STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY

APPLICATION OF THE UNITED	**:**	**DOCKET NO. 22-08-08**
ILLUMINATING COMPANY	**:**	
TO AMEND ITS RATE	**:**	
SCHEDULE	**:**	**APRIL 27, 2023**

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

Respectfully submitted,

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TABLE OF CONTENTS

William Tong, Attorney General for the State of Connecticut ("Attorney General"), hereby submits his brief in the above-captioned proceeding. For the reasons stated herein, the Attorney General respectfully requests that the Public Utilities Regulatory Authority ("PURA" or "Authority") reject the three-year $136.5 million distribution rate increase that The United Illuminating Company ("UI" or "Company") proposed in its Application to Amend its Rate Schedules dated September 9, 2022 ("Application") because it is unjustified and unaffordable. PURA should instead approve a one-year rate plan making appropriate adjustments to current distribution rates.

In addition, PURA should make findings of imprudence related to UI's mismanagement of the multimillion-dollar advanced tree trimming Utility Protection Zone ("UPZ") program as well as its failure to timely remediate the former power plant site known as English Station in New Haven. PURA should accordingly not allow the Company additional recovery of costs to complete the UPZ program. PURA should also levy at least a 20 basis point, or $2 million per year, Return on Equity ("ROE") penalty on the Company for its imprudent management of English Station and failure to meet its obligations to the State of Connecticut. The ROE penalty must be significant to encourage meaningful changes to UI's management to remedy these managerial shortcomings. The Authority should impose this penalty prospectively until such time as UI meets its commitments to the State and its customers.

I. EXECUTIVE SUMMARY

A. UI Has Failed to Meet Its Evidentiary Burden to Increase Its Rates

On September 9, 2022—at a time when its customers were struggling to afford their skyrocketing electric bills—UI filed a bloated, unsupported proposal to increase its electric distribution rates by $136.5 million over the next three years. During the next seven months of

administrative litigation before PURA, the Company failed to meet its burden to justify its exorbitant rate increase proposals, despite answering over 1,800 interrogatories from stakeholders, testifying over the course of 15 total evidentiary hearings, and answering 145 Late-Filed Exhibits. The Company failed to demonstrate, as it must, that its proposed distribution rate hike up to 8 percent in the first rate year is necessary to provide safe, adequate, and reliable electric service.

From a request to fund pet sitting services for its employees working from home on a hybrid schedule, to its request for ratepayers to fund $30,000 "European" Loyalty Awards for its already handsomely compensated employees, to its request for a solar and battery storage project costing $14.7 million to service two customers on Pleasure Beach Island, UI's rate application grasps for ratepayer funding that is neither prudent nor reasonable. *See, e.g.,* 3/2/23 Transcript of the Hearing ("Tr.") at 1926-27 & Late Filed Exhibit ("LFE") 85. Strikingly, UI's Application requests $48.1 million in what it has branded "Clean Energy Transformation" projects with minimal support. Specifically, UI has failed to present evidence that its request to recover $31.2 million in rates for an Electric Vehicle ("EV") Charging Hub would equitably inure to the benefit of its ratepayers. The EV Charging Hub is proposed to serve the "interstate highway system" corridor and a third-party vendor would select its location.

The evidence reveals that UI's management has been imprudent since its 2016 rate case and that disallowance of certain costs are warranted. It is simply alarming that UI failed to meet its obligations to remediate English Station by 2019, to the detriment of the people of the State and most notably New Haven residents. PURA should impose an ROE penalty on UI of at least 20 basis points, or $2 million per year, until it meets its English Station commitments. In addition, UI has imprudently managed the UPZ program. Due to its ineffective execution of the

UPZ program, UI now seeks to double the length of the program to 2029 and more than double the ratepayer funding over its 2013 level—from $100 million to $228 million. PURA should not allow UI recovery of its costs to complete the UPZ program. The Authority should also disallow from recovery in rates both UI's $10.2 million loss from the 2018 sale of its Bridgeport Avenue property in Shelton and the additional excessive $5.4 million in carrying costs. UI has failed to demonstrate that the Bridgeport Avenue property sale price was the lowest cost option for the consolidation of its operations.

The Company's proposed ROE of 10.2% is far too high and its proposed capital structure uneconomic and burdensome. The Company's proposed ROE is based upon a biased analysis and is inconsistent with current market conditions and recent Authority decisions. PURA should reject the Company's requested ROE, instead setting an appropriate ROE that includes penalties for managerial imprudence.

The recommendations herein are not meant to provide an exhaustive list. The Attorney General concurs with many of the other recommendations and adjustments of the Office of Consumer Counsel ("OCC") in this case.

B. <u>UI's Rate Increase Application</u>

UI seeks an enormous distribution rate increase over three years to fund various projects and proposals with thin, unconvincing support. In the first rate year beginning September 1, 2023, UI requests to increase its revenues by $91.1 million. *See* UI Rate Application, dated Sept. 9, 2022 ("UI Application"), at 2; *see also* LFE 1, Revised Schedule A-1.0 A (on March 16, 2023, after hearings, UI filed "corrections, updates and agreed changes to the filed revenue requirement[,]" thereby amending its three-year rate increase request to $130.7 million). The Application represents an average increase of approximately 28.8 percent over currently

authorized overall distribution revenues. *See* UI's Notice of Intent to File Amended Rate Schedules, dated Aug. 1, 2022, at 3. The Company's Application seeks an incremental $20.1 million in the second rate year beginning September 1, 2024, and another incremental $19.5 million in the third rate year beginning September 1, 2025. *See* UI Application, dated Sept. 9, 2022, at 2; *see also* LFE 1. The Authority should approve only the amounts that are absolutely necessary to provide safe and reliable distribution service. The Authority should also reject UI's proposal to increase its rates in each year of its three-year rate plan and should instead approve only adjustments for the first rate year and hold those rates steady for the entire three-year plan.

In addition, PURA should reject UI's "rate levelization" proposal. UI suggests that it offers a rate levelization proposal to moderate the impact of the proposed rate increase for all customers. *See* Direct Testimony of Franklyn D. Reynolds, Charlotte B. Ancel, and Daniel R. Canavan on Behalf of The United Illuminating Company, dated Sept. 9, 2022, at 16. This proposal does not decrease the proposed rate increase, rather it spreads it over three years, and the deferred portion of the rate increase would accumulate carrying charges of $3.9 million over the three rate years. *See id.* at 17; UI Application at 2. UI's proposal to assuage the effects of its enormous rate increase request by spreading it over three years with customers shouldering the carrying charges simply adds to the burden UI seeks to impose on its customers.

C. UI's Rate Increase Request is Unaffordable

Each iteration of UI's proposed rate increase is grossly unaffordable for the 341,000 customers it serves across seventeen cities and towns in southwest Connecticut. The $136.5 million rate hike in the Application, if approved as proposed, would result in a bill increase of approximately $17 *per month* for the average residential customer in Rate Year 1 alone. *See* Schedule E-2.3–A–NL. As the Authority is well aware, Connecticut residents have endured

exceptionally difficult circumstances over the past three years. The United States is finally emerging from a two-year public health crisis that created widespread economic dislocation. The economy is now experiencing high inflation, eating away at workers' incomes. Worse still, the Federal Reserve's inflation fighting measures are rapidly increasing the costs of borrowing for everything, including home mortgages, car payments, and credit card debt. Amid this economic chaos, electricity supply rates rose to unprecedented levels in Connecticut on January 1, 2023. Notably, UI's proposed distribution rate increase does not include transmission costs that are ever-increasing and likely does not include all grid modernization costs that are under consideration in other PURA proceedings.

