STATE OF CONNECTICUT

DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION

Petition of ReEnergy Holdings LLC for a Declaratory Ruling on the Applicability of the Phase-Down Exclusion of Connecticut General Statutes Section 16-245a(g) for the Renewable Energy Certificates Generated by the ReEnergy Livermore Falls and ReEnergy Stratton Generating Facilities	:	June 16, 2022

AFFIDAVIT OF BRUCE MCDERMOTT

I, Bruce McDermott, being duly sworn, depose and say:

1. I am over eighteen years of age and am a resident of Fairfield County, Connecticut.

2. I am a partner at the law firm of Murtha Cullina LLP representing ReEnergy Holdings LLC ("ReEnergy") and, as such, am personally familiar with the subject matter of this petition for a declaratory ruling.

3. Pursuant to Section 22a-3a-4 of the General Statutes, I hereby certify that on June 16, 2022 I provided notice via a letter (the "Notice Letter") to the party known by the petitioner to have an interest in the subject matter of ReEnergy's petition for a declaratory ruling (the "Petition") as to whether ReEnergy's biomass facilities located in Livermore Falls, Maine and Stratton, Maine (the "Facilities") meet the statutory exemption under Section 16-245a(g) of the General Statutes from any reduction in the value of Renewable Energy Certificates generated by these Facilities.

4. I further certify that ReEnergy's Notice Letter contains the substance of the Petition and a notification of the opportunity to file comments with the Commissioner, as well as the right to request party or intervenor status.

5. ReEnergy's Notice Letter containing the known interested party's name, address, and the date of mailing is attached hereto as Attachment A.

6. The statements that I have made herein are true to the best of my knowledge, information and belief.

Bruce McDermott
Murtha Cullina LLP
265 Church Street
New Haven, CT 06510
203.772.7700
bmcdermott@murthalaw.com

Subscribed and sworn to before me this 16th day of June, 2022.

Notary Public/Commissioner of Superior Court
My Commission Expires: _____

Annie W. Lau
NOTARY PUBLIC
State of Connecticut
My Commission Expires 10/31/2023

ATTACHMENT A

BRUCE L. MCDERMOTT
203.772.7787 DIRECT TELEPHONE
860.240.5723 DIRECT FACSIMILE
BMCDERMOTT@MURTHALAW.COM

June 16, 2022

Geoff Harmon
Treasurer
Greenleaf Power Consolidated LLC
2600 Capitol Avenue, Suite 430
Sacramento, CA 95816

Re: ReEnergy Holding's Petition for a Declaratory Ruling Regarding the Applicability of the Section 16-245a(g) Statutory Exemption from the Reduction in Value of Renewable Energy Certificates Generated by Biomass Facilities

Dear Geoff:

Enclosed is ReEnergy Holdings LLC's ("ReEnergy") petition for a declaratory ruling regarding the applicability to ReEnergy of the statutory exemption under Connecticut 16-245a(g) from the reduction in value of Renewable Energy Certificates generates by biomass facilities which was filed with the Department of Energy and Environmental Protection ("DEEP") on June 16, 2022.

Under Section 22a-3a-4 of the Connecticut General Statutes, as an interested party you have the opportunity to file comments with the Commissioner of DEEP and to request intervenor or party status.

Very truly yours,

Bruce L. McDermott

Enclosures

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Petition of ReEnergy Holdings LLC for a Declaratory Ruling on the Applicability of the Phase-Down Exclusion of Connecticut General Statutes Section 16-245a(g) for the Renewable Energy Certificates Generated by the ReEnergy Livermore Falls and ReEnergy Stratton Generating Facilities	:	June 16, 2022

REENERGY HOLDINGS LLC's
PETITION FOR DECLARATORY RULING

Pursuant to Section 4-176 of the Connecticut General Statutes ("CGS") and Section 22a-3a-4 of the Regulations of Connecticut State Agencies, ReEnergy Holdings LLC ("ReEnergy" or the "Company") hereby petitions the Commissioner of the Connecticut Department of Energy and Environmental Protection ("DEEP") for a declaratory ruling regarding the applicability of CGS §16-245a(g), specifically: Do ReEnergy's biomass facilities located in Livermore Falls, Maine (the "Livermore Falls Facility") and Stratton, Maine (the "Stratton Facility," and collectively with the Livermore Falls Facility, the "Facilities"), meet the statutory exemption from any reduction in the value of Renewable Energy Certificates ("RECs") generated by these Facilities as provided in CGS §16-245a(g)?[1]

