

March 11, 2012

To: Members of the Energy and Technology Committee
From: PURA Staff

Re: **Raised Bill No. 5474, An Act Concerning the Autonomy of the Public Utilities Regulatory Authority**

The PURA staff strongly recommends the passing of Raised Bill No. 5474 with certain revisions as discussed below. Both Governor Malloy and Com. Esty have stated numerous times that they want "lighter regulation" of the public utilities. The DPUC is now known as the Public Utilities Regulatory Authority (PURA) and is consolidated with the Department of Energy and Environmental Protection (DEEP). Through the new powers of the DEEP over the PURA, the responsibilities, structure, and personnel of the DPUC/PURA have been drastically diminished. One of the major changes is Com. Esty's mandatory removal of DPUC/PURA staff to DEEP. On January 1, 2011, there were 115 DPUC employees. Currently, there are only 70 PURA staff, a 40% reduction and a loss of about 1,800 hours of work each week.

1. PURA AS AN INDEPENDENT AGENCY

Raised Bill No. 5474 proposes to continue to have the PURA within the DEEP for administrative purposes only. **We strongly disagree with this proposal. The PURA must be completely independent from the DEEP so that there is no connection between the two agencies.** The PURA is a quasi-judicial entity and should not be under any other state department such as the DEEP for any reason. That is like putting a judge in a courtroom under a commissioner who has the ability to direct the judge in their decision making. The PURA should remain an independent regulatory entity where the Directors are not under Com. Esty's control or directives.

An example of how this is not working is the Office of Consumer Counsel (OCC), which also is under the DEEP for administrative purposes only (APO). The OCC is charged by state statute "to act as the advocate for consumer interests in all matters, which may affect Connecticut consumers with respect to public service companies." The OCC continues to have on-going problems trying to remain independent without interference from the DEEP and Com. Esty. For example, Com. Esty met with the OCC staff and discussed how they should participate in cases before the PURA. If the OCC is an independent agency, why is Com. Esty meeting with staff, giving them directives, and discussing their legal participation in cases? That should not be happening. Com. Esty also directed the OCC staff not to be contentious in cases. On numerous occasions, the OCC staff informed the PURA staff that they have been told not to ask any probing questions. As a consequence, the OCC staff have drastically reduced their participation in a number of cases before the PURA that contain issues for which Com. Esty has publicly advocated.

The following are two examples of cases in which the OCC had little or no participation. The PURA issued a draft Decision on March 9, 2012 in Docket No. 11-12-06, Joint Petition by The Connecticut Light and Power Company and The United Illuminating Company for Approval of the Solicitation Plan for the Low and Zero Emissions Renewable Energy Credit Program. This case involves the purchase of

\$1.02 billion of renewable energy credits directly from customers, site owners and/or developers of clean energy projects. Even though this Decision involved over a billion dollars, the OCC did not file briefs or written comments in this proceeding. **The OCC was silent.** Another example is Docket No. 11-10-03, PURA Review of the Connecticut Energy Efficiency Fund's Gas Conservation and Load Management Plan for 2012. The gas companies proposed to initially increase their 2011 conservation budget of \$16,870,075 to \$19,127,475 and then proposed an additional \$15,076,514 for a total of \$34,203,989 or a 103% increase over 2011. While all of the utility customers will be paying into the conservation fund, only a select few actually will receive the benefits of the conservation measures and programs. As stated in the Decision dated January 4, 2012, **the OCC did not express an opinion on the additional \$15,076,514.** While the OCC is mandated to be the utility customers' advocate, it is following Com. Esty's directives to not be contentious.

On an ongoing basis, the DEEP continues to reject and not approve paperwork that the OCC and the Siting Counsel already have approved. APO means that the agency is independent and another agency only processes the paperwork of the APO agency, which the APO agency already has approved. While the DEEP does not have the power to approve, reject or not process either the OCC or Siting Counsel's administrative paperwork, it continues to do that sending rejections back to the respective agency. Since these two agencies continue to deal with this interference, it is expected that the DEEP will do the same thing to the PURA. Based on the aforementioned, **the Raised Bill No. 5474 proposal to continue to have the PURA within the DEEP for APO should be rejected. It must be revised to allow the PURA to be completely independent from the DEEP so that there is no connection between the two agencies.**