Connecticut consumers—especially those on fixed or limited incomes—are simply unable to absorb any further increases in their cost of living. These customers need the Authority and all of the participants in this proceeding to work to ensure that the electric rates approved for UI will be no more than absolutely necessary.

II. DISCUSSION

UI's Application to increase its rates presents various legal issues, the standard for which are outlined below.

A. Relevant Legal Standard

Connecticut law requires that electric rates be no more than just and reasonable. *See* Conn. Gen. Stat. § 16-19. PURA must approve only those rates that it finds are absolutely necessary to fund UI's essential operations as an electric distribution company, and fund only those proposals where the Company has met its evidentiary burden.

In addition, in assessing the requested recovery of rates by UI in the immediate matter, the Authority will need to probe the company's degree of managerial prudence as it recently did

in Docket No. 22-07-01, *Application of Aquarion Water Company of Connecticut to Amend its Rate Schedule*. Upon findings of imprudence, the Authority retains the regulatory tool of adjusting a public service company's ROE to properly incentivize prospective prudent and efficient performance. *See* Docket No. 20-08-03, *Investigation into Electric Distribution Companies' Preparation for and Response to Tropical Storm Isaias*, Decision, dated Apr. 28, 2021 ("PURA Tropical Storm Isaias Investigation Decision"), at 15.

1. Rate Case Legal Standard

The authority to establish just, reasonable, and sufficient utility rates is found within two historic U.S. Supreme Court cases, which were recognized by the Connecticut Supreme Court. *See, e.g., Connecticut Light & Power Co. v. Dep't of Pub. Util. Control*, 216 Conn. 627, 635 (1990). These cases describe how a regulated utility is entitled to recover prudent operating expenses as well as capital costs, including a fair and reasonable rate of return on capital investments. *See Fed. Power Comm'n v. Hope Nat. Gas Co*., 320 U.S. 591 (1944); *Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va*., 262 U.S. 679 (1923).

Rate setting requires "a balancing of the investor and consumer interests." *Woodbury Water Co. v. Pub. Util. Comm'n*, 174 Conn. 258, 264 (1978) (citing *Hope*, 320 U.S. at 602-03). In doing so, the Authority "is not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function . . . involves the making of 'pragmatic adjustments.'" *Id.* (internal citation omitted). In achieving this delicate balance and making pragmatic adjustments, the Authority is also guided by General Statutes § 16-19e(a)(5), which states, in relevant part, that the Authority shall examine proposed rates in accordance with the principle that the level and structure of rates charged customers shall reflect prudent and efficient management of the franchise operation.

2. Managerial Prudence Standard

In assessing a utility's management and operations, the Authority applies the prudence standard, which is the standard of care a reasonable person would exercise under the same circumstances confronting the management of the utility at the time of the decision to take such actions. *See* PURA Tropical Storm Isaias Investigation Decision at 12 (internal citations omitted). The Connecticut Supreme Court has affirmed this standard, stating that the "prudence of a management decision depends on good faith and reasonableness, judged at the time the decision is made." *Connecticut Light & Power Co.*, 216 Conn. at 645 (internal citation omitted). That is, the prudency of a management decision is judged based on what the utility knew or should have known at the time the decision was made. *See* PURA Tropical Storm Isaias Investigation Decision at 12-13; *see also* Docket No. 11-12-02, *Application of PSEG New Haven LLC for Establishment of 2012 Revenue Requirements*, Decision, dated June 6, 2012, at 12.

3. Return on Equity Penalty Standard

Upon a finding of managerial imprudence, the Authority maintains the discretion to reduce a utility's ROE. In the absence of competitive forces and customer choice for electric distribution, the motivation for electric utilities to act prudently, efficiently, and in the public interest in the future depends upon the Authority's ability to properly align the electric utilities' performance with financial incentives. *See* PURA Tropical Storm Isaias Investigation Decision at 15. ROE adjustments ensure that rates reflect prudent and efficient management and incentivize the performance of public responsibilities with economy, efficiency, and care for public safety and energy security. *See id.* at 16 (citing Conn. Gen. Stat. §16-19e(a)(3) and (5)).

B. UI Imprudently Managed the UPZ Program & Should Not Receive More Ratepayer Funding to Complete It

PURA should reject UI's request to double the length of the UPZ program to 2029 and more than double the ratepayer funding over its 2013 level—from $100 million to $228 million. UI's management of this program has been ineffective and imprudent. PURA should make appropriate findings of imprudence. PURA should also reject UI's request to capitalize the program. The Company is still under an obligation to complete the program but it should not be rewarded with further UPZ funding with carrying costs. UI's customers have already paid to fund this reliability program including providing more funding upon the Company's rate case request in 2016. UI's customers should receive the full benefit of their investment in this program without having to pay any more.

1. UI's Pattern of Requesting More UPZ Funding

In its 2013 rate case, in the wake of the 2011 and 2012 major storms, UI proposed a four-year, $100 million enhanced tree trimming ("ETT") program. In its Decision, PURA authorized the Company to collect $100 million in rates for ETT but spread that recovery over eight years instead of four, from 2014 to 2021, thereby reducing its annual cost from $25 million per year to $12.5 million per year. Docket No. 13-01-19, *Application of The United Illuminating Company to Increase Its Rates and Charges*, Decision, dated Aug. 14, 2013, at 14. The ETT program was intended to trim all the Company's three phase lines on a four-year cycle and single-phase lines on eight-year cycle to a "blue sky" ground to sky clearance eight feet to the side of its distribution lines. PURA approved ETT program costs were capitalized through 2017. *See* Docket No. 16-06-04, *Application of The United Illuminating Company to Increase Its Rates and Charges*, Decision, dated Dec. 14, 2016 ("2016 UI Rate Case Decision"), at 7.

In its 2016 rate case, UI renamed the ETT program the UPZ program and proposed to greatly expand its duration and cost. UI asked PURA to extend the program through 2023 and increase ratepayer funding by $62.5 million. *See* 2016 UI Rate Case Decision at 5. UI cited increased traffic control costs and a rigorous consent and appeal process. *See id.* PURA approved expenditures totaling $162 million through 2025, directing all UPZ costs incurred in 2017 and after to be expensed. *See id.* at 7-9. The Authority noted that "[t]hese allowances should fully fund the work intended in the new UPZ program." *Id.* at 7.

UI now seeks to double the original length of the UPZ program to 2029 and double the original cost to get the same job proposed in 2013 done—from $100 million to $228 million. *See* 2/24/23 Tr. at 1192-95. To date, UI has only completed half of the UPZ program work. *See id.* at 1193 (UI has completed one of two passes of the three phase lines and half of the single phase lines). This is the second consecutive rate case in which UI has requested to extend the UPZ program length and seek more ratepayer funding to accomplish the same job. UI now requests that its customers pay $228 million for it to complete the UPZ program. *See id.* at 1192. UI also requests that the UPZ program costs be capitalized once again, deferring and amortizing the costs over five years with carrying charges at the weighted average cost of capital. *See id.* at 1195.

