May 19, 2021

Mr. Jeffrey R. Gaudiosi, Esq.
Executive Secretary
Public Utilities Regulatory Authority
10 Franklin Square
New Britain, CT 06051

Re: Docket No. 17-12-03RE11, PURA Investigation into Distribution System Planning of the Electric Distribution Companies – New Rate Designs and Rates Review

Docket No. 16-06-04RE04, Application of The United Illuminating Company to Increase Its Rates and Charges – Interim Rate Decrease, Low-Income Rates, and Economic Development Rates

Docket No. 21-01-04, PURA Annual Review of the Rate Adjustment Mechanisms of The United Illuminating Company

Joint Statement of the Settling Parties in Response to Procedural Order, dated April 26, 2021, and in Support of Joint Motion to Approve Settlement Agreement, dated March 9, 2021

Dear Mr. Gaudiosi:

The Office of the Attorney General ("AG"), the Office of Consumer Counsel ("OCC"), The United Illuminating Company ("UI" or the "Company"), and the Department of Energy and Environmental Protection ("DEEP"), (collectively, the "Settling Parties")[1] respectfully submit to the Public Utilities Regulatory Authority (the "Authority" or "PURA") this Joint Statement in Response to the Procedural Order, dated April 26, 2021 and in Support of Joint Motion to Approve Settlement Agreement, dated March 9, 2021.

Executive Summary

The Settling Parties restate here that they continue to agree that the Settlement Agreement as proposed is in the best interests of UI's customers. As further described herein, the Authority should consider the following during its continued review of the Settlement Agreement:

- The Settlement Agreement was intentionally designed by the Settling Parties to extinguish the regulatory asset arising from the approximate $58 million under-collection of the 2020 RAM rate components owed to the Company from customers concurrent with the tax liability of $41.55 million due to customers from the Company.
- While the Company remains open to exploring the Authority's proposed pre-amortization netting of these regulatory assets and liabilities, amortizing the regulatory asset and

[1] The undersigned parties understand that the Public Utilities Regulatory Authority's Office of Education, Outreach, and Enforcement ("EOE") will be filing a separate response to the Procedural Order, dated April 26, 2021, regarding the Settlement Agreement.

liabilities under the schedules provided for in the Settlement Agreement nets *in favor* of customers.

- The Settlement Agreement includes a commitment from UI to fund $5 million in bill credits to customers over this amortization period, which is equivalent to approximately 66 basis points of one year of the Company's allowed ROE of 9.1%.
- The Settlement Agreement also provides significant value in the proposed "stay out" provision, which was intentionally designed to allow for the implementation of any performance-based rate methodologies ultimately approved by the Authority into UI's next general rate proceeding in an orderly fashion.
- The Settling Parities believe that the proposed use of the Company's Revenue Decoupling Mechanism ("RDM") to recover any over- or under-collection of the Company's allowed revenues that may result by the adoption of low income or economic rates would not limit the manner in which these proposed rates could be implemented.
- As further discussed herein, the Settling Agreement is not intended, nor should it be construed, to allow the Company to retain or otherwise not return any portion of tax liabilities that are accruing pursuant to the Authority's Order No. 1 in Docket No. 18-01-15.
- The Settlement Agreement does not act to discontinue UI's ESM after the expiration of the Company's rate plan approved in Docket No. 16-06-04 or during the pendency of the Distribution Rate Freeze.
- The Settling Parties respectfully submit that the Settlement Agreement does not conflict with Public Act 20-5 and that it was the intention of the Settling Parties to provide customers with timely rate relief during pendency of the COVID-19 pandemic.

The Settling Parties look forward to further engaging the Authority on the Settlement Agreement in this proceeding.

