

**STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY**

INVESTIGATION INTO DISTRIBUTION : DOCKET NO. 17-12-03RE11
SYSTEM PLANNING OF THE :
ELECTRIC DISTRIBUTION :
COMPANIES—NEW RATE DESIGNS :
AND RATES REVIEW (PHASE IIa) : AUGUST 25, 2021

**BRIEF OF WILLIAM TONG,
ATTORNEY GENERAL
FOR THE STATE OF CONNECTICUT**

William Tong, Attorney General for the State of Connecticut (“Attorney General”), respectfully submits this Brief to the Public Utilities Regulatory Authority (“PURA” or “Authority”) in the above-captioned proceeding investigating whether an interim rate decrease is appropriate for electric utilities pursuant to General Statutes § 16-19(g). For the reasons stated herein, the Attorney General urges PURA to substantially reduce Eversource Energy’s (“Eversource”) rates by as much as \$123 million per year.

I. EXECUTIVE SUMMARY

Eversource ratepayers pay far too much for electricity and Eversource shareholders are reaping the benefits. Oppressive electric rates impose unreasonable economic burdens on Connecticut families, which are more home-centric in their work, educational, and leisure pursuits due to the COVID-19 public health and economic crises. In the Take Back Our Grid Act, a product of the September 2020 Special Session, the Legislature urged PURA to examine whether interim rate relief is warranted for Connecticut electric ratepayers during these turbulent times.

The evidence presented in this case demonstrates that Eversource’s rates are bloated and unaffordable. The Attorney General therefore recommends that PURA exercise its discretion to

reduce Eversource's rates by between \$65 million and \$123 million per year.¹ Eversource ratepayers should not pay a penny more than what is just, reasonable, and adequate.

Since its last rate case in 2018, Eversource's cost of equity and cost of debt have fallen, but those reductions are not reflected in Eversource's current rates. *See* Direct Testimony of Aaron L. Rothschild on Behalf of The Connecticut Public Utilities Regulatory Authority's Office of Education, Outreach, and Enforcement ("EOE"), dated April 26, 2021 ("Rothschild Direct Testimony"), at 4. Eversource's distribution rates are thus more than just, reasonable, and adequate, and not directly beneficial to consumers. Decreasing Eversource's annual distribution revenue by between \$65 million and \$123 million per year would reduce Eversource's rates to a range that is just, reasonable, and adequate. *See* Late-Filed Exhibit ("LFE") 11. A rate reduction of \$100 million would translate into an approximate 4.54% distribution rate decrease, or a 2.6% total bill decrease, until PURA sets rates during Eversource's next rate case.

Allowing Eversource rates to remain at their current level, however, is tantamount to needlessly transferring income from Eversource ratepayers to Eversource shareholders. *See* Docket No. 08-07-10, *DPUC Review of Overearnings for The Southern Connecticut Gas Company*, Decision, dated Oct. 24, 2008 ("Docket No. 08-07-10 Decision"), at 11. Such a transfer of income from Eversource ratepayers to shareholders during these trying pandemic times, without any discernible direct benefit to ratepayers, is not only not in the public interest, it is simply unconscionable. *See id.*

¹ This Brief pertains to Eversource Energy given that PURA is no longer considering an interim rate decrease for The United Illuminating Company ("UI"). *See* PURA Revised Notice of Investigation Timeline, dated July 15, 2021; *see also* PURA Interim Decision, dated June 23, 2021, at 1 (the Amended Settlement between UI, the Attorney General, the Department of Energy and Environmental Protection, the Office of Consumer Counsel, and PURA's Office of Education, Outreach, and Enforcement satisfies the interim rate decrease). As part of this settlement, UI shareholders provided a \$5 million contribution to reduce rates. *See id.*

The Attorney General recommends that the necessary interim distribution rate decrease be effectuated through a line-item credit on Eversource customers' monthly bills. The customer credit would reflect PURA's determination of an appropriate annual distribution revenue decrease based on the record evidence. PURA's predecessor, the former Department of Public Utility Control ("DPUC"), ordered line-item credits to reduce public service companies' rates on an interim basis in Section 16-19(g) proceedings. *See* Docket No. 08-06-10, *DPUC Review of Overearnings for Connecticut Natural Gas Corporation*, Decision, dated Aug. 6, 2008 ("Docket No. 08-06-10 Decision"), at 8 & Docket No. 08-07-10 Decision at 16. A distribution rate decrease accomplishes the same end as a decrease to return on equity ("ROE"). *See* 06/23/2021 Transcript ("Tr.") of the Hearing at 435. A customer credit is a transparent and straightforward way for consumers to realize an interim rate decrease.