UI has failed to meet its evidentiary burden to justify receiving more money for the UPZ program. UI has not forecasted increased reliability performance in terms of tree-related outages if PURA were to grant its request to receive $228 million in total UPZ funding. *See id.* at 1198-99. Likewise, UI has not forecasted storm cost savings if PURA were to grant its request to receive $228 million in UPZ funding. *See id.* at 1199.

2. *PURA Should Make Findings of Imprudence & Reject UI's Request for More UPZ Funding*

PURA should find that UI imprudently managed the UPZ program. PURA should also not allow the Company additional recovery of costs to complete the UPZ Program and should reject the Company's request to earn a recovery on its UPZ costs at the weighted average cost of capital. *See* 2/24/23 Tr. at 1195. Despite receiving more funding and time to complete the UPZ program in 2016, UI has only completed 50 percent of the program work to date, demonstrating that UI has failed to exercise managerial prudence in overseeing this expensive resiliency program. *See id.* at 1193 & 1198-99.

Significantly, UI cites the same reasons for UPZ program delay in this rate case as it did in the 2016 rate case, demonstrating that the Company knew or should have known that certain factors would affect its program work and timeline. In 2016, the Company cited UPZ program schedule delays associated with the customer consent process as a reason to request more time and money. *See* 2016 UI Rate Case Decision at 5; s*ee also* 2/24/23 Tr. at 1200. In this rate case, UI again cites schedule delays associated with the customer consent process as a reason to request more time and money. *See* Direct Testimony of Charles J. Eves, Jr. on Behalf of The United Illuminating Company, dated Sept. 9, 2022 ("Eves Direct Testimony"), at 57.

Similarly, in 2016 UI cited increased costs of traffic control by local police departments as a reason to request more time and money for the UPZ program. *See* 2016 UI Rate Case Decision at 5; s*ee also* 2/24/23 Tr. at 1200. In this rate case, UI again cites increased costs of traffic control by local police departments as a reason to request more time and money for the UPZ program. *See* Eves Direct Testimony at 57-58; s*ee also* 2/24/23 Tr. at 1200-01. UI also provided testimony that the traffic costs were about 24 percent of the UPZ budget in 2016 and 24

percent of the UPZ program costs today. *See* 2/24/23 Tr. at 1201-02; *see also* 2016 UI Rate Case Decision at 8.

UI knew or should have known that the customer consent process and traffic control expenses would affect the pace and cost to complete the UPZ program. UI has been executing its UPZ program for a full decade. Surely UI has acquired experience with the complexities of enhanced tree trimming in its compact service territory. Yet, UI requested more time and money to complete the UPZ program for the same reasons in this rate case as it did in 2016. Moreover, UI testified that traffic costs represent the same percentage of the overall UPZ budget today as they did in 2016. Thus, UI knew or should have known that traffic costs represented 24 percent of the UPZ program budget and should have planned accordingly.

PURA should find that UI has imprudently managed the UPZ program and deny further ratepayer funding to complete the UPZ program. *See* PURA Tropical Storm Isaias Investigation Decision at 13 ("the costs or additional costs arising from an imprudent decision or action are not recoverable by the utility"); *see also* Docket No. 08-02-06, *DPUC Investigation into the Connecticut Light and Power Company's Billing Issues*, Decision, dated Aug. 6, 2008, at 10 ("Actions by regulated public utilities which are found to constitute imprudent management that result in increased costs are generally disallowed.").

C. UI Has Imprudently Managed its English Station Remediation Responsibilities

Despite the Company's claim that it is meeting its commitments under its 2015 change of control settlement approved by PURA (*see* AG-02), UI has failed to meet its obligation to remediate English Station in three years. *See* Docket No. 15-07-38, *Joint Application of Iberdrola, S.A., et al. and UIL Holdings Corporation for Approval of a Change of Control*, Decision, dated Dec. 9, 2015 ("2015 UIL Change of Control Docket"). The Company's

approach to the remediation efforts reveals a lack of responsibility, managerial prudence, and commitment to local control.

Not only has UI failed to meet its commitments in the 2015 PURA-approved settlement, UI has also failed to meet its statutory obligations to the State of Connecticut. PURA is charged with examining and regulating public service companies in conformation with the principle that they:

> [S]hall perform all of their respective public responsibilities with economy, efficiency and care for public safety and energy security, and so as to promote economic development within the state with consideration for energy and water conservation, energy efficiency and the development and utilization of renewable sources of energy and for the prudent management of the natural environment[.]

Conn. Gen. Stat. §16-19e(a)(3). PURA should make appropriate findings that UI has failed to meet its obligations related to English Station, consequently failing the State of Connecticut and its people, particularly in New Haven. PURA should impose a 20 basis point ROE penalty, or $2 million per year, for UI's imprudent management of English Station until it meets its commitments to the State.

1. UI's English Station Remediation Obligations

The Company acknowledged that it has an obligation to cleanup English Station regardless of cost. *See* Tr. 3/21/23 at 3353; *see also* OCC-609, Attachment 1 at PCO p. 17, ¶ B.24. Per the Partial Consent Order COWSPCB 15-001 ("PCO") between UI and the Department of Energy and Environmental Protection ("DEEP"), UI agreed that "Nothing in this [PCO] shall alter [UI's] obligation to fully comply with this Consent Order, including but not limited to, the time for compliance during any time that there are discussions about the recovery of costs exceeding $30 million. Respondent shall comply with this Consent Order even if the costs of such compliance exceed $30 million[.]" From January 1, 2017 to September 30, 2022,

the Company has spent approximately $16.7M on English Station. *See* OCC-610 (listing expenses under the categories: Payroll & Overheads, Other Expenses, Legal, and Outside Services); *see also* 3/21/23 Tr. at 3337. Per the PCO, attorneys' fees and any direct time charges of the Company's employees, managers, or officers are not to be included in the $30 million public benefit. *See* OCC-609, Attachment 1, at PCO p. 15, ¶ B.18; *see also* LFE 60, Supplement & 3/21/23 Tr. at 3337. It is clear that UI has the responsibility and obligation to remediate the English Station site regardless of the cost.

2. UI Has Failed to Exercise Managerial Prudence

PURA should make appropriate findings that the Company has failed to exercise managerial prudence in fulfilling its commitment to remediate English Station. First, the Company has failed to complete the remediation and cleanup in the required three years. *See* 3/21/23 Tr. at 3366. The PCO became final in 2016 and requires the cleanup to be completed within three years. *See* OCC-609, Attachment 1, at p. 5 PCO, ¶ B.1; *see* 3/21/23 Tr. at 3366-67. Moreover, UI has cycled through six Project Managers at English Station. *See* Tr 3/21/23 at 3343. The frequency of this managerial turnover has clearly hindered the pace of UI's work. *See id.* Seven years later, the project remains unfinished.

UI has also failed in its responsibility for site security at English Station. UI has acknowledged both in the PCO and in this proceeding that it is responsible for site security until the cleanup is complete. *See* OCC-609, Attachment 1, at PCO p.10, ¶ B.3.; *see also* 3/21/23 Tr. at 3351-52. Site security is critical both to protect the public from on-site toxic contaminants and to prevent further deterioration of this already blighted property from further impacting surrounding neighborhoods and their residents. However, while under UI's control and responsibility, the fence around the site and the gate at the site were vandalized at some unknown

time within the past year or two with graffiti. *See* 3/21/23 Tr. at 3352. The Company could not identify when the vandalism occurred other than to state a review of photographs indicated the graffiti had occurred within the past year or two. *See id.* To this day the vandalism has not yet been addressed. *See id.* at 3352-53 & 3360-61.

