

TESTIMONY OF  
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ON BEHALF OF  
NORTHEAST UTILITIES

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Raised Bill No. 416 – An Act Concerning The Mergers And Acquisitions Of  
The Holding Companies Of Certain Public Utility Companies

My name is Dan Venora, and I am providing this testimony on behalf of Northeast Utilities (“NU”). I am a partner with the Connecticut law firm of Carmody & Torrance, and was formerly Assistant General Counsel of NU. I have practiced public utility law in the State of Connecticut for over 20 years, including in the areas of state rate regulation, holding company transactions and mergers and acquisitions. By way of additional background, NU is a Massachusetts business trust with its principal office in Springfield, Massachusetts, and is the parent holding company of four public service companies, including The Connecticut Light and Power Company (“CL&P”) and Yankee Gas Service Company (“Yankee Gas”). NU has its corporate offices in Hartford. Through its operating companies, NU provides service to over 2 million electric and gas customers in Connecticut, Massachusetts and New Hampshire. The addendum to my testimony includes further information on NU’s civic involvement and community support.

Utilities in today’s economy, and particularly in the northeast, face tremendous challenges in meeting the ever-increasing demands of customers for reliable service at a reasonable cost. Strategic business transactions, such as mergers and acquisitions, can provide companies with greater scale and scope, and enable them to serve their customers in a more efficient and cost-effective manner. My testimony explains that Raised Bill No. 416 would impose significant obstacles to utility mergers in Connecticut. The bill creates disincentives for companies to pursue merger opportunities, and as a result would deprive utility customers of potential cost savings. Similar to a bill that this committee considered last session, Raised Bill No. 416 would be an unnecessary and

unwarranted expansion of the State's regulation of private business, and a violation of the rights of holding companies and their shareholders.

My testimony also explains two additional aspects of Raised Bill No. 416. The bill includes a provision that could effectively limit Connecticut's ability to benefit from regional infrastructure projects, which would be a poor outcome for customers. Further, the bill includes a provision that would set a new standard for determining a utility's allowed return on equity, which would be contrary to long-established utility ratemaking and constitutional precedent. For all of these reasons, ***NU opposes this bill.***

### **Customer Interests Are Fully Protected Under Current Law**

Under current law, the Public Utilities Regulatory Authority ("PURA") regulates and must approve any transaction in which a person or company would acquire control (often called a "change of control") over a Connecticut public service company or the holding company of a Connecticut public service company. As a practical matter, a person or company would acquire such "control" by acquiring *all or a substantial percentage of the voting securities* of the public service company or holding company. The core concepts of this law have been in place for decades, since at least 1935. The law protects the interests of Connecticut utility customers by requiring PURA to approve any transaction that would result in a *new entity* taking control over a Connecticut public service company or its parent holding company. This concept is consistent with merger statutes in many other states. The law reflects a balanced state policy of focusing the state's regulation on holding company transactions that involve an actual change of control. In all other cases, the PURA's broad authority to regulate the rates and service of Connecticut's public service company (such as CL&P or Yankee Gas) provides ample protection to customers.

Under current law, holding companies are permitted to govern themselves, manage their businesses, make personnel and management changes, buy and sell assets, issue stock, establish corporate offices and headquarters, and engage in a wide variety of other business transactions, none of which necessitate PURA approval. In all

instances, the PURA fully controls whether any of the costs from a holding company transaction or project would be allowed into rates of the utility, and controls whether and when rates would be allowed to change. PURA also has ample powers to ensure that there are no negative impacts on service quality or customer service.

### **Section 1 of the Bill Abandons the “Change of Control” Standard and Creates Disincentives to Businesses**

Under current law, for a person to have “control” of a holding company, the person must possess the power to direct holding company management and policies.<sup>1</sup> A person may possess this power through various means, but typically it results from ownership of a company’s voting securities. However, control exists only if the percentage of share ownership is sufficiently large to enable the person to direct a holding company’s management and policies through those means. With respect to share ownership, the statute includes a rebuttable presumption of control if a person owns ten percent or more of a company’s voting securities. CGS §16-47(a).

Raised Bill No. 416 would amend §16-47(c) of the Connecticut General Statutes to require PURA approval in the case of a “merger or acquisition that would cause [a company’s] *shareholders* to own at least ten per cent of the shares of such a holding company, provided the authority determines that such merger or acquisition would have a positive or negative measurable impact on ratepayers within this state.” This language ignores the presumption of control under CGS §16-47(a) (where “a person” must own ten percent or more of the voting securities of a utility or its holding company to be presumed to have control). It broadens the change of control concept to include situations where company shares are being acquired by a diverse group of persons, none of whom individually may own a significant number of shares or be able to exert any form of control over the company. It creates ambiguity and could subject routine corporate transactions to PURA review and approval, when the likelihood of impact on customers is remote at best.

