



JOINT PRE-FILED TESTIMONY OF
EVERSOURCE ENERGY
Before the Energy & Technology Committee
September 8, 2020

RE: LCO No. 3920, AN ACT CONCERNING EMERGENCY RESPONSE BY ELECTRIC DISTRIBUTION COMPANIES AND REVISING THE REGULATION OF OTHER PUBLIC UTILITIES.

This joint pre-filed testimony is submitted by Eversource Energy (“Eversource” or the “Company”) concerning LCO No. 3920 (“LCO”) that has been raised for public hearing.

This testimony is jointly sponsored by James J. Judge, Chairman of the Board, President and Chief Executive Officer of Eversource; Craig A. Hallstrom, President and Chief Operating Officer of CT and MA Electric Operations; Douglas P. Horton, Vice President-Distribution Rates and Regulatory Requirements; and Vincent P. Pace, Assistant General Counsel.

BACKGROUND ON EVERSOURCE

Eversource transmits and delivers electricity to approximately 1.26 million customers in 149 municipalities in Connecticut; provides natural gas to approximately 241,000 customers in 74 towns in Connecticut; and our affiliate (Aquarion Water Company) provides water service to 198,000 customers in 52 towns in Connecticut. Eversource harnesses the commitment of its approximately 8,000 employees across three states to build a single, united company around the mission of delivering safe and reliable energy, natural gas and water service, and superior customer service.

Eversource is also committed to leading the way toward a cleaner energy future for our customers and communities. Our comprehensive approach includes providing leading energy efficiency programs and services; and challenging ourselves with an industry-leading goal of reducing carbon use in our facilities and operations, to be carbon neutral by 2030.

COMMENTS ON LCO No. 3920

Eversource thanks the Committee for this opportunity to submit written testimony on the LCO, which currently contains 22 sections totaling over 40 pages. In order to facilitate the Committee’s review of this filing, we have organized this testimony into the following three categories.

1. Part I below identifies those sections of the LCO that Eversource supports such as performance based ratemaking (“PBR”).

2. Part II below identifies those sections of the LCO that require additional discussion and collaboration in order to strike an equitable balance between the various interests of affected stakeholders. Therefore, Eversource proposes to cooperate with this Committee, the Department of Energy and Environmental Protection (“DEEP”), the Public Utilities Regulatory Authority (“PURA”), the Office of Consumer Counsel (“OCC”) and other stakeholders to address these topics in the next full legislative session commencing in January 2021 where there will be sufficient time to address these topics.
3. Part III below identifies those sections in the LCO that Eversource cannot support because, among other things, they increase costs for our customers, or they are duplicative of the financial penalties that already exist under current law as well as those that will be established under PBR. Eversource will be filing with PURA in its storm investigation proceeding in Docket No. 20-08-03 a detailed report on our preparedness and response to Storm Isaias. In that open and transparent proceeding, PURA will evaluate evidence and public comment from a broad group of participants such as DEEP, OCC, the Office of the Attorney General (“AG”), municipalities and many other stakeholders. PURA will then determine what went well and what did not go well in our storm response to inform the performance metrics and improvements to be incorporated into PBR going forward. It is therefore premature to speculate what those findings will be and to codify into legislation onerous provisions that will have dramatic, unintended consequences to utility storm response practices and customer costs, without the benefit of a technical process before PURA to identify effective, workable and reasonable solutions.

I. SECTIONS OF THE LCO THAT EVERSOURCE SUPPORTS

- a. Sections 1, 2 and 3: Performance Based Ratemaking (PBR). Eversource supports empowering PURA to develop through a technical or ratemaking proceeding the appropriate metrics to penalize electric distribution companies (“EDCs”) for poor performance and reward them for superior performance. The Company looks forward to participating constructively in such future proceedings before PURA.
- b. Section 4: Compensation. Section 4 of the LCO proposes to apply PBR metrics to PURA’s examination of whether executive compensation and employee incentive compensation can be recovered in electric rates. Eversource supports PURA’s implementation of PBR metrics in an appropriate ratemaking proceeding. Section 4 also proposes to limit the recovery in electric rates of CEO compensation to the median compensation of a proxy group of Northeast and Mid-Atlantic states. It is unclear why this additional provision appears in Section 4 because PURA already has the authority in a rate case to determine what portion of compensation is recovered in rates.
- c. Sections 6, 7 and 8: Extending Existing Statutory Deadlines for PURA to Evaluate Rate Cases, Financing Applications and Changes of Control. Each of these Sections proposes to increase existing statutory deadlines for PURA to issue decisions on a variety of topics that affect public service companies and customers. Eversource supports providing PURA with more time to issue its decisions. However, Eversource requests that a “middle ground” be reached between the existing statutory deadlines and the LCO’s revised