<u>Background</u>

On March 9, 2021, the Settling Parties filed a Joint Motion to Approve Settlement Agreement together with a fully executed Settlement Agreement in the above-captioned dockets. On April 14, 2021, the Authority issued a Proposed Final Decision in Docket No. 21-01-04 (the "UI RAM Proceeding"), which proposed various orders that, if entered, would have run counter to the terms of the Settlement Agreement, thus implying, although not explicit, that the Proposed Settlement Agreement had been rejected. Subsequent to receiving Written Exceptions and Oral Argument from the Settling Parties on the Proposed Final Decision, the Authority issued a Procedural Order, dated April 26, 2021, which suspended the procedural schedule in the UI RAM Proceeding and requested additional information from the Settling Parties with regard to the terms of the Settlement Agreement. On May 5, 2021, in Docket No. 17-12-03RE11, the Authority issued a Revised Notice Regarding Investigation Timeline, which set a procedural schedule for the Authority's review of the Settlement Agreement as Phase 1b in that proceeding. Included in that revised procedural schedule, is a request for the Settling Parties file

supplemental agreements and/or supplemental information relating to the Settlement Agreement by May 19, 2021.

The Settling Parties restate here that they continue to agree that the Settlement Agreement as proposed is in the best interests of UI's customers and is consistent with the Authority's policy to encourage the use of settlements to resolve contested cases pursuant to Conn. Gen. Stat. §16-19jj. The terms of the Settlement Agreement were negotiated in good faith by the Settling Parities and represent a balanced proposed package. The Settling Parties worked diligently to achieve a comprehensive result that is fair and reasonable from each party's perspective, and the terms of the Settlement Agreement represent an intricate balancing of goals and a compromise of the parties' individual interests. Based on the forgoing, the Settling Parties provide the following responses to each of the issues raised by the Authority in the Procedural Order in the UI RAM Proceeding.

Discussion

1. *Settlement Agreement*

The Settlement Agreement was intentionally designed by the Settling Parties to extinguish the regulatory asset arising from the approximate $58 million under-collection of the 2020 RAM rate components owed to the Company from customers[2] concurrent with the tax liability of $41.55 million due to customers from the Company,[3] combined with a commitment from UI to fund to $5 million in bill credits to customers over this amortization period. These amortization schedules were developed by the Settling Parties to avoid the 5-8% rate increase[4] that otherwise would have been required by customers to satisfy the 2020 RAM under-collection. The Settlement Agreement includes a voluntary financial contribution by the Company's shareholders, which reduces customers' bills. This figure was specifically negotiated by the Settling Parties, including the AG, DEEP, OCC and EOE, and is not available outside of the Settlement Agreement. The $5 million shareholder contribution represents the equivalent to approximately *66 basis points of one year of the Company's allowed ROE of 9.1%.* The Settling Parties agree that this represents a meaningful contribution by the Company in an effort to work with the Settling Parties and the Authority to mitigate rate impacts to its customers. When this voluntary $5 million contribution is coupled with an agreement to delay the collection of the outstanding $58 million of RAM bill components that the Company has already paid in 2020, but will not fully collect until May 2023, the Settlement Agreement represents a significant financial commitment by the Company and benefit to customers, which should not be discounted.

[2] The Settlement Agreement calls for the $58 million 2020 RAM under-recovery to be amortized over a 2-year period, commencing on May 1, 2021 through April 30, 2023, with carrying charges at Prime, net ADIT.

[3] The Settlement Agreement calls for the $41.55 million of Tax Liabilities to be amortized over a 20-month period, commencing on May 1, 2021 through December 31, 2022, with carrying charges at the Company's WAAC.

[4] See UI RAM Application, McDonnell PFT, dated March 9, 2021, at 8.

2. *Performance Based Rate Proceeding*

The Settling Parties believe there is significant value in the organized implementation of any performance-based rates methodologies ultimately approved by the Authority into UI's rate plan in the Company's next general rate proceeding. The Settling Parties acknowledge that Section 1(b) of Public Act 20-5, requires the Authority to initiate a proceeding no later than June 1, 2021, to investigate, develop and adopt a framework for implementing performance-based regulation of each electric distribution company ("EDC"). The Settling Parties anticipate that the performance-based rate proceeding will be a significant undertaking, which may have a material impact on the Authority's ratemaking methodology and the EDC's business models and rate schedules.[5]

The Settlement Agreement takes no position on the design elements of performance-based regulation and does not impact the Authority's options within the performance-based rate proceeding. The Distribution Rate Freeze or "stay out" provision through May 1, 2023 was specifically designed to provide all parties the benefit of allowing the Authority to investigate, develop and adopt a framework for implementing performance-based ratemaking *before* the Company's next general rate proceeding. The modest stay-out provision should be viewed as a benefit to all stakeholders in that it sets a clear path to incorporating this new rate making methodology, as well as any grid-modernization initiatives that are ultimately approved by the Authority, into a complete review of UI's rates in an orderly fashion and with the benefit of a contemporaneously developed cost of service study.

