



Office of The Attorney General
State of Connecticut

TESTIMONY OF
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BEFORE THE ENERGY AND TECHNOLOGY COMMITTEE
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I appreciate the opportunity to testify about House Bill 6360, *An Act Concerning Implementation of Connecticut's Comprehensive Energy Strategy*. This bill is intended to implement the 2013 Comprehensive Energy Strategy for Connecticut prepared by the Connecticut Department of Energy and Environmental Protection ("DEEP") and released on February 19, 2013. The proposed amendments to Conn. Gen. Stat. § 16-19tt concerning decoupling and § 16-245m concerning energy conservation and load management ("C&LM") present particularly important concerns for utility ratepayers in Connecticut.

Section 1 of HB 6360 amends Conn. Gen. Stat. § 16-19tt, the decoupling statute. Presently, this statute requires the Public Utilities Regulatory Authority ("PURA") to decouple any gas or electric distribution company's rates in a rate proceeding held after 2007, but allows PURA discretion about how to accomplish decoupling. Specifically, PURA may adopt one or more of three decoupling measures: 1) a mechanism that adjusts actual distribution revenues to allowed distribution revenues ("full" decoupling); 2) rate design changes that increase the amount of revenue recovered through fixed distribution charges; or 3) a sales adjustment clause, rate design changes that increase the amount of revenue recovered through fixed distribution charges or both. Section 16-19tt also now states that when considering decoupling, "the authority shall consider the impact of decoupling on the gas or electric distribution company's return on equity and make necessary adjustments thereto."

House Bill 6360 proposes to make two fundamental changes to § 16-19tt. First, it requires that after the effective date of the statute PURA must fully decouple sales and revenues. Second, it eliminates the language that now requires PURA to consider the impact of decoupling on the gas or electric distribution company's return on equity ("ROE") and make necessary adjustments thereto.

The proposed elimination of the explicit requirement that PURA consider the impact of full decoupling on a gas or electric distribution company's ROE and make necessary adjustments thereto presents a serious and unacceptable risk to ratepayers. The "risk-return spectrum" is a fundamental principle of economic theory and utility regulation. Because of the risk that they may lose money, or make less than expected, regulated entities facing higher business risks are

entitled to earn potentially higher returns on their investment – a “risk premium.” Without full decoupling, utility companies’ bear the risk that their actual revenues (sales) may fall short of projected levels, because of, for example reduced demand caused by weather or economic conditions, and these companies are compensated for that risk in their authorized ROE.

Full decoupling eliminates this risk by assuring that utility companies receive their projected revenue levels. When one of a utility’s central business risks has been reduced or eliminated, its ROE must be adjusted to reduce the risk premium and set rates that are not more than just and reasonable as required by Conn. Gen. Stat. § 16-19. Without such downward adjustments, ratepayers will end up overpaying by compensating companies for a risk that has been reduced or eliminated.

House Bill 6360 should therefore include the language which explicitly requires that PURA shall "consider the impact of decoupling on the gas or electric distribution company's return on equity and make necessary adjustments thereto." Although the bill does not prohibit PURA from considering such issues in the rate cases in which it considers decoupling, this language should be maintained in § 16-19tt to ensure that utility ROEs appropriately reflect the needs and circumstances of both the company and their ratepayers. As DEEP recognized in its Comprehensive Energy Strategy, “[d]ecoupling mechanisms need to be designed carefully and should include consideration of potential impacts on rates.” Comprehensive Energy Strategy, 105. Moreover, maintaining this language will avoid creating the unintended inference that its elimination could create, namely that PURA is not required to consider the impact of decoupling on ROE in rate cases.

House Bill 6360 also requires that C&LM budgets fully fund all C&LM measures that are deemed by the DEEP Commissioner to be “cost-effective or lower cost than acquisition of equivalent supply” and expressly requires if those budgets exceed the existing charges in rates that fund C&LM, PURA must raise rates “through a fully reconciling conservation adjustment mechanism” to fund such additional C&LM programs. This language effectively gives the DEEP Commissioner complete unilateral authority to increase gas and electric rates without any meaningful regulatory process or review by PURA. This represents a fundamental and historical shift in ratemaking authority from the PURA, which must conform to the requirements of the Uniform Administrative Procedures Act (“UAPA”), to the Commissioner of the DEEP, who is utterly unconstrained by statute or administrative process.

This change raises three major concerns for ratepayers. First, it guts a central protection for ratepayers in all previous utility regulation – the requirement that an independent administrative agency, through an independent proceeding with due process protections, determines what rates are just and reasonable. I am concerned that a process for funding C&LM that is not governed by the UAPA may not be sufficiently open and transparent to protect the interests of ratepayers.

Second, this change undercuts the ratepayers' significant interest in a rate setting process that balances all of the competing factors that must be considered when setting utility rates. While C&LM is an important policy consideration and should be funded appropriately, utility rates must also be structured to fund the companies' current costs of operations as well as future ratepayer obligations. Starting in 2014, ratepayers will be required to begin paying many hundreds of millions of dollars for new transmission projects, new peaking plants, 2011 and 2012 storm costs incurred by the companies as well as their infrastructure resiliency investments. These costs will be in addition to any rate increases that may be approved in the United Illuminating Company's pending rate case, in which the company has sought a \$95 million distribution rate hike, and in the rate case that CL&P will file in mid-2014. The appropriate level and structure of C&LM funding must be considered in the context of all these considerations. PURA is the regulatory authority that is designed and equipped to balance these considerations and set utility rates.

Third, this proposed change may undermine the long term stability of C&LM funding, which is recognized as essential to the success of C&LM, as succeeding administrations can more easily reverse Commissioner level discretionary policy determinations than decisions rendered through the UAPA process.

House Bill 6360 also amends subsection (d) in a manner that appears contradictory to this broad shift in ratemaking authority from PURA to DEEP. This newly proposed language provides that if the C&LM plan that is finalized by the DEEP Commissioner "contains any provision the implementation of which requires funding through new or amended rates or charges, the [PURA] shall open a proceeding to review such provision, in accordance with the procedures established in sections 16-19, 16-19b and 16-19e to ensure that rates remain just and reasonable." PURA is, however, given only 60 days to complete such review, a period clearly insufficient to conduct an administrative proceeding that is fair to all participants and produces reasoned results.

These two major changes to Conn. Gen. Stat. § 16-245m(d) appear to contradict each other. The first change requires PURA to fund all C&LM programs approved by DEEP, while the second seems to provide some sort of limited process that would allow PURA authority to review and approve only those increases to C&LM funding that it deems appropriate and consistent with statutory charge to ensure that rates are no more than just and reasonable. In order to appropriately protect ratepayers, House Bill 6360 should be amended to make clear that ultimate rate setting authority lies with PURA and must comply with the requirements of the UAPA and § 16-19, *et. seq.* It also should be amended to prevent the delegation of utility ratemaking authority from PURA to the DEEP Commissioner. Further, should PURA be allowed or required to conduct such a review as called for in the bill, the 60 day time limit should be eliminated.