Re: HB-5598

THE ENERGY & TECHNOLOGY COMMITTEE

Senate Bill 1328: AAC THE DEPARTMENT OF PUBLIC UTILITY CONTROL

February 28, 2008

The DPUC supports the passage of this proposal. This proposal would make various changes to the Title 16 that would improve the agency's ability to perform its duties and advance the interests of the state's utility customers. Specifically this proposal:

1) Requires the DPUC to adopt a **code of conduct** to govern the manner in which transactions are permitted to occur between gas companies (gas distribution companies) and their affiliates.

2) Modifies the provisions of the DPUC's **purchased gas adjustment clause** (PGA) statute by: requiring the DPUC to hold a public hearing no less than annually on the PGA in lieu of the current 6-month public hearing requirement, and specifying that the DPUC is required to hold a public hearing on the PGA at anytime if the OCC files an application requesting such a hearing.

3) Amends the current provisions of 16-19(a) that describe the timing and information to be provided by utility companies when they provide **notice to their customers that they have filed a rate application** with the DPUC.

4) Clarifies that the DPUC's public interest standard of review under §16-22 applies in the case of transactions involving the **sale, merger, acquisition, or change of control of holding company** that involves a public service company in the state.

5) Specifies that the DPUC may require rate reductions or the sharing of merger-related savings with utility ratepayers as a condition for granting **approval of a proposed merger application** and adds as a distinct element for the DPUC's consideration in approving any application whether such a proposed utility merger would be beneficial to the state's ratepayers or citizens overall.

6) Allows the DPUC to retain **consultants to assist agency staff in proceedings before various federal agencies** by providing expertise in areas where staff lacks expertise or where the consultants are needed to supplement staff expertise

7) Clarifies current law and current practices by adding references to Department of Banking at appropriate points in the statute that states the basis upon which **interest on utility customer security deposits** is to be calculated

8) Extends the time period for DPUC to make a preliminary finding on the validity of an **employee's complaint that employer has retaliated against employee for reporting an employer's misconduct** from 30 to 90 business days

9) Expands the provisions of the **winter shutoff moratorium** (for hardship electric customers) that currently prohibits utilities from terminating or refusing to reinstate electric customers- to also prohibit utilities from denying hardship customers new electric service

10) Establishes a new requirement that **electric brokers** doing business in the state register with the DPUC in the same manner that electric aggregators presently register with the agency

11) Amend §16-247p to allow the DPUC to establish wholesale **telecommunication performance standards** through administrative rulings rather than through the adoption of regulations.

Section by Section Commentary

Sections 1 & 2: Gas Affiliates Code of Conduct

These sections require the DPUC to adopt a code of conduct to govern the manner in which transactions are permitted to occur between gas companies (local gas distribution companies) and their affiliates. Specifically, these sections:

- Establish a new statutory term "affiliate" that is defined to include the range of entities that should be covered by the proposed code of conduct, and specify the meaning of other key terms that are used in this proposal.

- Outline the minimum standards for the goals and objectives that are to be addressed in the code of conduct (ex. procedures to safeguard against natural gas company ratepayers subsidizing the operations of their affiliates).

- Provide the DPUC with the authority to investigate a company's compliance with the code of conduct, and grant the DPUC the ability to enforce the code by issuing cease and desist orders/ levying civil penalties against entities subject to the code.

- Specify that the code of conduct shall not prohibit communications necessary to restore service or to prevent or respond to emergency conditions.

- Require the DPUC to promulgate regulations by 7/1/09 to establish the specific code of conduct, accounting and reporting requirements, and procedures for gas company and affiliate compliance. These new regulations would set specific standards for the procedures, purchases or sales of goods or services, system of records, accounting, and reporting requirements for these types of transactions.

The Department has collaborated with the LDCs on this language which this Committee has seen now three times and has favorably voted out of Committee each time. We hope the Committee will continue to lend its support to this proposal.

