lines 33-35
Attachment F-1, p. 1-3
Attachment G-1, p. 1-2, lines 19-47
Attachment G-1, p. 5, line 181
Attachment H-1, p. 1, 25-29
Attachment H-1, p. 1-2, lines 34-80
Attachment I-1, p. 1-3
Attachment J-1, p. 2-3, lines 51-83

Violations of Conn. Gen. Stat. § 16-245o(h)(3)(A) – misstating the EDC rate

Attachment E-1, p. 2, lines 56-57
Attachment E-1, p. 4, lines 160-164
Attachment E-1, p. 9, lines 430-431
Attachment H-1, p. 1, lines 44-46

(Exhibit A Continued)

Violations of Conn. Gen. Stat. § 16-245o(h)(4)
All violations of Conn. Gen. Stat. § 16-245o cited above also constitute a violation of § 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 – improper third-party verification
Attachment G-1, p. 10, lines 427-446
Attachment G-1, p. 12, line 537
Attachment J-1, p. 3, lines 104-105
Attachment J-2, p. 4, lines 120-124

Violations found in Response to Interrogatory OCC-12

Violations of Conn. Gen. Stat. § 16-245o(h)(2)(A) – implying or stating the call is affiliated with the EDC
Attachment B-1, p. 2, lines 55-57
Attachment B-4, p. 3, lines 127-129
Attachment B-5, p. 2, lines 68-69
Attachment B-6, p. 3, lines 95-97
Attachment B-7, p. 1, lines 15-20
Attachment B-7, p. 3, lines 125-126
Attachment B-7, p. 4, lines 148-150
Attachment B-8, p. 1, lines 29-30
Attachment B-9, p. 1, lines 15-22
Attachment B-9, p. 4-5, lines 172-173
Attachment C-1, p. 1, lines 28-34
Attachment C-2, p. 1, lines 15-21
Attachment C-2, p. 3, lines 122-124
Attachment C-3, p. 4, lines 143-144
Attachment C-4, p. 3, lines 92-93
Attachment C-7, p. 1, lines 22-25
Attachment C-7, p. 2, lines 67-69
Attachment C-7, p. 3, lines 89-94
Attachment C-12, p. 4, lines 147-148
Attachment C-13, p. 1, lines 18-19
Attachment C-16, p. 1, lines 15-20

(Exhibit A Continued)

Violations of Conn. Gen. Stat. § 16-245o(h)(2)(A) – Purpose of Solicitation
Attachment B-1, p. 1, lines 19-21
Attachment B-2, p. 1, lines 15-23
Attachment B-3, p. 1, lines 20-23
Attachment B-3, p. 1, lines 33-34
Attachment B-4, p. 1, lines 19-21
Attachment B-4, p. 1, lines 39-40
Attachment B-5, p. 1, lines 19-20
Attachment B-6, p. 1, lines 19-20
Attachment B-7, p. 1, lines 19-27
Attachment B-8, p. 1, lines 13-19
Attachment B-8, p. 1, lines 29-30
Attachment B-9, p. 1, lines 15-23
Attachment B-10, p. 1, lines 28-33
Attachment C-2, p. 1, lines 15-36
Attachment C-3, p. 1, lines 30-31
Attachment C-4, p. 1, lines 19-30
Attachment C-5, p. 1, lines 20-21
Attachment C-6, p. 1, lines 29-33
Attachment C-7, p. 1, lines 22-26
Attachment C-7, p. 2, lines 67-71
Attachment C-8, p. 1, lines 20-22
Attachment C-9, p. 1, lines 25-26
Attachment C-11, p. 1, lines 19-37
Attachment C-12, p. 1, lines 20-22
Attachment C-13, p. 2, lines 44-58
Attachment C-14, p. 1, lines 20-29
Attachment C-16, p. 1, lines 19-20
Attachment C-17, p. 1, lines 20-21
Attachment C-18, p. 1, lines 29-30
Attachment C-19, p. 1, lines 26-28

(Exhibit A Continued)

Violations of Conn. Gen. Stat. § 16-245o(h)(2)(A) – Claiming "price protection" and not explaining rates

