OLR Bill Analysis

HB 7006

Emergency Certification

AN ACT CONCERNING EMERGENCY RESPONSE BY ELECTRIC DISTRIBUTION COMPANIES, THE REGULATION OF OTHER PUBLIC UTILITIES AND NEXUS PROVISIONS FOR CERTAIN DISASTER-RELATED OR EMERGENCY-RELATED WORK PERFORMED IN THE STATE.

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§§ 1-3 — PERFORMANCE BASED REGULATION (PBR)

Requires PURA to initiate a proceeding by June 1, 2022, to adopt a PBR framework; requires PURA to consider implementing financial performance-based incentives and penalties and performance-based metrics for periodic reviews and general rate hearings

PURA Proceeding to Adopt a PBR Framework (§ 1)

The bill requires the Public Utilities Regulatory Authority (PURA) to initiate a proceeding by June 1, 2022, to investigate, develop, and adopt a framework for implementing performance-based regulation of

each electric distribution company (EDC, i.e., Eversource and United Illuminating). It also allows PURA to initiate a proceeding to investigate, develop, and adopt a framework to implement PBR for gas and water companies, consistent with the provisions described below.

The bill requires the framework to establish standards and metrics to measure how EDCs perform in meeting objectives in the ratepayers' interest or to benefit the public. These objectives may include the following:

1. safety;
2. reliability;
3. emergency response;
4. cost efficiency;
5. affordability;
6. equity;
7. customer satisfaction;
8. municipal engagement;
9. resilience; and
10. advancing state environmental and policy goals (e.g., the state's greenhouse gas reduction goals or goals included in the state's Integrated Resource Plan (IRP) or Comprehensive Energy Strategy (CES)).

Under the bill, "resilience" is the ability to prepare for and adapt to changing conditions and withstand and recover rapidly from deliberate attacks, accidents, or naturally occurring threats or incidents, such as those associated with climate change.

The bill requires the framework to identify how and when PURA will use PBR standards and metrics to (1) apply ratemaking principles

established in existing law to regulate utilities (see BACKGROUND) and (2) determine the relative adequacy of a company's service and the reasonableness and adequacy of proposed rates during a periodic rate review.

Under the bill, the framework must also identify specific mechanisms to align utility performance with its standards and metrics for EDCs, as well as those it must consider implementing for other regulated utilities (see § 3). The framework must also review the effectiveness of an EDC's revenue decoupling mechanism (i.e., a billing charge that allows a company to make up any distribution revenue lost due to a lower than expected sales volume).

PBR for Rate Hearings (§ 2)

By law, when a regulated utility proposes to amend its rates, PURA must investigate whether the proposed rates conform to ratemaking principles established in law (see BACKGROUND). The bill allows PURA, as part of that investigation, to evaluate the reasonableness and adequacy of the company's service and performance using metrics or standards developed under the PBR framework. Under the bill, PURA may also determine whether the company's allowed rate of return is reasonable based on PURA's evaluation of its performance on these metrics.

Financial Performance-Based Incentives and Penalties (§ 3)

By law, PURA must conduct a periodic review and investigation of gas companies and EDCs, or conduct a general rate hearing, at least every four years. Current law authorizes PURA to approve performance-based incentives as part of a periodic review, and requires PURA to include in its approval a framework to monitor performance on certain criteria including the company's return on equity, reliability, and quality of service. The bill instead requires PURA to consider implementing financial performance-based incentives and penalties and performance-based metrics for periodic reviews and general rate hearings.

Under current law, if PURA approves performance-based incentives

for a company, PURA's periodic monitoring and review of the company's performance replaces its periodic review of rates. The bill eliminates this provision and instead requires PURA, if it approves performance-based incentives or penalties, to include in its approval a framework to monitor and review the company's performance using metrics PURA develops.

EFFECTIVE DATE: Upon passage, except that provisions on performance-based incentives and penalties are effective November 1, 2020.