[1] On October 7, 2021, DEEP issued a Notice of Proceeding to Determine Facility Exemption under CGS §16-245a(g). On October 14, 2021, ReEnergy responded to DEEP with a letter requesting confirmation that the Facilities meet the CGS §16-245a(g) statutory exemption. On December 17, 2021, DEEP issued a response to ReEnergy in DEEP's Response to Requests for Confirmation of Facility Exemption. DEEP has taken the position that its Response "is not a final decision" of DEEP and therefore ReEnergy must petition the Commissioner for a declaratory ruling on this issue.

As explained at greater length below, it is ReEnergy's position that the Stratton Facility and the Livermore Falls Facility are exempt from the gradual phasedown in the eligibility of Class I RECs produced by biomass resources pursuant to CGS §16-245a(g) because both facilities entered into power purchase agreements with an electric supplier in the state of Connecticut before June 5, 2013. Copies of the power purchase agreements (the "PPAs") are attached. *See* Confidential Attachments 1 and 2.

I. Relevant Facts

A. REC Value Phase-Down Background

CGS §16-245a(g)[2] provides that DEEP is to "establish a schedule to commence on January 1, 2015, for assigning a gradually reduced renewable energy credit value to all biomass and landfill methane gas facilities that qualify as a Class I renewable energy source." By statute, however, "any reduced renewable energy credit value … shall not apply to any biomass … facility that has entered into a power purchase agreement

[2] CGS Section 16-245a(g) provides in whole:

> On or before January 1, 2014, the Commissioner of Energy and Environmental Protection shall, in developing or modifying an Integrated Resources Plan in accordance with sections 16a-3a and 16a-3e, establish a schedule to commence on January 1, 2015, for assigning a gradually reduced renewable energy credit value to all biomass or landfill methane gas facilities that qualify as a Class I renewable energy source pursuant to section 16-1, provided this subsection shall not apply to anaerobic digestion or other biogas facilities, and further provided any reduced renewable energy credit value established pursuant to this section shall not apply to any biomass or landfill methane gas facility that has entered into a power purchase agreement (1) with an electric supplier or electric distribution company in the state of Connecticut on or before June 5, 2013, or (2) executed in accordance with section 16a-3f or 16a-3h. The Commissioner of Energy and Environmental Protection may review the schedule established pursuant to this subsection in preparation of each subsequent Integrated Resources Plan developed pursuant to section 16a-3a and make any necessary changes thereto to ensure that the rate of reductions in renewable energy credit value for biomass or landfill methane gas facilities is appropriate given the availability of other Class I renewable energy sources.

(1) with an electric supplier … in the state of Connecticut on or before June 5, 2013 . . .". CGS §16-245a(g).

The 2020 Integrated Resource Plan issued by DEEP on October 7, 2021 ("2020 IRP") sets forth DEEP's plan to phase down the value of biomass RECs, and provides that "eligible generation for Class I biomass RECs will be reduced after 20 years for new facilities and 15 years for existing facilities from the time they were approved as a Class I renewable energy source in Connecticut." 2020 IRP at 191. For RECs generated at biomass facilities after January 1, 2022, the 2020 IRP states that

> "Class I RECs will still be generated as they have been, but the amount of generation eligible as a Class I resource in Connecticut will decline to 50 percent of the actual generation output from the facility each year. One MWh would still be required to be produced to receive a REC in Connecticut. A REC for a Class I biomass facility would not be treated any differently from CT Class I RECs from other eligible resources for the purpose of supplier compliance. The other 50 percent of the annual generation output, which is not eligible in Connecticut, will still be eligible to be sold to meet RPS requirements in other states, to the extent the resource is eligible to participate in those other state RPS programs." *Id*.

