



STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

THE ENERGY & TECHNOLOGY COMMITTEE

**House Bill 6592: AAC OPERATIONS OF THE DEPARTMENT OF PUBLIC
UTILITY CONTROL**

March 15, 2011

TESTIMONY OF CHAIRMAN KEVIN M. DELGOBBO

The Department of Public Utility Control, (Department) appreciates the opportunity to comment on House Bill No. 6592. 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. The DPUC supports the passage of this proposal which would modify the provisions of Title 16 in the following manner:

1. Modifications to the Purchased Gas Adjustment Clause

This proposal 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.

2. Retention of Consultants for Federal Proceedings

Allows the DPUC to retain non-legal 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 in General Statutes of Connecticut (Conn. Gen. Stat.) §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.

3. Uncontested Procurements

Clarifies that all DPUC procurements are uncontested proceedings in accordance with common law standards for agency sponsored procurements.

4. Customer Interest on Security Deposits

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 Connecticut 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 inquiries concerning the amount of interest that utilities pay on customer deposits. In accordance with current law, the DPUC relies upon the Connecticut 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.

5. Utility Whistleblower Complaints

This proposal would extend 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 an employer's misconduct from 30 to 90 business days. By law, the DPUC must begin conducting a full investigation 30 days after making its 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.

6. Denial of New Electric Service for Hardship Customers

First, please note that the current bill omits section 6 of the bill. We propose adding this language as follows regarding denial of new electric service for hardship customers. This section would expand 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 moratorium is annually in place from November 1st to May 1st 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/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 off 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 customer with a medical certificate, or an existing customer whose service was terminated and seeks reinstatement of service with a medical certificate.

7. Timing of Integrated Resource Plan (IRP)

Expands the time for the Department to review the plan from one hundred and twenty days to one hundred and fifty days. The Department notes that the IRP is such a large and complicated proceeding that in order for a thorough and comprehensive review the additional 30 days is necessary.

8. Timing & Contents of Customer Rate Notices

Modifies current provisions 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.

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. 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.

Moreover, 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 by 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 information about the public hearings.

Lastly, under current law, the wording of customer notices states 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 filings 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 case 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.

9. Technical Correction to Incorrect Citation

This legislative proposal would make a minor modification to correct an invalid citation in statute §16-19kk, replaces the reference in subsection of §16-19kk(b) from (i) to (j).

10 & 11. Technical Correction to reflect change in federal citation for the definition of an “Exempt Wholesale Generator”

This legislative proposal would make a minor modification to correct an invalid citation in statute §16-1 (4) and (8), concerning the federal citation and definition of an “exempt wholesale generator”. This proposal would replace the old and now invalid federal reference to a more general citation to the United States Code (USC) or Code of Federal Regulations(CFR) so that any future changes the federal government may take in the placement of the definition of an “exempt wholesale generator “ be it in the USC or CFR can still be relevant as it is referred to in our state statutes.

12. DPUC Abilities To Fine

Clarify Section §16-41 to specifically include “persons” to those subject to fining by the DPUC for violating statutes, regulations or orders of the department, and provides that the DPUC may order restitution, disgorgement or both for violations of DPUC statutes, regulations or orders. The present language specifically lists entities regulated by the DPUC subject to penalties for violating DPUC statutes but does not make it clear that individuals who violate the provisions of those statutes, such as employees of the listed entities or unlicensed individuals, are also subject to a penalty for violations of Title 16. The changes provide the DPUC with the ability to order the return of money obtained in violation of the DPUC statutes and to order those who have violated the statutes and injured another party to make them whole.

Provides the DPUC with enforcement powers that are reasonable and necessary to enable the commissioners to protect the public interest in accordance with the duties imposed under the statutes.

13. DPUC Decisions To Reopen And Hearing Determinations

To modify §16-9 to allow the Department to rescind, reverse or alter any decision, order or authorization after notice to all parties and an opportunity for a hearing by the request of any interested party. Presently, all rescissions, reversals or alterations of decisions, orders and authorizations of the DPUC must have a hearing under §16-9. This requires the hiring of a court reporter, holding a hearing and use significant agency resources when none of the parties to the proceeding desires the hearing. This modification gives all parties to any decision, order or authorization that the DPUC determines must be rescinded, reversed or altered, the ability to have a hearing if it is desired without mandating the holding of such a hearing.

14. Inclusion of “Holders of a Certificate of Video Franchise Authority” to C.G.S. §16-49

To modify §16-49 to include holders of a certificate of video franchise authority to the §16-49 list of companies the Department can order to comply for purposes of assessment.

15. Amendment to C.G.S. §16-244i Direct Billing Threshold

This proposal amends the minimum threshold for direct billing of electric generation services by electric suppliers contained § 16-244i to be consistent with the minimum threshold contained in §16-245d(a).

16. Electric Supplier And Agent's Procedures & Practices

This proposal creates standards for how sales by an electric supplier or on behalf of an electric supplier for the sale of electric generation services shall be conducted.

17, 18, 19 & 20. DPUC Enforcement Powers

Provide the DPUC with enforcement powers that are reasonable and necessary to enable the commissioners to protect the public interest in accordance with the duties imposed under the statutes; to prohibit the making or filing of false and misleading statements with the Department (a power currently not contained in statute); to provide the Department clear statutory authority to conduct investigations in all matters under its jurisdiction, eg. Issue subpoenas in cases other than ratemaking; establish a duty to update documents filed with the Department that have become inaccurate and to make clear that all records of entities covered by the authority of the Department are subject to periodic inspection by the Department. As the statutorily assigned responsibilities of the DPUC have evolved, the enforcement powers of the Department have not. Current enforcement powers are from an era when the DPUC was limited to the regulation of public service companies and are in need of updating. The changes proposed provide basic enforcement powers possessed by many state agencies that allow a reasonable inspection of records, require production of documents the department deems are in the public interest, a prohibition on making false or misleading statements to the department, clear authority to conduct investigations of all entities covered by Title 16 and provide the Department with the ability to take action against persons and entities that the legislature has given the DPUC responsibility to supervise.

The Department thanks the Committee for this opportunity to testify and looks forward to working with this Committee on this bill.