

**STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY**

INVESTIGATION INTO ELECTRIC : DOCKET NO. 20-08-03
DISTRIBUTION COMPANIES' :
PREPARATION FOR AND RESPONSE TO :
TROPICAL STORM ISAIAS : AUGUST 11, 2020

**MOTION FOR RECONSIDERATION
OF WILLIAM TONG, ATTORNEY GENERAL FOR
THE STATE OF CONNECTICUT**

William Tong, Attorney General for the State of Connecticut (“Attorney General”), hereby respectfully files this Motion for Reconsideration of the Public Utilities Regulatory Authority’s (“PURA” or “Authority”) August 7, 2020 ruling on the Attorney General’s August 6, 2020 Motion to Clarify Scope of Proceeding. The Attorney General appreciates that the Authority swiftly opened this critical investigation into the preparedness and response of The Connecticut Light and Power Company d/b/a Eversource Energy (“Eversource”) and The United Illuminating Company (“UI”) (together, the electric distribution companies, or “EDCs”) to Tropical Storm Isaias. The Attorney General, however, urges PURA to expand and formalize the scope of this proceeding by reconsidering and revising its August 7, 2020 decision to: (1) clarify that the scope of the proceeding will include a prudence review of the EDCs’ preparedness for and response to Tropical Storm Isaias; and (2) designate this proceeding as a contested case under the Connecticut Uniform Administrative Procedure Act (“UAPA”).

In addition to a full performance review pursuant to Conn. Gen. Stat. § 16-32i, Connecticut ratepayers are entitled to a probing prudence review with corresponding Findings of Fact in this proceeding. While the full panoply of possible sanctions—including civil penalties under Section 16-41, storm cost recovery disallowances and return on equity (“ROE”) penalties—may be appropriately suited for subsequent proceedings,

Connecticut ratepayers are entitled to answers in the form of Findings of Fact related to the prudence of both electric utilities' preparedness for and response to Tropical Storm Isaias in this proceeding.

Now is the time for PURA to clearly and unequivocally preserve every option to impose the most serious penalties available at the earliest possible time, instead of setting the stage for an endless series of related proceedings taking years to reach conclusion. PURA has a critical choice to make right now. If it designates this proceeding as including a prudence review and as a fully trial-like contested case under the UAPA, it will preserve every legal option for the quickest imposition of the most severe penalties if the evidence shows they are appropriate. If, instead, PURA fails to take these steps, it will add unnecessary years and wasteful additional proceedings down the road before finishing what it can and should do now: determine all the facts, including what the electric utilities did and did not do to meet their legal obligations; determine the legal import of those facts; and then do what needs to be done to provide fairness to ratepayers at the earliest possible moment, without unneeded bureaucratic delay.

Connecticut ratepayers pay handsomely for their energy. Yet, these ratepayers were left in the dark during the hot and humid dog days of summer while enduring the innumerable hardships of a global pandemic. Such hardships were painfully exacerbated during the multiple days of power outages. To name but a few: vulnerable residents who utilize medical equipment depending on electricity were stranded or forced to seek refuge in hospital emergency rooms; familiar commercial plazas and grocery stores were shuttered and dark; fallen trees lined well-travelled thoroughfares of the state; crackling wires hung from utility poles and trees where pedestrians and homeowners walk; and employees working from home had no power or internet from which to conduct their day-to-day work

responsibilities. Unemployed Connecticut ratepayers anxious about whether and when they will receive their next government assistance payment now have to worry about how they can afford to restock their refrigerators to feed their families and pay for other storm expenses. In addition, multiple polling places and town halls were without power leading up to and even during the statewide primary election on Tuesday, August 11, 2020, a full week after the storm hit.

Simply put, ratepayers have a right to be angry and deserve answers in this proceeding about the prudence of the EDCs' storm preparation and response. Ratepayers also deserve the formality and accountability that is afforded under the UAPA. The Attorney General therefore moves to expand and formalize the scope of this docket so that it is a contested proceeding under the UAPA and includes a probing prudence review into the electric utilities' storm preparedness and response.

I. Procedural History

On August 6, 2020, the Authority, on its own motion, entered its Request to Establish a New Docket on PURA's Own Motion. PURA stated the reason for the request as follows:

Tropical Storm Isaias caused wide-spread power outages and resulted in lengthy delays in restoration of service. Pursuant to Conn. Gen. Stat. §§ 16-11 and 16-41, [the Authority] is opening this docket to investigate [the EDCs'] preparation for and response to the Tropical Storm Isaias.