In order to implement this change, DEEP will submit a request to the NEPOOL GIS Working Group and Markets Committee. *Id*.

B. ReEnergy

ReEnergy was formed in 2008 by a senior management/co-investor team comprised of experienced industry professionals. The Company has an ownership interest in, and currently operates, among other facilities, the Stratton Facility, a 48-megawatt biomass facility located in Stratton, Maine, with Connecticut RPS registration number CT00188-05 and NEPOOL GIS Unit IDs MSS590 and NON32547 that can produce approximately 370,000 net megawatt-hours of electricity each year, and the Livermore Falls Facility, a 39-megawatt biomass facility located in Livermore Falls, Maine,

with Connecticut RPS registration number CT00108 04 and NEPOOL GIS Unit ID MSS463 that can produce approximately 290,000 net megawatt-hours of electricity each year. These Facilities provide electricity from sustainably harvested forest residue material and other wood waste residues to produce renewable energy. This forest residue material otherwise would typically have been landfilled or left to decompose on forest floors, resulting in the production of methane, a greenhouse gas.

II. Discussion

CGS §16-1(a)(20) defines a Class I renewable energy source to include a "biomass facility that uses sustainable biomass fuel." The Connecticut Public Utility Regulatory Authority's ("PURA") predecessor agency, the Department of Public Utilities Control, determined that both the Livermore Falls Facility and the Stratton Facility qualify as Class I renewable energy sources. *See* Docket No. 05-03-12, *Application for Advisory Ruling on Eligibility for Class I Renewable Status Pursuant to Connecticut's Renewable Portfolio Standards*, August 10, 2005 Final Decision at 3 and Docket No. 05-04-16, *Application of Boralex Stratton Energy Inc.*, June 30, 2005 Final Decision at 4.[3]

On May 23, 2013, NextEra Energy Power Marketing, LLC ("NEPM"), NextEra Energy Services Connecticut, LLC ("NextEra Retail") and ReEnergy Stratton LLC entered

[3] Subsequent to those decisions, the definition of Class I "sustainable biomass" was revised by Public Act 06-74, *An Act Concerning Biomass* and Public Act 07-5, September Special Session. The new definition excluded construction and demolition waste. In Docket No. 07-09-01, *Application of Boralex for Qualification of Livermore Falls as a Class I Renewable Generating Facility,* PURA determined that the Livermore Falls Facility qualifies as a "Class I renewable energy source from April 1, 2007 through June 30, 2007. The [Authority] further finds that … Livermore Falls also qualifies as a Class I renewable energy source for any quarter the facility operates with NOx emissions below the statutory limit. November 28, 2007 Final Decision at 5. Similarly, in Docket No. 05-04-16RE01, *Application of Boralex Stratton Energy Inc. for Qualification as a Class I Renewable Energy Source – Reopening*, the Authority determined that the Stratton Facility qualifies as a Class I renewable energy source for any quarter the facility operates with NO_x emissions below the statutory limit. November 28, 2007 Final Decision at 4.

into a PPA relating to the sale and purchase of electricity produced by the Stratton Facility. *See* Confidential Attachment 1. Also, on May 23, 2013, NEPM, NextEra Retail and ReEnergy Livermore Falls LLC entered into a similar PPA relating to the sale and purchase of electricity produced by the Livermore Falls Facility. *See* Confidential Attachment 2.[4] It should be noted that NextEra Retail was an electric supplier at the time these PPAs were entered into and based on the latest published data it continues to be an electric supplier.[5]

To summarize, the Livermore Falls and Stratton facilities are biomass facilities that qualify as Class I renewable energy sources pursuant to CGS §16-1. Furthermore, the Livermore Falls and Stratton facilities each have a PPA with an electric supplier (NextEra Energy Services Connecticut, LLC) that was entered into prior to June 5, 2013.