deadlines in order to strike a more equitable balance between PURA's legitimate need for more time and the legitimate interests of all public service companies to have access to a rate review using timely and accurate data on the cost of utility operations. An extended time period, such as suggested by the current draft of the legislation has the potential to cause reliance on stale data. The interests of both customers and utility companies are furthered with the use of timely and accurate data in setting rates to be charged to customers.

Section 6 of the LCO proposes to increase the deadline for issuing a rate case decision from 150 days to 350 days for *all* public service companies, including water companies. Eversource agrees that PURA should receive additional time. However, waiting one (1) year to receive a final decision is too long for companies, particularly water companies, unless they are allowed to implement temporary rates at the outset of the rate-case process that will either increase, decrease or remain the same at the conclusion of PURA's one-year rate review process. Also, it is important to understand how the proposed one-year timeline compares to deadlines in other states. For these reasons, additional discussion is requested to evaluate deadlines from other states and determine whether temporary rate adjustments can be allowed in order to strike an equitable balance between these important interests.

Section 7 of the LCO proposes to increase from 30 days to 90 days the time frame PURA has to issue a decision on a public service company's request for permission to borrow funds from financial institutions. Eversource agrees that PURA should receive additional time; however, delaying three (3) months to receive a decision could adversely impact a utility's ability to promptly take advantage of low lending rates, which will end up costing customers more when a utility misses-out on opportunities to lock-in lower borrowing rates. With a longer timeline, comes uncertainty as to the rates that will be available as a result of the financing. Also, before the current deadline is changed, this proposal should be compared to deadlines in other states.

Section 8 of the LCO proposes to extend the deadline for PURA to issue a decision in a change of control proceeding from 120 days to 350 days. Eversource agrees that PURA should receive additional time; however, the proposal to extend the timeframe to 350 days is a substantial change. Before this deadline is changed, time should be taken to understand how the proposed new deadline compares to other jurisdictions. The interests of customers (and employees) may be negatively affected if the timeline in Connecticut greatly exceeds the timeline in other states because of the extended uncertainty in utility operations and changeover. Also, less than 350 days should be used for comparatively smaller transactions such as a change of control involving a small water company.

- d. Sections 17 and 18: Changes to Retail Supplier Statutes. Eversource does not oppose Sections 17-18 of the LCO that seek changes to existing laws governing competitive retail suppliers.
- e. Section 19: Expanding the Existing Microgrid Program to Include Resilience Measures that Benefit Low & Moderate Income Communities. This Section proposes to authorize DEEP to expand its existing microgrid grant and loan pilot program to include resilience

projects that mitigate the impact of storms and other threats that could disrupt electric service to low and moderate income communities. Eversource supports DEEP's efforts to evaluate such measures that mitigate the risk of power losses to these vulnerable communities, provided that this important goal is balanced against the equally important goal of moderating the potential bill impacts of such programs on all customers.

- f. Section 20: Review of Compliance with NU-NSTAR Merger Commitments. Section 20 directs PURA to "(1) review the provisions of the Northeast Utilities and NSTAR merger settlement agreement, (2) evaluate the company's commitment to those provisions, and (3) recommend if any of those provisions need reinstatement or codification." PURA already has the authority to evaluate if a public service company is complying with the conditions in a PURA decision, which includes PURA's final decision dated April 2, 2012 in Docket No. 12-01-07 approving the settlement that authorized the merger. Additionally, it is important to recognize that since 2012, this highly successful merger has:
- i. Generated approximately \$270 million in savings for Connecticut customers through the use of standardized work practices and other efficiencies.
 - ii. Improved electric reliability, as evidenced by the fact that outage frequency (as measured by "months between interruption") improved 65% from 12.8 in 2011 to 21.1 in 2019; and outage duration (as measured by SAIDI) improved 54% from 136.41 minutes in 2011 to 63.3 minutes 2019.
 - iii. Benefited Connecticut during storm restoration due to the greater number of crews already under the control of Eversource when large-scale weather events approach the service territory, and utilities across the region race to lock-in available resources. This was fully evidenced by the rapid deployment of a substantial number of line workers from NSTAR's eastern Massachusetts service territory to support restoration efforts in Connecticut for Storm Isaias.

