



# STATE OF CONNECTICUT

## PUBLIC UTILITIES REGULATORY AUTHORITY

Marissa P. Gillett, Chairman  
John W. Betkoski III, Vice Chairman  
Michael A. Caron, Commissioner

Energy and Technology Committee

Public Hearing, September 8, 2020

Testimony submitted and presented by:

*Marissa P. Gillett, Chairman*

PURA Position:

*Support*

### **LCO No. 3920 – An Act Concerning Emergency Response by Electric Distribution Companies and Revising the Regulations of Other Public Utilities**

Thank you for the opportunity to present testimony regarding **An Act Concerning Emergency Response by Electric Distribution Companies and Revising the Regulations of Other Public Utilities, LCO No. 3920**. The Public Utilities Regulatory Authority welcomes the opportunity to offer the following *supportive testimony*.

---

The Public Utilities Regulatory Authority (PURA or the Authority) wholeheartedly supports the meaningful action signaled through the introduction of LCO No. 3920. We commend the leadership demonstrated by the Energy and Technology Committee (Committee) in introducing this legislation, which is designed to ensure that Connecticut's public utilities are held to higher standards to deliver not only a high quality product, but also to deliver products and services that more closely align with the best interests of the public and the State's public policy goals. PURA offers the following testimony in support of each section of LCO No. 3920, with comments for the Committee's consideration throughout.

#### **Section 1**

Section 1 directs PURA to develop a performance-based regulation framework by establishing standards and metrics for the performance of the electric distribution companies, determining the timeframe for the implementation of such standards and metrics, and identifying specific mechanisms to implement performance-based standards and metrics. It also allows PURA to establish a performance-based framework for the state's gas and water companies.

PURA welcomes any opportunity to better ensure the quality, adequacy, and cost effectiveness of the products and services provided by the public utilities. Performance-based regulation is a powerful tool for ensuring that the objectives of the public utilities are aligned with the public interest and the State's public policy objectives.

**10 Franklin Square, New Britain, CT 06051**

An Equal Opportunity Employer  
[www.ct.gov/pura](http://www.ct.gov/pura)

## Section 2

Section 2 allows PURA to use performance-based regulation when evaluating utility rate amendments and in determining the reasonableness of the allowed rate of return of the public utilities. As previously discussed, performance-based regulation is an important tool – one that would be significantly impaired without the inclusion of this section. Establishing a direct correlation between the allowed rate of return of the public utilities to performance metrics is particularly significant, as the allowed rate of return, and through it the allowed return on equity, is the primary financial mechanism PURA has at its disposal.

## Section 3

Section 3 requires PURA to consider performance-based regulation in all future rate cases. This practical change ensures that PURA can and will consider the application of performance-based regulation in future rate case proceedings, which serve as the primary vehicle by which PURA sets the distribution rates of the electric, gas and water companies over which it has authority.

## Section 4

Section 4 recognizes PURA's existing discretion to disallow the recovery *through rates* of any portion of incentive compensation made available to a company's executives, officers or employees. Enactment of this Section would empower PURA, if the Authority exercises its discretion to permit a portion of recovery in rates, to make recovery of such compensation contingent on the achievement of performance-based regulation targets and metrics. The new language also empowers PURA with the necessary discretion to ensure that Connecticut is not overcompensating the chief executive officers of the electric distribution companies compared to similarly situated companies serving ratepayers in neighboring states. Ensuring that the executive leadership teams of the electric utilities are collectively working towards standards and metrics that best meet the needs of the public and align with state policy goals will further ensure that those standards and metrics are realized.

## Section 5

Section 5 directs PURA to initiate a proceeding no later than November 1, 2020, for the purpose of examining and implementing important rate and tariff changes that could provide meaningful benefits to the ratepayers of Connecticut in the interim period prior to a subsequent full rate case proceeding. PURA envisions this Section as a natural extension of its current investigation regarding the recent administrative rate adjustments sought by the electric distribution companies in Docket Nos. [20-01-01](#) and [20-01-02](#). Moreover, the stage has been appropriately set for consideration of low-income and economic development rates as part of recent Solutions Days and listening sessions held by the Authority in its Equitable Modern Grid proceedings. (See, e.g. [Recordings](#) of the PURA Listening Sessions with [Solar Connecticut, Inc.](#) and [Connecticut Industrial Energy Consumers](#) on Commercial and Industrial Customer Energy Affordability Barriers, dated July 9, 2020 and August 4, 2020, respectively). With the backdrop of the ongoing

public health emergency, the macroeconomic conditions of the State further support the consideration of an interim rate decrease.