As discussed in the 2020 IRP, pursuant to section 5 of Public Act 13-303, codified at CGS §16-245a(g), DEEP must set a schedule for the gradual phasedown in the value of Class I RECs produced by biomass resources. The 2020 IRP also notes, however, that CGS §16-245a(g) provides an exemption to this phase-down for any biomass facility that meets certain criteria. Specifically, CGS §16-245a(g) provides the following exemptions:

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[4] Each of these PPAs were amended by a First Amendment to Energy Purchase Agreement dated June 4, 2013, a Second Amendment to Energy Purchase Agreements dated as of May 21, 2015, a Third Amendment to Energy Purchase Agreements dated as of April 28, 2016, a Fourth Amendment to Energy Purchase Agreements dated as of May 9, 2017, a Fifth Amendment to Energy Purchase Agreements dated as of January 10, 2018, a Sixth Amendment to Energy Purchase Agreements dated as of October 23, 2018, a Seventh Amendment to Energy Purchase Agreements dated as of June 26, 2020 and an Eight Amendment to Energy Purchase Agreements dated as of May 20, 2021. The primary substantive change to the PPAs in each of these amendments was to establish the fixed price component for each year.

[5] Docket No. 07-05-37RE02 filing dated January 25, 2022. NextEra Energy Services Connecticut, LLC's Annual Report.

> any reduced renewable energy credit value established pursuant to this section shall not apply to any biomass or landfill methane gas facility that has entered into a power purchase agreement (1) with an electric supplier or electric distribution company in the state of Connecticut on or before June 5, 2013, or (2) executed in accordance with section 16a-3f or 16a-3h.

The 2020 IRP identifies one facility that meets these criteria and is exempt from any phasedown: "[T]his phasedown will not apply to the Plainfield Renewable Energy facility because it has an existing contract." 2020 IRP at footnote 380, page 191. While Plainfield is the only facility mentioned by name in the IRP, DEEP correctly identified that there could be other facilities that are exempt from the phasedown per the criteria in Public Act 13-303, bringing about the declaratory ruling that this petition is requesting.

The Stratton and Livermore Falls Facilities are Class I renewable energy facilities with PPAs that were entered into prior to June 5, 2013, but are not identified in the 2020 IRP as meeting the criterion for an exemption of the phase-down of Class I RECs.[6] While CGS §16-245a(g) does not require such a showing, these two facilities support the forestry and waste management goals of the state (*see* 2020 IRP at 164) as each of the facilities use forest residue material in the production of electricity. In the absence of these facilities, this forest material otherwise would typically be landfilled or left to decompose on the forest floors, resulting in the production of methane. The use of the biomass not only enhances forest health, but it mitigates climate change, contributes to fuel diversity and represents a reasonably priced form of renewable baseload energy.

Further, the plain language in CGS §16-245a(g) provides that there are no conditions or limitations based on the volume purchased by the electric supplier or the term of the agreement, for a facility to meet the eligibility criteria for an exemption from

[6] In its comments to the draft 2020 IRP dated Feb 17, 2021, ReEnergy noted that eligibility for exemption to a biomass phase-down is governed by statute, not the 2020 IRP.

the biomass phasedown. The 2020 IRP comes to the same conclusion, noting that the Plainfield Renewable Energy plant is exempt from any phasedown since the facility has a PPA that was entered into prior to June 5, 2013 (2020 IRP at footnote 380, page 191). Additionally, the 2020 IRP does not limit or condition the duration of the statutory exemption for the Plainfield facility in any way. Therefore, given that the Facilities meet the criteria under CGS §16-245a(g), the Facilities should receive a full and unconditional exemption from any phasedown.

Consequently, in accordance with CGS §16-245a(g), the RECs generated by the Facilities are statutorily excluded from any requirement that the eligibility of their RECs be reduced as set forth in CGS §16-245a(g) and the 2020 IRP.

III. Conclusion

For the reasons set forth above, ReEnergy respectfully requests that DEEP issue a declaratory ruling that the Livermore Falls and Stratton Facilities are exempt from any phase-down of the REC value implemented pursuant to CGS §16-245a(g), and that 100% of the RECs to be generated by these facilities will qualify as Class I RECs under CGS §16-245a.

Respectfully submitted,

REENERGY HOLDINGS LLC

By: _____

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