On August 6, 2020, the Attorney General filed his Motion to Intervene and Clarify Scope of Proceeding (Motion No. 1). In that Motion, the Attorney General respectfully urged PURA to include in its forthcoming Notice of Proceeding clarification that this proceeding will encompass determinations on the prudence of the EDCs' storm preparation and response management. The Attorney General further submitted that PURA should include in the forthcoming Notice of Proceeding that this docket will take into

consideration the appropriateness of any future EDC storm cost recovery disallowances as well as ROE penalties.

On August 7, 2020, PURA granted the Attorney General's Motion to Intervene and denied his Motion to Clarify Scope of Proceeding. In granting the Attorney General's Motion to Intervene, the Authority designated the Attorney General a "Participant" in this proceeding in accordance with Conn. Agencies Regs. § 16-1-135. In denying his Motion to Clarify Scope of Proceeding, the Authority stated that:

[t]he General Assembly established a specific procedure under Conn. Gen. Stat. § 16-32i for reviewing the [EDCs'] performance of emergency preparation and service restoration. This review mechanism expressly provides for, among other things, the imposition of substantial civil penalties in a contested proceeding after a finding that an EDC failed to comply with applicable performance standards. The disallowance of storm recovery costs and the imposition of ROE penalties certainly remain within the Authority's power; the statutorily prescribed venue for these sanctions is a ratemaking proceeding. In addition, disallowance of storm recovery costs is also an available remedy that the Authority may invoke; however, the EDCs have not yet sought recovery and thus the Authority is not yet in possession of a request on which to rule. Consequently, the scope of *this* proceeding will remain as indicated in the Notice of Proceeding issued August 7, 2020; the disallowance of storm recovery costs and the imposition of ROE penalties will be considered separately.

PURA Ruling on Motion No. 1 (Aug. 7, 2020), at 1-2.

On August 7, 2020, the Authority also issued its Notice of Proceeding in this docket. In the notice, the Authority specified that it would conduct the proceeding pursuant to Conn. Gen. Stat. §§ 16-11, 16-32e, 16-32h, 16-32i, and 16-41. The Authority stated that:

[a]s part of the investigation, the Authority will review the [EDCs'] implementation of their emergency restoration plans filed in accordance with Conn. Gen. Stat. § 16-32e and assess whether the EDCs complied with the standards for emergency preparation and restoration of service established in accordance with Conn. Gen. Stat. § 16-32h. The review will include, but not be limited to: outage/damage prediction, storm preparedness, the adequacy of staffing and equipment, communications, outage/damage assessment, restoration management, and after-action reporting. Based the assessment of each EDC's performance, the Authority may issue enforcement orders or level civil penalties in accordance with

Conn. Gen. Stat. § 16-41 in a separate contested proceeding. In addition, the assessment will be considered in the Authority's evaluation of any proposal for cost recovery of storm expenses.

In its Notice of Proceeding, PURA designated Eversource, UI, the Office of Consumer Counsel, and the Commissioner of the Department of Energy and Environmental Protection as Participants to this proceeding. The Authority did not make express reference to this being a contested case in the Notice of Proceeding.

II. Argument

A. Legal Standard for Motions for Reconsideration

The Authority has broad discretion to rescind, reverse, or alter any decision, order, or authorization it has made. *See* Conn. Gen. Stat. § 16-9 (“Said authority may, at any time, for cause shown, upon hearing had after notice to all parties in interest, rescind, reverse or alter any decision, order or authorization by it made.”). The Authority maintains broad discretion to revise its Notices of Proceeding.

B. The Attorney General Urges PURA to Expand the Scope of this Proceeding to Include a Prudence Review

The Attorney General respectfully urges PURA to reconsider and revise its ruling in response to the Attorney General's August 6, 2020 Motion to Clarify Scope by noticing this docket as a prudence review that examines all aspects of the EDCs' preparation, response, and performance related to Tropical Storm Isaias.¹ Clarifying that this docket will include such a

¹ PURA has articulated a three-part prudency test as follows: “First, there must be a clearly understood definition of the standard of care by which a utility's performance can be measured; second, the actions of the utility must be examined to determine if there has been a failure on its part to conform to the standard required; and finally, there must be a reasonably close [causal] connection between the imprudent conduct, if any, and actual loss or damage.” Docket No. 13-03-23, *Petition of the Connecticut Light and Power Company for Approval to Recover its 2011-2012 Major Storm Costs*, Decision (Mar. 12, 2014), at 3-4, note 1, (*citing* Docket No. 08-02-06, *DPUC Investigation into The Connecticut Light and Power Company's Billing Issues*, Decision (Aug. 6, 2008) at 10-11).

