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April 9, 2012

Kimberley J. Santopietro
Public Utilities Support Services Manager
Public Utilities Regulatory Authority
10 Franklin Square
New Britain, CT 06051

Re: PURA Investigation of Public Service Companies' Response to 2011
Storms
Docket No. 11-09-09

Dear Mrs. Santopietro:

The Office of Consumer Counsel ("OCC") is a party to the above-captioned docket. Enclosed herewith is the Direct Testimony of William L. Vallee, Jr., being filed on behalf of the Office of Consumer Counsel.

Very truly yours,

ELIN SWANSON KATZ
CONSUMER COUNSEL

By: 

Richard E. Sobolewski
Supervisor of Technical Analysis

cc: Service List

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PUBLIC UTILITIES REGULATORY AUTHORITY

**REVIEW OF THE PUBLIC SERVICE COMPANIES'
RESPONSE TO 2011 STORMS**

DOCKET NO. 11-09-09

**DIRECT TESTIMONY OF
WILLIAM L. VALLÉE JR.
ON BEHALF OF THE
OFFICE OF CONSUMER COUNSEL**

APRIL 9, 2012

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31 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

32 A. My name is William L. Vallée Jr. I am a principal attorney with the Office Of Consumer
33 Counsel (the "OCC") with a focus on telecommunications and the public rights of way
34 (PROW). I am also federally-funded as the state's Broadband Policy and Programs
35 Coordinator through a five-year stimulus State Broadband Data and Development Grant
36 Program grant from the U.S. Department of Commerce, National Telecommunications
37 and Information Administration (NTIA). Through this funding, the NTIA has created a
38 single-point of contact for internal and external parties to access information regarding
39 the state's broadband expansion activities, and provided for the state to identify and
40 support opportunities for increased collaboration among various state agencies in order to
41 boost the creation and promotion of broadband access and adoption policies.

42 My business address is OCC, 10 Franklin Square, New Britain, CT 06051.

43 **Q. PLEASE SUMMARIZE YOUR BUSINESS EXPERIENCE AND EDUCATION.**

44 A. After several years of private practice of law on Wall Street and in Hartford focused on
45 structuring finance instruments for investment and commercial banking institutions, I
46 joined the OCC in 1993. I participated with others from the OCC and other state policy
47 and industry participants in negotiations to develop telecommunications industry
48 deregulation in Connecticut through passage of Public Act 94-83, *An Act Implementing*
49 *The Recommendations Of The Telecommunications Task Force* ("P.A. 94-83"), designed
50 by the General Assembly to implement the recommendations of a telecommunications
51 task force concerning the competitive provision and regulation of telecommunications
52 services. Upon its effective date of July 1, 1994, P.A. 94-83 generated over a dozen
53 substantive dockets at the Public Utilities Regulatory Authority (PURA or Authority)

54 (f/k/a Department of Public Utility Control) to redesign the state's telecommunications
55 regulatory and infrastructure organization to attempt to foster a competitive market for
56 such services. The OCC was instrumental in the structuring of service quality standards
57 imposed on AT&T (f/k/a The Southern New England Telephone Company) related to the
58 alternative regulation framework that resulted from P.A. 94-83, standards that have been
59 revisited on many occasions at PURA and the General Assembly, and which have
60 bearing on that company's operations in the public rights of way.¹ The Connecticut law
61 was soon joined by the 1996 Federal Telecom Act² which similarly addressed the
62 introduction of a competitive structure to the regulated telecommunications market, with
63 direct impact on this state's market and regulatory structure.

64 I was OCC's lead counsel on all the P.A. 94-83 implementation dockets, as well as nearly
65 all other telecommunications docket since that time, including managing the many
66 dockets addressing the activities of all regulated public utility issues involving the public
67 rights of way. Representing the OCC, I have advised members of and testified before
68 various committees of the General Assembly on many proposed bills regarding
69 telecommunications and the public rights of way since 1993.

70 With regard to the two storms of 2011 (Two Storms), I am a member of several
71 workgroups formed as elements of Governor Malloy's Emergency Planning and
72 Preparedness Initiative (EPPI), which has been established with state, local and private

¹ *Report Of The Two Storm Panel*, January 9, 2012, at 35-36

**CHAPTER EIGHT – GENERAL STATE ISSUES
REGULATION OF UTILITIES**

Findings:

Standards for maintenance, tree trimming, and replacement vary from town to town and utility to utility. The standards used by telecommunication companies are of particular concern.

² Publ. L. No. 104-104, 110 Stat. 456 (1996), codified throughout 47 U.S.C. (the "1996 Federal Telecom Act").

73 entities working together under the leadership of the state's Department of Emergency
74 Services and Public Protection/Department of Emergency Management and Homeland
75 Security (DESPP-DEMHS) Statewide Advisory Council to enhance emergency plans,
76 preparedness and training at every level.³ This work will culminate in a Statewide
77 Exercise during July 28-30, 2012. Notable among these working groups are the Multi-
78 Partner Energy and Utilities Policy Working Group, combining Emergency Support
79 Function (ESF) 2 (Communications) and ESF 12 (Energy) leadership and subject matter
80 experts, as well as the Exercise and Planning Preparedness Initiative - Technology Work
81 Group, which is addressing the state's initiatives regarding GIS data collection and
82 mapping,⁴ Public Safety Interoperability Communications,⁵ and the state's WebEOC

³ See <http://www.governor.ct.gov/malloy/cwp/view.asp?A=4010&Q=493690>

William J. Hackett, State Emergency Management Director, DEMHS/DESPP, Action Plan, January 3, 2012, noting that in the aftermath of Tropical Storm Irene and the October Nor'Easter, the Witt Report noted that :

public sector emergency response planning at the state and local levels does not adequately focus on actions needed in a significant power outage and assignment of responsibilities in mitigation, preparedness, response, and recovery in utility disruption events. State and local plans call for reports from power companies, but do not [specifically] address multi-agency actions or coordination needed to address energy disruption.

DEMHS/DESPP outlined a process for improving the State's planning and preparedness, particularly with regard to large scale power outages. The purpose of this work is to:

- Improve information-sharing during an emergency between state and local officials, and our utility providers;
- Provide clear, specific guidance on the inter-related roles and responsibilities of state and local officials, and the private sector, including utilities, in mitigation, preparedness, response, and recovery, particularly in utility disruption events.

⁴ Connecticut, coordinating with the Federal Geographic Data Committee (FGDC) and the National Spatial Data Infrastructure (NSDI), has joined many states that have moved to development of a common framework for management of their geospatial data. Geographic data are essential to many operations, yet they are expensive and time consuming to produce. Many organizations need the same basic geographic data for their applications and spend precious resources duplicating existing data sets. Others go without data because they cannot afford the production costs. Furthermore, when an application or problem covers more than one jurisdiction, it is often difficult to find and combine existing data. The state is now focused on providing a reliable, standardized source for commonly needed and used geographic data themes, which will prove very useful in monitoring and disseminating information concerning the PROW and its elements, especially in times of emergency.

83 system upgrades.⁶ These groups are also charged with exploring a cross-agency
84 enforcement team with the Department of Energy & Environmental Protection (DEEP)
85 and PURA instead of creating a brand new division to better utilize existing resources,
86 and investigating handling management and administration of poles and wires as part of
87 an enforcement team.

88 In order to improve information-sharing during an emergency between state and
89 local officials, and the utility providers, the working groups will provide clear, specific
90 guidance on the interrelated roles and responsibilities of state and local officials, and the
91 private sector, including utilities, in mitigation, preparedness, response, and recovery,
92 particularly in utility disruption events.

93 The fundamental goals of the Governor's EPPI are to :

- 94 ■ To enhance the existing State Response Framework and local plans to create more
95 comprehensive planning to identify in detail multi-agency, multi-jurisdictional
96 response and coordination actions, roles and responsibilities;

⁵ To provide immediate and coordinated assistance, the state's public safety workers must be able to communicate with each other in the mobile radio communication environment effectively, swiftly and securely. "Interoperability" simply refers to the ability of public safety personnel, including utility employees, to communicate by radio with staff from other agencies, on demand and in real time. Public safety agencies require three distinct types of interoperability — day-to-day, mutual aid, and task force. **Day-to-day interoperability** involves coordination during routine public safety operations. Interoperability is required, for example, when firefighters from around a county join forces to battle a structural fire or when neighboring law enforcement agencies must work together during a vehicular chase. **Mutual aid interoperability** involves a joint and immediate response to catastrophic accidents or natural disasters and requires tactical communications among numerous groups of public safety personnel. **Task force interoperability** involves local, state and federal agencies coming together for an extended period of time to address a public safety problem.

⁶ WebEOC is a customizable web-based application that allows agencies to communicate and coordinate response and recovery operations in a secure, real-time, online environment. It allows state, municipal and federal agencies to share information during an emergency and provides a common operating picture for all, enhancing situational awareness and improving interoperable communications. The Connecticut Department of Emergency Management and Homeland Security DEMHS, along with multiple state and local partners, developed this web-based application to mirror the way emergency management preparedness, response and recovery are conducted at the municipal, regional and State(Emergency Operations Center (EOC)) levels.