II. SECTIONS OF THE LCO THAT REQUIRE ADDITIONAL TIME FOR EVALUATION IN THE NEXT FULL LEGISLATIVE SESSION IN 2021

- a. Section 14: Re-opening Former Area Work Centers. Section 14 states that "each electric distribution company shall open, operate and staff all regional service centers available to such company". This proposal requires additional discussion because some of the Company's former area work centers ("AWCs") have been sold. In addition, before Eversource's former AWCs were closed, the proposed closings were evaluated in an open and transparent public hearing process before PURA.¹ Also, the cost of these former AWCs have been removed from rates so that customers are currently benefiting from the associated cost savings and efficiencies. Re-opening these closed AWCs will not only create inefficiencies, but it will increase costs for customers at a time when this Committee, the Company, PURA, OCC and others are evaluating options to mitigate bill impacts.

¹ See PURA Docket No. 13-11-13, Decision dated March 19, 2014; and PURA Docket Nos. 13-11-13RE01 & 15-01-27RE01, Decision dated July 13, 2016.

Importantly, the closure of former AWCs did not negatively impact storm response because Eversource had arrangements in place for utilizing properties across the state as staging areas, when needed, in order to respond to storm events. Eversource used these locations to house operations personnel, material lay down areas, perform truck refueling, parking, feeding and lodging. The Company activated these sites to allow restoration personnel to get closer to damage areas. For example, during Storm Isaias, the Company activated several sites, primarily in the Western part of the state, to facilitate its restoration efforts, such as at the Danbury Welcome Center, the Danbury Fair Mall, Cove Island, Sherwood Island and the Crystal Mall.

Finally, it is important to recognize that we continually evaluate our operational needs, and therefore, we will evaluate with our local unions whether other potential work reporting locations are necessary.

- b. Section 16: The Integrated Resources Plan; and Connecticut's Role in ISO-NE. This Section proposes to have DEEP prepare a report for this Committee on the benefits and detriments of Connecticut's continued participation in ISO-NE. Although DEEP has already taken evidence on this topic in its pending Integrated Resources Planning ("IRP") proceeding – and although Eversource supports Connecticut's continued participation in ISO-NE for the reasons it explained in the pending IRP proceeding² – the Company understands that DEEP continues to be interested in studying this topic in greater detail. For that reason, Eversource does not oppose DEEP's preparation of a report on this topic in which it evaluates evidence from all interested stakeholders, including ISO-NE, PURA, OCC, the AG, the EDCs and others.

While Eversource supports Section 16's proposal for DEEP to prepare the above-described study on Connecticut's future role in ISO-NE, additional discussion is needed on Section 16's proposal to remove EDCs from DEEP's IRP process. Presently, Connecticut law empowers DEEP to run the IRP process and to prepare each IRP report, but it appropriately allows the regulated department within each EDC with expertise in procuring energy and negotiating state-mandated energy contracts to consult with DEEP in preparing the IRP. DEEP is currently not required to accept the EDCs' advice. Section 16, however, proposes to eliminate this consulting role for the EDCs without providing any justification for doing so, thereby removing the EDCs from having any meaningful role in future IRP proceedings. Eversource requests additional discussion on this portion of Section 16 because the EDCs are an important source of information and experience. Therefore, EDCs should continue to have the ability to offer such consultation, which DEEP can elect to accept or reject.

III. SECTIONS OF THE LCO THAT EVERSOURCE CANNOT SUPPORT

Before describing in detail why Eversource cannot support each of the LCO Sections listed in this final portion of our pre-filed testimony, the Company provides the following three overarching comments as to why it cannot support these Sections of the LCO.

² See CT DEEP, IRP Proceeding, February 28, 2020 Technical Meeting, Eversource Presentation on Alternative Market Designs, by James G. Daly, Vice President-Energy Supply.