The Company will likely require a modest amount of time after the conclusion of the performance-based rate proceeding in late 2021 to systematically develop and file its next rate proceeding to incorporate the Authority's performance-based ratemaking principles, which generally aligns with the timeframe of the proposed "stay out" provision. Accordingly, the Settling Parties thought the Settlement Agreement provided an orderly process to implement the new ratemaking process while also providing ratepayers with a modest benefit.

3. *Low Income and Economic Rates*

The Settling Parties do not believe that the Settlement Agreement unreasonably limited the Authority's ability to implement low income and economic development rates. First, the Settlement Agreement takes no position on the design elements of Low Income and Economic Development rates. All of the Settling Parties have specifically reserved the right to raise additional arguments with regard to the adoption, implementation or substantive design of those rates in the balance of this proceeding. Second, the only issue concerning the implementation of Low Income and Economic Development Rates that is addressed by the Settlement Agreement is

[5] See Public Act 20-5, § 1(b). During that proceeding, the Authority is required to (1) establish standards and metrics for measuring such electric distribution company's performance, (2) identify the manner, timeframe and extent in which such standards and metrics shall be used to determine the adequacy of the company's service and the reasonableness of rates proposed and considered pursuant to section 16-19a of the general statutes, and (3) identify specific mechanisms to be implemented to align utility performance with the standards and metrics adopted pursuant to such a proceeding. Id.

the use of the Company's current RDM to true up any over- or under-recovery of the Company's allowed revenue requirements caused by the implementation of such rates. The use of the decoupling mechanism for this purpose is *limited in scope and duration* and would remain in effect only until those new tariffs are incorporated into the rate design approved as part of the Company's next rate proceeding. The Settling Parties believe this represents a *benefit* to low income customers and commercial and industrial customers that may qualify for these rates. Deploying these tariffs in such a manner allows the Company to implement those tariffs *immediately and without delay* until they are incorporated into rates during the Company's next general rate case.

4. *Legislative Intent of Pubic Act 20-5*

The Settling Parties do not believe that the Settlement Agreement conflicts with Public Act 20-5, nor did the Settling Parties intend for the Settlement Agreement to conflict with the Act in any way. Consistent with the relevant sections of Public Act 20-5, it was the intent of the Settling Parties to provide customers with timely rate relief during pendency of the COVID-19 pandemic. The Settlement Agreement provided an opportunity to avoid a 5-8% bill increase to customers and give meaningful relief before the onset of the traditionally high-consumption summer months.[6] If approved as filed, the Settlement Agreement would have delivered tangible benefits to customers starting May 1, 2021.

5. *Bill Credit Naming Conventions*

The Settling Parties are open to any naming conventions that the Authority believes may be appropriate to identify the proposed bill credit on customers' bills.

6. *Return of Tax Liabilities*

The Settlement Agreement proposed the return of $41.55 million in total regulatory liability, resulting from the reduction in the federal corporate tax rate from 35% to 21% as a result of the 2017 Federal Tax Cuts and Jobs Act.[7] In Docket No. 18-01-15, the Authority ordered the

[6] See UI RAM Application, McDonnell PFT, dated March 9, 2021, at 8.

[7] As set forth in Article 1.1.1 of the Settlement Agreement, the Company agreed to accelerate the return of $41,550,000 in total regulatory liability, resulting from the reduction in the federal corporate tax rate from 35% to 21%, representing (1) $26,295,000 in income tax expense included in rates charged to customers from January 1, 2018 through December 31, 2020 ("2018-2020 FIT"); (2) $6,841,000 in unprotected excess accumulated deferred income tax ("Unprotected Excess ADIT"); (3) $6,457,000 in pre-settlement period protected excess accumulated deferred income tax for the period January 1, 2018 through December 31, 2020 ("2018-2020 Pre-Rate Year Protected Excess ADIT") as appropriate per normalization guidelines; and (4) $1,958,000 in protected excess accumulated deferred income tax for the 2021 calendar year ("2021 Protected Excess ADIT") as appropriate per normalization guidelines (collectively, the "Tax Liabilities").

