



**Testimony**  
**Elizabeth Gara**  
**Connecticut Water Works Association**  
**Before the Energy & Technology Committee**  
**September 8, 2020**

**RE: LCO 3920, AN ACT CONCERNING THE STORM RESPONSE OF ELECTRIC DISTRIBUTION COMPANIES AND THE REGULATION OF OTHER UTILITIES**

The Connecticut Water Works Association, a trade association representing municipal, private, and regional water utilities throughout Connecticut, appreciates the opportunity to comment on the above-referenced draft bill.

Although the bill is primarily focused on addressing issues relating to Electric Distribution Companies, there are several provisions in the bill which negatively impact or establish precedents for regulating other public service companies, including private water utilities. Private water utilities were well-positioned to provide ongoing water service to customers during Tropical Storm Isaias without interruption. Folding private water utilities into a bill aimed at addressing electric utility storm response and preparedness unnecessarily imposes regulatory burdens and costs on private water utilities, undermining their ability to provide customers with safe, high quality drinking water at a reasonable cost.

Moreover, these additional regulatory costs and burdens will create rate disparities between private water customers and municipal and regional water utility customers. ***Accordingly, CWNA respectfully requests that water utilities be exempt from the bill's provisions.***

The following comments outline the provisions in the bill which are problematic for water utilities:

**PERFORMANCE-BASED RATEMAKING**

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Section 1 of the bill requires the Public Utilities Regulatory Authority (PURA) to initiate a proceeding to investigate, develop and adopt a framework for implementing performance-based regulation of electric distribution companies, including establishing standards and metrics.

Line 37 of the bill authorizes PURA to extend performance-based ratemaking to water utilities based on the same provisions and considerations applicable to electric utilities. While there may be some benefit to instituting a performance-based ratemaking policy for water utilities, extending the standards used for electric utilities to water utilities may be problematic. Standards applicable to water utilities must be appropriately aligned to support critical goals, including compliance with state and federal laws to protect water quality, promote water conservation and efficiency, support continued infrastructure investment and asset



management, and strengthen the resiliency of system components to ensure that water utilities may continue to provide safe, high quality drinking water to meet the state's public health, safety and economic development needs.

Given the complexity of moving from the current ratemaking structure to a performance-based ratemaking structure for water utilities, CWNA believes legislation authorizing PURA to apply performance-based ratemaking to water utilities is premature. PURA recently initiated a docket to undertake a review of issues relating to electric utilities, including performance-based ratemaking, with public hearings scheduled for October and a final decision in April 2021.

This docket will enable regulators, with input from the regulated entities and the public, to determine whether performance-based ratemaking for electric utilities would benefit customers and how it would impact rates. Prior to adopting legislation granting PURA broad authority to extend performance-based ratemaking to water utilities, lawmakers and regulators must determine what standards and metrics would be appropriate for water utilities and how this would impact customer rates and service as well as compliance with a myriad of state and federal laws and regulations.

#### **PURA DOCKET ON VARIOUS RATE STRUCTURES**

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Section 5 of the bill requires PURA to initiate a proceeding to consider the implementation of an interim rate decrease, low-income rates, and economic development rates for nonresidential customers. Although this section appears to be aimed at electric distribution companies, as drafted, the provisions may also apply to private water utilities and other public service companies.

However, under Section 16-20 of the Connecticut General Statutes, private water company customers may petition PURA to initiate a proceeding to determine whether the company unreasonably fails or refuses to furnish adequate service at reasonable rates. Accordingly, Section 5 should expressly exclude private water utilities from the scope of this provision.

#### **RATEMAKING TIMELINE**

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Section 6 of the bill significantly extends PURA's timeline for rendering a final decision in a rate case from 150 with the possibility of a 30-day extension to 350 days. While we understand that PURA may need some additional time to finalize decisions in complex rate cases, this provision extends the timeline for public service companies across the board, without regard for the size of the utility or the complexity of the rate case.

Unlike electric utilities, there are several smaller water utilities that would be faced with additional regulatory costs if rates cases are extended out to almost a year, including:

- Hazardville Water Company serves approximately 7,300 customers
- Torrington Water Company serves approximately 10,000 customers in five towns
- Valley Water serves approximately 6,700 customers in three towns



According to a 2013 report<sup>1</sup> by the National Association of Water Companies, “The cost of preparing detailed rate filings is not necessarily proportional to the dollar values that are at stake in these proceedings. The smaller the company, the larger the cost of a traditional rate proceeding is relative to the amount of revenue at issue. This can absorb too many resources in the regulatory process, so the approaches need to be different for large and small water utilities.”

Moreover, water utilities are more highly capital intensive than other utility sectors. Therefore, extending the deadline for rendering a decision in a rate case with respect to a water utility, creates significant uncertainty which may drive up capital costs, increasing customer rates.

If the timeframes are extended in this manner, water utilities should be authorized to recover any deficient revenues during the period that the utility has had to wait for a final decision on its rate case. For example, New Hampshire statute RSA 378.27 allows a utility to petition for the expeditious implementation of reasonable temporary rates pending the Commission’s final decision on the Company’s request for permanent rates. The utility is then permitted to recover an adjustment (RSA 378.29) representing the difference between the rates finally determined in the rate proceeding and the previously implemented temporary rates in the form of a temporary increase over and above the permanent rates.