First, many of the following Sections of the LCO deviate from the well-established practice of the legislature developing general goals and then delegating to agencies with technical expertise, such as PURA, the authority to achieve those goals after evaluating substantial record evidence from experts through an open and transparent regulatory process. For example, Sections 10, 11, 12 and 15 of the LCO are instances of legislative ratemaking that impose substantial fines and penalties for EDCs without providing PURA with an opportunity to achieve the legislature's goals through a comprehensive regulatory process. The legislature's reasonable and understandable goal of incenting EDCs to achieve superior results can be more effectively achieved through empowering PURA to develop appropriate PBR metrics for measuring performance, instead of the approach used in Sections 10, 11, 12 and 15 where legislatively developed penalties are layered on top of existing penalty standards as well as the PBR penalties the legislature intends for PURA to develop.

Second, the onerous penalties that Sections 10, 11, 12 and 15 seek to impose on EDCs *will have the negative unintended consequence of increasing electric rates for our customers*. The increased risks and duplicative penalties imposed on EDCs will cause operational changes that will be necessary to attempt to achieve the legislature's new goal of restoring power to all customers within 72 hours. If specific deadlines are set in statute to apply to every storm event, then substantial changes must be made in electric operations to cover or bury overhead infrastructure; to pay hundreds of crews on a year-round basis to be available in weather events; and to more drastically cut back vegetation around overhead infrastructure. Applicable law allows each EDC to recover in rates the future cost to hire more crews and take these other steps because an EDCs would be incurring these costs to meet the legislature's new 72 hour restoration deadline for all storms. These types of changes will be very expensive for customers and would render the penalties envisioned by the legislation of little value or even useless to customers on balance. And despite all of this extra cost to our customers, outage durations longer than 72 hours would continue to occur in large-scale weather events because no amount of preparedness and increased staffing will guaranty power will be restored to all customers within 72 hours.

Other unintended costs for customers would result from rating agency downgrades of the EDCs, which would likely occur due to the perceived substantial step-up in risk associated with the Connecticut electric utilities. This would increase the borrowing costs that are paid for by electric customers because electric companies cannot operate without borrowing funds to pay for utility operations. Also, the increased perception of risk in investing in an EDC will increase costs for customers because electric companies are very capital intensive and need to access capital markets for funding of electric infrastructure projects over and above what is collected through customer rates, which comes at a cost. For example, over the past three years, our Connecticut investment in our electric transmission and distribution facilities have averaged nearly \$1 billion a year.

Third, to the best of our knowledge, these proposed penalties are the most onerous piece of draft legislation we have seen proposed anywhere in the U.S. As noted above, setting restoration deadlines by statute will drive changes in utility operations because electric companies must comply with state law. If state law says that restoration is to be complete by a date certain or a penalty will apply, then the company must strive to meet that deadline. This is the reason that,

to the best of our knowledge, no other state jurisdiction has imposed such onerous restoration deadlines of 72 hours for every storm or associated penalties by law. As indicated previously, to comply with these proposed new standards, we would have to double or triple staff, double or triple investment, double or triple tree removal, all of which would dramatically increase customer rates and we still would not be assured that we could meet the statutory deadline. Many states that have attempted to set restoration timelines have done so through the regulatory process where the public utility commission is able to apply its technical expertise, through an open and fair process, to structure a framework that is reasonable and balances the interests of customers in terms of service expectations and cost.

For example, if these proposed penalties were in effect in Louisiana and Texas today, the utilities there would be refunding hundreds of millions to utility customers while at the same time needing to borrow hundreds of millions to fund the restoration of power to customers, creating a combined effect that would destroy the financial integrity of the very company that customers are relying on to restore their power and provide power reliably between weather events. Utilities must borrow money to pay for storm restoration because no company can pay for restoration out of current rates or has the cash resources on hand when the scale of restoration is huge and outsized to current operations. Such a proposed regulatory scheme would create unjust and unreasonable outcomes for customers and utilities who had the misfortune of Hurricane Laura coming ashore in their territory.

For these three reasons, as well as the detailed reasons provided below, Eversource cannot support the following Sections of the LCO.