PURA is committed to bringing greater transparency to public utility ratemaking in Connecticut. We welcome the opportunity to work together towards these goals with this Committee, the Department of Energy and Environmental Protection, the Office of Consumer Counsel, the Office of the Attorney General, and all stakeholders and members of the public. The consideration of interim rate decreases, rates and tariffs will provide the Authority with needed time to prepare for the implementation of a performance-based regulatory structure as well as providing needed relief to all ratepayers during these unprecedented times.

## **Section 6**

The proposed changes outlined in Section 6 would bring Connecticut closer in alignment to the standard review length allowed across the country for state regulatory commissions to conduct rate case proceedings. As it stands today, PURA and other parties are permitted only five months to conduct a rate case review, with the opportunity for a single thirty-day extension. According to a recent analysis performed by Regulatory Research Associates, a division of S&P Global Market Intelligence, only 9% of states require their regulatory commissions to complete these complicated proceedings that have far-reaching consequences in less than seven months.

Significant process, including public hearings, is justifiably required for such important proceedings. Allowing PURA up to three hundred and fifty days in which to review rate cases will serve to improve and enhance the public engagement opportunities, and will allow PURA an appropriate length of time to conduct a thorough investigation of the proposed rates and underlying costs. As the state moves toward a performance-based regulatory framework, the additional time will be crucial for PURA and our stakeholders to review and consider appropriate metrics, standards, incentives and penalties on which to condition any future rate increase. Furthermore, even with the extension of up to three hundred and fifty days, Connecticut joins 66% of other states that permit between 7 to 12 months in which to conduct a rate case; 6% of states permit more than 12 months and 19% of states impose no time limit at all.

## **Sections 7 and 8**

Sections 7 and 8 also address the amount of time allotted to PURA for the review of other applications submitted to it by a public service company, including requests related to the issuance of certain financial instruments as well as with respect to applications for change of control and/or acquisitions. Similar to the testimony provided in support of Section 6, allowing PURA an appropriate amount of time in which to review these applications will serve to improve the public process associated with these proceedings. While PURA is cognizant of the need to avoid unnecessary or undue regulatory lag, the current abbreviated timelines ascribed to complicated transactions such as merger proceedings impedes the Authority's ability to balance effectively a private business interest with the best interest of the ratepayer. Moreover, because many complicated change of control proceedings involve multiple jurisdictions, and because Connecticut's statutory timelines are on the short end of the spectrum, Connecticut ratepayers

**10 Franklin Square, New Britain, CT 06051**

An Equal Opportunity Employer  
[www.ct.gov/pura](http://www.ct.gov/pura)

are at a disadvantage to their peers in other jurisdictions whom benefit from the imposition of regulatory protections that result from settlements and adjudicatory proceedings that can take place when appropriate review timelines are in place. Further, PURA commits in all of its proceedings to issuance of a timely resolution of all matters; if reviews can be completed to the Authority's satisfaction in less time than authorized by statute, nothing prevents the Authority from releasing its decision prior to expiration of the statutory deadlines.

## **Section 9**

Both Connecticut electric distribution companies are permitted by Section § 16-243p of the Connecticut General Statutes (Conn. Gen. Stat.) to recover costs and investments that have been prudently incurred, along with specified lost revenues. Requiring ratepayers to also compensate the companies for the costs expended by the company in pursuit of such cost recovery is an unjustifiable burden. Section 9 empowers PURA to disallow cost recovery for expenses related to an electric utility's attendance or participation in a ratemaking hearing before the Authority.

## **Section 10**

Section 10 increases the percentage amount that PURA can fine the electric distribution and gas companies for underperformance or noncompliance with respect to an emergency, as defined in Conn. Gen. Stat. § 16-32e. Importantly, this percentage increase does not change the legal process by which PURA would assess the fines – a process that guarantees ample due process for the electric distribution and gas companies to contest such fines. The existing statute also prescribes certain factors that the Authority must consider in determining the amount of any penalty, providing further regulatory certainty for the utilities.

While the changes contemplated by Section 15, as discussed below, are crucial enhancements to the punitive authority of PURA, the modifications to this Section are equally important because civil penalties levied in connection to a utility's emergency response efforts can be assessed in the form of credits to the accounts of ratepayers.

## **Sections 11 and 12**

Sections 11 and 12 direct the electric distribution companies to provide compensation to residential customers for outages that last more than seventy-two consecutive hours, as well as specific compensation for spoiled food and expired medication. Of critical importance is that the compensation provided to customers subject to these Sections is not recoverable in rates.