§ 2 — PURA DECISION DEADLINES IN RATE CASES

Effectively extends PURA's deadlines for decisions in rate cases by (1) 200 days for EDCs and gas companies and (2) 50 days for all other regulated utilities

The bill changes the deadline for PURA to issue final decisions on rate cases, effectively extending it by 200 days for EDCs and gas company filings and by 50 days for all other regulated utility filings. Under current law, PURA must issue a final decision for utility rate cases within 150 days from the new rate's proposed effective date. Under the bill, PURA must issue a final decision on (1) EDC and gas company rate cases within 350 days of the new rate's proposed effective date and (2) all other regulated utility rate cases within 200 days from proposed effective date. The bill also eliminates a provision that currently gives PURA a 30-day deadline extension under certain circumstances.

As under existing law, if PURA does not issue its rate case decision by the applicable deadline, the proposed rate may become effective pending PURA's decision, if the company meets certain requirements.

EFFECTIVE DATE: Upon passage

§ 4 — EDC EXECUTIVE COMPENSATION

Requires PURA to consider whether to make a utility company's rate recovery for certain executive and employee compensation dependent on the company meeting performance targets

The bill requires PURA to consider whether to make rate recovery for certain compensation paid to utility company executives and

employees dependent on the company achieving the performance targets established in § 1. PURA must do this when deciding whether to allow rate recovery for any portion of an EDC's, PURA-regulated gas company's, or PURA-regulated water company's compensation packages for executives or officers, or incentive compensation for employees.

EFFECTIVE DATE: Upon passage

§ 5 — PURA RATE PROCEEDING

Allows PURA, by November 1, 2020, to initiate a proceeding to consider implementing an interim rate decrease, low-income rates, and economic development rates for EDC customers

The bill allows PURA, by November 1, 2020, to initiate a proceeding to consider implementing the following rate changes for EDC customers, as authorized under existing law: (1) an interim rate decrease, (2) low-income rates, and (3) economic development rates.

By law, PURA must hold a hearing on the need for an interim rate decrease in certain circumstances, including when PURA finds a regulated utility may be collecting rates that are more than just, reasonable, and adequate (CGS § 16-19(g)).

Existing law also authorizes PURA to approve rate amendments for regulated utilities in order to promote the state's economic development or other policies (CGS § 16-19oo).

EFFECTIVE DATE: Upon passage

§ 6 — PURA DEADLINES FOR APPROVING UTILITY COMPANY DEBT

Extends, from 30 to 60 days, the deadline for PURA to approve or disapprove certain types of utility company debt

The bill extends, from 30 to 60 days, the deadline for PURA to approve or disapprove a regulated utility company (1) issuing notes, bonds, or securities; (2) lending or borrowing funds for more than one year (unless it is for certain purposes); or (3) amending the provisions of an indenture or similar financial instrument that would affect the issuance of terms of its notes, bonds, or securities.

EFFECTIVE DATE: November 1, 2020

§ 7 — PURA APPROVAL OF UTILITY COMPANY MERGERS AND CHANGES OF CONTROL

Requires proportional representation for Connecticut on the boards of directors of prospective holding companies for PURA-regulated utilities; extends hearing and approval deadlines for PURA in proceedings to approve mergers or other changes in control of PURA-regulated utilities

Starting January 1, 2021, the bill effectively prohibits entities from applying to become a holding company of a PURA-regulated utility company unless the percentage of Connecticut-based members on the holding company's board of directors equals the percentage of the holding company's total service area that is in Connecticut (e.g., if 30% of the company's service area is in Connecticut, then 30% of its directors must be Connecticut-based). Under the bill, PURA can only approve an application to create a holding company for a PURA-regulated utility company if it makes a change in the composition of its board members that reflects these proportional percentages. The provision applies to applications to create such a holding company filed on or after January 1, 2021.

The bill also extends two deadlines related to PURA's approval of any mergers or other changes in control of a PURA-regulated utility company. It extends the deadline for PURA to hold a hearing on the merger or change in control from 30 to 60 days after the application was filed. And it extends the deadline for PURA to approve or disapprove the transaction from 120 to 200 days after the application was filed. It also allows PURA to extend the approval deadline by an additional 30 days after notifying all parties and intervenors in the proceeding.

