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# The Energy and Technology Committee

## Public Hearing, March 15, 2012

**Office of Consumer Counsel**

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Testimony of Elin Swanson Katz

**S.B. 415, *An Act Concerning the Operations of the Department of Energy and Environmental Protection, the Establishment of a Commercial Property Assessed Clean Energy Program, Water Conservation and the Operations of the Clean Energy Finance and Investment Authority.***

This bill, like H.B. 5474, *An Act Concerning the Autonomy of the Public Utilities Regulatory Authority*, has as one of its prime issues the bureaucratic relationship between the Department of Energy and Environmental Protection ("DEEP") and the Public Utilities Regulatory Authority ("PURA") and their respective decision-making processes. S.B. 415 tries to promote the authority of DEEP as compared to PURA and in several places seeks to replace public hearings with undefined "public meetings." In contrast, H.B. 5474 seeks to give to PURA much of the autonomy enjoyed by the former Department of Public Utility Control ("DPUC") by establishing that PURA would be within DEEP "for administrative purposes only."

The Office of Consumer Counsel ("OCC") agrees that the legislature and the many energy and utility stakeholders should work in this session to clarify the roles of DEEP and PURA. Last year's major energy bill, Public Act 11-80, *An Act Concerning the Establishment of the Department of Energy and Environmental Protection and Planning for Connecticut's Energy Future*, sought to centralize energy policy development in DEEP, and placed PURA within DEEP. Since passage of Public Act 11-80, questions have been raised about communications between DEEP and PURA; issues of overlapping authority or unclear authority have arisen; DEEP has had to develop hearing processes and procedures for certain matters, such as the development of the Integrated Resource Plan, which have not always been viewed as satisfactory by some stakeholders; and there are staffing and staff reporting issues regarding who is working for whom, and how, if at all, can DEEP staff be borrowed by PURA, or vice versa.

OCC intends no criticism of Public Act 11-80 by pointing out these issues; in crafting major legislation, one cannot project every issue that may arise. The question is, how do we now fill in the gaps and accomplish the following two ends: (1) honor Public Act 11-80's goal of energy policy centralization in a powerful Department of Energy; while also (2) ensuring that PURA has appropriate power over rates and utility performance such that stakeholders can be assured that PURA's contested case processes will be just and based on the evidentiary record, not private communications? In OCC's view, neither S.B. 415 nor H.B. 5474 provides a complete solution.

To better describe the nature of the issues that need to be solved here and why they need to be solved, consider the very first provision of Public Act 11-80 from last year, Section 1(a). On the one hand, Section 1(a) says that DEEP will, among other things, "have jurisdiction relating to ... energy policy planning and regulation ... and shall have the following goals: (1) Reducing rates and decreasing costs for Connecticut's ratepayers, (2) ensuring the reliability and safety of our state's energy supply, (3) increasing the use of clean energy and technologies that support clean energy, and (4) developing the state's energy-related economy." On the other hand, the PURA within DEEP will "be responsible for all matters of rate regulation for public utilities and regulated entities under title 16 of the general statutes and shall promote policies that will lead to just and reasonable utility rates." These provisions show that there is an overlap of authority over issues that may affect rates and reliability of utility service.

To the extent that Public Act 11-80 sought, loosely-speaking, to put policy functions within DEEP and rate-setting functions within PURA, OCC must note that this distinction is unworkable. In setting utility rates for an electric, gas, or water utility, one will inevitably make policy decisions many complex policy, financial, and legal decisions; rates are most assuredly not simply a "number." Given that fact, and given that rates are developed in contested cases before PURA, what role should the non-PURA part of DEEP have in a PURA rate case? Connecticut needs a clear answer.