- 97 ▪ To increase the quality of communications between local and state governments and
98 utilities during emergencies; and
- 99 ▪ To increase utilities' interface with Connecticut emergency management systems.

100

101 My educational background includes a J.D. from Fordham University and a Bachelor of
102 Arts Degree *cum laude* in English from Union College.

103 Q. **ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

104 A. I am testifying on behalf of the Connecticut Office of Consumer Counsel (OCC) to assist
105 in its participation in Docket No. 11-09-09, *PURA Investigation of Public Service*
106 *Companies' Response to 2011 Storms*. While I have not appeared before PURA as a
107 witness before, I have acted as an attorney representing the OCC in many PURA dockets,
108 have litigated appeals and cases involving PURA in state and federal courts, and have
109 testified many times at the General Assembly in committee hearings examining issues
110 affecting public utilities and the public rights of way .

111 Q. **PLEASE DESCRIBE THE SCOPE AND PURPOSE OF YOUR TESTIMONY.**

112 A. The demonstrated disconnection by the incumbent telephone and electric companies, the
113 owners of the poles (Pole Owners) with the clear evidence littering the streets and
114 property of scores of municipalities, homes, and business establishments due to the Two
115 Storms truly highlights the critical need for immediately improving the management of
116 the public rights of way. It is clear and was plain to the Governor's investigators that
117 management of the PROW must be improved and cannot remain at the sole discretion of
118 the Pole Owners. Public policy cannot be made in a boardroom, where the financial
119 concerns of shareholders legally and rightly predominate. The Authority has
120 comprehensive jurisdiction over the management of the public rights of way under state

121 statutes and the time is more than ripe for it to exercise that authority with much greater
122 efficiency and focus through a dedicated internal group with that goal as their mission.
123 There are no legal impediments to a new process being enacted at PURA, a project that
124 can be quickly implemented, with minimal financial cost.

125 The Authority has stated that it believes that a thorough investigation of the storm
126 outages and response must also include the issue of pole performance, particularly with
127 regard to issues of ownership, maintenance and age.⁷ The Authority indicated that
128 evidence regarding utility pole outages and restoration filed in this Docket should also
129 encompass the issue of enhanced pole administration, thus prompting the hearing in this
130 Docket specifically focusing on pole administration. The Authority declared that it will
131 pursue such issues in this proceeding and took administrative notice in this Docket of
132 written comments and reply comments on issues associated with the appointment of a
133 pole administrator in the Pole Administrator Docket.⁸

134 This Docket will reveal the extent to which the current management process and
135 joint ownership by multiple Pole Owners of the public rights of way delayed necessary
136 repairs during the storms. The regulatory and statutory history in Connecticut has already
137 shown us that the current system of pole administration is dysfunctional and has
138 contributed to many prior delays in establishment, repair, and restoration of utility and
139 communication service. Given that history and recent events, it is evident that a more
140 responsive management system for the public rights of way is urgently needed. The
141 collapse of the utility system in many communities across Connecticut and the

⁷ Docket No. 11-09-09, PURA December 14, 2011 approval of OCC's Motion No. 21, filed on December 6, 2011.

⁸ PURA stated that evidence developed herein may also be useful in the ultimate determination and outcome in Docket No. 11-03-07, *DPUC Investigation Into the Appointment of a Third Party Statewide Utility Telephone Pole Administrator for the State of Connecticut* (Pole Administrator Docket).

142 disorganized restoration response in the public rights of way evident in the days
143 following the recent devastating Two Storms was a an economic disaster and created
144 public safety dangers to most of the citizens and property of this state.⁹

145 On behalf of the OCC, I have detailed in this testimony a plan for enhanced pole
146 administration within PURA as recommended by many parties over the last few years
147 and by investigators reporting to Governor Malloy. The OCC believes that enhanced pole
148 administration composed of PURA staff should be developed to manage the use of utility
149 poles, to address and remedy the general aging of utility pole infrastructure as reported to
150 PURA by the Pole Owners, and other issues associated with the reliability of utility pole
151 infrastructure across Connecticut.

152 **Q. HAS IT BEEN DEMONSTRATED THAT THE CURRENT SYSTEM OF POLE**
153 **ADMINISTRATION NEEDS REORGANIZATION?**

154 A. Yes. As the evidence detailed in many PURA dockets over the last few years
155 demonstrates, the regulatory and statutory history in Connecticut has established that the
156 current system of pole administration is dysfunctional and has contributed to many delays
157 in attachments, repair and restoration of utility and telecommunications services.¹⁰

158 Because of the Two Storms, the current pole management system was thoroughly tested,

⁹ See e.g., Docket No.11-09-09, *Interim Decision Regarding CATV Power Supplies*, February 29, 2012. PURA determined that certain specific power supply devices attached to poles by Cablevision Systems Corporation have the potential to pose safety risks to utility employees and the public. On September 1, 2011, in Westport during restoration activities from Tropical Storm Irene, a Cablevision power supply was backfeeding portions of the electric distribution system owned by CL&P at a time when work was being performed on those facilities and they should otherwise have been de-energized. A device backfeeding the electric distribution system could energize a downed wire while lineworkers engaged in power restoration activities may wrongly assume facilities to be de-energized, and be injured or killed. A similar safety risk is posed to the public.

¹⁰ See Appendix A attached hereto listing notable PURA dockets since 1995 focused on public rights of way issues.

159 subsequently investigated, and proved to be dangerously inadequate to the tasks required
160 of it during the 2011 emergencies. In the ordinary course of business, as well, the
161 existing process has been shown to require often unnecessarily lengthy, cumbersome, and
162 expensive proceedings in order to address business practices that are not responsive or
163 supportive of the utility and competitive telecommunications markets existing in
164 Connecticut. In terms of the market for telecommunications services in particular, for
165 competition to flourish in Connecticut, providers must have assurance that the business
166 system can support their efforts to provide prompt, reliable service in a timely manner.
167 These qualities are not forthcoming when it can take months to turn up telecom service to
168 a new customer due to unnecessary delays imposed by a massive competitor in control of
169 access to the public rights of way.

170 Given that history, it is evident that a more responsive management system for the
171 public rights of way is urgently needed. The situation was plain to the two investigators
172 reporting to Governor Malloy on the disastrous utility preparations for and response to
173 the Two Storms. Indeed, both *The Report Of The Two Storm Panel* (Witt Report) and The
174 Two Storm Panel Report proposed many changes to utility and state organizations in
175 order to address the multitude of problems unearthed by its investigation, including this
176 very pertinent recommendation presented for Governor Malloy to consider, as follows:

177 **74)** PURA should develop a new position of pole administrator to manage utility
178 pole rights-of-ways, aging of utility pole infrastructure as reported by pole
179 custodians, and other issues associated with the reliability of utility pole
180 infrastructure.¹¹

181
182 Similarly, it was recommended that:

¹¹ *The Report Of The Two Storm Panel*, January 9, 2012, at 35-36.

183 71) An enforcement division should be created within PURA that will serve both
184 PURA and the Connecticut Siting Council. This division will be tasked with
185 reviewing open orders issued by both agencies; investigating potential violations
186 of such orders; negotiating administrative penalties with violators; and, if
187 necessary, referring violations to the office of the Attorney General for
188 enforcement proceedings. The creation of this division will require additional
189 personnel and funding for PURA.
190

191 These recommendations were based on findings that determined that :

- 192 • Neither the PURA nor the Connecticut Siting Council has an effective
193 enforcement capability in the structure of either agency. Put another way, neither
194 agency is designed with a separate division tasked with the enforcement of orders
195 and decisions issued by those agencies.
- 196 • Currently, there is no entity within the state of Connecticut that is tasked with
197 developing best practices for utility systems and infrastructure.¹²
198

199 The Connecticut October 2011 Snowstorm Power Restoration Report (Witt
200 Report) recommended the use of the Emergency Planning and Preparedness Initiative
201 (EPPI) process initiated by Governor Malloy in January 2012, which should be adapted
202 into an enhanced pole administration maintained and exercised into the future by PURA:

203 **Regulatory Oversight** - CL&P and UI are regulated by PURA and report
204 to PURA, in accordance with state regulations and policy, regarding
205 electricity transmission, distribution, and supply, compliance, and rate
206 issues. PURA should review its regulatory requirements and ability to
207 monitor utility preparedness and restoration capability improvements,
208 including review of mutual assistance agreements and procedures for
209 implementation. PURA, the state Office of Policy and Management, and a

¹² *Report Of The Two Storm Panel*, January 9, 2012, at 35-36, Chapter Eight – General State Issues, Regulation Of Utilities.