#### **APPROVAL OF FINANCING TIMELINE**

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Section 7 extends PURA’s timeline for approving or disapproving the issuance of any notes, bonds or other evidences of indebtedness or securities of any nature and other financing mechanisms from 30 to 90 days. This is very problematic because it will hinder opportunities for utilities to lock in favorable interest rates or close on loans quickly. As a highly capital-intensive industry, such financing tools are necessary to support ongoing water infrastructure investments at favorable rates, which benefits customers.

#### **APPROVAL OF MERGERS & ACQUISITIONS TIMELINE**

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Section 8 of the bill extends PURA’s deadline for approving mergers and acquisitions from 120 – 350 days. CWWA is concerned that 350 days would become the default timeframe for approving mergers and acquisitions, which is very problematic. In today’s economy, financial markets are active, and business moves swiftly. PURA must be positioned to approve mergers and acquisitions within the current timeframe to reflect this real-world dynamic.

In addition, this provision would delay the approval of the acquisition of small community water systems. Small community water systems include homeowner’s associations, condo associations, senior housing complexes, mobile homes and other developments where providing water is not the primary function but incidental activities of the owner(s). Unfortunately, as outlined in the 2014 Townsely Consulting Group Report commissioned by

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<sup>1</sup> Alternative Regulation and Ratemaking Approaches for Water Companies: Supporting the Capital Investment Needs of 21st Century



PURA, small community water systems often lack the financial, technical, and managerial capacity to adequately maintain systems, make necessary system improvements and comply with rigorous state and federal public health and environmental laws.

Recognizing these concerns, PURA and DPH strongly support efforts of larger private water utilities to acquire the systems and make the necessary infrastructure investments to assure reliable water service. The Townsley report noted, however, that the process for acquisition of water systems is inordinately complex, delaying efforts to resolve issues that may compromise the safety quality of drinking water for customers. Extending the timeframe for approving such acquisitions would exacerbate this concern, further delaying efforts to resolve issues to meet customers' public health and safety needs.

#### **INDEPENDENT CONSUMER ADVOCATE**

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Section 21 of the bill establishes an Independent Consumer Advocate to sit on the board of directors of the electric distribution companies. Although this provision is not applicable to private water utilities, it is important to note that Section 16-262a of the Connecticut General Statutes requires private water companies to establish and maintain a customer advisory council comprised of residents in the water company's service area. This has proven a valuable forum for water companies to obtain input from customers on a wide range of issues.

#### **EXECUTIVE/OFFICER COMPENSATION PACKAGES – RATE RECOVERY**

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Section 4 of the bill prohibits the recovery in rates of executive/officer compensation levels. Given the levels of compensation for water utility officers and executives relative to those reported for the electric sector, we urge that any provisions of this section explicitly state that they do not apply to water companies. Currently, there is an annual compensation report of officers and directors filed pursuant to Docket 08-01-16. There is also an opportunity for scrutiny of such compensation in rate cases and water companies have provided studies that consider salaries of peers and comparable size companies. Therefore, additional statutory criteria do not seem necessary or appropriate.

#### **RECOVERY IN RATES FOR COSTS OF PROCEEDINGS**

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Section 9 of the bill sets a difficult precedent by prohibiting an electric distribution company from recovering costs associated with attendance or participation in ratemaking proceedings. As indicated previously, the cost of preparing detailed rate filings is significant compared to the amount of revenue that may be generated by a rate increase. Water companies are facing significant costs to replace aging infrastructure at a time when water consumption and revenues are declining. We are concerned that prohibiting water companies from recovering the costs of ratemaking proceedings in rates will unnecessarily deter water companies from seeking rate increases necessary to support infrastructure investment. Such delays will also have the effect of companies filing for larger increases to cover investments made over a longer



period of time. This will have a greater impact on customers than more timely, smaller rate requests.

## **LEGISLATIVE OVERSIGHT OF MERGERS**

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Although Section 20, as drafted, only applies to the NSTAR/NU merger settlement agreement, CWWA is very concerned that this provision establishes a dangerous precedent relative to merger agreements. Granting regulators and lawmakers broad authority to review and make recommendations regarding a merger settlement agreement may have significant legal implications, including issues relating to federal securities law.

## **RESTITUTION**

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Section 15 of the bill gives PURA broad latitude to order public service companies to provide restitution to customers if PURA finds that they failed to obey or comply with public service company statutes or a PURA order. Restitution may be ordered in addition to civil penalties currently authorized under 16-41(a) of the general statutes, capped at \$40,000.

Under Section 16-41(c) and (d) of the general statutes, public service companies must be provided with notice, an opportunity for hearing, and a right of appeal relative to the imposition of civil penalties. CWWA requests that these provisions be amended to clarify that parties ordered to make restitution pursuant to Section 16-41(a) are also provided with notice, an opportunity for hearing, and a right of appeal, consistent with existing provisions governing civil penalties.

## **CONCLUSION**

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CWWA is committed to working with lawmakers to address the issues raised in our testimony. However, as stated previously, CWWA believes that the bill should exclude private water utilities from its scope. Given the complex nature of ratemaking, mergers, and acquisitions and other regulatory processes and the potential impact on private water utilities, folding private water utilities into a bill intended to address electric utility issues will result in unintended consequences and unnecessary costs for private water customers.

Moreover, we are concerned that it is difficult to adequately vet these complex issues in special session, particularly given the limitations on public discourse due to the COVID-19 pandemic. The committee process during a regular legislative session ensures that issues affecting public water supplies are appropriately considered and deliberated by various committees, including the Public Health and Environment Committees as well as the Energy & Technology Committee.

If the legislature intends to take up this bill in special session, CWWA respectfully requests the opportunity to provide additional input on any provisions or revisions affecting water utilities and public water supplies.

Thank you.