Enhancing Regulatory Oversight

Currently, there is no state statute or regulation that sanctions the development of a common code of conduct that would set the standard for all natural gas company transactions with their affiliates. As a consequence over the years, the DPUC has addressed these issues in a range of different administrative proceedings (CT has three regulated gas companies). The resulting DPUC decisions have established a broad array of guidelines that have been largely constructed to correspond to the specific facts and situations that we asked to address. Not surprisingly, our standards and guidance to the natural gas companies has varied from docket to docket. The DPUC believes that the current fragmented process and structure inadequately protects natural gas ratepayer's interests because comprehensive rules are not in place to ensure that transactions between natural gas companies and affiliates are conducted in an appropriate manner. Following the passage of this proposal, the DPUC will adopt detailed regulations that will establish a generic set of rules to govern all transactions between natural gas companies and their affiliates. The adoption of these regulations will provide the DPUC with an enhanced legal basis to prohibit or limit preferential treatment by a regulated natural gas company of its affiliates.

Safeguarding Gas Ratepayer Interests

Currently, all three of natural gas companies operating in the state are owned by parent companies that have multiple utility and non-utility subsidiaries. Therefore, it can be anticipated that from time to time, the interests of the parent companies, affiliates, regulated gas companies, and ratepayers will conflict with each other. Not surprisingly, these companies conduct business transactions with their affiliates on a daily basis. It is therefore critically important that strong rules and standards be put in place to govern the actions of gas company personnel- in light of the absence of arm's-length bargaining with their affiliates.

CT's natural gas ratepayers have an important interest in ensuring that transactions between our states regulated gas companies and their affiliates are conducted in an appropriate manner. The adoption of a common code of conduct will serve to safeguard their interests by putting in place rules and standards to ensure that: 1) gas company ratepayers are not subsidizing affiliate operations; 2) fair and equitable rules govern the purchase, sale, lease, and transfer of assets involving a gas company and its affiliates; 3) gas companies are limited or prohibited from granting to their affiliates inappropriate/preferential access to certain types of customer or commercially sensitive information; and 4) gas companies do not engage in transactions that have an improper adverse impact on their costs, revenues, or the quality of service.

Section 3: Purchase Gas Adjustment Clause

This section modifies the provisions of the DPUC's purchased gas adjustment clause (PGA) statute by: 1) requiring the DPUC to hold a public hearing no less than annually on the PGA in lieu of the current 6-month public hearing requirement, and 2) specifying that the DPUC is required to hold a public hearing on the PGA at anytime if the Office of Consumer Counsel files an application requesting such a hearing.

Background

In general, natural gas customers pay for their fuel through two primary components on their utility bills: a base rate and the purchase gas adjustment clause (PGA). The base rate includes an estimate of fuel prices for the 12 month period following a general rate decision. The PGA adjusts the fuel portion of base rates to reflect the actual fuel costs incurred by the local distribution company (LDC). The PGA can appear on customer bills as a credit if fuel prices have decreased or charge if the fuel costs have increased since the setting of base rates. Every month, the state's three gas distribution companies (Connecticut Natural Gas, Southern Connecticut Gas and Yankee Gas) file with DPUC their proposed PGA for the following month. The DPUC reviews these proposed monthly PGA figures and, if necessary or requested to do so by the Office of Consumer Counsel (OCC), holds an administrative proceeding on these filings. Following DPUC approval, the LDCs charge natural gas customer at the newly adjusted monthly PGA level.

Semi-Annual PGA Investigations

Currently in each calendar year, the DPUC is required to conduct two investigations to determine the accuracy of the previous six-month PGA collection level. The first proceeding covers the period September 1 through the end of February. The second proceeding includes the period March 1 through August 31. The second proceeding also includes a further true-up of actual fuel costs and recovery based on the difference between the PGA approved by the Department and the actual amount of money collected through the PGA. This PGA true-up is called the deferred gas cost factor. Once set, the deferred gas cost factor is recovered over the following 11 months. The DPUC reviews and if necessary makes adjustments to the deferred gas cost factor after it considers the experience of the previous 12 months of PGA recovery.