210 state ESF 12 or comparable functional group should be involved in review
211 of restoration efforts and infrastructure resilience issues and consider
212 addressing issues and lessons from the snowstorm event in the state's
213 ongoing energy assurance planning effort, which is coordinated by the
214 Office of Policy and Management.¹³

215 Unfortunately, most utility poles in this state are jointly owned, creating
216 confusion and uncertainty in affected municipalities and other attaching parties as to the
217 identity of the entity responsible for repair or replacement of damaged utility poles, and
218 their attendant attachments.¹⁴ Further, the FCC has emphasized in its review of pole
219 attachments that "joint ownership or control of poles should not create or justify a
220 confusing or onerous process for attachers ... [such as] requiring attachers to undergo a
221 duplicative permitting or payment process ..."¹⁵ While not mandating joint Pole Owners
222 to consolidate pole authority in one managing utility, the FCC recognized the potential
223 benefits of a "single administrative contact point."¹⁶

¹³ *Connecticut October 2011 Snowstorm Power Restoration Report*, Prepared by: Witt Associates
December 1, 2011, at 29-30.

¹⁴ *Connecticut October 2011 Snowstorm Power Restoration Report*, Prepared by: Witt Associates
December 1, 2011, at 2-3.

"Although a good idea in concept, CL&P's Town Liaison program had not been fully developed at the time of the snowstorm and was not consistently effective in providing a conduit for accurate information between the company and municipal governments, and, in some cases, undermined the company's credibility with local officials."

Connecticut October 2011 Snowstorm Power Restoration Report, Prepared by: Witt Associates
December 1, 2011, at 10.

"A recently implemented Town Liaison program, through which CL&P placed liaisons with each municipality during the outage, had mixed results. In some towns, liaisons communicated reliable information between CL&P operations and the towns. In others, however, the presence of liaisons raised municipal officials' expectations of communication and coordination, and the assigned liaisons were not sufficiently integrated with restoration operations to meet these expectations."

¹⁵ *FCC Pole Attachment Order*, April 7, 2011, ¶ 82.

¹⁶ *FCC Pole Attachment Order*, April 7, 2011, ¶ 84.

224 Q. WILL ENHANCED POLE ADMINISTRATION IMPROVE MANAGEMENT OF
225 THE PUBLIC RIGHTS OF WAY?

226 A. Yes. Setting aside PURA’s suggestion of a “*third-party administrator*” first broached in
227 its titling of the Pole Administrator Docket,¹⁷ the OCC believes instead that a new *pole*
228 *administration process* should be organized to serve the state at virtually no cost, using
229 existing personnel and facilities at PURA. The foundation work being performed by the
230 Governor’s Task Forces through the EPPI process, incorporating input from all state
231 agencies, municipalities, and industry participants, will form the basis for a new model
232 for managing the public rights of way and restoration processes in the future.¹⁸

233 Had “*enhanced pole administration*”, as the OCC has chosen to brand the
234 process we are recommending in this Docket, been in existence over the last few years
235 and especially during the Two Storms, the restoration of the utility infrastructure in the
236 public rights of way would have been much faster, communication among all involved

¹⁷ Docket No. 11-03-07, DPUC Investigation Into the Appointment of a Third Party Statewide Utility Telephone Pole Administrator for the State of Connecticut (Pole Administrator Docket). The OCC is unaware of the genesis leading PURA to introduce the cumbersome concept of a *third-party* administrator when in all prior instances the “administrator” was understood to be PURA itself.

¹⁸ *Connecticut October 2011 Snowstorm Power Restoration Report*, Prepared by: Witt Associates December 1, 2011, at 31:

- “**Conclusion** –
- “Improvements can be addressed on multiple issues through an inclusive planning process and the engraining of emergency plans and procedures in each entity’s culture and operations. Plans are best developed with the input of those who will be involved in response.”
- “In many cases, it appears that public sector agencies were not involved in the development of CL&P’s emergency plans and procedures, and CL&P was not involved in development of state and local government response plans and procedures.”
- EPPI - “Adherence to accepted planning guidance regarding an inclusive planning process that emphasizes ongoing multi-agency involvement in preparedness (such as using Emergency Support Functions to organize responsibilities and preparedness activities) should be considered an improvement measure for the state’s DEMHS – both for state plans and DEMHS guidance to local governments.
 - While CL&P shared its new Emergency Response Plan with municipalities, there had been little or no opportunity to exercise the updated plan, which allows for practice of roles and responsibilities, identification of areas for additional resources or training, and work on coordination issues.”

237 parties would have been far more efficient, and the public would have been far less
238 distressed.¹⁹ Fundamentals of enhanced pole administration would include:

- 239 1) creating a single point of contact with all utility, municipality, priority
240 community anchor institutions (e.g., hospitals, police, fire, gas stations),
241 contact information (names, phone, IP addresses, expertise), and
- 242 2) ensuring nondiscriminatory access to the poles with fair and reasonable
243 application procedures and prices, that encourage competition and
244 expanded access to services for all residents, businesses, and
245 municipalities.

246 The OCC is proposing a system of enhanced pole administration that would
247 incorporate the basic idea of a working group, utilizing that type of forum for raising and
248 debating issues, but with strict deadlines for orders and resolution of complaints resulting
249 from the use of PURA's existing statutory authority through an expedited process. The
250 functions proposed here relate less to technical expertise or operational experience, some
251 of which PURA already possesses on staff, but more to communications, organizational
252 skills, and lines of command within PURA to utilize its statutory authority more
253 efficiently and routinely in order to monitor and interact with the Pole Owners and
254 attachers.

255 While all of the work in the PROW that is done today – construction, make ready,
256 maintenance, attachment, inspection, company record-keeping, communication between
257 attachers, human resource management, etc. – must still be done by the Pole Owners and
258 various attachers, the time is right for the state utility regulator to take a more active role
259 in the management of that process. Only through such a reorganization can the

¹⁹ *Connecticut October 2011 Snowstorm Power Restoration Report*, Prepared by: Witt Associates
December 1, 2011, at 3.

“CL&P should more closely coordinate and integrate preparedness activities with state and local governments to include ongoing planning, training, and exercise for utility disruption.”

260 competitive market work and the state be assured in an emergency that systematic and
261 controlled restoration and communications systems will function at the highest levels.

262 As suggested in this testimony, the pole administration group to be formed in
263 PURA would be a hub for communication and dispute resolution, but would have very
264 few employees, no enforcement functions or mechanisms, would perform no safety
265 inspections (unless required²⁰) or audits of utilities, and would not dictate how
266 attachments or other equipment provisioning would occur in the public rights of way.

267 Through implementing enhanced pole administration, PURA will be able to more
268 easily and efficiently initiate and coordinate regular communications between the Pole
269 Owners and the many and diverse parties (e.g., industry, municipalities, and public safety
270 agencies) involved in using and maintaining the poles during routine and emergency
271 periods.²¹ Part of the evolution of the enhanced pole administration over time will allow
272 PURA to better keep track of the status of all license applications pending with each of
273 the Pole Owners and establish priorities, investigate delays in licensing and make-ready
274 completion, and authorize the expedited processing of selected applications that

²⁰ PURA staff routinely inspect the conditions in the PROW in the event of accidents or to verify evidence claimed in the course of a docket. *See e.g.*, Docket No. 99-03-25, *Application of The Southern New England Telephone Company For A Declaratory Ruling Regarding Municipal Use Of Poles And Conduits*, Decision January 19, 2000, at 9 (the “Municipal Network Decision”).

On November 9, 1999, the Department inspected the alleged construction violations identified by SNET and CL&P. As a result of the inspection, the Department has determined that Manchester’s installation of its fiber optic facilities were not in compliance with the NESC. The Department also found that in some cases, there were communications cables, other than Manchester’s, that were in the safety neutral zone, resulting in non-compliance of safety standards.

²¹ “CL&P needs to improve its processes for information management, including message vetting, communication, and coordination with local governments, and the dissemination of public information to its customers, external partners, stakeholders, and the media. During a large-scale outage, it can be as important to communicate the restoration plan and progress toward implementation of that plan, as it is to restore power itself.” *Connecticut October 2011 Snowstorm Power Restoration Report*, Prepared by: Witt Associates December 1, 2011, at 3.

275 verifiably need to be completed on a fast track.²² In the case of routine pole knockdowns
276 or major storm damage, enhanced pole administration could help coordinate repairs
277 among the various owners and attachers in conjunction with the EOC. In the case of an
278 emergency, enhanced pole administration could work with the mobilized EOC to help
279 serve as the state’s coordinator and would be able to serve as the clearinghouse for
280 distributing information to public safety personnel regarding downed or sagging lines,
281 and providing information to municipalities and the public.²³

282 Enhanced pole administration could serve to monitor compliance with PURA
283 orders,²⁴ including ensuring that Pole Owners follow through on activities such as :

- 284 1. Secure access to additional tree crews and line crews, both to assist in the event of
285 a weather-related outage and to provide additional support to address existing
286 storm damage, including damaged tree limbs (“hangers”), and completion of
287 temporary repairs remaining from the storm outages;
- 288 2. Ensure that CL&P has appropriate managerial and staff personnel assigned to
289 storm-related duties in the event of an outage, and that such personnel are
290 adequately trained to perform such duties;
- 291 3. Implement steps to shorten the time it takes to assess damage following a storm,
292 to the extent that such assessment must be completed prior to commencement of
293 restoration activities during weather-related outages;
- 294
295

²² See e.g., Fibertech Reply Comments, 11-03-07, at 16-17.

