The Energy and Technology Committee

Public Hearing, March 7, 2013

Office of Consumer Counsel

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Testimony of Elin Swanson Katz

Proposed H.B. No. 6360, *An Act Concerning Implementation of Connecticut's Comprehensive Energy Strategy*

The Office of Consumer Counsel (OCC) supports revisions to the statutory paradigm created by P.A. 11-80 to clarify the roles of the Department of Energy and Environmental Protection (DEEP) and the Public Utilities Regulatory Authority (PURA), to avoid unnecessary duplication of efforts, and to better coordinate planning for gas and electric Conservation and Load Management (C&LM) programs. OCC has some suggested revisions to this bill to accomplish those goals. OCC also supports the proposed changes that aid in implementing other policies proposed in the Comprehensive Energy Strategy (CES), with some fairly minor revisions.

OCC recommends that a change be made to Section 1 of H.B. 6360, to add to proposed subsection (b) the language that currently appears in lines 14-16 of proposed subsection (a), that "the authority shall consider the impact of decoupling on the gas or electric company's return on equity and make necessary adjustments thereto." Decoupling through a sales adjustment mechanism compensates the utility company for any type of reduction in consumption, such as warmer weather, customer loss, a

deteriorating economy as well as permanent and price-induced conservation. Through a sales adjustment mechanism the very large potential risk of revenue instability is shifted from the company to customers. In a rate proceeding, when such a sales adjustment mechanism is established and an allowed return on equity level is determined, the Authority should be required to analyze and quantify the impact of this shift in risk on the utility's allowed return on equity.

OCC has some significant concerns about what appears to be contradictory language within Section 3 of this bill regarding the authority to review and approve budgets for the C&LM programs. Under the current statutory paradigm, PURA maintains authority over any rate increases, but must be guided by the policies of DEEP. Because there is no effective statutory funding mechanism for gas C&LM, this means that PURA has authority over the entire budget for gas C&LM. DEEP has been given authority over the electric C&LM Plan, but PURA maintains authority over any DEEP-proposed increase in electric C&LM spending over the legislated 3 mill rate.

The changes proposed in this bill would further confuse the roles of DEEP and PURA in determining an appropriate C&LM budget. In lines 192 and 193, authority to review and approve the C&LM budget is given to the Commissioner of DEEP. The language in lines 193 to 198 then states that PURA "shall ensure that the balance of revenues required to fund such a budget [over and above the statutory 3 mill rate] is provided through a fully reconciling conservation adjustment mechanism." The language "shall ensure" removes any PURA discretion over the imposition of new or amended rates and charges. Later in that same paragraph, at lines 216-225, apparently contradictory language has been added that states that PURA shall open a

proceeding to review any provision requiring additional funding through new or amended rates and charges, in accordance with sections 16-19, 16-19b and 16-193 to ensure that rates remain just and reasonable. If that language is meant to give PURA authority to amend the budget if it finds it is not just and reasonable, it directly conflicts with the earlier language cited, and thus creates significant ambiguity. If that language is meant to indicate that PURA has to pass through the budget approved by the Commissioner, but attempt to do so in a way that keeps rates just and reasonable, that is a direct abrogation of PURA's ratemaking authority. It also puts PURA in an untenable position, as it is impossible to ensure rates remain just and reasonable if someone else has the unchecked authority to add additional spending requirements directly to rates. Finally, the proposed language requires that this PURA review be completed in sixty days, which is not sufficient time to conduct even a cursory review of, and proceeding concerning, what is generally an 800+ page filing. Assuming that an actual review and approval by PURA is contemplated, OCC suggests that one hundred and twenty days be allowed.

The legislature delegated its ratemaking authority to PURA and its predecessor agencies with the explicit requirement that such authority can only be exercised in a contested process pursuant to the Uniform Administrative Procedures Act (UAPA), which provides a judicial check on that authority, and due process to those who will be affected by PURA's decisions. The proposed changes highlighted above create significant ambiguity regarding the continued existence of the check on the ratemaking authority that has been delegated.

Some might argue that the ability of the DEEP Commissioner to unilaterally impose a rate increase through an increased C&LM budget is checked by the proposed requirement that the budget only fund energy efficiency that is “cost effective or lower cost than acquisition of equivalent supply” [lines 191-192]. However, the definition of what is cost-effective is highly subjective, and the elements of cost-effectiveness are the subject of considerable debate among experts in the field. A subjective test such as cost-effectiveness does not provide a meaningful check on the ability to raise rates.