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<sup>1</sup> For purposes of §16-47, a “person” may include a corporation, association, partnership, trust or similar organization.

In addition to changing the standard, the bill also imposes proscriptive conditions on potential mergers, which would have the effect of discouraging future transactions. Prior to issuing an approval, the bill would require PURA to consider factors that could substantially alter the economic expectations of parties to a transaction, such as long-term commitments regarding rates, jobs and management decisions. The framework of the current law – which requires consideration of the acquiring company's financial, technological and managerially suitability, and the ability of the operating companies to provide safe, adequate and reliable service – provides ample authority to PURA to properly evaluate mergers. The additional conditions contained in Raised Bill No. 416 would create significant disincentives and would constrain the regulatory process.

Section 1 of the bill also imposes an unusual standard that would require PURA to determine that any merger would provide benefits to Connecticut *at least as great* as those provided to other states. Other state standards may include a “no net harm” test or a “net benefits” standard. Current law enables PURA to evaluate mergers on their own terms, in the interest of Connecticut customers. The impact or benefit to customers in other states is neither a necessary, relevant nor valid measure.

Finally, Section 1 of the bill includes a series of proscriptive reporting requirements that would apply to all mergers for 10 years following the transaction. PURA, acting within the scope of its authority under current law, has reviewed and approved numerous merger transactions. In many cases it has imposed reporting requirements or other conditions, but notably, it has done so to address the specific facts and circumstances of each given case. The bill's reporting requirements are burdensome and unnecessary.

### **Section 2 Could Prevent Connecticut from Obtaining Benefits from Regional Infrastructure Projects**

Section 2 states that no expenditure “for any infrastructure upgrade or project *outside the state* by any public service company or holding company of such public

service company" that is subject to a change of control "shall be included, directly or indirectly, as an operating expense of such public service company for purposes of rate-making." The committee should carefully consider the unintended consequences that could result from this section of the bill. Cost sharing among utilities for regional projects is not a new concept. Prior to electric restructuring, for example, Connecticut utilities participated in cost-effective joint ownership arrangements of electric generating plants, which enabled them to share costs associated with such facilities to the benefit of customers (for example, CL&P owned interests in the Yankee plants located in Massachusetts and Vermont). A provision such as that contained in Section 2 of the bill would have prevented such an arrangement.

With respect to current and future projects, Section 2 could have implications for interstate transmission infrastructure, the costs of which are allocated to customers throughout the region through federally approved formula rates. Connecticut customers realized savings of hundreds of millions of dollars in congestion costs with the construction of the Middletown- Norwalk lines, and paid less than a third of the project costs as a result of the regional cost sharing formula. In addition, to the extent that policymakers may determine that Connecticut customers could benefit by having the utilities' participate in regional projects, such as infrastructure projects to provide access to low cost sources of renewable energy, this bill could effectively prevent such initiatives. These are examples where Connecticut customers benefit from regional cost sharing for infrastructure projects. This section of the bill has a high likelihood of harsh and unintended consequences.

Additionally, Section 2 of the bill is wholly unnecessary considering PURA's existing powers with respect to rate regulation and cost recovery. Under current law, no costs are allowed in electric distribution rates unless and until they are reviewed and approved by PURA in a rate case. PURA's authority under C.G.S. §§16-19 and 16-19e fully protects customers' interests, and prevents any costs from being included in utility operating expenses if they are deemed inappropriate. Section 2's blanket prohibition on costs from out of state projects is an inferior measure to PURA's existing authority, and would potentially preclude customers from seeing the benefits of regional projects, the

costs of which could only be included in rates if allowed by PURA under its existing powers.

### **Section 3 Violates Established Standards for Determining Just and Reasonable Rates**

Section 3 of the bill would establish an illegal standard for determining a utility's allowed return on equity. The provision states that "[s]ubject to the provisions of section 16-19e of the general statutes, the Public Utilities Regulatory Authority shall not authorize a return on equity for any public service company . . . that exceeds the return on equity authorized by any *out-of-state* regulatory agency for any comparable *out-of-state* utility company that is a subsidiary of the holding company of such public service company."

Utility rates must be sufficient to provide a "just and reasonable" return on the value of the property used by the utility to provide service, and requires a balancing of customer and investor interests. See Bluefield Waterworks & Improvement Co. v. Public Service Comm'n of West Virginia, 43 S.Ct. 675 (1923); Federal Power Comm'n v. Hope Natural Gas Co., 64 S.Ct. 281 (1944). Connecticut law reflects this concept, requiring that "the level and structure of rates be sufficient, but no more than sufficient, to allow public service companies to cover their operating costs including, but not limited to, appropriate staffing levels, and capital costs, to attract needed capital and to maintain their financial integrity, and yet provide appropriate protection to the relevant public interests." C.G.S. §16-19e(a).