UI's failure to take its responsibilities and commitments to the people of Connecticut seriously—specifically the local residents in the area surrounding English Station—was forewarned by Commissioner Caron in his Dissent to PURA's Decision approving Iberdrola's acquisition of UI, where he warned: "Iberdrola's previous ownership of Connecticut Natural Gas and Southern Connecticut Gas demonstrates a lack of commitment to Connecticut." 2015 UIL Change of Control Decision, Dissent at 4.

3. UI's Failure to Meet its English Station Obligations Calls into Question Local Control

PURA's 2015 UIL Change of Control Decision makes clear that UI is required to maintain local control of its operations, which include its commitment to remediate English Station. Specifically, PURA repeatedly referenced UI's commitments to maintain the local decision-making processes and authorities that then existed within The United Illuminating Holdings Corporation ("UIL") companies. *See* 2015 UIL Change of Control Docket at 4. The Decision also describes how OCC, through the settlement agreement, similarly included additional commitments to maintain local control of the UIL companies. *See id.* at 5.

PURA emphasized that "[a]s part of the proposed change of control, the [Iberdrola USA, Inc.] Affiliates pledged their commitment to high quality, local management with respect to UIL and the UIL Utilities following the closing of the Proposed Transaction." *Id.* at 15. In approving the merger, PURA also found that "UIL is a sound company in many aspects such as management, finances, corporate responsibility, community service and its relationship with

customers …. Therefore, the commitments made by the Applicants to maintain UIL's current local management in the Settlement Agreement are of key importance to the Authority." *Id.* at 16. Not only did PURA make clear in its Decision the importance of local control, but Connecticut law also prescribes it. *See* Conn. Gen. Stat. §16-11 ("The general purposes of this section and sections 16-19, 16-25, 16-43 and 16-47 are to assure to the state of Connecticut its full powers to regulate its public service companies, to increase the powers of [PURA] *and to promote local control of the public service companies of this state*, and said sections shall be so construed as to effectuate these purposes.") (Emphasis added.)

Testimony given in this proceeding calls into question whether the UI has breached that requirement for local control. For instance, the English Station Project Managers have been Avangrid, not UI or UIL, employees. *See* 3/21/23 Tr. at 3348-49. The current Project Manager is an Avangrid, not UI or UIL, employee. *See id.* at 3348. Prior to 2021, two of the Project Managers, including the current one, were transferred from UIL to Avangrid. *See id.* at 3350.

The Director of Remediation is an Avangrid, not UI or UIL, employee. *See id.* at 3336-37. He testified that he does not have the authority to make important remediation decisions or binding commitments and must instead consult an executive legal and executive "sponsor" group that is primarily employed by Avangrid not UIL. *See id. at* 3349-50. The project sponsors have final decision-making authority about the cleanup at English Station, although the Company also testified that the sponsors bring issues about English Station to the Avangrid CEO. *See id.* at 3361-62. The Director of Remediation only has authority for minor day to day decisions like choosing sampling locations, but any decisions on cleanup approaches must be made through the "sponsors." *See id.* at 3363.

UI has failed to maintain local control of important business matters in Connecticut such as English Station remediation, contrary to PURA's directive in the 2015 UIL Change of Control Decision and the associated settlement agreement. The record calls into question the Company's commitment to local control, and as is demonstrated above, UI's slow remediation pace and frequent change of Project Managers call into question UI's commitment to this critical remediation project impacting the local community in New Haven.

4. UI's English Station Accounting Raises Serious Concerns

UI has exhibited a general lack of responsibility and detailed accounting over English Station costs. In its Decision related to divestment of the English Station property in 2000, the Authority stated that it would not permit any future costs other than costs related to bulkhead repair to revert to ratepayers. *See* Docket No. 00-04-05, *Petition of the United Illuminating Company for Approval to Sell English Station*, Decision, dated June 29, 2000, at 5.

Although UI acknowledges that attorneys' fees and direct time of Company employees, managers, and officers are not to be included in English Station costs, UI's accounting has been checkered. *See* Tr. 3/21/23 at 3337. To date, the company has not received approval of any accounting of its costs on English Station from DEEP. *See* Tr. 3/21/23 at 3366.

UI states that it inadvertently included approximately $311,000 related to English Station remediation efforts for recovery from ratepayers. *See* LFE 1. It is ambiguous whether English Station costs are included in "State Regulatory Matter" costs. *Compare* Tr. 3/21/23 at 3342-43 (Read-In 2 requests clarity on whether UI included English Station-related costs in "State Regulatory Matters" in LFE 61, Attachment 1, line 16) *with id.* at 3511 (the Company does not answer Read-In 2 about "State Regulatory Matters" costs in LFE 61, Attachment 1, line 16). UI

also admitted capturing English Station related costs as Operations and Maintenance expense rather than a below the line account in their accounting system. *See id.* at 3420-22.

The record demonstrates UI's general lack of responsibility and detailed accounting over English Station costs. PURA should make appropriate orders to hold UI accountable.

5. PURA Should Impose a 20 Basis Points Penalty on UI's Return on Equity

PURA should impose a 20 basis point penalty on UI's eventual approved ROE for its many failures to meet its commitments to the State of Connecticut and the residents of New Haven. UI committed to fully remediate the English Station site within three years and to commit to at least $30 million to do so. These commitments were made to the State in the PCO and to the Authority as a condition of its proposed acquisition by Iberdrola. UI has failed utterly in those commitments. Seven years later, UI has spent less than $17 million—the accounting for which DEEP has neither approved nor accepted—and the site remains a contaminated blight on the residents of New Haven who were promised better. *See* 3/21/23 Tr. at 3365-66. There remains no completion date in sight.

The Authority should send a message that this continued delay will no longer be tolerated. UI's continued failure to make reasonable progress is not an accident—it represents a deliberate corporate policy of indifference to the residents of New Haven, the State, and to this Authority. Each year that passes diminishes the value of UI's initial $30 million commitment as inflation eats away at its value. A 20 basis point penalty represents approximately $2 million each year. *See* LFE 1, Revised Schedule A-1.0 A. This ROE penalty should continue until the site is fully remediated, and DEEP has so certified.