EFFECTIVE DATE: January 1, 2021

§ 8 — HEARING COST RECOVERY

Prohibits EDCs from recovering costs related to PURA hearings

The bill prohibits EDCs from recovering their costs associated with attending or participating in PURA's rate-making hearings.

EFFECTIVE DATE: November 1, 2020

§ 9 — CIVIL PENALTIES FOR EMERGENCY RESPONSE

Raises the limit on civil penalties for EDCs and gas companies that fail to comply with any standard related to emergency preparation or service restoration

The bill raises the limit on civil penalties PURA may impose on EDCs and gas companies that fail to comply with any standard of acceptable performance in emergency preparation or service restoration in an emergency. Existing law, unchanged by the bill, requires PURA to assess penalties as ratepayer credits and, generally, sets them at $10,000 per violation. The bill raises the limit on penalties from 2.5% to 4% of a company's annual distributed revenue.

EFFECTIVE DATE: Upon passage

§§ 10 & 11 — EDC CREDITS FOR OUTAGES AND COMPENSATION FOR LOST FOOD AND MEDICINE

Requires EDCs to give residential customers (1) $25 account credits for each day that a service outage occurs for more than 96 consecutive hours after an emergency and (2) $250 compensation for food and medication lost due to a service outage that lasts for more than 96 consecutive hours; allows EDCs to request a waiver from the requirements; and prohibits EDCs from recovering their costs for the credits and compensation

Starting July 1, 2021, the bill requires an EDC to (1) give a residential customer a $25 account credit for each day that the customer has a distribution system service outage occur for more than 96 consecutive hours after an emergency (§ 10) and (2) compensate each residential customer with $250, in the aggregate, for any food and medication that expires or spoils due to a service outage that lasts for more than 96 consecutive hours after an emergency (§ 11).

For these purposes, an "emergency" is any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, or fire explosion. The bill prohibits the EDCs from recovering their costs for providing the credits (presumably, through their rates).

The bill allows the EDCs, within 14 days after an emergency occurs, to petition PURA for a waiver from the requirements to provide account credits and compensation for lost food and medicine. The petition must include the severity of the emergency, employee safety issues, and conditions on the ground. PURA must conduct the

proceeding over the petition as a contested case and the petitioning EDC bears the burden of proving that the waiver is reasonable and warranted. In deciding whether to grant the waiver, PURA must consider whether the EDC received approval and reasonable funding allowances, as determined by PURA, to meet infrastructure resiliency efforts to improve the company's performance.

The bill requires PURA, by January 1, 2021, to open proceedings to consider implementing the credit, compensation, and waiver provisions and establish the circumstances, standards, and methodologies needed to implement the provisions for each EDC, including any modifications to the 96-hour threshold that triggers the requirements. PURA must issue its final decisions in the proceedings by July 1, 2021.

EFFECTIVE DATE: Upon passage

§ 12 — EDC STORM RESPONSE AND MINIMUM STAFFING

Requires the EDCs to submit a report that analyzes their storm preparation and response, and requires PURA to establish minimum staffing level standards for EDC outage planning and restoration personnel

EDC Report

The bill requires each EDC, by January 1, 2021, to provide PURA and the Energy and Technology Committee with a report about how it prepares and responds to storms. More specifically, the report must include a cost-benefit analysis that identifies the resources spent responding to the last five storm events classified as level three, four, or five. This analysis must include a review of the number of line crew workers that distinguishes between those workers (1) directly employed by the EDC and working full-time in the state, (2) directly employed by the EDC but working primarily in another state, and (3) hired as contractors or subcontractors.

The report must also include, for the last five storm events classified as level three, four, or five, an analysis of the company's (1) pre-storm estimates of potential damage and service outages; (2) post-storm assessments of damage and service outages; and (3) restoration management, including access to alternate restoration resources via

regional and reciprocal aid contracts.

In addition, the report must include the EDC's analysis of its infrastructure, facilities, and equipment. It must examine (1) their age and condition, and whether they were in good repair and capable of meeting operational standards; (2) whether the company is following standard industry practices for operating and maintaining them; (3) whether their maintenance has been delayed; and (4) whether the company had access to adequate replacement equipment during the last five storm events classified as level three, four, or five.