The impact on customers of electricity outages is undeniable. A 2004 peer-reviewed study by the Lawrence Berkeley National Laboratory concluded that sustained power interruptions cost the United States upwards of \$26 billion per year (2002-\$) – a cost that has likely grown exponentially in the intervening years given the increasing reliance of society on electricity-driven functions. Further, a 2013 study conducted by the Maryland Public Service Commission and the National Association of Regulatory Utility Commissioners following the region's 2012 derecho storm demonstrated that daily outage costs for residential customers could range from a low of

\$33 to a high of \$363 per day.<sup>1</sup> Providing compensation to customers for this lost value – particularly our most vulnerable customers – will help mitigate this impact. Such relief is imperative, particularly in situations where an emergency weather event coincides with the beginning of a month – like with Tropical Storm Isaias – given that our most vulnerable residents are procuring perishable goods at that time after receiving the monthly installment of the Supplemental Nutrition Assistance Program benefits.

PURA stands ready to review and approve a proposed plan for each electric distribution company's administration and implementation of these Sections. Several models exist already, including the administrative process used by Con Edison in New York that permits customers who lost power for more than forty-eight consecutive hours to complete a claims form to cover spoiled food, medication or perishable commercial merchandise.<sup>2</sup>

### Section 13

Section 13 outlines a logical next step following completion of the PURA study submitted to this Committee on February 3, 2020, pursuant to Special Act 19-15, An Act Requiring the Public Utilities Regulatory Authority to Study Performance Standards and Minimum Staffing and Equipment Levels For Electric Distribution Companies. Among other findings, PURA concluded that a heavy reliance on regional affiliates, local contractors and mutual aid may place a constraint on the available line resources for an electric distribution company during an extreme regional outage event, thus impeding restoration activities and extending restoration times.<sup>3</sup> At the same time, the PURA study concluded that the comparative costs of maintaining incremental internal staff should not be discounted, and noted the necessity of further cost-benefit analysis.

As drafted, Section 13 requires the electric distribution companies to provide important benchmarking information regarding their response to the last five storm events classified as a level three, four or five, as well as a cost-benefit analysis as to whether its response efforts would have improved under different staffing scenarios. The Section requires PURA to use this information in setting minimum staffing levels for the electric distribution companies' outage planning and restoration personnel divisions. This Section will ensure that PURA considers both the effectiveness and cost-effectiveness of minimum staffing levels to ensure that the electric distribution companies prepare for and respond to emergencies in a manner commensurate with ratepayer expectations. PURA is further empowered by this Section to hold the companies accountable through the establishment of related standards and associated enforcement authority.

---

<sup>1</sup> Factors that contribute to the variation in range include time of year, weekday versus weekend day, methodologies, and customer perceptions. See NARUC and MDPSC Cost-Benefit Analysis of Various Electric Reliability Improvement Projects from the End Users' Perspective (November 15, 2013), p. 86, available at: <https://www.psc.state.md.us/search-results/?q=9298&x.x=22&x.y=21&search=all&search=case> (Item 92).

<sup>2</sup> <https://www.coned.com/en/services-and-outages/claim-form>

<sup>3</sup> Report and Study of the Public Utilities Regulatory Authority (Feb. 3, 2020), p. 2, available at: [http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/7ea5b8891dad75e5852585030067d4de/\\$FILE/df190637\\_clean.pdf](http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/7ea5b8891dad75e5852585030067d4de/$FILE/df190637_clean.pdf)

## **Section 14**

Section 14 provides a potential remedy that addresses a plethora of complaints fielded by PURA in the immediate aftermath of Tropical Storm Isaias – written and oral comments attesting to the frustration of elected officials, town leaders and emergency personnel regarding the real or perceived disorganization of certain utility response and restoration functions. While the investigation of the electric distribution companies’ preparation for and response to Tropical Storm Isaias remains the subject of an ongoing investigation by PURA, the Authority can confirm that hundreds of complaints of this nature have been submitted for its consideration and are accessible in its public portal; see [Docket No. 20-08-03](#) correspondence. The language as drafted empowers PURA with the tools to ensure that the electric distribution companies are in compliance with this Section, which the Authority commits to exercising in a timely fashion should this Section be adopted.

## **Section 15**

Section 15 empowers PURA to provide financial restitution to customers in the event that PURA determines a regulated entity has failed to obey or comply with a statute, regulation or order. A recent Connecticut Superior Court decision held that PURA does not currently possess such statutory authority required to provide financial restitution to utility customers; thus, the enactment of this legislation would provide immediate, measurable relief to ratepayers. This proposal would give PURA the option to provide restitution to customers, in addition to civil penalties currently provided for in Conn. Gen. Stat. § 16-41, and would allow PURA to allocate a portion of any civil penalty to a non-profit agency engaged in energy assistance programs.