²³ **“REGULAR MEETINGS OF ALL STAKEHOLDERS”**

“It is important when considering the role that utilities play in disaster response and public safety to acknowledge (and hold accountable) all types of power and communications networks, including cell towers, cable companies, telecommunications providers and others. For example, CL&P has committed to fixing all utility poles, including those owned by AT&T, however AT&T is unable to repair poles where electrical cables are present. AT&T has an obligation, then, to participate fully in these key stakeholder meetings in order to provide exact information on how they will assist in the restoration of service as quickly as possible.” *Report Of The Two Storm Panel*, January 9, 2012, at 19.

²⁴ *Report Of The Two Storm Panel*, January 9, 2012, at 35-36

PURA has not uniformly enforced its own compliance orders involving utility storm preparation and power restoration efforts. For example, PURA reviews both CL&P’s and UI’s emergency response plans. As noted in the Witt Report, CL&P’s plan was based on an outage of 100,000 customers, or 8.2% of the customer base, while UI’s plan was based on an outage of 250,000 customers, or 71% of the customer base. This wide variation raises serious questions about the regulatory agency’s oversight and enforcement functions.

- 296
297 4. Provide additional training to the town liaisons, and implement protocols to
298 improve communication between CL&P, the towns, and the town liaisons during
299 outages;
300
301 5. Schedule regular meetings between the town liaisons and their assigned towns, so
302 that the towns and their liaisons can strategize in advance of outages;
303
304 6. Investigate the possible integration of local town resources into CL&P's efforts to
305 clear roads and downed power lines during major weather-related outages;²⁵ and
306
307 7. Other interim measures which PURA deems necessary and appropriate to protect
308 public safety in advance of another major weather-related outage.
309

310 The Pole Owners are the best positioned to manage their own poles since, beyond
311 their legal property rights in the equipment, they have economic and market incentives to
312 perform these tasks the most effectively of any entity. Reorganizing PURA's process to
313 introduce enhanced pole administration has been judged the by Governor's investigators
314 and seconded by the industry and municipal attachers to have become sensible public
315 policy at this time. Similarly, the opponents of enhanced pole administration claim that
316 PURA-based administration will fail to streamline processes or reduce costs to attachers,
317 primarily based on a theory of a lack of expertise in PURA and a wasteful additional
318 layer of administration. PURA has been urged by the Governor's investigators to seek
319 opportunities to streamline processes, avoid duplication of effort, and potentially reduce
320 costs, further indicated by renewed calls this year for further PURA reorganization from

²⁵ *Connecticut October 2011 Snowstorm Power Restoration Report*, Prepared by: Witt Associates
December 1, 2011, at 10.

“Local government officials and residents in towns that still had power outages were frustrated by the uncertainty regarding the time by which power would be restored, which challenged planning for shelter operations, continuity operations, and emergency and human services. Some town officials were told they would get power crews in their area on specific days and the crews did not appear. Municipal emergency officials communicated damage assessments and top priorities for restoration through their CL&P town liaison; however, many reported delays in addressing their priorities, and they described a failure on CL&P's part to explain these delays.”

321 the Administration and the General Assembly. It would be hoped that all the industry
322 and municipality attachers could be persuaded to contribute to helping PURA and state
323 government in general in achieving those goals. We are confident that a new process at
324 PURA will stimulate that support from industry participants by quickly providing market
325 stability leading to improved economic growth and job creation in the utility markets.
326 This will be best and most efficiently accomplished by promptly creating a reliable and
327 cooperative process for all work and legal affairs in the public rights of way.

328 The issue of joint ownership of the utility poles by the incumbent electric and
329 telephone companies was also found to have directly caused confusion and uncertainty
330 for affected state officials, FEMA, municipalities and citizens as to the identity of what
331 organization was responsible for repair or replacement of damaged utility poles, and their
332 attendant attachments. In large part, this results from a lack of communication with state
333 and local authorities as to the real-time status of the restoration efforts by the Pole
334 Owners.

335 This problem is also shared by most telecommunications attachers to the utility
336 poles, such as the cable operators and competitive telecom providers, seeking information
337 during an emergency on when and where they were eligible to begin restoration of their
338 infrastructure. Quite simply, the attachers (lessees of space on the poles from the Pole
339 Owners) were, as a rule, not promptly or reliably notified as to restoration status by the
340 Pole Owners. This lack of communication or involvement in the restoration process
341 actually caused some pole attachers (e.g., as reported to PURA by Cablevision) to resort

342 to physically following electric or telephone utility trucks on their rounds as their only
343 means of determining when they can commence their own restoration efforts.²⁶

344 Together with CL&P, UI, and Verizon, AT&T is an incumbent public service
345 company and major pole owner in the state, and this group seems to believe they have
346 much to lose in this Docket if the status quo regarding pole management is disrupted.
347 For instance, while approximately 3,156 poles were damaged or fell across the state
348 during Storms Irene and Alfred, causing many days of lack of public utility services and
349 requiring restoration efforts costing ratepayers many hundreds of millions of dollars,
350 AT&T stated that:

351 This number accounts for only about 0.3% of the more than 800,000 poles in the
352 State of Connecticut. This figure does not demonstrate that poles are in need of
353 management by a government appointed administrator – to the contrary. *The*
354 *facts demonstrate that the utility poles in Connecticut performed remarkably well*
355 *under historic weather conditions.*²⁷
356

357 It is because of this cavalier attitude, shared by other public utility companies
358 owning or attaching to utility poles across the state that Consumer Counsel Elin Swanson
359 Katz and Attorney General George Jepsen joined forces to urge state utility regulators to
360 create a new process with management and oversight authority over Connecticut’s
361 network of utility poles. In their joint motion to PURA requesting a hearing in this
362 Docket focused on enhanced pole administration, they stated:

²⁶ See e.g., Docket No. 10-03-08, *Investigation of the Service Response and Communications of The Connecticut Light and Power Company (CL&P) and The United Illuminating Company (UI) following the Outages from the Severe Weather over the Period of March 12 through March 14, 2010* (“Electric Company Repair Notice Docket”). See CL&P Letter to DPUC, November 16, 2010 re a September 28, 2010 technical meeting concerning the communication interface between the electric companies and the cable and telecommunications companies during storm restoration periods. At that meeting, it was agreed that the electric companies would provide account executives to directly correspond generally and in emergencies with the other attachers on the utility poles.

²⁷ Docket No. 11-09-09, AT&T Response to OCC/AG Motion No. 22, December 8, 2011 (emphasis added).

363 We believe that a thorough examination of all the circumstances
364 underlying the widespread damage to the state's utility infrastructure will
365 reveal that the compromised integrity of the utility poles from neglect and
366 mismanagement contributed to the devastation caused by these two
367 storms, as weakened or rotted utility poles are much more likely to be
368 damaged during extreme weather conditions.²⁸

369
370 As detailed in the December 6, 2011 OCC/AG Letter, enhanced pole
371 administration would create successful new processes and streamlined pole management,
372 as opposed to the status quo which evidently benefits the incumbent joint Pole Owners at
373 the expense of the market and public safety. It is thus not surprising to note that the Pole
374 Owners oppose not only enhanced pole administration generally, but also that they would
375 remarkably choose to make that argument in the context of the clearly inadequate
376 preparation for and response by the state's utilities to the devastation caused by the Two
377 Storms at issue in this Docket.

378 AT&T's claim in its December 8, 2011 letter that there is no evidence to "support
379 the AG's and OCC's suggestion that pole administration played any part in the outages
380 suffered by Connecticut residents after the storms" is particularly insensitive and out of
381 tune with the suffering and sentiments of the state government, the municipalities, and
382 certainly the residents and businesses of this state.

383 AT&T concluded its letter with the statement that, referencing this Docket, 11-09-
384 09 :

385 "In this docket, PURA should focus its attention on Storms Irene and Alfred."²⁹

²⁸ Docket No. 11-09-09, OCC/AG Letter to PURA, December 6, 2011, creating Motions 21, 22.

²⁹ Docket No. 11-09-09, AT&T Letter, December 8, 2011 to PURA, objecting to administrative notice of the evidentiary record in the Independent Pole Administrator Docket, 11-03-07.