The report must also contain an analysis of the EDC's (1) planning for at-risk and vulnerable customers; (2) communication policies with state and local officials and customers, including individual customer restoration estimates and their accuracy; and (3) compliance with any emergency response standards adopted by PURA.

PURA Docket

The bill requires PURA, by January 1, 2021, to either initiate a docket to review the EDCs' reports or incorporate a review of them into an existing docket. PURA must submit its final decision on the docket to the Energy and Technology Committee. (The bill does not specify any criteria PURA must use to review the report or a deadline for its decision.)

EDC Minimum Staffing Levels

The bill requires PURA, after it issues its final decision on the EDC reports, to establish minimum staffing level standards for EDC outage planning and restoration personnel, including linemen, technicians and system engineers, tree trimming crews, and personnel responsible for directing operations and communicating with state, municipal, and regional officials. The standards may reflect different staffing levels based on an emergency's severity. (Existing law, unchanged by the bill, requires PURA to establish minimum staffing level standards for any regulated utility companies in an emergency in which more than ten percent of their customers are without service for more than 48 consecutive hours (CGS § 16-32h(d)).)

The bill also allows PURA to establish other EDC performance standards to ensure the reliability of the company's services in an emergency and to prevent, minimize, and restore any long-term service outages or disruptions caused by an emergency. (Existing law, unchanged by the bill, requires PURA to establish these standards for any regulated utility company to prevent and minimize outages or disruptions that last for more than 48 hours and affect more than 10% of their customers (CGS § 16-32h(e)).)

If PURA finds that an EDC failed to comply with these standards or any PURA order, the bill requires PURA to make orders to enforce the standards. It also specifies that PURA may levy civil penalties as allowed under existing law, which cannot be included as operating expenses for ratemaking purposes (and thus, are not recoverable through rates).

EFFECTIVE DATE: Upon passage

§ 13 — CUSTOMER RESTITUTION

Allows PURA to order restitution for failure to comply with laws, orders, or regulations

The bill expands the types of penalties that PURA must impose on certain entities that fail to obey or comply with the applicable energy statutes or PURA's orders or regulations (see BACKGROUND). Under current law, PURA must impose a fine for these violations, but the bill allows PURA to also order restitution or both a fine and restitution. Under the bill, the fine, restitution, or combined fine and restitution cannot exceed existing limits on the amount of the fine (generally, $10,000 per offense unless otherwise specified).

The bill also allows PURA to direct a portion of any fine it levies to be paid to a nonprofit agency engaged in energy assistance programs. PURA must name the nonprofit in its decision or violation notice.

EFFECTIVE DATE: Upon passage

§ 14 — ISO-NE STUDY

Requires DEEP to evaluate the state's reliance on wholesale energy markets administered by ISO-NE and recommend alternatives

The bill requires the Department of Energy and Environmental Protection (DEEP) commissioner, by January 15, 2021, to submit to the Energy and Technology Committee a report that:

1. evaluates whether the state's reliance on the wholesale energy markets administered by the regional independent system operator (i.e., ISO-New England) benefits the state's ratepayers and

2. recommends alternative approaches to better meet the state's need for clean, reliable, and affordable electricity in a way that leverages competition, reduces ratepayer risk, and achieves the state's public policy goals, including its greenhouse gas reduction goals.

EFFECTIVE DATE: Upon passage

§ 15 — MICROGRID GRANT AND LOAN PROGRAM EXPANSION

Expands DEEP's microgrid grant and loan program to cover resilience projects and requires DEEP to prioritize funding proposals that benefit vulnerable communities

Under current law, DEEP administers a microgrid grant and loan program to support local distributed energy generation for critical facilities. The bill expands the program to also support resilience projects. Under the bill, resilience projects provide an ability to prepare for and adapt to changing conditions and withstand and recover rapidly from deliberate attacks, accidents, or naturally occurring threats or incidents such as those associated with climate change.