Basis for Proposed Change

The existing provisions for the PGA require semi-annual proceedings. These semi-annual periods covered do not reflect actual natural gas industry practices. Rather, natural gas industry fuel planning is annual, normally November 1 through October 31. Fuel used in the winter is more expensive, and includes fuel "saved up" from the previous summer. Summer fuel is less expensive and is "put aside" for use the following winter. Therefore, no six-month period can accurately reconcile the planning and purchase of fuel and the period in which it is consumed or recovered. Only an annual PGA review can accurately match the gas industry operating practices and the manner in which fuel is bought, consumed, and costs recovered from ratepayers. Under the current six-month investigation parts of the review are redundant because much of the earlier period's information must be reviewed again. As a result, DPUC staff, LDCs, and other participants must dedicate significant resources twice a year to review fuel costs and the recovery of these costs. The DPUC believes that by allowing an annual review great administrative efficiency can be attained while improving accuracy and minimizing the mismatch of data review and cost recovery. It is

also important to note, that by issuing a formal decision in the first semi-annual investigation, the DPUC is prevented from revisiting approved PGAs from an earlier period even if a review of the full annual gas industry operating cycle would suggest an adjustment should have been made.
As a result of the proposed change, the DPUC recognizes that circumstances will arise that will justify a hearing on the PGA prior to the annual review proceeding. To address this issue, this proposal modifies the current statute to specify that the DPUC is required to hold a public hearing on the PGA at anytime if the Office of Consumer Counsel files an application requesting that we do so. Through these various proposed changes, the DPUC seeks to modify the existing statute in the interest of improving the annual PGA process for the DPUC, the gas companies, and the state's natural gas customers.

Section 4: Customer Notice of Rate Case

This section would modify the current provisions of 16-19(a) that describe the timing and information to be provided by utility companies when they provide notice to their customers that they have filed an application with the DPUC to amend their rates. Specifically, this section requires that customer notices must: 1) be mailed to customers no sooner than four weeks prior to the start of public hearing(s), 2) indicate the date(s), time(s), and location(s) of public hearings scheduled by the DPUC, and 3) include a statement that customers can provide comments regarding the proposed rate request by writing to the DPUC or in person at one of the DPUC's public hearing(s).

Timing of Customer Notices

Under current law, regulated utility companies are required to provide written notice to their customers of proposed rate increases by mail at least one week prior to the date that the DPUC holds its public hearings. However, the current statute does not in any manner prescribe how early in time the written notices can be provided to customers. Based upon our experience with several recent rate cases, the DPUC believes that the absence of a statutory limitation on how early notices are mailed to utility customers diminishes the statute's important policy objective of providing appropriate and timely notice to utility customers about upcoming public hearings. For example, in three recent significant rate cases (CL&P 03-07-02; Aquarion Water 04-02-16; Yankee Gas 04-06-01) there was a gap of at least two months between the company's submission of its rate application and the start of the DPUC's public hearings. With this proposed change, the DPUC seeks to address the shortcomings in the current open-ended timing structure which frequently can result in customer notices being issued so far in advance of the public hearings that attendance and customer participation is not appropriately encouraged.

Additional Information To Be Included in Customer Notices

Under current law, there is no requirement that customer notices include important information like the date, time, and location of scheduled public hearings. This additional information can be provided to customers because the public hearing schedule is established in advance of the actual public hearings. This proposed change will assist customers be requiring that this important information be included on customer notices. As is currently the case, customers will also be able to contact the DPUC directly if they need more info about the public hearings.

Under current law, the wording of customer notices state that customers can obtain additional information about utility rate filings and the public hearing schedule by calling the DPUC. As a result of this written description, customers frequently call our Consumer Assistance Unit hoping to have their comments on company's rate filing made part of the DPUC's docket record. These customers are then frustrated to learn that legally in order for their comments to be included in the DPUC's docket record- their comments need to be filed in writing or made in person at a hearing of the particular rate filing that they have a concern about. This proposed change will assist customers by requiring customer notices to clearly state the manner in which input can be appropriately provided to the DPUC for those customers who desire to participate in the DPUC's ratemaking process.

Sections 5 & 6: Review of Utility Merger Review

These sections would: 1) clarify that the DPUC's public interest standard of review under §16-22 applies in the case of transactions involving the sale, merger, acquisition, or change of control of holding company that involves a public service company in the state, 2) specify that the DPUC may require rate reductions or the sharing of merger-related savings with utility ratepayers as a condition for granting approval of a proposed merger application, and 2) add as a distinct element for the DPUC's consideration in approving any application whether such a proposed utility merger would be beneficial to the state's ratepayers or citizens overall.