2. COMMISSIONERS AND EXECUTIVE DIRECTOR

Public Act 11-80 restructured the hierarchy of the DPUC. Out of the five Commissioners, the act removed two positions and changed the titles of the DPUC Commissioners to Directors. The State of Connecticut is being ridiculed nationally because Public Act 11-80 abolished the oldest (100 years) regulatory entity with Commissioners in existence in the United States. For example, the National Association of Regulatory Utility Commissioners (NARUC) is an association comprised of the Commissioners from utility regulatory bodies in each state. The former commissioners now attend NARUC conferences as a director while everyone else is a Commissioner. **The Commissioner title must be reinstated.**

Public Act 11-80 also removed the Executive Director position. With the removal of the Executive Director, the Chairman was made responsible for all of the PURA's administrative matters as well as assigned as a panel member on all dockets, testifies at the legislature on pending bills, and represents the PURA interests in government, all of which is too much responsibility for one person. **The Executive Director must be reinstated.**

3. COM. ESTY'S RESTRUCTURING OF DPUC

As a result of all of Commissioner Esty's directives, the PURA staff is demoralized and there is no morale. Even most of the staff that he mandatorily transferred from the PURA to the DEEP are not happy and many want to return back to the PURA. Staff are leaving the agency as quickly as they can to find other employment or they are retiring early just to get out of here. In the past week alone, another three employees left for other positions. The one positive note was the departure of Deputy Commissioner Jonathan Schrag who was extremely condescending and disrespectful to management and staff.

In January 2011, prior to Public Act 11-80 taking effect, the DPUC consisted of 115 employees. This count was down from over 150 positions in past years due to hiring freezes. Once Com. Esty gained control of the DPUC, he either reassigned the DPUC/PURA staff to new units in the PURA or mandatorily transferred them to the DEEP's Bureau of Energy and Technology Policy (Policy Bureau) or to the Departments of Revenue Services and Banking. Consequently, the DPUC/PURA staff has been decreased from 115 to 70 employees or by about 40%, a loss of about 1,800 hours of work each week. The reduction included a number of staff that either retired or found other employment due the difficult working conditions created by Com. Esty. Prior to Com. Esty's reorganization of the PURA, all of the DPUC's technical staff were experts in a specific industry: cable, electric, gas, telephone, and water. When writing interrogatories, cross-examining a utility's expert witness, or writing sections in a draft Decision, a technical staff must also be an expert on the subject topic in that industry. Com. Esty abolished the Electric, Gas and Water Units and reassigned them to discipline units: accounting/finance, engineering, rates/revenue. The technical staff reassigned to these discipline units, who had been experts in one industry such as electric, were now expected to quickly become an expert in all of the other industries – an impossible feat. It takes five to seven years to fully understand utility regulation and become an expert in one particular industry. Imagine trying to quickly learn all about the intricacies and many issues of electric, gas and water to be able to cross-examine the company's expert witnesses. **The industry specific units must be re-established and the PURA restored to its former organization with a full complement of expert staff.**

4. PURA FUNDING

The PURA's funding does not come from the General Fund; it comes from an annual assessment on the utilities that provide funding for their regulation by the PURA. Com. Esty has not saved the state any money laying-off employees and transferring positions out of the PURA. All of the utilities' assessment monies should remain with the PURA to allow it to have the resources and staff necessary to regulate the state's public utilities as mandated by statute. The DEEP is utilizing any excess utility assessment monies from the PURA's reduced expenses and staff, which was not the original intent of this assessment as directed by the legislature. **Raised Bill No. 5474 must include text that ensures that the PURA and only the PURA can use the assessment funds from the utilities.** This will allow the PURA to obtain the necessary resources and staff to properly regulate the cable, electric, gas, telephone, and water utilities in compliance with statutes and regulations.

5. COM. ESTY'S CONFLICT OF INTERESTS

There are huge conflicts of interest with all of the positions that Com. Esty currently holds. For him to be over and in total control of the Policy Bureau and the PURA is a huge conflict of interest. The Policy Bureau is setting policy that the PURA is expected to follow regardless of actual need or legislative opposition or the impact on the utility and its customers. These policies could cost utility ratepayers millions of additional dollars. The cost and benefits need to be in balance. Some of Com. Esty's conflicts of interest are discussed below. On another note, no one person can be in charge and administer so many diverse bureaus and agencies. It needs to be simplified.