386

387 The OCC and the AG responded that they wholeheartedly agreed with that
388 proposal, and both agencies committed to exercising all efforts to make certain that all
389 the facts are discovered, examined, and that ongoing processes and statutory powers are
390 brought to bear on the mistakes and corporate policies that led to the disastrous results of
391 the Two Storms.³⁰ That includes researching and helping to implement changes in state
392 agency organization and processes, as needed, and the facts have led to such a
393 requirement being recognized as necessary. In keeping with PURA's ruling in favor of
394 the OCC/AG motion, the state agencies voiced their intention to not litigate in favor of
395 enhanced pole administration in this Docket, but rather to focus on demonstrating how
396 enhanced pole administration would yield innumerable benefits to the state at virtually no
397 cost, using existing personnel and facilities at PURA, implementing its existing
398 comprehensive jurisdiction over the management of the PROW.

399 Like the OCC, all the proponents of enhanced pole administration firmly believe
400 that the state's citizens and municipalities will benefit from more streamlined and
401 efficiently administered statutory authority by PURA squarely focused on the public
402 rights of way. This will quickly result in a more transparent and responsive regulatory
403 oversight process. While it is obvious from recent events that more concentrated
404 attention to management and oversight is required in the event of a catastrophic
405 emergency, the various dockets addressing the public rights of way have equally

³⁰ Docket No. 11-09-09, OCC/AG Letter to PURA, December 12, 2011, responding to AT&T Letter, December 8, 2011 to PURA.

406 demonstrated that the routine competitive needs of all attachers on the poles also require
407 a much more effective and streamlined response from regulatory managers.³¹

408 The enhanced pole administration group would also serve to centralize
409 communications — much as the EOC process does during emergencies — between all
410 parties operating in or affected by the PROW, including utilities, state agencies, FEMA,
411 municipalities, and the public. This capacity needs to be well-publicized and regularly
412 maintained so all parties and affected residents, businesses, and municipalities are aware
413 of this resource. This will in turn stimulate new lines of communication providing the
414 enhanced pole administration group with greatly increased access to vital data and
415 information found to be a key component lacking in the Two Storms investigations.

416 For instance, this should also lead to greatly improved and relevant GIS mapping,
417 interactive websites, and wiki functions to provide transparency and greatly increased
418 access to information. To address security and competitive concerns, there should be
419 secure sites for public utilities and state officials to trade information, with public access
420 for all other sites and outbound information transfers. Public interaction and a focus on
421 municipal government entities should be a focus to relieve the EOC and utilities of
422 primary responsibility for this function during emergencies to both support their
423 restoration duties and improve access to and dissemination of critical data and
424 information.

³¹ See Appendix A attached hereto listing notable PURA dockets since 1995 focused on public rights of way issues.

425 **Q. DOES THE PROW DEPEND ON A BALANCE BETWEEN PUBLIC POLICY**
426 **GOALS AND THE PRACTICAL BUSINESS AND SAFETY CONCERNS OF**
427 **POLE OWNERS AND MULTIPLE ATTACHERS?**

428 **A. Yes.** It is essential to recognize that there is no need to create a “third-party
429 administrator”, but rather PURA simply needs to reorganize and enhance its own PROW
430 administration process. All the existing statutory authority of PURA would remain with
431 PURA, with the only substantive change being the establishment of a “working group” to
432 be reliably “on-call” to rapidly respond to complaints and generally monitor compliance
433 with outstanding PURA orders. The licensing process itself will remain with the Pole
434 Owners as today to properly allow and control use of their private property, but
435 enforcement of deadlines and streamlining of expenses imposed on attachers should be a
436 regular process at PURA, not based on the current cumbersome, time consuming, and
437 costly process of petitions and complaints, and the opening of separate dockets with their
438 attendant time and expense. Turning complaints around promptly would be the basic
439 function of this redefined PURA group.

440 Another area of possible improvement is implementation of coordination among
441 Pole Owners and attachers with respect to the transfer of facilities and equipment from
442 old poles to newly installed poles. A byproduct of this duty for the enhanced pole
443 administration would be the elimination of “double poles”, an effort first begun nearly a
444 decade ago in Docket No. 03-03-07, reopened in 2009 at the OCC’s request without
445 further action, being yet one more demonstration of the ineffectiveness of the present
446 system of pole administration.³² By managing attachments and transfers from old to new

³² Docket No. 03-03-07, *DPUC Review Of Public Utility Structures And Poles Within Municipal Rights Of Way* (“Double Poles Docket”) and RE01- *Compliance Review*.

447 poles, enhanced pole administration could easily monitor the time being taken to remove
448 the old pole following completion of the transfer. Such monitoring could be extremely
449 helpful, if only because it would enable the Authority to obtain regular data regarding the
450 pace at which the number of double poles is being reduced.

451 Similarly, there is no monitoring of the presence of abandoned lines on utility
452 poles, which can delay and increase the effective cost of third-party attachments if the
453 third-party is obliged to remove abandoned lines at its own expense. With a critical need
454 to add new access to advanced broadband technology in Connecticut, reducing hurdles to
455 access to the poles is a fundamental public policy goal for the state, and since broadband
456 represents the future of telecommunications should logically be a central business
457 strategic goal for all telecommunications providers in the state. While the Pole Owners
458 have the right to remove abandoned lines under the terms of their respective pole
459 attachment agreements, they are not required to do so, but they can reasonably be
460 expected to pass on the cost of doing so to the attacher affected by the presence of the
461 abandoned line on the pole instead of the cost causer. The potential for this inequity and
462 disruptive practice should be monitored by PURA as part of its enhanced pole
463 administration and resolved by the Authority on a continuous basis.

464 Enhanced pole administration could also be effective in coordinating pole
465 relocations in connection with street projects in which municipalities routinely attempt to
466 work with Pole Owners and attachers when they relocate or widen streets in order to

On April 29, 2009, the department reopened this docket in response to a petition from the OCC on behalf of State Senator Robert Duff who had requested the OCC's aid due to constituent complaints. PURA reopened the docket "for the limited purpose of reviewing compliance with the orders issued in the September 29, 2004 Decision and to also review the current backlog of double pole situations and consider imposing if necessary, financial penalties to ensure order compliance." Docket No. 03-03-07RE01 *DPUC Review of Public Utility Structures and Poles within Municipal Rights of Way – Compliance Review*. No decision was issued by PURA in the reopened docket.

467 coordinate the movement of poles, but there are instances where poles are left standing in
468 the public rights of way without protection.³³

469 **Q. DOES THE JOINT OWNERSHIP OF THE UTILITY POLES CREATE**
470 **CONFUSION AND UNCERTAINTY FOR REPAIR OR REPLACEMENT OF**
471 **DAMAGED UTILITY POLES AND ATTACHMENTS?**

472 **A. Yes.** In the wake of August 28, 2011's Storm Irene, 1292 utility poles in CL&P's service
473 area and 209 utility poles in UI's service area needed to be replaced. Many others were
474 damaged. During the October 29, 2011 Nor'easter, thousands more utility poles fell or
475 were damaged (1655 poles in CL&P's service area alone), once again necessitating
476 replacement or repair of a large number of the state's utility poles in a very short time.

477 The Governor's investigators, many industry parties, and the municipalities have
478 voiced serious concerns about the condition of the poles, coordination of pole
479 attachments, and the speed with which attachments can be made. There is evidence that
480 nearly half of Connecticut's utility poles may be beyond their useful life. It is likely that
481 the thorough examination of all the circumstances underlying the widespread damage to
482 the state's utility infrastructure being conducted in this Docket will reveal that the
483 compromised integrity of the utility poles from neglect and mismanagement contributed
484 to the devastation caused by these two storms, as weakened or rotted utility poles are
485 much more likely to be damaged during extreme weather conditions.

486 This *ad hoc* management of utility poles and the public rights of way by multiple
487 Pole Owners has resulted in confusion and delay in repair and replacement of poles and

³³ “**31)** As one utility needs to expand or build new infrastructure, it should consult with other utilities, and where possible, co-locate such expansion with other utilities to minimize the cost of burying them underground. Such an effort would need to be coordinated through a combination of PURA and the Siting Council so that utilities could be co-located.”
Report Of The Two Storm Panel, January 9, 2012, at 16.

488 attendant connections even in minor events, but this was especially true during the Two
489 Storms. This *ad hoc* system also creates uncertainty as to which of the multiple owners is
490 responsible for tree-trimming and maintenance of the poles and rights of way,
491 contributing to the degraded condition of Connecticut’s utility poles.

492 Nearly all utility poles in Connecticut are jointly owned by an electric distribution
493 company (CL&P or UI — which solely owns most of poles in its territory), together with
494 an incumbent local exchange carrier (ILEC), i.e., AT&T or Verizon), with these
495 ownership positions being generally dictated by geographic franchise areas. In addition
496 to most poles having incumbent electric and telephone ownership and the owners’
497 facilities attached to them, there are often a multitude of independent attachers, such as
498 cable operators, municipalities, and competitive local exchange carriers, which may have
499 extensive infrastructure on many poles.