- a. Section 5: Examination of Each EDC's Rates. Section 5 of the LCO directs PURA to initiate a proceeding by November 1, 2020 to "consider the implementation of an interim rate decrease, low-income rates and economic development rates for nonresidential customers". PURA already has the authority under Connecticut General Statute § 16-19 to evaluate low-income rates and economic development rates, or to order a broader rate review. In fact, PURA is presently discussing potential low-income rates in a pending case and will evaluate low-income rates in a newly opened case.³ Such worthwhile initiatives that seek to benefit particular groups of customers need to be balanced against the cost impact of such programs on the bills of all other customers.

Moreover, General Statute § 16-19a already requires PURA to evaluate each EDC's distribution rates within four (4) years of its last rate case hearing.⁴ Eversource's last rate case was in 2017-2018 in Docket No. 17-10-46; therefore Eversource's rate review is

³ See PURA Docket No. 17-12-03, Interim Decision (Oct. 2, 2019) at 10; Docket No. 17-12-03RE01, Notice of Public Forums and Request for Presentations and Comments (Oct. 10, 2019) at 3. In its Interim Decision that launched the 11 Reopeners, PURA also stated that Docket No. 17-12-03RE11 "will explore new rate designs that address the disproportionate impact of increased electric rates on the lowest income customers. The reopened proceeding will also continue the dialogue from Docket No. 17-12-03RE01, ensuring that energy affordability and the need for Connecticut businesses to remain competitive with neighboring states remains central to the narrative." Interim Decision at 23.

⁴ See Conn. Gen. Stat. § 16-19a.

already upcoming and due in 2021. In addition, General Statute § 16-19(g) already authorizes PURA to evaluate if existing rates need to be decreased if an EDC exceeds its allowed ROE (which is not the case for Eversource) or if PURA finds that an EDC “may be collecting rates which are more than just, reasonable and adequate”.⁵ Accordingly, Section 5 is duplicative and counterproductive to the existing statutory framework.

Lastly, whenever PURA examines an EDC’s rates, the U.S. Constitution requires PURA to evaluate not only whether rates should decrease, but also whether rates must increase to comply with the U.S. Supreme Court’s decision that authorizes a utility to recover in rates “enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. . . . [Rates] . . . should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital”.⁶ Therefore, the idea that PURA will somehow be able to reduce rates without consideration of a utility’s actual costs to provide service to customers is inaccurate.

- b. Section 9: Costs for Rate Case Consultants. Section 9 of the LCO proposes that EDCs will be prohibited from recovering any portion of the costs they incur to hire consultants to provide information to PURA in rate case proceedings. Section 9 is ill-advised and unnecessary for several reasons. First, PURA already has authority to limit recovery of the costs incurred for expert witnesses on complex topics such as rate design, depreciation and the cost of capital for reasons relating to the specific company and rate proceeding. For example, in Eversource’s last litigated rate case in Docket No. 14-05-06, it was allowed to recover only about 66% of its expense for outside consultants.⁷ In addition, testimony from experts on these complex topics is critically important to enable PURA and other

⁵ Conn. Gen. Stat. § 16-19(g) “The authority shall hold either a special public hearing or combine an investigation with an ongoing four-year review conducted in accordance with section 16-19a or with a general rate hearing conducted in accordance with subsection (a) of this section on the need for an interim rate decrease (1) when a public service company has, for the rolling twelve-month period ending with the two most recent consecutive financial quarters, earned a return on equity which exceeds the return authorized by the authority by at least one percentage point, (2) if it finds that any change in municipal, state or federal tax law creates a significant increase in a company’s rate of return, or (3) if it finds that a public service company may be collecting rates which are more than just, reasonable and adequate, as determined by the authority, provided the authority shall require appropriate notice of hearing to the company and its customers who would be affected by an interim rate decrease in such form as the authority deems reasonable.”

⁶ Fed. Power Comm’n v. Hope Nat. Gas Co., 320 U.S. 591, 603, 64 S. Ct. 281, 288, 88 L. Ed. 333 (1944) (“it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. . . . [Rates] . . . should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.”); Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm’n of W. Va., 262 U.S. 679, 690, 43 S. Ct. 675, 678, 67 L. Ed. 1176 (1923) (“Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.”). See also Connecticut Light & Power Co. v. Public Utilities Control Authority, 176 Conn. 191, 216 (1978) (“rates are not sufficient if operating costs are disallowed, regardless of the amount disallowed.”)