Com. Esty was made Chairman of the Energy Conservation Management Board (ECMB) in the passed Public Act 11-80. According to an ECMB's annual report on the internet, the primary objectives of the ECMB are to advance the efficient use of energy to: (1) **reduce ratepayer bills**; (2) promote economic development and provide energy security/affordability; and (3) reduce air pollution and other negative environmental impacts. As stated below, Com. Esty is not complying with these directives and his actions are actually increasing ratepayer bills.

In addition, there are major conflicts with the authority given to Com. Esty in the passed Public Act 11-80 language. For example:

- **Section 33.** In subsection (c), the new language makes the DEEP Commissioner (Esty) Chairman of the Energy Conservation Management Board (ECMB). Subsection (d)(1) states that the ECMB shall advise and assist the EDCs in the development and implementation of a comprehensive plan, which plan shall be approved by the DEEP (Commissioner Esty again). **How can Commissioner Esty as Chairman of the ECMB send the plan to himself for approval. This is a conflict of interest, improper, and gives the appearance of impropriety.**
- **Section 33(d)(4).** The new language states that the DEEP shall adopt an independent, comprehensive program evaluation, measurement and verification process to ensure that the ECMB's programs are administered appropriately and efficiently, comply with statutory requirements, etc. **This makes no sense why the DEEP should evaluate an ECMB program that the DEEP Commissioner as Chairman of the ECMB sent to himself as the DEEP Commissioner.**

Due to the above conflict, the ECMB decided to have the ECMB Vice Chairman send the conservation plan to the DEEP Com. Esty so that the letter would not be from ECMB Chairman Esty to the DEEP Com. Esty. How ridiculous is that? This situation needs to be corrected.

Com. Esty is also the Vice Chairman of the Clean Energy Finance and Investment Authority (CEFIA). Its website states that CEFIA's mission is to promote, develop and invest in clean energy and energy efficiency projects to strengthen Connecticut's economy, protect community health, improve the environment, and promote a secure energy supply for the state. As the nation's first full-scale clean

energy finance authority, **CEFIA will leverage public and private funds to drive investment and scale-up clean energy deployment in Connecticut.**

There is a conflict of interest to have Com. Esty set energy policy through the Policy Bureau, approve energy programs as Chairman of the ECMB and then approve the funding for these same programs as Vice Chairman of CEFIA, and then direct the PURA to carry out the policy. As stated above, a case in point is the Low and Zero Emissions Renewable Energy Credit Program, which involves \$1.02 billion, and the electric and gas conservation programs for which ratepayers must fund over \$253 million. These are just some of the conflicts of interest with which Com. Esty is involved. This situation needs to be corrected in the new legislation.

6. CONSERVATION FUNDING

As a Connecticut Senator, we are sure that you are concerned about DEEP approving policies that increase citizen's utility bills, especially in these difficult economic times. As Governor Malloy and Com. Esty continue to push their energy efficiency agenda, it is imperative that the cost to ratepayers for their programs is revealed and discussed. They do not want to discuss the cost per kW of each initiative they put forward or the high increase in rates and citizen's bills. Their mantra is energy efficiency and **lower electric rates – THAT IS NOT TRUE** as discussed below. Both Governor Malloy and Esty dramatically pushed to have Connecticut be the national leader in energy efficiency no matter what the high cost will be to utility customers. In their pronouncements, they do not reveal the individual impact on residential, commercial and industrial customers' utility bills, which will be extremely high. Utility rates and customer bills will definitely increase due to the implementation of their initiatives.

Both ECMB Chairman Esty and the DEEP Com. Esty approved the electric and gas conservation plan even though it meant large increases in customer's bills. For gas, the 2011 conservation budget was \$16,870,075 and Com. Esty approved a 2012 budget of \$34,203,989 or a 103% increase. For example, a gas heating customer in The Southern CT Gas Company's area, using 750 ccf a year, paid \$29.43 in 2011. **With Com. Esty's approval of the 2012 gas conservation budget, that customer would pay \$60.23 or a 105% annual increase.** An average electric customer using 13,215kWh a year paid \$39.64 in 2011. **With Com. Esty's approval of the 2012 electric conservation budget, that customer would pay \$91.05 or an annual 130% increase.**