The bill expands the allowed uses for funding from the program to include (1) community planning that includes microgrid or resilience project feasibility, including cost-benefit analyses; (2) assistance for the cost of design, engineering services, and interconnection infrastructure for resilience projects; (3) resilience projects connected to storage systems or certain distributed energy systems; and (4) non-federal cost sharing for grant or loan applications for projects or programs that include microgrids or resilience.

When granting funding under the program, the bill requires DEEP

to prioritize proposals that benefit vulnerable communities. Under the bill, these communities are populations that may be disproportionately impacted by the effects of climate change, including:

1. low- and moderate-income communities;

2. environmental justice communities (i.e., distressed municipalities and census block groups for which at least 30% of the population consists of low-income people who are not institutionalized and have an income below 200% of the federal poverty level);

3. communities eligible for the federal Community Reinvestment Act program;

4. populations with increased risk and limited means to adapt to the effects of climate change; or

5. any others as further defined by DEEP in consultation with community representatives.

The bill allows DEEP to hire a technical consultant to support implementing the program using any bond funds authorized in support of microgrids or resilience. It also specifies that the program can accept proposals from nonprofit and academic entities seeking to develop eligible projects and eliminates an obsolete reporting requirement.

EFFECTIVE DATE: Upon passage

§ 16 — NEXUS RULES FOR CERTAIN DISASTER- OR EMERGENCY-RELATED WORK

Establishes tax nexus rules and registration and licensure exemptions for certain out-of-state businesses and employees who perform certain disaster-related work on critical infrastructure

This bill establishes tax nexus rules (see BACKGROUND) for out-of-state businesses or employees who come to Connecticut to perform disaster- or emergency-related work on critical infrastructure during a disaster response period. Under the bill, regardless of existing tax laws,

operating or being present in the state to perform this work is not sufficient to require out-of-state businesses or certain out-of-state employees to:

1. pay property tax, tax on income derived from disaster-related work during a disaster response period, or use tax on tangible personal property that is temporarily in the state during the disaster response period to help the employees in their work or

2. submit any tax filing to the state.

The bill's tax nexus rules for out-of-state employees apply only to employees residing in states with similar rules or no personal income tax. (Out-of-state businesses and employees performing work during a disaster response period are subject to all other applicable state taxes and fees during this period (e.g., sales tax).) Out-of-state businesses must disregard activities covered under the bill when filing returns for income or gross receipts taxes, including a combined unitary return.

Additionally, under the bill, out-of-state businesses and all out-of-state employees who are present in Connecticut to perform disaster- or emergency- related work during a disaster response period are exempt from (1) registering with the state or any of its political subdivisions and (2) state licensure requirements, as long as the business or employee is properly licensed to perform disaster- or emergency-related work under another state's laws. But upon the secretary of the state's (SOTS) request, out-of-state businesses and registered businesses affiliated with them must submit certain information in a written statement.

Under the bill, out-of-state businesses and employees who remain in the state after the disaster response period are subject to all laws that set standards to establish presence in the state and must follow any applicable laws.

EFFECTIVE DATE: Upon passage

Applicability

The bill applies to out-of-state businesses and out-of-state employees who perform disaster-related or emergency-related work during a disaster response period.

Out-of-State Businesses. Under the bill, an "out-of-state business" is a business entity that, in the income or tax year immediately before the income or tax year in which the state disaster or emergency occurred, (1) was not registered with the state or any of its political subdivisions, (2) did not submit any tax filings to the state, and (3) did not derive income from state sources. The term includes business entities that satisfy the above requirements except that they (1) were present or conducted operations in the state to perform disaster- or emergency-related work or (2) are affiliated with a business registered in the state only by common ownership. The bill applies only to businesses that would be subject to the following taxes if they conducted business or derived income from in-state sources: corporation business, community antenna and satellite television companies, utility companies, electric generation, or pass-through entity.

Out-of-State Employees. An "out-of-state employee" is an employee of an out-of-state business who does not work in the state, except for performing disaster- or emergency-related work for the business during a disaster response period. The tax nexus provisions apply only to those employees who reside in states that either (1) have substantially similar laws regarding tax nexus or (2) do not impose a personal income tax.