⁷ See PURA Docket No. 14-05-06, December 17, 2014 Rate Case Decision at 70-71. The Company’s last rate case in Docket No. 17-10-46 resulted in a settlement, which reduced the overall amount of consultants costs that were needed due to the truncated regulatory proceeding.

participants in rate cases to make an informed decisions. This expertise is indispensable in a rate proceeding. As a result, without the ability to recover these costs in a rate proceeding (occurring once every four years), EDCs will have to build in-house expertise and pay for the cost of both staffing and professional training as part of its regular operations, creating a cost that customers pay all year every year instead of once, on a temporary basis, every four years. Using external experts to provide assistance in a peak period occurring once every four years is more efficient and less costly for customers.

- c. Section 10: Substantial Increases to Existing Storm Penalties. Currently, General Statute § 16-32i authorizes PURA to fine an EDC up to 2.5% of its annual distribution revenue if it fails to comply with PURA's storm performance standards. For Eversource, 2.5% of annual Connecticut distribution revenue is approximately \$28 million. Section 10 proposes to increase the scope of a fine to 10% of annual distribution revenue, which would be approximately \$110 million for Eversource. The Company does not support Section 10 because:
- i. It is duplicative of the penalties for poor performance that PURA proposes to implement in Sections 1 through 3 of the LCO that seek to implement PBR.
 - ii. A potential fine of up to \$110 million is exorbitant and excessive.
 - iii. It will significantly increase the cost of electric service because EDCs will have to make very significant changes to operations to pay for crews on a year-round basis in anticipation of weather events; to cover and/or bury electric infrastructure; and to clear vegetation far back from the overhead system.
 - iv. It will significantly increase the perception of risk in investing in an EDC, which will in turn increase the cost of raising capital for needed electric infrastructure and hardening projects that will in turn have the unintended consequence of increasing the cost of electric service for customers.
 - v. This increased risk could cause rating agencies to lower Eversource's existing industry leading credit ratings, which will increase our cost of borrowing to fund electric operations that will in turn have the unintended consequence of increasing the cost of electric service for our customers.
 - vi. To the best of our knowledge, we are unaware of any other jurisdictions that impose such excessive fines per storm event.
- d. Section 11: Storm Credits of \$125 Per Day for Power Outages Longer than 72 Hours. This Section requires each EDC, *retroactive* to July 1, 2020, to provide a bill credit of \$125 per day for each storm in which a residential customer loses power for more than 72 consecutive hours. Although the Company understands the hardships experienced by customers when catastrophic storms cause substantial system damage, Eversource does not support this Section 11 for the following reasons.

- i. It is duplicative of the penalties for poor performance that PURA proposes to implement in Sections 1 through 3 of the LCO that seek to implement PBR. Using PBR, not an arbitrary 72-hour deadline, is the most effective tool to help achieve the legislature's goals.
- ii. Section 11's implementation of this new standard *retroactive* to July 1, 2020 is inconsistent with fundamental fairness and due process. The U.S. Supreme Court stated that "[T]he presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly For that reason, the principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal."⁸
- iii. This Section does not apply to storms affecting more than 870,000 customers; however, this is a completely arbitrary cutoff that actually has the potential to shortcut customer interests. Each storm event needs to be considered for its own circumstances and in relation to a company's performance in that event. This arbitrary cutoff also fails to recognize that no amount of preplanning will enable an EDC to restore power to all affected customers in less than 72 hours when a catastrophic storm causes hundreds of thousands of outages. For example, a storm impacting several hundred thousand customers will likely always require more than 72 hours to restore customers *as a physical matter*; therefore, the legislation is simply setting false expectations. Section 11 does not cite to any evidence to support its unrealistic assumption that power can be restored in 72 hours following a storm with up to 870,000 outages in a state with Connecticut's tree density. Nor does Section 11 recognize that it was physically impossible to repair over 21,000 damage locations and restore power to all customers impacted by Storm Isaias within 72 hours, especially when no weather forecast or damage prediction model accurately predicted Storm Isaias would cause this substantial level of damage that it did.
- iv. In addition, Section 11's new goal of restoring customers within 72 hours will have the unintended consequence of elevating restoration of power to large blocks of customers over Eversource's current approach of balancing power restoration with the equally important goal of simultaneously addressing municipal priorities. In Storm Isaias alone, Eversource responded to over 5,000 municipal priorities, which included handling approximately 2,431 Priority 2 calls (hindering operations), 2,273 Priority 3 calls (non-threatening electric hazard) calls, responding to or restoring power to 860 affected critical facilities predesignated by local municipalities, as well as restoring power for polling locations.