500 PURA has the statutory authority under Connecticut General Statutes (C.G.S.)
501 § 16-11 to create an enhanced pole administration process as part of the remedial orders
502 in this proceeding. C.G.S. § 16-11 gives PURA very broad authority where public safety
503 is at stake to “order such reasonable improvements, repairs or alterations ... or such
504 changes in the manner of operation as may be reasonably necessary in the public
505 interest.”³⁴ More specifically, C.G.S. § 16-243 states that PURA “shall have exclusive
506 jurisdiction and direction over...the kind, quality and finish of all materials, wires, poles,
507 conductors and fixtures” used to transmit electricity, and C.G.S. § 16-247h gives PURA

³⁴ *Report Of The Two Storm Panel*, January 9, 2012, at 35-36

**“CHAPTER EIGHT – GENERAL STATE ISSUES
REGULATION OF UTILITIES**

Findings:

The failure of a large portion of Connecticut’s telecommunications system during the two storms is a life safety issue.”

508 authority over, among other things, utility poles used by telecommunication providers.
509 C.G.S. § 16-247h further states that PURA “*shall* adopt regulations, in accordance with
510 chapter 54, governing such use of the public right-of-way, including, without limitation,
511 design and construction standards and specifications to protect the public safety...”
512 (emphasis added). PURA thus has not just the authority, but in fact the obligation, to
513 regulate utility poles and the public rights of way.

514 The National Electrical Safety Code (NESC) also plays a key role in the
515 Authority’s regulation of energized wires and equipment. Similar to other jurisdictions,
516 the Authority has incorporated by reference the NESC, as it may be changed from time to
517 time, within its regulations. The provisions of the code are referred to in the regulation,
518 §16-11-134 Conn. Agencies Regs., as the minimum requirements, and the Authority
519 recommends the code as a guide to good practice in all cases not governed by specific
520 commission orders. Thus the NESC by operation of regulation has become part of
521 Connecticut law, although the Authority has always reserved the ability to issue specific
522 orders that could function as a supplement to code provisions where the code does not
523 cover a particular situation.³⁵

524 **Q. WILL A SUBSTANTIVE REORGANIZATION OF THE PROW MANAGEMENT**
525 **PROCESS CHANGE THE OWNERSHIP OF PROPERTY FOR INCUMBENT**
526 **POLE OWNERS?**

527 **A. No.** The need for a substantive reorganization of the process through which PURA
528 exercises its statutory authority over the management and procedures associated with

³⁵ See e.g., Docket No. 96-11-20, *DPUC Review Of Southern New England Telephone Installation Of Facilities In Fairfield County*, Decision, May 21, 1997 (the “SNET Electrified Cable Decision”), at 9.

529 PROW has been found to be comprehensively demonstrated.³⁶ Yet, in spite of all the
530 evidence of problems in the management of the public rights of way, there are adamant
531 legal claims pressed on PURA by the opponents of organizational change, particularly
532 from the incumbent utility and telecommunications providers, which not coincidentally
533 are the current joint owners of the over 800,000 utility poles stretching across the state.³⁷

534 These contentions dispute or seek to minimize the true status of the profound
535 problems encountered by potential competitors, residents, and municipalities seeking
536 routine access to the poles and quality service, even challenging the magnitude of the
537 damage and inadequate restoration efforts inflicted on the state through the loss of utility
538 services during the disastrous Two Storms.³⁸

539 With over 800,000 poles in Connecticut, situated in all manner of urban,
540 suburban, and rural locations, as well as multiple pole line configurations and types of
541 attachments spread across the entire network, construction, and maintenance work are a
542 continuous and complex process. The opponents basically contend that their private
543 property rights — which are actually easements rights through which the Pole Owners
544 have installed utility infrastructure, including the poles — somehow trump the
545 government ownership of and management authority over the public rights of way. The

³⁶ *Connecticut October 2011 Snowstorm Power Restoration Report*, Prepared by: Witt Associates, December 1, 2011, at 3.

“State and local government planning and preparedness should address major power disruption more comprehensively and inclusively, including coordination with utility providers and procedures for damage assessment teams in power and/or utility outage events.”

³⁷ *FCC Pole Attachment Order*, April 7, 2011, at ¶ 84. The FCC has noted that the Commission’s decision not to require a managing utility for the public rights of way was due to the burden such a responsibility would create for the managing utility and the fact that a majority of poles would not be subject to pole attachment requests in the near future or at all.

³⁸ *Report Of The Two Storm Panel*, January 9, 2012, at 11.

“Based on the responses that they provided to PURA and/or the Siting Council, certain utilities’ senior management also appear to give short shrift to the concept of emergency planning and related issues associated with potential public safety impacts.”

546 joint Pole Owners certainly have property rights in the PROW and have legitimate
547 authority to exercise management and legal control over that property; indeed there is no
548 dispute in that regard, in spite of the Pole Owners' claims otherwise. Pole Owners must
549 therefore balance their legitimate business needs to ensure the safety and security of their
550 infrastructure and provide service to their customers, public safety obligations, while
551 meeting the reasonable and legally granted access requirements of multiple attachers. In
552 the *FCC Pole Attachment Order* (April 7, 2011), the FCC recognized the need
553 to balance the needs of communications companies to deploy vital
554 network facilities with the needs of utility Pole Owners, including the need
555 to protect safety of life and the reliability of their own critically important
556 networks.³⁹

557 The Pole Owners' property rights thus remain subject to the easements allowing
558 them access to the PROW, however, as well as the statutory authority and obligations of
559 the state, exercised through PURA, to manage all aspects of the PROW for the protection
560 and welfare of all citizens and communities. To be sure, as part of the licensing process,
561 and no matter what organizational changes are made to the methods PURA uses to
562 streamline and make more efficient its use of its statutory authority, attachers will still
563 routinely need to:

- 564 ○ interact directly with the Pole Owners on pole administration tasks and execute
- 565 pole attachment agreements and comply with the agreement's terms and
- 566 conditions prior to attaching their facilities to poles, and throughout the term of
- 567 the agreement;
- 568 ○ secure licenses for each attachment of their facilities;

³⁹ *FCC Pole Attachment Order*, April 7, 2011, at ¶ 7.

- 569 ○ schedule and conduct a pre-construction survey with the Pole Owners to
570 determine if make-ready work is required on any poles including in the attacher's
571 application;
572 ○ pay for any required make-ready work; and
573 ○ coordinate with the Pole Owners after attachments are placed on facilities
574 regarding rearrangements and transfers (including street relocation projects)

575
576 Of course, all of these steps also apply to emergency pole repairs necessitated by
577 storm damage, unless waived by state or Pole Owner action.⁴⁰

578 In rebuttal of the legal claims advanced by the Pole Owners opposing reorganization
579 of the management of the public rights of way, many proponents filed comments
580 presenting substantive legal analysis indicating extensive sources of statutory support for
581 the Authority enhancing its statutory obligations and authority regarding pole
582 administration and management.

583 As noted earlier in this testimony, the focus of the controversy generated in the Pole
584 Administrator Docket centered on the mistaken concept of a “third-party administrator”
585 as some sort of agent to PURA and assuming the authority and obligation pertaining to
586 PURA under state law. While the OCC is advancing a mere restructuring of how PURA
587 uses its existing statutory authority in this testimony, the OCC nonetheless supports the
588 legal analysis of the proponents that PURA’s statutory authority to manage the PROW
589 extends to a delegation of its authority.

590 In terms of the straightforward enhanced pole administration concept advanced in this
591 testimony, the OCC is quite confident that PURA is certainly well within its statutory

⁴⁰ The state has a policy of granting waivers during declared emergencies for the purpose of suspending certain rules and regulations in order to expedite restoration efforts, such as granting temporary exemptions from licensing requirements for outside utility contractors to perform work in the state.

592 authority to implement enhanced pole administration by merely appointing just a few
593 qualified existing staff members dedicated to the purpose of streamlining the
594 management processes of the public rights of way over which PURA has jurisdiction.
595 PURA simply needs to make 2-3 staff available on an as-needed basis to quickly expedite
596 specific requests for PURA action, and to present a regular forum similar to a working
597 group for continued investigation into the problems facing attachers in the PROW.⁴¹ This
598 action will jump start a remedial process that can evolve with continuous input from
599 interactions among the interested parties, who will share the same goals of efficient and
600 streamlined processes for equitable access and use of the utility poles.

601 Several docket participants proposed establishing a single pole administrator in 2007
602 when the Authority opened the Make Ready Docket to investigate the complaints of
603 competitive telecommunications companies, municipalities, and others about delays and
604 other hurdles to efficient access in the pole attachment process.⁴² The PURA Mediation
605 Team and the participants in the Pole Attachment Working Group (“Working Group”)
606 formed during the Make Ready Docket collectively made substantial progress in
607 resolving the major concerns that originally prompted the proposal for a single pole
608 administrator. While many positive goals were realized in addressing the issues raised by
609 the pole attachers, after many meetings it became apparent to all participants that the
610 Working Group had reached a permanent impasse in its ability to resolve the remaining
611 issues and the group ceased its work with PURA approval.

