



The Energy and Technology Committee

Public Hearing, September 8, 2020

Office of Consumer Counsel

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Testimony of Richard E. Sobolewski

Proposed Bill No. 3920

An Act Concerning Emergency Response by Electric Distribution Companies and Revising the Regulation Of Other Public Utilities.

The Office of Consumer Counsel (OCC) has reviewed Proposed Bill No. 3920, An Act Concerning Emergency Response By Electric Distribution Companies and Revising the Regulation of Other Public Utilities. The OCC **supports** the Bill and offers the following specific input and suggestions.

The proposed Bill makes additions and changes to Title 16 of the General Statutes, some of which were raised in previous bills but left inchoate as a result of the regular 2020 Legislative Session being rendered dormant by the COVID-19 pandemic. Other proposed changes are timely reactions to recent events that had significant ratepayer impact, such as the Eversource rate adjustment and the Electric Distribution Companies' (EDCs) response to Tropical Storm Isaias. The proposed Bill also raises numerous issues that may help to offset the continuing increase in electric rates that is likely to occur as the State adopts technological advances aimed toward modernizing its electric grid and increasing the level of carbon free generation.

Sections 1, 2, and 3

Section 1 (b) requires the Public Utilities Regulatory Authority (PURA) to hold a proceeding to investigate and adopt a framework for Performance Based Ratemaking (PBR) for Connecticut's EDCs. OCC supports the idea of a new PBR authorization. PBR is not a new concept in utility regulation and was previously reviewed in 1999 by PURA's predecessor agency, the Department of Public Utility Control (DPUC), pursuant to P.A. 98-28, *An Act Concerning Electric Restructuring*, in DPUC Docket No. 99-06-21. OCC notes that the Final Decision from the 1999 Decision, attached hereto as Exhibit 1, provides a thorough review of PBR plans and includes cautionary concerns about the manner in which PBR plans should be established. See Exhibit 1.

PBR Plans have been established in several states, and in many instances they have been intended as a means to reduce regulatory oversight, rather than to increase it. While PBR may offer a new tool to PURA's regulatory tool belt, once established it should not be viewed as a "cure all" for the issues many Connecticut residents face with regard to today's electric utilities. The OCC notes that the powers to reward good performance and penalize insufficient performance already exist under PURA's current statutory authority. There are numerous cases where PURA has adjusted a utility's return on equity to either impose penalties for poor performance or to allow higher allowed profit levels for exceptional performance. Similarly, PURA has historically disallowed excessive operating expenses and denied the recovery of capital expenditures found to be not reasonable or imprudent, pursuant to the statutory scheme already in place. The OCC suggests that PBR should be crafted with the scope of PURA's already-existing authority in mind, so that new provisions are augmentative rather than duplicative.

The OCC also suggests that PBR should be designed to provide real performance incentives and deterrents, taking caution not to merely adjust the goalposts in our state's current ratemaking framework. Specifically, PBR should be structured with clearly defined parameters, to avoid situations where utility companies are rewarded for mere satisfactory performance, or where customers are required to pay extra for those tasks a utility is already obligated to perform as a public service entity. If not properly designed, a PBR could ultimately increase rates and utility company profits, with little or no improvement to service quality.

Section 4

The OCC supports proposed Section 4, which calls for the PURA to review the recovery of employee incentives through rates. OCC recommends that the comparative compensation provision set out in subsection (b) be applicable not only to chief executive officers, but to all officers and directors, by comparison to the compensation of officers and directors of functional equivalency in the listed jurisdictions, as such equivalency shall be determined by the authority. OCC also recommends that for the purposes of this subsection, compensation comparisons should be based upon the lesser of the mean or median compensation packages for functionally equivalent officers and directors in the listed jurisdictions.

Finally, OCC suggests that language should be added in order to ensure that, in the interim periods between rate cases, the utilities do not charge to operating results compensation expenses that exceed those allowed in the company's last rate proceeding. To that end, OCC proposes a provision disallowing the inclusion of compensation deemed unrecoverable from customers as operating expenses in the

reporting of the company's earned return on equity. Similarly, those expenses not included for ratemaking purposes should be excluded from the calculation of any potential excess earnings that are subject to the annual earnings sharing mechanism calculation.

Section 5

The OCC would support further study of a low-income rate and economic development rate for non-commercial customers as suggested in Section 5 and believes studying proposed new rate classes holistically with the current portfolio of rate classes is crucial to understanding the impact of any proposed new rate upon existing rates. Regarding the study of a possible rate-decrease pursuant to subsection (g) of section 16-19, the OCC would caution that as of the proposed date for the study's commencement, the EDCs will not yet have finalized cost and arrearage-related data from the COVID-19 shut-off moratorium, which could hamper the thorough analysis of any proposed rate decrease.