⁸ Landgraf v. USI Film Products, 511 U.S. 244, 265, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994) (Internal quotation marks omitted.)

- v. As indicated previously, Section 11 will also have the unintended consequence of causing EDCs to change the way they prepare for storms by moving from the current model in which they balance storm preparedness with the associated bill impacts of such preparation on customers toward a new model that will increase the cost of utility service for all customers.
- vi. Section 11 also fails to take into consideration that, in large storms, many customers lose power for more than 72 hours because their customer-owned electrical equipment was damaged and their power will not be restored until they hire an electrician to repair their customer-owned equipment.

Lastly, although Eversource opposes Section 11 for the reasons described above, if the legislature concludes that it is necessary or appropriate to enact this Section into law then it should make three changes. First, the legislature should extend the restoration deadline to align with varying event levels and associated restoration timeframes reviewed and approved by PURA so that the very important dual customer interests of service restoration and cost, along with the need to address municipal priorities, are appropriately balanced in the interest of customers and communities. This is not achieved in the current draft legislation. Second, the legislature should include a “rebuttable presumption” that provides an EDC with the due-process opportunity to provide evidence to PURA showing that the EDC’s preparation and response to a storm was prudent and therefore the interests of customers were protected by virtue of a good storm response under the circumstances. Third, the legislature should apply a “need based” threshold and associated criteria to assure that the payment of any funds is made to customers who need assistance. In its current form, Section 11 requires such credits to be provided to all affected customers after 72 hours although the time frame is neither physically achievable or practical from a cost perspective; without any opportunity for PURA to evaluate mitigating circumstances or weigh good performance by the electric company; and without consideration of customer need.

- e. Section 12: Medication and Spoiled Food Credit for Storm Outages Longer than 72 Hours. Section 12 provides reimbursement up to \$500 for spoiled medicine and another \$500 for spoiled food due to any power outage lasting more than 72 hours. Although Eversource understands the hardships experienced by customers when catastrophic storms cause substantial outages, it does not support this Section 12 for the same reasons it does not support the \$125 per day bill credit in Section 11 of the LCO. Also, based on the same reasons provided in the discussion of Section 11 above, if this Section 12 is enacted it should include the same three qualifying provisions listed above for Section 11.
- f. Section 13: Minimum Line Worker Staffing Levels. Section 13 of the LCO requires PURA to study minimum staffing levels for EDCs. Once PURA has completed its study, this Section authorizes PURA to establish minimum staffing levels. Eversource does not support this Section because PURA just completed a line worker staffing study on February 3, 2020 in Docket No. 19-06-37 and submitted that report to this Committee. That report appropriately recognized that “reliance on mutual aid to supplement existing crews for severe weather events is an industry best practice” and that “[s]taffing internal resources for events more extreme than Event Level 5 [in an EDC’s ERP] would require a significant investment in operating and investment cost and would at least double the staffing and

equipment levels Since there would be significant cost involved with these types of staffing changes, any minimum requirements would require approval in a rate proceeding.”⁹

Doubling or tripling Eversource’s current staffing levels would substantially increase rates for our customers at a time when this Committee, Eversource, PURA, OCC, the AG and other stakeholders are actively evaluating all available options to mitigate bill impacts to customers. Additionally, as Eversource explained in its August 27, 2020 testimony before this Committee: (1) our current in-house line worker staffing level is comparable to the level we had at the time of the Northeast Utilities-NSTAR merger in 2012; (2) we are on-track to meet the commitment we made in our last rate case in Docket No. 17-10-46 to hire 100 additional skilled craftworkers during 2018-2020; and (3) we supplemented our internal staffing with, on average during 2020, approximately 250 Connecticut-based contractors supporting our system. Lastly, PURA already has the authority in a future rate case to provide direction to the Company regarding the terms and conditions that will be attached to customer funding for employees and contractors.