II. PROCEDURAL HISTORY

PURA opened this proceeding to explore new rate designs that address the disproportionate impact of increased electric rates on the lowest income customers and the need for Connecticut businesses to remain competitive with those in neighboring states. *See* Second Revised Notice of Proceeding, dated June 14, 2021, at 1. "Specifically, the Authority will consider the implementation of an interim rate decrease, low-income rates, and economic development rates for customers of electric distribution companies (EDCs)[.]" *Id.*

Phase IIa of this proceeding, investigating an interim rate decrease for the EDCs, was initiated pursuant to PURA's authority under General Statutes § 16-19(g) and at the behest of the Legislature in Section 5 of Public Act 20-5, *An Act Concerning Emergency Response by Electric Distribution Companies, the Regulation of Other Public Utilities and Nexus Provisions for Certain Disaster-Related or Emergency-Related Work Performed in the State* ("Take Back Our Grid Act").

Second Revised Notice of Proceeding, at 1. PURA held five days of evidentiary hearings and considered voluminous pre-filed testimony and interrogatory responses on an interim rate decrease.

III. ARGUMENT

A. General Statutes § 16-19(g)(3) and the Take Back Our Grid Act Provide PURA Discretion to Order an Interim Rate Decrease

Section 16-19(g) provides PURA discretion to decrease rates on an interim basis. Section 5 of the Take Back Our Grid Act provides that the Authority “may initiate a proceeding or proceedings to consider the implementation of an interim rate decrease . . . pursuant to its authority in subsection (g) of section 16-19 of the general statutes.” Section 16-19(g) states that PURA “shall hold either a special public hearing or combine an investigation with an ongoing four-year review conducted in accordance with section 16-19a or with a general rate hearing conducted in accordance with subsection (a) of this section on the need for an interim rate decrease” when one of three triggering conditions occur. These conditions are:

- (1) when a public service company has, for the rolling twelve-month period ending with the two most recent consecutive financial quarters, earned a return on equity which exceeds the return authorized by the authority by at least one percentage point,
- (2) if [PURA] finds that any change in municipal, state or federal tax law creates a significant increase in a company’s rate of return, or
- (3) if [PURA] finds that a public service company may be collecting rates which are more than just, reasonable and adequate, as determined by the authority[.]

General Statutes § 16-19(g).

The third condition is operative in this proceeding. Section 16-19(g)(3) is broad by its plain language, authorizing PURA to initiate proceedings when it “finds” rates “*may be . . . more than just, reasonable and adequate, as determined by the authority[.]*” General Statutes § 16-19(g)(3) (emphasis added); *see Office of Consumer Counsel v. Dep’t of Pub. Util. Control*, 279 Conn. 584, 593 (2006) (noting that the DPUC possesses broad regulatory authority and discretion) (internal citation omitted). PURA properly used its authority under Section 16-19(g) to commence this

proceeding. Moreover, the Take Back Our Grid Act strongly indicates that the Legislature wanted PURA to initiate this proceeding. *See* Take Back Our Grid Act § 5.

B. The Evidence Supports an Interim Rate Decrease for Eversource

PURA should order an interim rate decrease for Eversource because its rates are not just, reasonable, and adequate, nor are its rates directly beneficial to ratepayers. Section 16-19(g) provides that during an interim rate decrease proceeding:

[t]he company shall be required to demonstrate to the satisfaction of the authority that earning such a return on equity or collecting rates which are more than just, reasonable and adequate is directly beneficial to its customers. At the completion of the proceeding, the authority may order an interim rate decrease if it finds that such return on equity or rates exceeds a reasonable rate of return or is more than just, reasonable and adequate as determined by the authority.

In the DPUC’s two-step analysis pursuant to Section 16-19(g), PURA must first determine if the company is earning rates which are more than just, reasonable, and adequate. *See* Docket No. 08-07-10 Decision at 3. Second, if the company is earning too much, the company must demonstrate to the satisfaction of the Authority that the excessive rates are “directly beneficial” to its ratepayers. *See id.* If the company fails to show a direct benefit, then the Authority may order an interim rate decrease. *See id.*

Eversource has not met this burden. Eversource’s rates are more than just, reasonable, and adequate and they are not directly beneficial to ratepayers. PURA should accordingly order an interim rate decrease.