Section 3 potentially imposes a cap on allowed returns that would prevent the utility from recovering its just and reasonable costs. It sets an arbitrary standard whereby the allowed return on equity is capped in reference to actions by out-of-state regulators assessing the rates and service of out-of-state utilities. Such actions should have no bearing on the PURA's rate-making authority.

## **Conclusion**

Thank you for the opportunity to comment on Raised Bill No. 416. NU urges the members of the Committee to reject this bill going forward and to preserve the appropriate balance that exists under current state law.

## **Addendum to NU Testimony—NU Support and Involvement in Connecticut**

**Employment:** NU has more than 6,100 employees, more than two-third of which are in Connecticut. NU has remained a stable employer during a down economy (previous counts: 6,099 in 2010; 6,044 in 2009; 6,152 in 2008; 5,909 in 2007).

The NU companies are a significant employer within Connecticut, totaling almost 4,400 jobs. Over 1,500 of these jobs are union employees, and many of them perform the critical tasks associated with delivering reliable energy services to Connecticut consumers.

**Taxes:** The NU companies pay over \$100 million annually in municipal property taxes and are among the highest payers of property taxes in each of the communities in which they have facilities or serve. Recent figures as follows: \$112.9 million (CL&P: \$96.15 million, Yankee Gas: \$13.1 million; also Rocky River Realty: \$2.7 million, and NUSCO: \$943,851).

The NU companies pay over \$200 million in state taxes associated with Gross Earnings, Sales Use and Income Taxes.

The NU companies pay \$1.5 million for CT unemployment taxes.

The NU companies recently had over \$16 million in tax credit purchases to assist in low income housing, neighborhood assistance and historic home rehabilitation that was provided to communities throughout the state.

**Charitable Contributions:** In 2011, NU employees gave a record number of hours at company sponsored events to support various causes in its communities. NU employees also contribute financially, in particular through the company's annual employee giving campaign to benefit the United Way.

The results of NU's 2011 campaign also highlight its long-standing commitment to helping others in need, as exemplified by its total donation of over \$1.5 million. Collective pledges exceeded the company's \$1.18 million campaign pledge goal and reflect NU's exceptional generosity.

Equally impressive was the support of its Power of Caring activities; more than 1,000 NU employees worked on-location at community sites.

In addition, NU's operating companies and the Northeast Utilities Foundation provided over \$7 million in grants to nonprofit organizations and worthwhile regional activities across its tri-state service area in 2011.

In Connecticut, NU remains the largest corporate contributor to Operation Fuel, a nonprofit program offering emergency energy assistance to residents ineligible for other support. In 2011, the company donated over \$1 million to this worthy cause.

The following are additional recent examples of NU's support of and involvement in the communities it serves in Connecticut:

- CL&P sponsored and hosted Special Olympics Winter Games for 21st straight year. The two-day event included 300 athletes, and 700 volunteers from the community.
- Northeast Utilities has been listed among the top 10 companies in the nation for its support of the arts in 2009 by the advocacy group Americans for the Arts.
- Over 80 NU employees, family members and friends participated in the American Heart Association's Hartford Heart Walk in downtown Hartford and they raised over \$10,000.
- 75 employees worked a Day of Caring at Avery Heights in Hartford. Avery Heights provides independent and assisted living services to seniors in the Greater Hartford area. NU volunteers performed general cleanup of the grounds including pruning and raking the areas surrounding numerous residential buildings and facilities at the site.
- Northeast Utilities received citations from the state of Connecticut Comptroller's office, the Office of the Treasurer and from Attorney General's office for the company's support of the Spanish American Merchants Association and the company's support of its minority business training programs. NU also received the Corporate Award from SAMA.
- CL&P recognized with a Leadership Award from the University of Hartford's Scholars program for the company's support of the program through grants and internships provided to students. The program provides half price tuition to students who graduate from a Hartford public school.
- In its August issue, Military Times EDGE magazine has ranked Northeast Utilities among the 50 best corporate employers for military veterans. The companies featured on this year's list recognize the benefits of military experience in potential employees.
- CL&P sponsored the annual Corporate 5K (3.1 miles) Road Race at Bushnell Park in Hartford to benefit Special Olympics Connecticut.
- CL&P and NU employees provided tutoring help for nine months in English, math and computers at East Hartford's Langford Elementary School, approximately 30 students enjoyed a fulfilling and positive learning experience that went beyond the traditional classroom. This marked 23 years that CL&P employees have tutored at the school.