D. PURA Should Reject or Reduce UI's Unsupported Capital Expenditure Requests

UI's Application proposes a massive commitment to capital spending. Many of UI's requests lack the requisite level of specificity to meet its evidentiary burden, particularly UI's proposed projects branded as "Clean Energy Transformation" initiatives. PURA should reject all requests where UI fails to meet its evidentiary burden. PURA has clearly articulated the burden of proof a utility bears. *See* Docket No. 22-07-01, *Application of Aquarion Water Company of Connecticut to Amend its Rate Schedule,* Decision, dated Mar. 15, 2023 ("2023 Aquarion Rate Case Decision"), at 7. The burden requires the utility to provide more than mere declarations of fact. *See Connecticut Nat. Gas Corp. v. Pub. Utilities Comm'n*, 29 Conn. Supp. 379, 394 (1971) ("There is no sacrosanctity about the testimony of any company officer regardless of his position which gives such testimony any godlike fiat that must be accepted out of hand by the [Public Utility Commission]."). Specifically, "[b]ald statements need to be covered with some evidential hair[.]" *Id.*

1. PURA Should Reject Unsubstantiated Plant Requests

The OCC's accounting consultants provided testimony that UI failed to deliver the requisite level of detail to evaluate the Company's forecasted plant balances, including information to assess whether the forecasted balances are known and measurable. *See* Direct Testimony of Helmuth W. Shultz, III, C.P.A. and John Defever, C.P.A. on Behalf of the Office Consumer Counsel, dated Dec. 13, 2022 ("Schultz/Defever Direct Testimony"), at 6-13; *see also* Surrebuttal Testimony of Helmuth W. Shultz, III, C.P.A. and John Defever, C.P.A. on Behalf of the Office Consumer Counsel, dated Jan. 17, 2023 ("Schultz/Defever Surrebuttal Testimony"), at 3-5.

The Attorney General supports the OCC's recommendations to reduce the Company's plant in service additions as well as appropriate reductions for any other capital project for which the Company has not met its evidentiary burden. *See* Schultz/Defever Direct Testimony at 13 (recommending reducing plant in service by $23.567 million, $44.579 million, and $64.402 million in Rate Years 1, 2, and 3, respectively).

2. PURA Should Reject Unsubstantiated Clean Energy Transformation Proposals

The Company's Application requests a staggering $48.1 million[1] in ratepayer funding to support Clean Energy Transformation initiatives. *See* Direct Testimony of Elizabeth A. Stanton, PhD on Behalf of the Office of Consumer Counsel, dated Dec. 13, 2022, at 17-18 (citing OCC-261, Attachment 1). Many of these projects lack any cost-benefit analyses. Moreover, the record demonstrates that the Company's costly requests have not been carefully vetted and considered. PURA should only approve funding for projects where the Company has met its evidentiary burden and where approval in this rate case, as opposed to one of the Authority's other relevant proceedings, is appropriate.

UI's request to recover $31.2 million in rates for an Electric Vehicle ("EV") Charging Hub provides an illustrative example of an exorbitant Clean Energy Transformation proposal that lacks the requisite level of detail and specificity. *See* Direct Testimony of the Clean Energy Transformation Panel on Behalf of The United Illuminating Company, dated Sept. 9, 2022 ("UI

[1] On March 7 and 8, 2023, the Company testified it made a math error in its Application reducing the overall Clean Energy Transformation initiative request by $5.2 million. *See, e.g.,* 3/8/23 Tr. at 2816-17. The Company submitted its request for ratepayer funding for the Medium and Heavy-Duty Vehicle Make-Ready Program with its Application on September 9, 2022 and thereafter answered interrogatories about it. *See* Direct Testimony of the Clean Energy Transformation Panel on Behalf of The United Illuminating Company, dated Sept. 9, 2022, at 11. Yet it was not until March 7, 2023, or about six months later, that the Company corrected the record for its $5.2 million math error. Such a significant error causes concern regarding the Company's attention to detail when requesting millions of dollars in ratepayer funding.

Clean Energy Transformation Panel Direct Testimony"), at 13-15. In the Company's words, "[a]n EV Charging Hub is large scale, purpose-built infrastructure that will serve corridor charging needs for light-duty, medium-duty, and heavy-duty EVs. The EV Charging Hub would include partnerships with one or more third parties to own and operate the chargers and driver amenities." *Id.* at 13.

Significantly, the location for the large-scale EV Charging Hub has not been determined. *See* 3/8/23 Tr. at 2808. The Company testified that the "corridor" the EV Charging Hub is designed to serve is the "interstate highway system." *Id.* at 2810. This is clearly an area greater than UI's service territory. *See id.* at 2810-11.

In addition, a third-party vendor, not UI, would choose the location of the EV Charging Hub. *See id.* at 2809. Thus, UI will have little to no control over whether the location of the EV Charging Hub will inure to the benefit of all its customers funding the $31.2 million project. Moreover, UI agreed that the third-party vendor "could make decisions that [are not] using equity as their primary criteria." *Id.* The Company's request for $1 million in funding to study EVs also does not appear to be carefully considered. The Company testified that the proposed EV studies will bear upon the placement of the proposed EV Charging Hub, but the studies will occur *after* the EV Charging Hub location selection. *See id.* at 2815; *see also* UI Clean Energy Transformation Panel Direct Testimony at 15-16.

PURA should carefully examine whether UI has met its evidentiary burden to substantiate its request for a $31.2 million EV Charging Hub. The project has no known location, and the Company cannot guarantee that a project designed to serve the interstate highway system with a location chosen by a third-party will equitably serve all UI ratepayers.

3. *PURA Should Reject UI's Pleasure Beach Island Request*

UI has not met its burden to demonstrate that its proposed $14.7 million solar and battery storage project on Pleasure Beach Island to service two customers is a reasonable and prudent use of ratepayer funds. Pleasure Beach Island is a 2.5 miles long small island located in Bridgeport that currently has two customers: two self-supporting 300-foot-high steel radio transmission towers owned by the WICC radio station and a pavilion owned by the City of Bridgeport. *See* UI Clean Energy Transformation Panel Direct Testimony at 23. UI states that the solar and battery storage system is needed to replace the existing 1940s vintage submarine cable that serves the island, which has been prone to failure. *See id.* UI estimates that it would cost $10-12 million to replace the cable. *See* Exhibit UI-CETP-5 at 2.

In support of its $14.7 million solar and battery proposed solution, UI states: "Although the [project] directly impacts only two customers, the Company anticipates the [project] ultimately will benefit all of UI's customers as a result of the valuable learnings this innovative solution will provide." UI Clean Energy Transformation Panel Direct Testimony at 25. The Company has provided no evidence to support this claim. Although the project would only serve two customers, UI has failed to sufficiently explain why a Contribution in Aid of Construction ("CIAC") is not applicable. *See* LFE 128; *see also* 3/8/23 Tr. at 2818-20.

Not only has UI failed to prove that its proposed solution is a reasonable and prudent use of ratepayer funds, it also failed to meet the Authority's directives in its 2021 ruling on this matter. *See* Docket No. 10-10-12, *Petition Filed by Cumulus Media, Inc. for an Investigation Pursuant to § 16-20 of the General Statutes of Connecticut*, Ruling on Motion No. 14, dated July 12, 2021; *see also* 3/7/23 Tr. at 2783-88. PURA should accordingly reject the Company's

request for funding in rates of a $14.7 million battery and solar project to serve two customers on Pleasure Beach Island.

E. PURA Should Reject or Limit Operations and Maintenance Expenses

PURA's standard for allowing operating expenses is clear: only those expenses that are reasonable and necessary to provide service to the public may be included. *See* 2023 Aquarion Rate Case Decision at 59. Allowable operating expenses must "reflect prudent and efficient management of the franchise operation." Conn. Gen. Stat. § 16-19e(a)(5). PURA should reduce many of the Company's proposed Operations and Maintenance ("O&M") expenses, as it has in UI's previous rate cases, to ensure that the Company's rates are no more than just and reasonable. The following discussion addresses certain elements of the Company's proposed O&M expenses that the Authority should adjust, but PURA should carefully examine all the Company's proposed expense items.