Background

Repeal of the Public Utilities Holding Company Act of 1935 (§§1261-1277); Merger Review Reform (§1289)

In 2005, the Public Utility Holding Company Act (PUHCA) of 1935 was repealed and replaced by the PUCHA of 2005 and as a result certain federal regulatory oversight duties have been transferred from the Securities and Exchange Commission (SEC) to the Federal Energy Regulatory Commission (FERC). The Federal Energy Act of 2005 (Act) provides the FERC with the authority to access the books and records of public utility holding companies and their affiliates and subsidiaries. The Act clarifies the FERC's ability to inquire into the reasonableness of inter-affiliate transactions so as to avoid cross-subsidies, (the Act also grants the State commissions the authority to access books and records, although State authority in this regard is contingent upon the State commission identifying materials in reasonable detail during a proceeding). Furthermore, the Act amends and clarifies FERC's merger review authority under §203(a) of the Federal Power Act, (FPA). §1289 of the Act requires the FERC to approve mergers if the merger is "consistent with the public interest, and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless FERC determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest." § 1289 (a)(4).

PUCHA was enacted to address a host of corporate abuses made possible by the rise of unregulated public utility holding companies, including, but not limited to: pyramiding, unfair affiliate transactions, and inter-affiliate cost misallocations. With the repeal of PUHCA, some of the broad regulatory controls exercised by the SEC will no longer exist. The PUHCA of 1935 limitations such as the requirement that merged electric utilities be geographically contiguous, and that public utility holding companies engage only in utility-related businesses, (unless explicitly permitted by the SEC), intentionally have been lifted pursuant to the theory that the relaxation of regulation will encourage greater levels of investment in public utilities. Regardless of whether this new public policy goal will be achieved, the risk still exists that a holding company will use the regulated utility as a source of revenue to subsidize its unregulated, diversified business ventures.

Basis for Proposed Change

The DPUC currently possesses authority to review utility mergers and acquisitions, and it has employed various "ring fencing" type conditions upon the approval of the holding company application filed pursuant to §16-47. The imposition of conditions may be an adequate substitute for the type of oversight previously exercised by the SEC under the PUHCA of 1935. However, if the DPUC wishes to have the discretion to impose broad conditions on a merger/acquisition application, §16-47 should be modified to ensure that its grant of power to the DPUC is broad enough to support a heavily-conditioned approval in the event of a challenge.

Currently, §16-47 does not contain a legal standard, per se, governing the DPUC's review of mergers and acquisitions. Subsection (d) of §16-47 does list the factors that the DPUC must consider in its review. These are the familiar, general criteria relating to the financial, technological and managerial suitability of the applicant as well the applicant's ability to provide safe, adequate and reliable service. §16-11 adds the considerations that the DPUC exercise of its power under §16-47 to "increase the powers of the Department of Public Utility Control," and, to "promote local control of the public service companies of this state." (the promotion of local control in the context by an out-of-state holding company's application for acquisition of a CT utility could run afoul of the U.S. Constitution's Commerce Clause). Of course, since Title 16, taken in its entirety, is remedial in nature, the general standard of acting in the public interest can be implied. However, if the DPUC is desirous of filling the gap left by the repeal of the PUHCA of 1935, it is necessary that a clear & unambiguous standard be expressed in Title 16.

In light of these recent significant changes at the federal level, the DPUC believes that it is appropriate to consider adding language to Title 16 that sets a standard of review that a proposed merger or acquisition should act to serve the public interest, or, stated in a more positive manner, the proposed merger or acquisition should benefit the ratepayers. Since currently, §16-47 is susceptible to a neutral interpretation or "no harm" standard. It could be argued that §16-47 is designed to operate in such a manner that assuming the acquiring company passes the financial, managerial & technical tests, and that the merger will not result in a detriment to customers, then the merger or acquisition is in the public interest.

Section 7: Retention of Consultants for Federal Proceedings

This section allows the DPUC to retain consultants to assist agency staff in proceedings before various federal agencies by providing expertise in areas where its staff lacks expertise or where the consultants are needed to supplement DPUC staff expertise.