Company to create a regulatory liability to "accumulated deferred income taxes and propose a method of returning such amount to customers in their next rate case filings."[8] To date, the Company has followed that order. The Settling Parties are unaware of any more recent orders regarding the return of the tax liability to customers. The Settlement Agreement includes a provision whereby UI agreed, in exchange for other concessions negotiated by the Settling Parties, to accelerate the return of a regulatory tax liability of $41.55 million that had accumulated since the Authority's order in Docket No. 18-01-15, prior to its next rate case filing, in order to expedite the return of the regulatory liability to ratepayers during the pendency of the proposed rate stay out.

The Settling Agreement is not intended, nor should it be construed, to allow the Company to retain or otherwise not return to customers any portion of tax liabilities that are accruing pursuant to Order No. 1 in Docket No. 18-01-15. To ensure that no ambiguity exists with regard to UI's commitment to return the tax liabilities to customers consistent with applicable accounting rules and standards, the Company is open to exploring alternative provisions in the Settlement Agreement that would provide the Authority with further comfort on the Settling Parties' intent on this issue. Moreover, the Company is open to engaging the Authority on how best to readjust its base distribution rate structure to reflect the reduction of the Federal Corporate tax rate from 35% to 21%, due to the Federal Tax Cuts and Jobs Act that is the subject of Order No. 1 in Docket No. 18-01-15, as well as the initiation of a regulatory asset to defer any under-recovery should the federal tax rate increase above the current 21% in the future.

7. *Netting of Amortization Periods*

As noted above, the Settlement Agreement was intentionally designed by the Settling Parties to extinguish the regulatory asset arising from the approximate $58 million under-collection of the 2020 RAM rate components owed to the Company from customers[9] concurrent with the tax liability of $41.55 million due to customers from the Company,[10] combined with a commitment from UI to deliver $5 million in bill credits to customers over this amortization period. Given the carrying charges associated with each regulatory asset due to the Company (carrying charges at the prime rate, net ADIT) and regulatory liability due to customers (carrying charges at the Company's WAAC), amortizing the regulatory asset and liabilities under the schedules provided for in the Settlement Agreement nets *in favor* of customers.[11] Notwithstanding the foregoing, the

[8] Docket No. 18-01-15, Decision, dated January 23, 2019, Order No. 1 ("Order No. 1: At the time of their next rate cases, UI . . . will address the effects of the Tax Act on both [its] income tax expense and [its] excess accumulated deferred income taxes. [UI is] directed to establish a regulatory liability to account for this difference in income tax expense and excess accumulated deferred income taxes and propose a method of returning such amount to customers in their next rate case filings.").

[9] The Settlement Agreement calls for the $58 million 2020 RAM under-recovery to be amortized over a 2-year period, commencing on May 1, 2021 through April 30, 2023, with carrying charges at Prime, net ADIT.

[10] The Settlement Agreement calls for the $41.55 million of Tax Liabilities to be amortized over a 20-month period, commencing on May 1, 2021 through December 31, 2022, with carrying charges at the Company's WAAC.

[11] See CAE-034 UI Supplement 2 Attachment 1 (*comparing* calculation of carrying charges at prime rate, net ADIT on the $58 Million regulatory asset owed to the Company *with* calculation of carrying charges at UI's WAAC on the $41.55 Million regulatory liability owed to customers).

Company is open to exploring the Authority's proposed pre-amortization netting of these regulatory assets and liabilities.

8. *Tax Liability Amortization Schedules*

As noted above, the amortization schedules were purposely negotiated by the Settling Parties to ensure that the RAM under-collection regulatory asset was extinguished concurrently with the $41,550,000 tax liability due to customers. The terms of the Settlement Agreement, including the amortization periods, were negotiated by the Settling Parties to achieve a comprehensive result that is fair and reasonable from each party's perspective, and the terms of the Settlement Agreement represent a balancing of each Settling Parties' goals and compromises. Notwithstanding the foregoing, the Company is open to exploring alternative tax liability amortization schedules.