1. Incentive Compensation Costs Should Not Be in Rates

PURA should reject the Company's request for Incentive Compensation to be fully funded in rates. The Company argues that its variable pay program, or Incentive Compensation, is "reasonably designed to encourage good employee performance[.]" Direct Testimony of Compensation and Benefits Panel on Behalf of The United Illuminating Company, dated Sept. 9, 2022 ("UI Compensation and Benefits Panel Direct Testimony"), at 14; *see also* 3/2/23 Tr. at 1918 ("variable pay" is synonymous with "incentive compensation").

The Company has not met its burden to demonstrate that its proposed Incentive Compensation is a prudent and efficient use of ratepayer funds. *See* 2023 Aquarion Rate Case Decision at 63. In 2021, all UI employees eligible for Incentive Compensation received it: 564 UI employees were eligible for Incentive Compensation, and 564 employees received Incentive

Compensation. *See* OCC-33; *see also* 3/2/23 Tr. at 1914-15. This raises significant doubt as to the degree to which the program provides motivation to meet or exceed any goals set. *See* 2023 Aquarion Rate Case Decision at 63. UI's Incentive Compensation plan is designed in a way that provides little, if any, benefit to ratepayers. *See* Schultz/Defever Direct Testimony at 37. In fact, the Company failed to provide any studies or documentation to support its claim that Incentive Compensation benefits ratepayers. *See id.* at 39 (citing OCC-36).

PURA should accordingly disallow the Company's request for ratepayer funding of $1,495,000, $1,555,000, and $1,618,000, in each of the rate years, respectively. *See id*. at 41. UI may of course elect to fund Incentive Compensation using shareholder funds.

2. Board of Directors Costs Should Be Capped

PURA should reject UI's proposal to recover 100 percent of its Board of Director costs from ratepayers and, as it did in UI's 2013 and 2016 rate cases, assign no more than 25 percent of these costs to ratepayers. *See* Schultz/Defever Direct Testimony at 25. In its 2016 UI Rate Case Decision, PURA allowed the Company to recover just 25 percent of such costs from its customers, assigning the remaining 75 percent to shareholders. *See* 2016 UI Rate Case Decision at 36. The Authority held that the Board of Directors act primarily to benefit the Company's shareholders and thus those shareholders should bear most of its costs. *See id.* In this rate case, an adjustment so that ratepayers pay only 25 percent of Board of Directors costs would result in a reduction to the Company's request of $240,000 per year for each of the three rate years. *See* Schultz/Defever Direct Testimony at 25; *see also* OCC-03, Attachment 1 (Board of Directors costs include donations, work meals, and traveling expenses).

In addition, PURA should require a similar downward adjustment to the Company's request to recover all its "Other Public Company Costs" from its customers, which amounts to

$121,000 per year for each of the three rate years. *See* Schultz/Defever Direct Testimony at 26-27; *see also* 2016 UI Rate Case Decision at 37. Board of Directors and Other Public Company Costs, which include investor relations and U.S. Securities and Exchange Commission reporting, primarily benefit shareholders. *See* Schultz/Defever Direct Testimony at 26.

3. Non-Industry Dues & Advertising Costs Should Be Capped

It is inappropriate for ratepayers to fund Company dues and advertising costs unless the Company has demonstrated a clear benefit to ratepayers. The Company has not demonstrated that non-industry dues benefit ratepayers. Ratepayers should not fund dues that include any advocacy in rates. UI indicated that although a portion of the organizations to which it belongs activities involve advocacy, it is requesting full ratepayer funding for such membership dues. *See* OCC-21. For example, some of these non-industry association dues include, but are not limited to, AdvanceCT, Boston College for Corporate Citizenship, Fairfield Chamber of Commerce, and Shoreline Chamber of Commerce. *See* OCC-21, Attachment 1; *see also* 2023 Aquarion Rate Case Decision at 81 ("[T]he membership dues paid to chambers of commerce and business organization provide little, if any, benefit to ratepayers and are not needed for the Company's provision of water service").

In addition, PURA should disallow all advertising expenses that were not approved or ordered by PURA. The Company requests advertising expenses of $87,000 in Rate Year 1, $87,000 in Rate Year 2, and $88,000 in Rate Year Three. *See* OCC-02, Attachment 1. PURA should reject the requested advertising expenses it did not order or approve. *See* OCC-002, Attachment 1 (listing, for instance, advertising expenses for a Lineman Rodeo).

4. The Annual Storm Reserve Accrual Should Not Be Increased

PURA should reject the Company's request to increase its annual storm reserve accrual from $2 million to $3 million per year. *See* 3/2/23 Tr. at 2098. The Company has been collecting $2 million per year for its storm reserve since its 2013 rate case. *See* 2016 UI Rate Case Decision at 111. The Company is currently charging major storms, or storms that cause more than $1 million in restoration damage, and lean-in costs to the storm reserve. *See* 3/2/23 Tr. at 2099.

While it is appropriate for the Company to establish a storm reserve to mitigate rate shocks often associated with regulatory assets, the Company failed to demonstrate that collecting more than $2 million per year is necessary or prudent. Although the Company asserts that its UPZ program reduces tree-related outages, and that many, if not most, outages are due to trees, the Company nevertheless requests to increase its annual storm reserve accrual from $2 million to $3 million per year. *See* 3/2/23 Tr. at 2098-99. Moreover, the $14 million in costs related to Tropical Storm Isaias in 2020, which contributed to the Company's $25.7 million storm cost regulatory asset, represents an outlier. *See id.* at 1184 & OCC-159, Attachment 1 (UI's storm costs 2013-2023). The Company did not provide evidence demonstrating or predicting that storms would be more severe or frequent in the rate years. *See id.* at 2098-99. Thus, UI has not met its burden to establish that collecting $3 million in rates annually would be prudent.

In addition, PURA should impose an appropriate cap on the storm reserve, or a threshold at which UI stops collecting ratepayer money to fund the reserve. *See* 2/24/23 Tr. at 1186. The Company's Earnings Sharing Mechanism could be used as a vehicle to flow through customer credits of unused storm reserve at an appropriate threshold set by PURA. *See* 2016 UI Rate Case Decision at 111-12 ("Customers will continue to receive a bill surcredit when there are no

deferred major storm costs to reduce their shares of earnings sharing amount."); *but see* 3/2/23 Tr. at 2100.

5. PURA Should Make Other Appropriate Adjustments for Recovery Requests That Are Not Prudent and Efficient

The Attorney General's O&M recommendations are not intended to provide an exhaustive list of items the Company has requested that are inappropriate to be included in rates. In addition to the foregoing, the Attorney General highlights that Company's Loyalty Award Program and Caregiver Program as requests that are not a prudent and efficient use of ratepayer funds.

First, the Company's Loyalty Award Program, which it testified "is like a European terminology[,]" is not appropriate to be funded in rates. 3/2/23 Tr. at 1923. The Company stated that the costs reflected as "Loyalty Gifts" consist of retention payments of $30,730 and sign on payments of $31,608. *See* LFE 85. The Company utilizes retention payments as a tool to retain high performing employees. *See id.* Although UI claimed that it does not pay bonuses, Loyalty Awards appear to be exactly that. *See* 3/2/23 Tr. at 1920. In view of all the various and lucrative ways the Company compensates its employees (*see generally* UI Compensation and Benefits Panel Direct Testimony), it is neither prudent, necessary, nor reasonable for ratepayers to fund cash Loyalty Awards of $30,000.