1. Eversource’s Rates are More Than Just, Reasonable, and Adequate

Market and financial conditions have changed since Eversource’s last rate proceeding in 2017. As a result, Eversource’s rates are no longer just, reasonable, and adequate. EOE’s witness Rothschild testified that Eversource’s cost of equity and cost of debt have fallen since Eversource’s last rate case. *See* Rothschild Direct Testimony at 4-5. Rothschild further argued that Eversource

Energy's actual capital structure on a holding company level is nearly 7% lower than reported for its Connecticut operations, and the Company's overall revenue requirement should be adjusted to account for this difference. *See* Supplemental Testimony of Aaron L. Rothschild on Behalf of EOE, dated May 25, 2021, at 4-5. These changes combine to lower annual revenue requirements between \$65.4 million and \$123.4 million for Eversource. *See* LFE-11.

According to Rothschild's calculations, an annual revenue decrease of between \$65.4 million and \$123.4 million per year would bring Eversource's rates down to a range that is just, reasonable, and adequate. *See* Rothschild Direct Testimony; LFE-11. A flat rate decrease of this amount could accomplish the same end as an adjustment to Eversource's ROE. *See* 06/23/2021 Tr. at 435 (Rothschild testified that "you can get there in different ways[.]") Importantly, PURA's determination of the appropriate annual revenue decrease, and thus distribution rate decrease, within Rothschild's range of reasonableness is discretionary. *See* General Statutes § 16-19(g) ("At the completion of the proceeding, the authority may order an interim rate decrease if it finds that such return on equity or rates exceeds a reasonable rate of return or is more than just, reasonable and adequate as determined by the authority."); *see also* *Office of Consumer Counsel v. Dep't of Pub. Util. Control*, 252 Conn. 115, 120 (2000) ("[a]n agency's factual and discretionary determinations are to be accorded considerable weight by the courts.") (internal citations omitted) (emphasis added).² Variations in the methodology used to determine a reasonable rate of return are entirely within the discretion of PURA. *See* Docket No. 08-06-10 Decision at 2.

² In determining an appropriate annual distribution revenue decrease, PURA is guided by the statutory principle that the level and structure of Eversource's rates shall be sufficient, *but not more than sufficient*, to allow it to cover its capital costs, to attract needed capital and maintain its financial integrity, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable. *See* General Statutes § 16-19e(a)(4).

2. Eversource's Excessive Rates are Not Directly Beneficial to Ratepayers

Eversource has failed to meet its burden to show that its excessive rates are directly beneficial to ratepayers. *See* General Statutes § 16-19(g); *see* Docket No. 08-06-10 Decision at 3 (both General Statutes §§ 16-19(g) and 16-22 place the burden of proof on the company).

Eversource claims that its excessive rates benefit customers in two ways: “[1] the stability provided by Eversource’s current rates and [2] maintaining strong credit ratings that keep capital costs low.” *See* Rebuttal Testimony of Douglas P. Horton, et al. on Behalf of The Connecticut Light and Power Company d/b/a Eversource Energy, dated May 20, 2021 (“Horton Rebuttal Testimony”), at 8. Both claims are unpersuasive.

First, rate stability is not an inherent benefit to consumers. To be sure, rate stability does not benefit consumers if their rates are too high. The DPUC specifically found that:

[S]tabilized rates are not a direct benefit to [the company]'s ratepayers. Stabilizing rates at levels that are more than just, reasonable and adequate are a detriment to ratepayers. There is no benefit from having ratepayers paying more than just and reasonable rates pending the conduct of a complete Conn. Gen. Stat. § 16-19 proceeding, historically lasting months. Thus, [the company] has not demonstrated to the Department that its overearnings are a direct benefit to its ratepayers.

Docket No. 08-06-10 Decision at 6.