9. *The Company's Earning Sharing Mechanism*

The Settlement Agreement does not intend that the ESM would not be continued after the expiration of its rate plan approved in Docket No. 16-06-04 or, upon approval of the Settlement Agreement, during the pendency of the Distribution Rate Freeze.[12] Put another way, the Company intends to follow the terms of the ESM until PURA approves a successor rate plan in a subsequent rate proceeding. The Company would be willing to make such a stipulation as part of the Settlement Agreement.

10. *Section 2 of Public Act 20-5*

The Settling Parties are aware that Section 2 of Public Act 20-5 has extended the review period of a rate case application up to 350 days. Accordingly, the Settling Parties acknowledge that to ensure the Authority is allowed the entire time period to review an application to amend rates prior to new rates becoming effective in May 2023, the Company would be required to file a rate case application no later than May 2022. The Settling Parties have considered the Authority's concerns but respectfully do not see how the proposed Distribution Rate Freeze runs contrary to Section 2 of Public Act 20-5 given that it delivers lower customer rates than otherwise would have existed and given that UI's proposed $5M contribution is equivalent to approximately 66 basis points of one year of UI's current 9.1% ROE. Nor do the Settling Parties see how the proposed Distribution Rate Freeze would otherwise limit the Authority's review of the Company's next rate case application (especially given that the performance based rate proceeding is expected to go through year end and that UI would need a few months from a final order in the performance based rate proceeding to shape its proposed successor rate plan and rate case to reflect the performance based rate guidance set forth therein) or should otherwise serve as an impediment to delivering the benefits offered by the Settlement Agreement to customers.

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[12] See UI RAM Proceeding, Transcript, dated March 26, 2021, at 88, where the following took place:

> MR. KING: Does UI propose to return any over earnings above an ROE of 9.1 similar to the current ESM, or, excuse me, the ESM that just expired?
>
> MR. MCDONNELL: Yes, all the provisions of the last rate proceeding would remain unchanged.

11. *$5 Million Shareholder Contribution and Other Commitments*

As noted above, the Settlement Agreement includes a voluntary financial contribution by the Company's shareholders, which would reduce customers' bills. The $5 million in bill credits would be provided by the Company over a 20-month period commencing on May 1, 2021 and extending through December 31, 2022. This is a substantial customer benefit that is not available outside of the negotiated settlement.

12. *Consumers Education Regarding RAM Bill Components*

The Settling Parties are generally aware that confusion exists concerning the various bill components. However, customer confusion with regard to this issue will likely continue to exist in the near term regardless of whether the Settlement Agreement is approved or denied. The Settling Parties remain open to discussing how best to educate consumers regarding these bill components vis-à-vis the Settlement Agreement and stand ready to discuss this issue further with the Authority. However, the need for additional customer education should not be an impediment to delivering the benefits offered by the Settlement Agreement to those very same consumers.

13. *Rate Stability*

The Settling Parties believe that the Settlement Agreement provided reasonable rate stability and struck the right balance between delaying the impact of bill increases with the increased costs that result from delaying the collection of those increases.

<u>Conclusion</u>

The Settling Parties remain committed to the Settlement Agreement and the benefits it can deliver to UI's customers if approved. The Settling Parties appreciate that the Settlement Agreement contains detailed provisions that impact multiple dockets, but this is the result of the Settling Parties working together to achieve a comprehensive solution to benefit customers. The Settling Parties support approval of the Settlement Agreement and stand ready to provide the Authority with additional specific information regarding the Settlement Agreement if it would be helpful for PURA to issue a final determination. The Settling Parties respectfully request a prompt determination so that all of the impacted dockets can proceed in a timely manner to the benefit of ratepayers. Consistent with the foregoing comments, the Settling Parties respectfully request approval of the Settlement Agreement.

We certify that service of this filing has been made upon all parties or intervenors of record in this proceeding.

Respectfully submitted,

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