Second, the Company's Caregiver Program is not necessary for the provision of utility service. *See* Schultz/Defever Direct Testimony at 41-42. The Company failed to show that customers benefit from UI employee childcare, elder care, and pet care (including dog walking, house sitting, and care for dogs, cats, and domestic caged animals). *See id.* UI testified that most of its employees are on a hybrid schedule consisting of three days per week in the office and two working from home. *See* 3/2/23 Tr. at 1925-26. However, UI employees are eligible to

use the Caregiver Program services such as dog walking on days they work from home. *See id.* at 1926-27. In addition, UI has not performed any internal analysis of whether the Caregiver Program decreases employee absenteeism or increases productivity. *See id.* at 1909-11. In sum, the Company has not demonstrated that the Caregiver Program is a prudent and efficient use of ratepayer funds, thus PURA should reject the Company's request to fund the Caregiver Program in rates.

F. PURA Should Reject UI's Request to Recover Bridgeport Avenue Property Losses with Carrying Charges

The Attorney General agrees with OCC's recommendation that PURA disallow the Company's $10.2 million loss for the sale of its Bridgeport Avenue property in Shelton as well as another $5.4 million in carrying charges. *See* Schultz/Defever Direct Testimony at 53-54 & 56. This would remove $12.986 million, $7.792 million, and $2.597 million for each of the rate years, respectively. *See id.* at 56. In addition, this would remove the excessive annual amortization expense of $5.194 million for each of the three rate years. *See id.*

In Docket No. 05-06-04, the former Department of Public Utility Control ("DPUC") approved UI centralizing its facilities into a new Central Facility in Orange. *See* Docket No. 05-06-04, *Application of The United Illuminating Company to Increase its Rates and Charges*, Decision, dated Jan. 27, 2006, at 15. The sale of UI's 801 Bridgeport Avenue facility was a part of the Central Facility plan, and the DPUC stated that the Company could establish a regulatory asset at the time of sale associated with any loss. *See id.* at 22-23. Although the DPUC approved the sale of the Bridgeport Avenue property at a purchase price of $10.225 million in Docket No. 11-08-08, the sale fell through in December 2012. *See* Rebuttal Testimony of Revenue Requirements Panel on Behalf of The United Illuminating Company ("UI Revenue Requirements Rebuttal"), dated Jan. 6, 2023, at 33-34.

The Company did not sell the property until December 21, 2018. *See id.* at 34-35. In Docket No. 17-10-40, PURA found that proposed sale price of $6,600,000 represented fair market value and allowed the Company to establish a regulatory asset. *See* Docket No. 17-10-40, *The United Illuminating Company Application for Approval to Sell Improved Land at 801 Bridgeport Ave., Shelton, CT*, Decision, dated Jan. 10, 2018, at 5-6. PURA specifically stated that the recovery of the regulatory asset would be determined during a later proceeding "upon a comprehensive review of the lowest cost option for consolidation of operations[.]" *Id.* at 5.

The Company has not met its burden to demonstrate that the 2018 sale price was the lowest cost option for the consolidation of operations. *See* Schultz/Defever Direct Testimony at 52 ("Consolidations are supposed to result in costs savings, not costs to customers because a facility is no longer considered to provide an adequate operations center.") UI confuses who bears the burden in this rate case, declaring that "[n]or has OCC presented any evidence whatsoever of any lower cost option." UI Revenue Requirements Rebuttal at 36. The Company bears the burden to demonstrate that the 2018 sale price was the lowest cost option for the consolidation of operations. *See Connecticut Nat. Gas Corp.*, 29 Conn. Supp. at 394 (the burden requires the utility to provide more than mere declarations of fact).

The Attorney General agrees with OCC that UI has not met its burden and thus recommends that PURA disallow the Company's $10.2 million loss for the sale of its Bridgeport Avenue property. In addition, the Company has not received authorization for carrying charges on this loss, so the $5.4 million in requested carrying charges should also be rejected. *See* Schultz/Defever Direct Testimony at 53-54.

G. PURA Should Reject UI's Proposed Return on Equity and Capital Structure

In its Application, UI proposed that the Authority approve an ROE for the Company's shareholders of 10.2 percent, which the Company represents "is conservative." Direct Testimony of Ann E. Bulkley on Behalf of The United Illuminating Company, dated Sept. 9, 2022 ("Bulkley Direct Testimony"), at 3. This ROE nonetheless represents an increase of 110 basis points above UI's currently authorized return of 9.1 percent. *See* 2016 UI Rate Case Decision at 1. Conservative or not, this ROE would be the highest authorized return for any of the State's principal regulated public service companies—and by a very large margin.

In its most recent rate case decision, PURA authorized the Aquarion Water Company a return of 8.7 percent. *See* 2023 Aquarion Rate Case Decision at 1. The Connecticut Water Company is authorized a return of 9 percent. *See* Docket No. 20-12-30, *Application of the Connecticut Water Company to Amend its Rate Schedule*, Decision, dated July 28, 2021, at 1. The Connecticut Light and Power is currently authorized an ROE of 9.25 percent. Docket No. 17-10-46, *Application of the Connecticut Light and Power Company d/b/a/ Eversource Energy to Amend its Rate Schedules*, Decision, dated Apr. 18, 2018, at 18. The Connecticut Natural Gas Corporation and The Southern Connecticut Gas Company are authorized to earn a 9.3 percent ROE and 9.26 percent ROE, respectively. Docket No. 18-05-16, *Application of Connecticut Natural Gas Corporation To Increase its Rates and Charges*, Decision, dated Dec. 19, 2018, at 10-11; Docket No. 17-05-42, *Application of the Southern Connecticut Gas To Increase its Rates and Charges*, Decision, dated Dec. 13, 2017, at 8. The Yankee Gas Services Company has an authorized ROE of 9.3 percent. *See* Docket No. 18-05-10, *Application of the Yankee Gas Services Company d/b/a/ Eversource Energy to Amend Its Rate Schedules*, Decision, dated Dec. 12, 2018, at 11.

UI offers no credible explanation why it should receive an authorized return 90 basis points higher than next highest public service company ROE in the State of Connecticut. As noted by the OCC's cost of capital expert:

> [a]s Table 7 (page 37) shows, the electric utility industry is among the lowest risk industries in the U.S. as measured by beta. As such, according to CAPM, the cost of equity capital for this industry is among the lowest in the U.S.

Direct Testimony of J. Randall Woolridge, Ph.D. on Behalf of the Office of Consumer Counsel, dated Dec. 13, 2022 ("Woolridge Direct Testimony"), at 69. And while the electric industry as a whole has a low cost of equity, UI is in particular less risky (and therefore less expensive) than the industry as a whole. As Dr. Woolridge states:

> CMP's Standard & Poor (S&P) and Moody's issuer credit ratings of A and A2 indicate that the Company's investment risk is below that of other electric utilities. In fact, UI's S&P and Moody's ratings are two notches above the averages of the two Proxy Groups, which are BBB+ and Baa1.

Woolridge Direct Testimony at 69; s*ee also* Surrebuttal Testimony of J. Randall Woolridge, Ph.D. on Behalf of the Office of Consumer Counsel, dated Jan. 17, 2023, at 4.