Second, Eversource’s claim that an interim rate decrease would harm its ability to secure credit is overstated and rebutted by record evidence. Rothschild’s range of reasonableness for an interim rate decrease is consistent with the cost of equity demanded by investors and “will still therefore enable [Eversource] to raise the capital needed to provide safe and reliable service.” Direct Testimony of Rothschild at 9. Rothschild factored in investors’ expectations when determining that Eversource’s annual distribution revenue may be decreased by between \$65.4 million and \$123.4 million per year without discouraging investment in Eversource. *Id.* at 11; LFE-11. This decrease would align Eversource’s returns with those of the overall market. Direct

Testimony of Rothschild at 9 (“[M]ajor financial institutions are telling their clients on average to expect about the same returns on their investments as the midpoint [of] the cost of equity I am proposing for [Eversource]”). Importantly, Rothschild’s cost of equity recommendation is for a regulated utility company for which investors demand a lower return on equity than for the overall stock market. *See id.* at 9-10. Moreover, the record evidence demonstrates that Eversource’s credit metrics “will not be significantly impacted” if Rothschild’s recommendations are used to reduce rates. Revised LFE-12, filed July 27, 2021.

Further, even if an interim rate decrease could harm Eversource’s ability to access capital, those effects would be mitigated due to the interim nature of this proceeding. *See* 06/24/2021 Tr. at 593-94 (Rothschild noting that if communicated properly, investors would recognize a decrease as temporary and act accordingly). The Connecticut Supreme Court has recognized the statutory scheme under which an interim rate decrease is to be followed by a full rate case. *See Office of Consumer Counsel v. Dep’t of Pub. Util. Control*, 252 Conn. at 124. Moreover, Section 16-19(g) provides a safeguard in that the Authority may order a customer surcharge in the next full rate case if an interim rate decrease is found to be inappropriate. *See id.*; General Statutes § 16-19(g) (“Any such interim rate decrease shall be subject to a customer surcharge if the interim rates collected by the company are less than the rates finally approved by the authority or fixed at the conclusion of any appeal taken as a result of any finding by the authority.”).

In short, Eversource has not successfully refuted Rothschild’s testimony that its rates are more than just, reasonable, and adequate. Nor has Eversource shown that its excessive rates are a direct benefit to consumers. Given that Eversource has not met its burden, the Authority should order an interim rate decrease at the conclusion of this proceeding.

C. An Interim Rate Decrease Would Not Contravene the Common Law Prohibition Against Single-Issue Ratemaking

An interim rate decrease ordered under Section 16-19(g) would not violate the common law prohibition against single-issue ratemaking, which generally prohibits changes to components of a utility's revenue requirement in isolation. *See Office of Consumer Counsel v. Dep't of Pub. Util. Control*, 279 Conn. at 597; *see* Rebuttal Testimony of Vincent V. Rea on Behalf of The Connecticut Light and Power Company d/b/a Eversource Energy, dated May 20, 2021, at 10, 79 & 121 (stating that an interim rate decrease in this proceeding would be single-issue ratemaking). Section 16-19(g) specifically authorizes PURA to decrease rates in the context of an interim rate proceeding, and this express authority statutorily overrides the common law prohibition under discrete statutory circumstances. *See Paul Dinto Elec. Contrs., Inc. v. City of Waterbury*, 266 Conn. 706, 716 n.10 (noting that a statute can "legislatively overrule[]" case law); *see also State ex rel. Office of Pub. Counsel v. Mo. PSC*, 331 S.W.3d 677, 690-91 (Mo. Ct. App. 2011) (finding that single-issue ratemaking was appropriate because it was allowed by statute); *Penn. Indus. Energy Coalition v. Penn. Pub. Util. Comm'n*, 653 A.2d 1336, 1350 (Pa. Commw. Ct. 1995) (same).

PURA would simply be following an appropriate and well-worn path in ordering an interim rate decrease for Eversource. *See, e.g.*, Docket No. 08-06-10 Decision; Docket No. 08-07-10 Decision; *see also* Docket No. 18-01-15, *PURA Review of Rate Adjustments Related to The Federal Tax Cuts and Jobs Act, et al.*, Decision, dated Jan. 23, 2019, at 8 (PURA required public service companies to return tax savings to consumers derived from the federal corporate income tax decrease effective January 1, 2018).

IV. CONCLUSION

The evidence in this proceeding demonstrates that Eversource ratepayers pay far too much for their electricity and receive no direct benefit for such excessive rates. PURA should accordingly

use its statutory discretion to determine an appropriate annual distribution revenue decrease for Eversource between \$65 million and \$123 million per year—and a corresponding interim rate decrease—so that Eversource’s rates are no more than just, reasonable, and adequate. The Attorney General recommends that the necessary interim distribution rate decrease for Eversource be effectuated through a line-item credit on Eversource customers’ monthly bills.

The Attorney General thanks PURA for its administration of this critical proceeding and for its careful consideration of the positions taken in this Brief.

Respectfully Submitted,

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