Attachment B-1, p. 1, lines 39-46
Attachment B-2, p. 2, lines 76-77, 107
Attachment B-3, p. 2, lines 66-67
Attachment B-3, p. 5, lines 173-174
Attachment B-4, p. 2, lines 48-49
Attachment B-4, p. 3, lines 114-118
Attachment B-4, p. 5, lines 182-184
Attachment B-5, p. 4, lines 137-138
Attachment B-6, p. 2, lines 83-84
Attachment B-7, p. 3, lines 108-119
Attachment B-8, p. 2, lines 69-76
Attachment B-9, p. 1, line 38
Attachment B-10, p. 2, line 53
Attachment B-10, p. 5, lines 176-180
Attachment C-1, p. 2, lines 58-68
Attachment C-2, p. 2, lines 76-84
Attachment C-2, p. 4, lines 158-160
Attachment C-3, p. 3, lines 88-112
Attachment C-3, p. 5, lines 210-212
Attachment C-4, p. 2, lines 68-82
Attachment C-4, p 4, lines 138-139
Attachment C-5, p. 2, line 83
Attachment C-5, p. 3, line 123
Attachment C-6, p. 1, lines 30-31
Attachment C-7, p. 1, lines 23-25
Attachment C-7, p. 3, lines 89-94
Attachment C-7, p. 3, lines 114-117
Attachment C-7, p. 6, lines 234-235
Attachment C-8, p. 2, lines 44-47
Attachment C-8, p. 3, lines 107-108
Attachment C-8, p. 3, lines 117-118
Attachment C-9, p. 3-4, lines 76-90
Attachment C-9, p. 5, lines 182-186
Attachment C-9, p. 5, lines 202-204
Attachment C-10, p. 1, lines 6-38
Attachment C-11, p. 3, lines 89-96
Attachment C-12, p. 3, lines 97-105
Attachment C-12, p. 5, lines 202-203
Attachment C-13, p. 5, lines 180-199
Attachment C-13, p. 6, lines 257-260
Attachment C-14, p. 2, lines 47-48
Attachment C-14, p. 1, lines 36-37
Attachment C-16, p. 1, lines 28-36
Attachment C-17, p. 3, lines 92-101
Attachment C-18, p. 1, lines 30-31

(Exhibit A Continued)

Attachment C-19, p. 1-2, lines 27-58
Attachment C-19, p.3, lines 87-90
Violations of Conn. Gen. Stat. § 16-245o(h)(3)(B) – implying a customer must choose a supplier
Attachment B-1, p. 1-2, lines 14-59
Attachment B-2, p. 1-2, lines 15-54
Attachment B-3, p. 1-2, lines 15-58
Attachment B-4, p. 1-2, lines 14-52
Attachment B-5, p. 1-2, lines 14-82
Attachment B-6, p. 1-2, lines 14-84
Attachment B-6, p. 3, lines 95-97
Attachment B-7, p. 1, lines 15-37
Attachment B-8, p. 1-2, lines 13-86
Attachment B-9, p. 1-2, lines 15-47
Attachment B-10, p. 1-2, lines 14-85
Attachment C-2, p. 1-2, lines 15-76
Attachment C-3, p. 1-3, lines 15-104
Attachment C-4, p. 1-2, lines 14-80
Attachment C-5, p. 1-2, lines 15-83
Attachment C-7, p. 1, lines 16-26
Attachment C-7, p. 2, lines 67-71
Attachment C-7, p. 3, lines 89-94
Attachment C-8, p. 1-2, lines 20-50
Attachment C-9, p. 1-2, lines 19-59
Attachment C-11, p. 1-3, lines 19-108
Attachment C-12, p. 1-4, lines 1-149
Attachment C-12, p. 6, lines 219-220
Attachment C-13, p. 2-5, lines 44-214
Attachment C-14, p. 1, lines 20-34
Attachment C-16, p. 1, lines 15-41
Attachment C-17, p. 1-4, lines 15-137
Attachment C-18, p. 1, lines 24-42
Attachment C-19, p. 2, lines 53-77

Violations of Conn. Gen. Stat. § 16-245o(h)(3)(A) – misstating the EDC rate
Attachment B-1, p. 1, lines 39-46
Attachment B-4, p. 1, lines 40-42
Attachment C-7, p. 1, line 25
Attachment C-7, p. 2, lines 67-71
Attachment C-7, p. 3, lines 89-94
Attachment C-7, p. 3, lines 114-117
Attachment C-7, p. 6, lines 234-235

Violations of Conn. Gen. Stat. § 16-245o(h)(4)
All violations of Conn. Gen. Stat. § 16-245o cited above also constitute a violation of § 16-245o(h)(4) because they are "deceptive acts or practices in the marketing, sale or solicitation of electric generation services."

(Exhibit A Continued)

Violations of Conn. Gen. Stat. 16-245s – improper third-party verification
Attachment B-6, p. 3, lines 128-129
Attachment B-6, p. 4, lines 142-144, 155-156
Attachment B-7, p. 6, lines 239-241, 246
Attachment B-9, p. 8, lines 337-338
Attachment B-9, p. 8, line 363
Attachment B-9, p. 9, line 505
Attachment C-1, p. 5, lines 194-196
Attachment C-3, p. 6, lines 230-233
Attachment C-3, p. 6, lines 260-263
Attachment C-4, p. 4, lines 158-161
Attachment C-5, p. 3, lines 125-128
Attachment C-12, p. 6, lines 230-232

DOCKET NO. 06-12-07RE07 APPLICATION OF LIBERTY POWER HOLDINGS, LLC FOR AN ELECTRIC SUPPLIER LICENSE - REVIEW OF ALLEGATIONS OF CONSUMER PROTECTION VIOLATIONS

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.

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

July 31, 2019
Date