Based on the above, OCC notes that it has some concerns about specific aspects of S.B. 415. For example, Section 11, a proposed revision to Section 16-245m, replaces a current reference to DEEP holding a public hearing on the Conservation &

Load Management ("C&LM") Plan, a document of major importance involving the expenditure of over $100 million, with a reference to DEEP holding a public "meeting." This proposal moves in the wrong direction, as does the additional proposed amendment that the C&LM Plan be reviewed only once every three years. We need more process, not less, for proceedings at this level of expenditure and importance, and we need robust opportunities for stakeholders to be heard and to ask questions, including questions of DEEP about assumptions and data in the proposed plan. Instead of diluting the process of reviewing the C&LM Plan, the Legislature should amend 16-245m so that a public hearing is required to be held annually for the C&LM Plan, providing all of the protections of Chapter 54, Section 4-166 et seq., the Uniform Administrative Procedure Act ("UAPA"), with the possible exception that there be no right of appeal from DEEP's approval of the Plan.

Similarly, Section 19 of S.B. 415, a proposed revision to Section 16a-3d, seeks to replace a current requirement for the Commissioner of DEEP to hold a public hearing as to the Comprehensive Energy Plan with one or more public meetings. Again, although the Comprehensive Energy Plan is clearly the type of plan for which the DEEP's role is intended to be paramount, still there should be a hearing process pursuant to the UAPA, except without the right to appeal, where stakeholders can ask questions of the DEEP or DEEP's consultants, file comments on a proposed plan, and generally have the ability to have their views heard.

Oddly, Section 19 of S.B. 415 also seeks to remove a key section which establishes how PURA is to conduct decision-making. Public Act 11-80 established that PURA is to be guided by the Comprehensive Energy Plan and the Integrated Resources Plan ("IRP") and must also make its decisions based on the evidence in the record before it. Section 19 seeks to remove this provision but does not replace it with anything, leaving PURA no guidance as to what impact the Comprehensive Energy Plan and IRP should have on its decisions.

Section 20 is an apparent attempt to clarify the roles of DEEP, PURA and the newly-hired PURA Procurement Manager in the Integrated Resource Plan ("IRP") process under Section 16a-3a. These roles are not clear in the existing statute and OCC agrees that clarification is required. However, OCC believes that the changes

proposed in SB 415 unduly limit process by changing required public hearings to public meetings and by removing PURA's role in the process. OCC believes that the primary responsibility for the IRP should rest with DEEP, but that a hearing with all the UAPA protections and standards, although not subject to appeal, should be required. OCC believes that the IRP statute should be further clarified to provide that PURA conduct a contested proceeding to review and implement any proposals within the IRP that would necessitate any increase in utility ratepayer funding. This would preserve PURA's ratemaking authority and ensure that all parties whose substantial rights are affected by IRP recommendations, which recommendations could implicate hundreds of millions of ratepayer funding, have access to due process.

Section 58 and 59 of Section SB-415 as proposed require decoupling for water utilities in the form of a sales adjustment clause that would make water utilities whole between rate cases for any decreases in usage. While decoupling has been justified as a means to avoid a situation where utilities have an incentive to block conservation programs, a full sales adjustment clause makes the utility whole regardless of whether decreased usage was caused by weather or economic conditions rather than conservation. Indeed, this proposed legislation would give water utilities full decoupling regardless of whether the water utilities make any effort to promote conservation programs. If the proposal was limited to lost revenues associated with conservation programs, efforts to reduce usage in supply-constrained systems, or similar efforts to reduce demand, OCC would be much more supportive. Respectfully, OCC maintains that this sort of detailed analysis should be done in a PURA rate case, and that any decoupling requirement should be drafted in a way that gives PURA some flexibility.

Finally, we are uncertain why, in Section 1 of S.B. 415, there is a proposed deletion of some conflict-of-interest protections, particularly as to removing sections (h), (i), and (j) of Section 16-1. These protections ensure that those who work for or make decisions at PURA will have not have a financial interest in the outcome of such decision or benefit from inside information. As to the proposed removal of section (k) of Section 16-1, which is the "revolving door" provision for PURA directors, OCC could see reducing the requirement from one year to six months, but there should be some period

of time between someone making decisions affecting utilities and then working for utilities or appearing before PURA.

Given the need to fill in the gaps and clarify the relationship between PURA and DEEP, OCC stands ready to discuss the suggestions set forth in this testimony and any other ideas that stakeholders may have so that we will have a DEEP and PURA that are supremely competent in well-defined roles, have the confidence of stakeholders and the public, and are not working at cross-purposes or performing duplicative activities.