As an example, one element of the cost-effectiveness debate revolves around cross-subsidization, or whether benefits of reduced use of non-regulated fuels (oil and propane) should be included in deciding whether gas and electric utility ratepayer-funded energy efficiency programs are cost-effective. This is an issue because those unregulated fuel customers do not currently contribute to the conservation funds. Section 3 of H.B. 6360 proposes changes to the C&LM cost effectiveness analysis to include program benefits for “all energy savings” (lines 240-241), which would include non-regulated fuels. This is a significant departure from the historical application of cost-effectiveness testing in C&LM program review in Connecticut, and would have the effect of artificially making the cross-subsidization of propane and oil fuel measures look cost-effective for electric ratepayers. As an example, this language would make it appear to be cost-effective to use electric ratepayer money to install a more efficient oil boiler in an oil-heated home, which would cause only minimal, if any, reduction in that customer’s electric use.

Counting oil and propane benefits in the cost-effectiveness test for electric C&LM programs would also significantly expand the universe of what is considered cost-

effective. Coupled with a requirement to do all energy efficiency that is cost-effective, and given the number of oil and propane serviced homes and businesses (some very large commercial and industrial) in Connecticut, this one proposed change to cost-effectiveness analysis could cause electric rate increases of billions of dollars in the near-term, for benefits that will not lower electric bills. OCC notes that this contradicts the CES, insofar as the CES calls for a funding source for oil heated homes in order to decrease cross-subsidization by electric ratepayers.

Taking all of these proposed changes together, without more clarity about PURA's role in reviewing and approving the budgets for C&LM programs, a DEEP Commissioner could be able to increase rates by billions of dollars in the short-term with no check on that authority. OCC suggests that this is not an appropriate delegation of the legislature's ratemaking authority, and suggests that the bill be changed to remove the language in lines 193-198 requiring PURA to pass through the budget approved by the Commissioner. This change will eliminate what may be an untended consequence of the conflicting statutory provisions, but it is essential to maintaining a check on ratemaking authority.

Recognizing that one of the goals of the CES is to better coordinate and streamline electric and gas energy efficiency planning, OCC recommends that changes be made to Section 2 and 3 of H.B. 6360 to combine consideration of the gas and electric Conservation and Load Management (C&LM) Plans and to provide an effective statutory mechanism for gas energy efficiency funding. Both the gas and electric C&LM Plans should first be subject to a consolidated review by DEEP, followed by a consolidated review of the gas and electric plans by PURA for any changes to rates

(guided by the policies developed by DEEP), with a reasonable time limit imposed for each. This can be accomplished by combining the gas C&LM statute (which is addressed in Section 2) with the electric C&LM statute (addressed in Section 3), and by adding a new section to the bill which would add the gas companies to Section 16-19b(c), the statute used by PURA for approving and implementing an electric Conservation Adjustment Mechanism (CAM). OCC believes these changes would significantly streamline the review of the combined gas and electric C&LM plans, while maintaining PURA's authority over rates. OCC would be happy to work with the members of the Committee and any other interested parties to develop language to effectuate these changes.

OCC supports the changes proposed in Section 5 of H.B. 6360 to expand virtual net metering, in particular the applicability to customers who lease or contract with a virtual net metering facility. OCC is concerned about the level of cost-shifting to other customers if a credit is applied toward eighty percent of the distribution and other service charges, as proposed, since customers who participate in virtual net metering are still using the distribution system. OCC would be happy to work with the Committee and other interested parties to analyze the effect of that cost-shifting and develop alternative language if appropriate.

OCC supports Section 6 of H.B. 6360, which expands PURA's authority to permit electric sub-metering. OCC suggests that a section be added to amend Section 16-41 of the General Statutes, in order to bring those who sub-meter electricity, with or without PURA's approval, within PURA's jurisdiction for the issuance of penalties for any consumer protection violations.

OCC recognizes that sections of this bill overlap with others that are on the agenda today which also propose changes to clarify the roles of PURA and DEEP and processes regarding resource planning. OCC is ready and willing to continue conversations with Committee members, DEEP and other parties to resolve conflicts between the bills and ensure appropriate consumer protections continue to be part of the regulatory process.