Disaster-Related or Emergency-Related Work. Under the bill, "disaster-related or emergency-related work" means repairing, renovating, installing, constructing, or rendering services to critical infrastructure in the state that has been damaged, impaired, or destroyed by a disaster or emergency declared by the governor or the president (i.e., a "state disaster or emergency"). "Critical infrastructure" refers to real property and tangible personal property that is owned or used by a public service company or telecommunications company to generate, transmit, or distribute the

company's product or service in the state. It includes buildings, conduits, lines, fiber optic cables, poles, pipes, structures, and equipment.

The bill applies only to work performed during a "disaster response period," meaning the period beginning 10 days before the disaster's or emergency's proclamation or declaration and ending 60 days after its declared end.

Written Statements to SOTS

The bill requires any out-of-state business that is present or operates in the state to perform disaster- or emergency-related work during a disaster response period to provide a written statement to SOTS upon request. The statement may be submitted electronically and must include the business's name, domicile state, principal business address, telephone number, e-mail address, federal tax identification number, and date of entry into the state.

SOTS may also request a registered business that is affiliated with such an out-of-state business to provide a written statement that includes (1) the information listed above and (2) the registered business's name, principal address, telephone number, and e-mail address. A "registered business" is a business that is registered with SOTS to do business in Connecticut before the disaster or emergency.

Under the bill, an out-of-state business that has received a request from SOTS for a written statement or is an affiliate of a registered business that has received such a request, may not be prevented from beginning disaster- or emergency-related work in the state before providing the written statement.

BACKGROUND

Provides additional information about ratemaking principles, PURA's authority to impose penalties, and tax nexus rules

Ratemaking Principles

The law requires PURA to regulate public service companies in accordance with the following principles:

1. there must be a clear public need for the service being proposed or provided;

2. the public service company must be fully competent to provide efficient and adequate service (i.e., it is technically, financially, and managerially expert and efficient);

3. PURA and all public service companies must perform their respective public responsibilities with economy, efficiency, and care for public safety and energy security, as well as to promote economic development within the state with consideration for conservation, energy efficiency, development and use of renewable energy, and for prudent management of the natural environment;

4. the rate level and structure must be sufficient, but no more than sufficient, to allow companies to cover their operating costs, including appropriate staffing levels, and capital costs, to attract needed capital and to maintain financial integrity, and yet provide appropriate protection to relevant public interests;

5. the level and structure of rates charged to customers must reflect prudent and efficient management of the operation; and

6. company rates, charges, conditions of service, and categories of service must not discriminate against customers using renewable energy sources or co-generation technology to meet a portion of their energy requirements (CGS § 16-19e).

PURA Authority to Impose Penalties

The law authorizes PURA to penalize the following entities for a failure to obey or comply with the applicable energy statutes or PURA's orders, or regulations:

1. public service companies (i.e., regulated utilities) and their officers, agents, and employees;

2. electric suppliers or anyone providing electric generation

services without a license, and their officers, agents, and employees;

3. certified telecommunications providers or anyone providing telecommunications services without authorization, and their officers, agents, and employees;

4. a person, public agency, or public utility subject to "call before you dig" requirements;

5. natural gas sellers required to register with PURA;

6. cellular mobile telephone carriers;

7. Connecticut energy efficiency partners;

8. companies required to pay their share of certain PURA expenses (e.g., utilities); and

9. entities approved to submeter (CGS § 16-41).

Tax Nexus Rules

Tax nexus refers to the amount and type of activity that must be present before a person or business is subject to a state's taxing authority. State law establishes rules for determining nexus, subject to federal constitutional restrictions.

For example, for the corporation business tax, any company that derives income from sources in Connecticut and that has a substantial economic presence within this state is liable for the tax, to the extent permitted by the U.S. Constitution, and must apportion its income according to applicable corporation business tax rules (CGS § 12-216a). Under state regulations, activity that subjects businesses to tax includes (1) performing, or soliciting orders for, services in the state and (2) having an employee, regardless of where the employee is based, repair or replace faulty or damaged goods or install or assemble the business's product in the state (Conn. Agencies Regs. § 12-214-1).