prudence review is essential to put the EDCs on notice from the outset that PURA will have available its full complement of remedies in this or future ratemaking proceedings, including denying full recovery of storm costs and/or ROE penalties. PURA should not wait until future ratemaking proceedings to face the question of whether it, in fact, has made the requisite findings regarding prudence to support such penalties. Moreover, the people of the State of Connecticut deserve PURA's factual findings in this case regarding the prudence of the EDCs' actions.

Noticing and conducting this docket as a prudence review also serves the interests of administrative efficiency. By centralizing all its findings of fact in one administrative record, PURA could then rely on that record as a platform to consider potential additional sanctions in subsequent proceedings. Such subsequent proceedings could include a future docket to levy civil penalties pursuant to the notice provisions of Section 16-41(c) which stem from the Section 16-32i review in this proceeding, future storm cost recovery disallowances, and ROE penalties in each of the EDCs' next rate cases.

The PURA investigation into the public service companies' response to Tropical Storm Irene and the October Nor'easter, both in 2011, was not expressly noticed to include the issues of a prudence review and efficient management. *See* Docket No. 11-09-09, *PURA Investigation of Public Service Companies' Response to 2011 Storms*, Decision (Aug. 1, 2012), at 15-16. As such, PURA declined to make such prudence determinations in that comprehensive investigation docket. *See id.* The Attorney General urges PURA to include a prudence review within the noticed scope of the present proceeding so that it is not later precluded or hindered from making determinations on prudence if the fact-finding in this docket supports them.

C. The Attorney General Urges PURA to Designate This Proceeding as a Contested Case under the UAPA

In order to comport with the requirements of Conn. Gen. Stat. § 16-32i and preserve the UAPA rights of all stakeholders who receive formal status in the proceeding, the Attorney General requests that PURA revise its Notice of Proceeding to designate this as a contested proceeding under the UAPA. *See* Conn. Gen. Stat. § 4-177. The Notice of Proceeding, dated August 7, 2020, designates certain stakeholders as “Participants.” In addition, PURA’s ruling on Motion No. 1 designates the Attorney General as a “Participant” in accordance with Conn. Agencies Regs. § 16-1-135. This regulation provides the following: “(a) Any person granted permission by the Authority to take part in an uncontested proceeding shall be designated a participant.”

The PURA Notice of Proceeding invokes Conn. Gen. Stat. § 16-32i as a “review mechanism” under which it will evaluate the EDCs’ performance of emergency preparation and service restoration. PURA Ruling on Motion No. 1 (Aug. 7, 2020), at 1-2. Importantly, Section 16-32i requires that this review and any order resulting therefrom will take place in a contested case under Chapter 54 of the General Statutes of Connecticut, or the UAPA. Specifically, Section 16-32i provides the following, in relevant part:

The authority, upon a finding that any such company failed to comply with any standard of acceptable performance in emergency preparation or restoration of service in an emergency, adopted pursuant to section 16-32h, or with any order of the authority, shall make orders, *after a hearing that is conducted as a contested case in accordance with chapter 54*, to enforce such standards or orders and may levy civil penalties against such company, pursuant to section 16-41, not to exceed a total of two and one-half per cent of such electric distribution or gas company's annual distribution revenue, for noncompliance in any such emergency.

Conn. Gen. Stat. § 16-32i (emphasis added).

Given that Section 16-32i requires a contested proceeding under the UAPA, and to preserve the procedural due process rights of all stakeholders who receive formal status in

this proceeding, the Attorney General respectfully requests that PURA revise its Notice of Proceeding to expressly designate this a contested case.

III. Conclusion

The Attorney General respectfully urges PURA to expand and formalize the scope of this proceeding to: (1) clarify that the scope of the proceeding will include a prudence review of the EDCs' preparedness for and response to Tropical Storm Isaias; and (2) designate this a contested proceeding under the UAPA. The Attorney General thanks PURA for its attention to the important procedural matters in this motion as well as PURA's diligence in establishing this critical proceeding. The Attorney General looks forward to vigorous participation on behalf of Connecticut's ratepayers in this proceeding.

Respectfully Submitted,

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