Based on PURA’s experience with assessing civil penalties under Conn. Gen. Stat. § 16-41, customers would benefit from an amendment to this statutory section so that PURA can authorize a remedy of restitution to cover financial losses that customers have suffered.

## **Section 16**

PURA stands ready to work with the Department of Energy and Environmental Protection (DEEP), ISO New England, this Committee, and all relevant stakeholders, to further the important discussions before this Committee and any additional insights and analysis that may come out of the Integrated Resource Plan regarding the alignment of the wholesale market’s design with Connecticut’s public policy goals.

## Section 17

Section 17 eliminates the early termination fee for residential customers subscribed to a third-party supplier. PURA's customer service intakes and investigations have shown that the early termination fee prevents customers from switching from an overpriced contract with a supplier to either another supplier offering service at a lower rate or to standard service. By eliminating the early termination fee, customers can navigate more freely through the market and recognize possible benefits from competitive supply being offered at lower rates.

Section 17 also revises the definition of a third-party agent of an electric supplier to encompass those that are compensated or contracted by an agent or third-party marketer on behalf of the supplier. This modification is imperative to ensure full accountability of all parties financially compensated by a supplier to engage consumers on their behalf.

## Section 18

Section 18 would amend Conn. Gen. Stat. § 16-245 to require electric suppliers to request approval to assign customers to another electric supplier before any customer re-assignments occur, which would allow PURA to ensure that customers are not assigned to suppliers subject to large and/or multiple investigations, or are not assigned as a means of avoiding penalties.

At present, Conn. Gen. Stat. § 16-245 is unclear regarding the reporting requirements when an electric supplier assigns all or a portion of its customers to another supplier (Conn. Gen. Stat. § 16-245(i) requires notice for changes in corporate structure and scope of service; Conn. Gen. Stat. § 16-245(j) requires approval for transfers of licenses). As a result, PURA has encountered instances of suppliers assigning all of their customers but maintaining their licenses to avoid the approval requirements of Conn. Gen. Stat. § 16-245(j).

## Section 19

Section 19 would expand the scope of eligibility for the State's microgrid program to include resilience measures and to focus on vulnerable communities. PURA applauds these changes. Distributed energy resources, through microgrids and other applications, will play an increasingly important role in delivering resilience benefits to all customers, particularly critical facilities and those customers on the grid edge. Further, the outsized impact of emergency events on vulnerable communities cannot be overstated. PURA strongly supports focusing the efforts and funds of the State's microgrid program, and all distributed energy resources programs, on providing valuable resilience benefits to the customers in vulnerable communities.

## Section 20

PURA stands ready to work with this Committee, DEEP, the Office of Consumer Counsel, and any other agencies and stakeholders to review the provisions of the Northeast Utilities and NSTAR merger settlement agreement as directed by this Section. PURA looks forward to working with



the Committee to further refine the scope of this review to ensure successful collaboration and outcomes that align with the Committee's objectives.

## **Section 21**

As PURA understands it, Section 21 would establish an Independent Consumer Advocate on the board of directors of the electric distribution companies. PURA strongly supports greater representation of consumer interests within the electric distribution companies to better align the objectives of the distribution companies with the public interest.

The Committee may wish to consider clarifying the role of the Independent Consumer Advocate established in this Section vis-à-vis the role of the existing Office of Consumer Counsel (OCC). The OCC is statutorily mandated (See, Conn. Gen. Stat. § 16-2a) to advocate on behalf of and to represent utility customers in proceedings before PURA. Indeed, it is the statutory role of the OCC to serve as the voice of the public in PURA's regulatory processes. The Office of the Attorney General (OAG) also frequently intervenes in PURA proceedings to act in a similar capacity. Clearly delineating between the roles of the OCC, the OAG, and the new Independent Consumer Advocate will ensure that consumers have the strongest possible voice both within PURA proceedings and as part of the internal decision-making processes of the electric distribution companies.

## **Section 22**

PURA recognizes the vital importance of energy efficiency in meeting the State's climate and energy goals as both a clean and cost-effective energy resource. As the Committee knows, however, PURA does not exercise jurisdiction with respect to the State's energy efficiency programs. As such, PURA provides no additional commentary on this Section.

*Thank you for the opportunity to present testimony on this proposal. If you should require any additional information, please contact Taren O'Connor at 860-827-2689 or [taren.oconnor@ct.gov](mailto:taren.oconnor@ct.gov).*