612 Thus, even though the Make Ready Docket boosted the potential for a more
613 organized and fair management of the PROW by establishing aggressive make-ready

⁴¹ Staff for this group might include a director, adjudicator, engineer and communications specialist, for instance.

⁴² See Docket No. 07-02-1,3 April 30, 2008, Decision, at 23-24.

614 timeframes and a working group with PURA staff managing the process, the Working
615 Group (also called the Authority’s Mediation Team) has been disbanded. Some
616 incumbent opponents of enhanced pole administration have misleadingly claimed that the
617 “continued existence” of the Working Group provides a process in place to resolve
618 attachment complaints and other problems in the PROW without need for PURA
619 reorganization. As noted, however, the group is now gone and the facts indicate that not
620 coincidentally delays and stalling in implementing licenses for new infrastructure have
621 been demonstrated to be on the rise.

622 At this point, as in most prior history, there is in fact no avenue open for
623 complaint resolution except petition to PURA for a hearing or other relief, a very time
624 consuming, cumbersome, and expensive process. The state needs a permanent and
625 streamlined process to expedite and better control management of the PROW, not only
626 for emergencies, but in the routine business of making the PROW useful in providing
627 quality services and profitable to attract competitors to this state.

628 **Q. WILL PURA RESPONSIBILITY FOR ENHANCED POLE ADMINISTRATION**
629 **IN EMERGENCIES AND ROUTINE BUSINESS BENEFIT THE STATE IN A**
630 **MULTITUDE OF WAYS AT LITTLE EXPENSE OR PROCESS CHANGES?**

631 **A. Yes.** While the state’s Emergency Operations Center (CT-EOC) is an effective means for
632 the state to obtain crucial information and data pertaining to emergency status and
633 restoration efforts, that epicenter of the state’s emergency process has front line and real-
634 time responsibility for the state’s actual welfare only during crisis periods. Accordingly,
635 while the CT-EOC is well equipped and staffed with experts to gather, analyze, and
636 disseminate information and data during emergencies, its fundamental mission is to
637 coordinate the actions of dozens of ordinarily disparate entities into a cohesive and

638 effective restoration-production machine for limited periods. This high powered role is
639 not intended to be sustained or extended into the routine management duties of
640 coordinating activities in the ordinary course of utility and telecommunications business
641 in the public rights of way.

642 It would certainly be probable that the CT-EOC will play a central role in
643 cooperating with a PURA-based staff devoted to consolidating data and information for
644 wide-based dissemination during all emergencies. That said, its role will remain as the
645 pinnacle of strategy and support for the Governor's mission during all emergencies to
646 protect the safety of the state's citizens, residential and business, and the municipalities.
647 With enhanced pole administration implemented at PURA, the EOC would have a
648 dynamic state agency partner taking responsibility for helping managing and sharing
649 information on utility poles in preparation for, during and following major storms,
650 helping to reduce the confusion associated with emergency restoration efforts, resulting
651 in a far more coordinated and successful process for managing restoration resources and
652 planning.

653 Emergencies are not the only time an impartial state administrator like PURA
654 would serve the public interest since the current pole management system has proved to
655 be inadequate to the routine tasks and processes affecting the PROW. Today, attachers
656 and citizens often face lengthy, cumbersome, and expensive proceedings involving well-
657 financed Pole Owners and other incumbents that are frankly not responsive to the
658 demands imposed by the current competitive electric and telecommunications market.
659 During the routine course of utility regulatory affairs, enhanced pole administration will
660 promote responsive and supportive pole administration. PURA will be able to easily

661 administer an orderly process for pole attachments and reattachments that provides fair
662 and timely access. Economic opportunity and job creation, as well as greater access to
663 advanced services such as broadband connections to the Internet, will be enhanced by
664 streamlined, transparent, and equitable attachment licensing and pricing enforcement of
665 fair standards for maintenance and replacement of utility poles.

666 The OCC does not dispute that commercial agreements between Pole Owners and
667 attachers are the best means of ensuring prompt and predictable pole arrangements. The
668 vast majority of utility poles in Connecticut are jointly-owned by an electric and
669 telephone company in each instance, but each owner currently insists upon its own pole
670 attachment agreement and payments.⁴³ Nothing in the OCC's suggestion that PURA
671 needs a new streamlined approach to resolving challenges in the PROW requires a
672 lessening of the threshold issues that already exist for verifying appropriate use of the
673 PROW, including regarding commercial and safety concerns.

674 The existence of multiple agreements unfortunately carries with it the virtual
675 certainty that those agreements will contain inconsistent terms and add unnecessary
676 confusion and cost to the majority of projects on jointly-owned poles.⁴⁴ A single license
677 application filed with a Pole Owner by a competitor or municipality involving multiple
678 poles can easily create multiple variations on these problems, including attachment
679 projects crossing from the territories of different Pole Owners, with possibly different

⁴³ CL&P Response to Interrogatory TWH-001, February 19, 2010, Docket Number: 11-09-09. Of the 714,121 poles that CL&P owns, nearly 87% are owned jointly with AT&T or Verizon. Of those, the vast majority - nearly 85% - are owned jointly by CL&P and AT&T.

⁴⁴ Examples re multiple Pole Owners and agreements:

- One owner could direct the applicant to attach at the bottom of the communications gain while the other could direct the applicant to attach at the top and have the other attachments shifted downward.
- One owner could permit overlashing to an existing line and the other owner could refuse.

680 pairs of agreements, pricing, and standards. Enhanced pole administration should require
681 that pole attachment agreements and fees should be consolidated into one form with
682 identical standards and prices for the services rendered, subject to PURA approval. If the
683 poles are “jointly owned” then why do the joint owners have “respective areas” of
684 management, divided by electric and telecom issues? One agreement should be created
685 to cover the rights and obligations of both owners and all attachers to streamline and
686 make the whole attachment process more efficient.

687 Additional changes to the current organization might include:

- 688 ○ Coordinating engineering reviews and ride-outs to assess the status of the pole
689 pre- and post-attachments could be a feature of the PURA group’s duties; the
690 obligations and cost-sharing for those activities would remain in the hands of the
691 utilities; and
- 692 ○ All attachments, including those of the Pole Owners, would be subject to strict
693 compliance with appropriate periods for repairs with provisions for penalties for
694 failure to comply;
695
696

697 Enhanced pole administration will serve the public interest, provide greater
698 security for Connecticut’s power and telecommunication services, and promote economic
699 opportunity through the following actions:

- 700 1. Implementing and enforcing standards for maintenance and replacement of poles,
701 ensuring the integrity of utility poles, and the hardening of the infrastructure;
702
- 703 2. Facilitating the development and sharing of information on utility poles in
704 preparation for, during, and following major storm events;
705
- 706 3. Coordinating restoration resources during outages with respect to pole and
707 attachment repair and replacement;
708
- 709 4. Verifying and monitoring finalization of temporary repairs in the wake of major
710 outages; and
711
- 712 5. Administering an efficient and orderly process for pole attachments and
713 reattachments that provides fair and timely access for all legitimate attachers.

714

715 These issues have been raised many times before. There have been many recent
716 PURA dockets investigating or litigating rights and obligations of Pole Owners and
717 attachers, each of which demonstrates that the current system of utility pole and public
718 rights of way management is dysfunctional and not effective from a safety or an open
719 commercial market point of view.⁴⁵

720 Enhanced pole administration will greatly enhance the state's preparedness for the
721 next major storm. In the event of a threat to the state's infrastructure, enhanced pole
722 administration would be ready to communicate with the Pole Owners and attachers to
723 immediately determine that all steps necessary to prepare for a potentially damaging
724 event have been taken. This could include alerting all state, federal, and municipal
725 entities involved with storm recovery of a potentially damaging event and instituting
726 communication protocols. Enhanced pole administration could also implement and
727 utilize a sophisticated, open access GIS mapping system to coordinate and disseminate
728 information on pole and line condition, drawing on data from the public, municipalities
729 and industry members to facilitate restoration efforts during an outage.⁴⁶

⁴⁵ See Appendix A attached hereto listing notable PURA dockets since 1995 focused on public rights of way issues.

⁴⁶ *Report Of The Two Storm Panel*, January 9, 2012, at 30-31.

CHAPTER SIX – USE OF GEOGRAPHICAL INFORMATION SYSTEMS

The need for a common platform to share information about storm assessments was a major concern that was brought to the Panel's attention, and the sharing of GIS mapping data between towns, utilities and state agencies was a repeated suggestion that was made to the Panel.

- Questions as to what streets are blocked, what poles and wires are down, where the power is on and where it's off were consistent complaints.

64) Electric utilities should be required to develop extensible GIS applications--incorporating information from smart meters/smart grids and mobile data terminals as required by PURA--to facilitate the real-time sharing of data on service outages.