Under current law, the provisions of Title 16 permit the DPUC to retain outside expert services to assist the agency in performing its statutory duties under a variety of circumstances. Most notably, the provisions of §16-18 allow the DPUC to retain the services of consultants to assist the agency in proceedings that the agency itself is conducting, and the provisions of §16-6a allow the DPUC, through the Attorney General's office, to obtain the services of outside legal counsel to appear in matters before certain specified federal agencies.

With the passage of the new Federal Energy Act and as a result of our ongoing experience in several recent federal proceedings, it has become apparent that a problematic gap exists in the current law which prevents the DPUC from directly retaining outside experts (non-legal) to assist the agency with its participation before federal proceedings. Absent this proposed change, if outside consulting services are required the DPUC can only acquire such services through outside legal counsel that we have retained pursuant to §16-6a. With this proposed change, the DPUC believes that it will gain much needed administrative flexibility to, when appropriate, directly retain outside technical expertise allowing the agency to secure these services on a more efficient and cost-effective basis.

Section 8: Customer Interest on Security Deposits

This section clarifies current law and current practices by adding references to Department of Banking at appropriate points in the statute that states the basis upon which interest on utility customer security deposits is to be calculated.

Currently, the provisions of 16-262(c) & (d) specify the standard by which interest on utility customer security deposits is to be calculated. In several locations in this section, the statutory provisions make alternative references to the Federal Reserve Bulletin and the CT Banking Commissioner as the basis for determining the appropriate interest rate. As a result of this fragmented statutory drafting, in looking to the statute for guidance on the matter utility customers and companies are frequently confused. The DPUC regularly receives utility customer and utility company inquires concerning the amount of interest that utilities pay on customer deposits. In accordance with current law, the DPUC relies upon the CT Banking Department's deposit index (information posted on Banking Department website) when questions arise about interest rate levels. Therefore, in the interest of eliminating this confusion the DPUC seeks to better clarify current law and current practices by adding references to the Department of Banking at appropriate points in the statute.

Section 9: Utility Whistleblower Complaints

This section extends the time period for the DPUC to make a preliminary finding on the validity of an employee's complaint that an employer has retaliated against an employee for reporting employer's misconduct from 30 to 90 business days

Current law prohibits utilities and related companies from retaliating against their employees who report their employer's misconduct. The provisions of 6-8(a) outline the DPUC's responsibilities and procedures for handling these utility employee whistleblowers complaints. This proposal amends the process the DPUC must follow in responding to complaints by employees alleging such retaliation by extending the time period for the DPUC to make a preliminary finding on the validity of an employee's complaint from 30 to 90 business days. By law, the DPUC must begin conduct a full investigation 30 days after making it preliminary determination, where an employer can rebut the presumption that its action was retaliatory. The law also specifies that the employee's return to his previous or comparable position must continue until the full investigation is complete.

Outline of Current Preliminary Finding Process

DPUC must notify employer within 5 business days of receiving the employee's complaint

DPUC to consider written response(s) submitted by the employer within 20 business days of receiving the notice

Both employer and employee, within this 20-day period can (1) submit rebuttal statements in the form of witness affidavits and supporting documents and (2) meet with DPUC to discuss the charges; the DPUC may consider an employer's written response submitted after the 5 day deadline only for good cause shown.

DPUC must consider all of these written and verbal responses in making its preliminary decision as to whether the employer should be required to return the employee to his previous or comparable position.

As shown by timeline described above, and based upon its actual experience, the DPUC has found the current 30 day statutory window for making a preliminary finding to be grossly inadequate. In short, no meaningful or credible investigation into a complaint can be reasonably performed within the existing time period. In particular, as one can imagine, it is almost impossible to seek additional input from the employee and actually issue a preliminary determination in the last 5 days (after 20-day window for employer filings) in order to meet the current 30 day deadline. Therefore, to enhance the likelihood that employee interests (and also ratepayer interests) are not harmed by this unrealistic timeline, the DPUC seeks to extend the statutory deadline to issue a preliminary finding from 30 to 90 business days.

Section 10: Denial of New Electric Service for Hardship Customers

This section expands the provisions of the winter shutoff moratorium (for hardship electric customers) that currently prohibits utilities from terminating or refusing to reinstate electric customers- to also prohibit utilities from denying hardship customers new electric service.