- g. Section 15: Authorizing PURA to Order Utilities to Pay Restitution to Customers. Section 15 proposes to amend General Statute § 16-41 to authorize PURA to impose not only fines, but also to order “restitution” (i.e., monetary damages) be paid to customers, whenever an electric, gas, telephone, water or cable television company violates a statute, regulation or PURA order. Eversource opposes this Section for the same reason that it opposes Sections 10, 11 and 12 of this LCO. Also, requiring all Connecticut utility companies to potentially pay monetary damages to customers will increase each company’s cost of purchasing insurance coverage, which will in turn ultimately harm customers by increasing the cost of delivering utility service.
- h. Section 21: Requirement to Add an Independent Consumer Advocate to each EDC’s Board of Directors. Section 21 of the LCO requires an independent consumer advocate, who is selected by the OCC, to become a member of the board of directors for each EDC. This provision is flawed for at least two reasons.

First and foremost, Section 21 is in direct conflict with long-established Connecticut corporation law in General Statute § 33-756. Section 33-756 states that “[e]ach member of the board of directors, when discharging the duties of a director, shall act: (1) in good faith; and (2) in a manner the director reasonably believes to be in the best interests of the corporation.” This means that, under Connecticut law, board members have a fiduciary duty to the corporation, which is different than Section 21 directing that the proposed independent consumer advocate would act “as an independent advocate for ratepayer interests”.

⁹ PURA Docket No. 19-06-37, February 3, 2020 Report at Page 41. The Report is entitled “REPORT AND STUDY OF THE PUBLIC UTILITIES REGULATORY AUTHORITY REGARDING THE STANDARDS FOR ELECTRIC DISTRIBUTION COMPANY EMERGENCY PERFORMANCE PURSUANT TO SPECIAL ACT NO. 19-15, AN ACT REQUIRING THE PUBLIC UTILITIES REGULATORY AUTHORITY TO STUDY PERFORMANCE STANDARDS AND MINIMUM STAFFING AND EQUIPMENT LEVELS FOR ELECTRIC DISTRIBUTION COMPANIES”.

Second, there are a series of considerations that would have to be accounted for, such as there is no provision made as to how the new board member would be free to participate, advocate or even discuss the business of the corporation in any other forum, particularly in light of Connecticut law establishing a fiduciary duty to the corporation. Therefore, the whole purpose of this provision is questionable. If the board member is independent and has no fiduciary obligation to the corporation, then it would be necessary to sort out numerous protections and parameters for how that board member should be performing or carrying out duties to the public.

A more practical and productive approach, which would also comply with Connecticut law, would be to require an EDC's Board to receive input and recommendations from a customer-focused externally-staffed Advisory Committee.

- i. Section 22: Replacing EDCs with Private Third Parties to Administer EE Programs. Section 22 of the LCO states that the Commissioner of DEEP can elect to conduct a request for proposals to replace the EDCs with one or more private third parties to administer the EE programs that are paid for by the customers of Eversource and UI. This type of sweeping change has the potential to harm customers if made on an expedited timeframe without adequate review and consideration. This approach has a strong potential to result in fewer program dollars being spent to deliver actual EE benefits to customers because the EDCs fulfill this role at cost, with no profit mark-up for program delivery, except for incentives that can be earned if there is superior performance. This would not be true for competitive service providers.

Also, Eversource has been recognized by the American Council for an Energy-Efficient Economy ("ACEEE") and Ceres as #1 in the nation for EE. This could not have happened without the support of our customers; our business partners; and stakeholders – many of whom invest a lot of time at the Energy Efficiency Board, you (our legislators) and our regulators. We are grateful for the trust that is placed in us.

In that context, no outside third party has the same level of knowledge and relationships with customers and local vendors that the EDCs have developed since the inception of these programs. The two EDCs have a proven track record of developing and administering EE and demand reduction programs that generate sustainable energy savings (lifetime and annual) for Connecticut's residents and businesses. Since 2000, the EDCs' energy-saving programs have achieved 6,374 annual gigawatt-hour ("GWh") and 74,680 lifetime GWh savings through a highly effective PBR program. The existing programs administered by the EDCs are a prime example of how PBR can incent and achieve superior outcomes.

Lastly, the State of Connecticut has substantial day-to-day oversight and control over the heavily regulated EDCs who administer these programs, whereas it would no longer enjoy the same level of control over any new private third-party program administrator.

Thank you for the opportunity to provide comments on the draft legislation as many of the sections do have far reaching cost and service implications for the State and Connecticut utility customers.