730 Testimony before the Governor’s Two Storm Panel indicated that the electric
731 providers are planning to establish a working group with PURA to bring together various
732 stakeholders, including the municipalities, to coordinate the gathering and transmission of
733 outage data. The OCC strongly supports all such ideas and urges consolidation of these
734 efforts. Data coordination is a fundamental elements of the reorganization of PURA’s
735 response process. This could most effectively be accomplished through broadband
736 connections to a central GIS collection area where interactive maps could be quickly
737 prepared and distributed by PURA’s enhanced pole administration that identify downed
738 poles, blocked roads, and other outage problems. The EPPI process is directly addressing
739 this GIS proposal and has tight deadlines to create a productive organization to make this
740 process available in the next few months, prior to the statewide emergency exercise.

741 Enhanced pole administration would also improve the orderly management of
742 utility poles and public rights of way from a business perspective as well. The Pole
743 Owners and attachers are all in business to provide high quality, reliable, and reasonably
744 priced utility, municipal communications, and telecommunications services. When the
745 poles are down or damaged due to the current *ad hoc* pole management morass, revenues
746 decline and customer complaints and demands for refunds or damages increase. Both
747 Pole Owners and attachers would therefore benefit from the clear authority of PURA’s
748 enhanced pole administration and a transparent government oversight process providing
749 equal opportunities to share the invaluable and limited space in the public rights of way.
750 While it is obvious from recent events that concentrated attention to management and

65) Utilities should dispatch to local EOCs: circuit maps, piping maps organizational flow charts, escalation paths, and up-to-date information on service outages within 120 minutes of the opening of an EOC.

751 oversight is required in the event of a catastrophic emergency, the various dockets
752 addressing the public rights of way over the last decade and longer have equally
753 demonstrated that the competitive needs of all attachers on the poles require a much more
754 effective and streamlined response, on a routine basis as well as during emergencies.

755 **Q. DOES THE STATE SITING COUNCIL HAVE A ROLE TO PLAY IN PURA'S**
756 **ENHANCED POLE ADMINISTRATION?**

757 **A. Yes.**⁴⁷ Since the Governor's Two Storm Panel recommended the development of state
758 standards for generators, battery backups, backhaul capacity, response times for existing
759 cellular towers, and the creation of an enforcement arm for the Connecticut Siting
760 Council (CSC) will need to be included in the enhanced pole administration group.⁴⁸
761 The CSC considers backup power when it approves applications, but each carrier has its
762 own standard as to the source of backup power and the length of time it will operate, and
763 there are currently no federal, state or CSC requirements for backup power at cell towers,
764 and thus each company develops its own standards.

765 While the FCC attempted to mandate backup power in 2007, the efforts failed due
766 to industry opposition and similar efforts prevented CSC's recent attempts to obtain
767 voluntary survey information from the cell companies. CSC's survey questions went
768 largely unanswered with little or no specific data provided to the state agency regarding
769 how many towers were affected by the storms, or the exact status of backup systems.

⁴⁷ *Report Of The Two Storm Panel*, January 9, 2012, at 35-36, Chapter Eight – General State Issues, Regulation Of Utilities.

⁴⁸ *Report Of The Two Storm Panel*, January 9, 2012, at 16.

31) As one utility needs to expand or build new infrastructure, it should consult with other utilities, and where possible, co-locate such expansion with other utilities to minimize the cost of burying them underground. Such an effort would need to be coordinated through a combination of PURA and the Siting Council so that utilities could be co-located.

770 Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?

771 A. Yes, it does.

772

773 **Appendix A attached hereto listing notable PURA dockets since 1995 focused on public**
774 **rights of way issues.**

775

776 *See e.g.,*

- 777 • Docket No. 95-08-34, *DPUC Investigation Of The Process Of And Jurisdiction Over*
778 *Siting Certain Utility Company Facilities And Plant In Connecticut*, Decision, dated
779 October 30, 1996 (the “Siting Decision”);
- 780 • Docket No. 96-11-20, *DPUC Review Of Southern New England Telephone Installation*
781 *Of Facilities In Fairfield County*, Decision, May 21, 1997 (the “SNET Electrified Cable
782 Decision”);
- 783 • Docket No. 99-03-25, *Application of The Southern New England Telephone Company*
784 *For A Declaratory Ruling Regarding Municipal Use Of Poles And Conduits*, Decision
785 January 19, 2000 (the “Municipal Network Decision”);
- 786 • Docket No. 00-04-15, *DPUC Declaratory Ruling Concerning Jurisdiction over Access to*
787 *Public Rights of Way by Non-Certificated Telecommunications Carriers*;
- 788 • Docket No. 00-09-23, *Investigation of the Incident Involving Gemini Networks, Inc.,*
789 *Contractor Employee and the Occupational Safety and Health Administration's (OSHA)*
790 *Alleged Cable Lines Clearance and Safety Problems*, Decision, May 22, 2002 (the
791 “Gemini Electrocution Decision”);
- 792 • Docket No. 02-02-15, *Objection Of Adjoining Proprietors To Southern New England*
793 *Telephone Company Project In Stamford*, Decision, July 3, 2002;
- 794 • Docket No. 03-03-07, *DPUC Review Of Public Utility Structures And Poles Within*
795 *Municipal Rights Of Way* (“Double Poles Docket”). *Compliance Review -_RE01* = March
796 6, 2009, per Office of Consumer Counsel’s (OCC) *Petition to Reopen for Compliance*
797 *Review*;
- 798 • Docket No. 04-02-15, *Application Of The Southern New England Telephone Company*
799 *d/b/a SBC For A Declaratory Ruling Regarding The Town Of Manchester's Use Of Its*
800 *Private Telecommunications Network* (“Manchester Wi-Fi Docket”);
- 801 • Docket No. 05-06-01, *Petition of the United Illuminating Company for a Declaratory*
802 *Ruling Regarding Availability of Cable Tariff Rate for Pole Attachments by Cable*
803 *Systems Providing Telecommunications Services and Internet Access* (“UI Cable Tariff
804 Docket”);

- 805 • Docket No. 05-06-12, *DPUC Investigation of the Terms and Conditions Under Which*
806 *Video Products May Be Offered by Connecticut’s Incumbent Local Exchange*
807 *Companies*, Decision, June 7 2006, (the “IPTV Decision”);
- 808 • Docket No. 05-09-15, *DPUC Investigation of the Performance of Electric Porcelain*
809 *Insulator Cutout Devices*, Decision, April 26, 2006 (the “CL&P Cutouts Decision”);
- 810 • Docket No. 07-02-13, *DPUC Review of the State’s Public Service Company Utility Pole*
811 *Make Ready Procedures*, Decision, April 30, 2008 (the “Make Ready Decision”);
- 812 • Docket No. 07-03-34, *Application Of The Cities Of Bridgeport, Danbury And Stamford*
813 *For An Emergency Hearing And Declaratory Ruling Regarding The Safety Of V-RAD*
814 *Boxes*, Decision, September 29, 2008 (the “V-RAD Decision”);
- 815 • Docket No. 08-04-20, *Petition of Patrick Sheehan Seeking Relief Regarding the*
816 *Placement of a V-RAD Box by AT&T* (the “Patrick Sheehan VRAD Decision”);
- 817 • Docket No. 08-05-17 , *Investigation Into The Deployment Of High Speed Broadband*
818 *Access Facilities In Connecticut* (the “Broadband Docket”);
- 819 • Docket No. 08-06-19 , *DPUC Investigation Into The Deployment Of Distributed Antenna*
820 *System (DAS) In The Public Rights Of Way In Connecticut* (“Distributed Antenna System
821 Docket”);
- 822 • Docket No. 09-12-05, *Application of Connecticut Light & Power Company to Amend its*
823 *Rate Schedules*, Decision June 30, 2010 (“CL&P Pole Attachment Rate Decision”);
- 824 • Docket No. 10-03-08, *Investigation of the Service Response and Communications of The*
825 *Connecticut Light and Power Company (CL&P) and The United Illuminating Company*
826 *(UI) following the Outages from the Severe Weather over the Period of March 12*
827 *through March 14, 2010* (“Electric Company Repair Notice Docket”);
- 828 • Docket No. 11-03-07, *DPUC Investigation Into The Appointment Of A Third Party*
829 *Statewide Utility Telephone Pole Administrator For The State Of Connecticut* (“Pole
830 Administrator Docket”);
- 831 • Docket No. 11-09-09, *Review Of The Public Service Companies’ Response To 2011*
832 *Storms* (“Two Storms Docket”);
- 833 • Docket No. 11-11-01, *Petition of Fiber Technologies Networks, L.L.C. for a Declaratory*
834 *Ruling Confirming the Authority of the PURA to Approve the Installation of Facilities*
835 *Under and Over Certain Public Rights-of-Way on an Expedited Basis* (“Expedited
836 PROW Authority Docket”);
- 837 • Docket No. 11-11-02, *Petition of Fiber Technologies Networks, L.L.C. for Authority*
838 *Investigation of Rental Rates Charged to Telecommunications Providers by Pole Owners*
839 (“Telecom PROW Rental Rates Docket”).