Under current law, a winter shutoff moratorium is annually in place from November 1st to April 15th that prohibits an electric distribution, electric supplier, or a municipal electric utility from terminating or refusing to reinstate residential electric service in hardship cases where the customer lacks the financial resources to pay his or her entire account. This proposal would change the existing language of 16-262c(b)(1) which states "terminate or refuse to reinstate" to instead read "terminate, deny, or refuse to reinstate." The DPUC is proposing this modification to address several complaints that it received from electric customers who moved into various service franchise areas during the winter shut moratorium last year. In one particular case, a customer who possessed a certificate of serious illness from their doctor was denied electric service because the municipal electric utility sought a deposit before electric service would be initiated. This proposed change would offer an applicant for new electric service the same shutoff protection as an existing electric customer with a medical certificate, or an existing electric customer whose service was terminated and seeks reinstatement of service with a medical certificate.

Sections 11-19: Electric Broker Registration

This section establishes a new requirement that electric brokers doing business in the state register with the DPUC in the same manner that electric aggregators presently register with the agency.

It has come to our agency's attention that there are a variety of entities that have begun to do business in the state that are operational similar to "electric aggregators" but is not covered under the law as it is presently constructed. Under current law, electric aggregators are defined as entities that group customers together to negotiate their purchase of electricity from a supplier. The aggregator acts as a middleman and may not buy or resell the electricity.

The DPUC believes that it is in the interest of the state's electric customer and the expanding retail electric marketplace too have these new entities register- so as to ensure that some limited regulatory framework is in place to assist customers in being able to substantiate the legitimacy of entities that they may consider doing business with. The proposed language creates a new "electric broker" definition and makes a variety of other modifications to related statutes where the term aggregator currently appears. As proposed, "electric broker" would be defined as an entity that arranges or acts as an agent, negotiator or intermediary in the sale or purchase of electric generation services between any end use customer in the state and any electric supplier, but does not take title to any of the generation services sold.

Section 20: Telecommunication Regulations

This section would amend §16-247p to allow the DPUC to establish wholesale telecommunication performance standards through administrative rulings rather than through the adoption of regulations.

The DPUC believes that a need does not exist for the performance regulations required by §16-247p. This requirement, contained in this statute, predates the

comprehensive performance standards adopted by the Federal Communications Commission (FCC) that have been imposed on the AT&T and Verizon. In the case of Verizon, additional standards have also been adopted by the New York Public Service Commission that has been imposed on Verizon.
For example, the performance standards imposed on AT&T were the result of the FCC's approval of the Ameritech/SBC merger in 1999. These standards, developed after significant involvement from the competitive local exchange carriers (CLEC), are all encompassing and include key measurements, benchmarks, financial penalties and formulae for determining the extent of any resulting penalties. Any failure by AT&T to meet these standards would subject it to the provisions contained in AT&T's carrier interconnection agreements with the affected CLEC(s).

Similar comprehensive performance standards have also been developed by the NYPSC and imposed on Verizon either through its CT Performance Assurance Plan (adopted as a result of Verizon receiving long distance authority from the FCC) as well as the New York State Carrier-to-Carrier Guidelines Performance Standards and Reports, which were developed through a collaborative effort between the NYPSC, Verizon and the Clefs. The DPUC has adopted these same performance standards for Verizon's CT wholesale service offerings. Should Verizon fail to meet these performance measures, it would be required to apply bill credits to the affected customers. Accordingly, the existing statute's requirements for additional state-specific performance-based regulations would be duplicative to existing standards and are unnecessary.

Finally, the DPUC does not believe that wholesale regulations are conducive to a competitive telecommunications marketplace because they do not recognize the wholesale provider/customer relationship nor would they offer the flexibility required by the providers and customers to negotiate interconnection agreements. The adoption of wholesale performance-based regulations would also prevent the wholesale provider and customer from focusing on more relevant service standards as market conditions dictate. Similarly, the wholesale performance-based structure contemplated under this statue would require the CT wholesale telecommunications service providers and their customers to constantly be in a "catch up" mode as opposed to allowing them to concentrate directly on the provision of telecommunications services to their customers.