Section 6

The OCC does not oppose extending the current time for the rate-making approval process as proposed in Section 6 and believes additional time is necessary to complete a thorough and diligent review, especially in the instance of multi-year rate plans. OCC notes, however, a potential trade-off for the lengthened approval period could be rates that deviate more widely from actual market conditions when implemented. As such, it is important that the public service companies continue to have the ability to true up their proposals through the end of the hearing process to avoid test year rates that widely deviate from the actual market conditions upon

implementation, which in turn could lead to increased rate fluctuation during the interim rate adjustment proceedings.

Section 9

The OCC supports an examination of cost recovery methodology as set out in Proposed Section 9. A thorough examination and appropriate adjustment of this methodology would put to rest a long-standing dispute over how the EDCs shall recover costs associated with participating in and appearing at rate-making hearings. OCC submits that more efficient rate-making proceedings will result from defining how these costs may be recovered, which will in turn impact consumers as well as taxpayers.

Sections 11 and 12

The OCC supports the method of compensation to consumers for prolonged electricity outages in proposed Section 11. OCC suggests the development of regulations related to the implementation of Section 11 in order to more closely define its parameters.

The OCC supports proposed Section 12, which provides for consumer compensation and reimbursement for food and medical losses associated with prolonged electricity outages following storms. OCC looks forward to participating in the PURA proceeding in which the EDCs will submit plans related to the development of systems by which this proposed section will be implemented.

Section 13

The OCC supports the study proposed in Section 13 to fully review and analyze the EDCs' historical storm responses, staffing, equipment, and processes and attendant costs. OCC also recommends that the operations of the regional service centers as proposed in Section 14, below, be adjusted to reflect the outcomes of the study and standards ordered by PURA pursuant to proposed subsection (d) of this section.

Section 14

The OCC continues its historical support for sufficiently staffed regional service centers, as proposed in Section 14. Historical data, collected from past instances where service centers were closed, demonstrates a direct correlation between service center availability and the average duration of customer power outages. The OCC recommends including a provision in this Section requiring sufficient regional coverage, using the standard that an operational Regional Service Center be placed within a maximum 45-minute drive for 90% of all customer premises.

Sections 15, 17, and 18

The OCC offers strong support for the important consumer protection provisions related to the third-party electric supply market in proposed Sections 15, 17, and 18. First, Section 15 adds restitution as a possible PURA remedy for legal violations of all kinds, and is potent and necessary to consumer protection. OCC has repeatedly seen instances where restitution would be a highly appropriate remedy, including in the areas of customer overcharges by third-party suppliers and illegal electric submetering. Further, customers often expect that restitution of their losses is required by justice, but

are surprised to discover PURA's lack of legal authority to order restitution to date. OCC hopes that this hole in the statutory scheme will be fixed at long last and provide PURA with the ability to order restitution to consumers when appropriate.

Section 17 provides an essential change to the current statutory regime by further defining the legal relationship and responsibility between the third party agents and contractors of electric suppliers and the suppliers themselves. In the OCC's experience, some electric suppliers attempt to circumvent their responsibility for illegal sales tactics used by contractors to promote their products. The additional language would solidify the electric suppliers' liability for any unlawful acts of its contractors.

Section 18 would clarify that the law requires PURA to pre-approve all transfers and assignments of customers from one electric supplier to another. One of the OCC's many concerns for the protection of consumers in the electric supply market is the widespread confusion amongst consumers regarding the identity of their electricity supplier, and how or when any supplier-related changes came to pass. Historically, OCC has witnessed instances where suppliers have sought to transfer or assign their entire customer base to another supplier with little or no advance notice. The specific language in this section will address that issue and is a welcome addition.

Likewise, OCC suggests that the bill include a remedy for the ongoing problem associated with legacy variable rate contracts. In 2015, the General Assembly passed legislation prohibiting third-party suppliers from offering variable rate contracts on a prospective basis. Despite the illegalization of these contracts five years ago, OCC has determined that there are approximately 20,000 customers still on such contracts, often paying generation rates far in excess of the standard service rate. Accordingly, the

Committee should include language mandating a sunset provision for extant variable rate contracts by which the third-party supplier would be required to offer to place the customer on a normally available product or allow the customer to return to standard service.

Section 20

The OCC supports proposed Section 20 and welcomes the opportunity to collaborate with the Department of Energy and Environmental Protection and PURA to review the NSTAR merger agreement and its provisions in light of current circumstances.

Section 21

The OCC supports the proposal for an independent consumer advocate (the “Advocate”) from Section 21 in principle. However, OCC suggests that the parameters and the oversight of the position both need to be more closely defined, especially as the date for the first appointed Advocate is less than two months away. Primarily, OCC is seeking guidance to avoid conflicts of interest between the Advocate and the OCC, as well as on the necessary qualifications for the Advocate. The OCC would also propose that this section include language limiting the future employment of the Advocate by the EDCs, similar to those provided for the role of the Consumer Counsel in General Statutes § 16-2a(d).