UI's unreasonable ROE request is based upon a flawed and unreliable cost of capital analysis. First, UI proposed a capital structure that includes an uneconomically high level of equity. In addition, UI's testimony in support of its proposed ROE of 10.2 percent contains serious errors that have distorted the Company's discounted cash flow ("DCF"), expected earnings and capital asset pricing model ("CAPM") analyses, and unreasonably inflated its proposed ROE. As a result, the Company's proposed ROE is substantially higher than other similarly situated electric utility companies and substantially higher than the levels recently approved for Connecticut's other public service companies.

The Attorney General generally supports the testimony from both the OCC's cost of capital expert, Dr. Woolridge, and EOE's cost of capital expert, Aaron Rothschild. OCC's cost of capital expert recommended an ROE of 9 percent. *See* Woolridge Direct Testimony at 4. EOE's cost of capital expert recommended an ROE of 8.68 percent. *See* Direct Testimony of Aaron L. Rothschild of Behalf Connecticut Public Utilities Regulatory Authority Office of Education, Outreach, and Enforcement, dated Dec. 13, 2022 ("Rothschild Direct Testimony"), at 8. Adjusting UI's proposed ROE from 10.2 percent to the more reasonable 8.68 percent to 9 percent would result in a revenue requirement reduction of approximately $12 to $15 million per year.[2]

1. PURA Should Reject UI's Proposed Capital Structure

In its Application, UI proposed a capital structure of 52 percent common equity and 48 percent weighted cost of debt. *See* Bulkley Direct Testimony at 63. UI's current approved debt to equity ratio is 50/50 debt to equity. *See* 2016 UI Rate Case Decision at 62. Bulkley states this new proposed debt to equity ratio is appropriate because: (1) it is consistent with the utilities UI selected as its proxy group (*see* Bulkley Direct Testimony at 64); (2) it is consistent with UI's actual equity levels (*see id.* at 66); and (3) "[t]he incremental risk of a higher debt ratio is more significant for common equity shareholders, who are the residual claimants on the cash flow of the Company." *Id.* at 63.

The Authority should reject the Company's proposed capital structure because it is economically inefficient and does not effectively balance the interests of the Company and its

[2] Assuming an ROE of 9 as opposed to 10.2 means 120 basis points multiplied by UI's pre-tax revenue requirement of $9,846,000 for each 100 basis points, or an $11,815,200 rate decrease. *See* LFE 1, Revised Schedule A-1.0 A. Assuming an ROE of 8.68 as opposed to 10.2 means 152 basis points multiplied by UI's pre-tax revenue requirement of $9,846,000 for each 100 basis points, or an $14,965,920 rate decrease.

ratepayers. The cost of equity is simply much higher than the cost of debt. The Company projects its cost of equity as 10.2 percent, and proposed weighted cost of debt of 4.38 percent. *See* Bulkley Direct Testimony at 4; *see also* Woolridge Direct Testimony at 5, Table 2. Moreover, because of the income tax responsibility associated with the use of common equity in the capital structure, that form of capital is more than three times as costly than debt capital. Increasing the Company's equity component relative to less expensive debt raises the overall cost of capital and, therefore, is unnecessarily expensive for ratepayers.

UI's justifications for this higher equity level do not withstand scrutiny. While UI's witness Bulkley's proxy group shows an average equity ratio of 52.23 percent (*see* Bulkley Direct Testimony at 64), those equity ratios appear skewed much higher than the ratios employed by the other cost of capital experts in this proceeding. EOE witness Rothschild described UI's proposed equity level as having "significantly more common equity than the average common equity ratio used by other electric utilities in the country (46.0%)." Rothschild Direct Testimony at 46. OCC witness Woolridge concluded that "the average common equity ratios for the Electric and Bulkley Proxy Groups were 41.7% and 42.8%." Woolridge Direct Testimony at 27, Exhibit JRW-3. Woolridge noted that "[t]ypically, one may see equity ratios for utilities range from 40% to 50%." *Id.* at 30.

In addition, it appears that the Company may have overstated its own historical actual equity ratios. In Bulkley's Direct Testimony, UI lists its year end equity as:

2013 – 54.66 percent;
2014 – 53.60 percent; and
2015 – 55.27 percent.

See Bulkley Direct Testimony at 66. In its 2016 rate case, however, UI reported substantially lower equity ratios over those same years. "Over the 2013 UI rate case years of 2013, 2014 and

2015, the Company's year-end common equity portion was 48.66%, 50.96% and 50.34%, respectively." 2016 UI Rate Case Decision at 60 (internal citation omitted). UI is currently reporting equity levels higher by 6 percent, 2.64 percent, and 4.93 percent, respectively, than it reported for those same years in 2016. It is unclear what accounts for this discrepancy.

UI has previously sought to have the Authority approve unnecessarily costly equity ratios. In Docket No. 16-06-04, the Authority specifically rejected UI's proposal to increase its common equity ratio from 50 percent to 52 percent. *See id*. at 61-62. The Authority stated that, "UI does not adequately explain why 52% is now appropriate as compared to the 50% common equity ratio that was approved in the 2013 UI Rate Case Decision." *Id*. at 61. UI certainly has done no better here now.

The Authority should reject UI's proposed equity ratio and should authorize an equity ratio as recommended by the other cost of capital witnesses in this matter. EOE witness Rothschild recommended the Authority impute the average common equity ratio used by other electric utilities in the country, or 46.04 percent. *See* Rothschild Direct Testimony at 46. OCC witness Woolridge recommended the Authority use a 50 percent equity ratio. *See* Woolridge Direct Testimony at 31. Reducing the Company's proposed capital structure from 52 percent equity to 50 percent equity will reduce UI's revenue requirement by up to $2.6 million. Reducing the Company's proposed capital structure from 52 percent equity to 46 percent equity will reduce UI's revenue requirement by up to $6.6 million.[3]

[3] A move to 50 percent equity at the company's proposed ROE (10.20 percent) and weighted cost of debt (4.32 percent) would reduce its required rate of return ("ROR") from 7.38 percent to 7.26 percent. That 12 basis point reduction applied to a Rate Base of $1,383,608,000 and Revenue Conversion Factor of 1.3685 results in a reduction in revenue requirements of $2,272,000. A move to 46 percent equity at the company's proposed ROE (10.20 percent) and weighted cost of debt (4.32 percent) would reduce ROR from 7.38 percent to 7.03 percent. That 35 basis point reduction applied to a Rate Base of $1,383,608,000 and Revenue Conversion Factor of 1.3685 results in a reduction in revenue requirements of $6,627,000. *See* LFE 1, Revised Schedule A-1.0 A.

2. *PURA Should Reject UI's Discounted Cash Flow Analysis and Risk Premium/Capital Asset Pricing Model Analyses of the Cost of Equity*

The most reliable estimate of a company's cost of equity is generally derived from the DCF analysis. The DCF model attempts to replicate a market valuation of what investors would pay for a share of the Company's stock. The DCF model employs a "proxy group" of companies similarly situated in business risk, cash flow, and investment return to determine a level of earnings necessary to attract needed capital at a reasonable cost to provide safe and adequate utility service. The DCF also needs to make assumptions about long term interest rates and the expected growth rates of the proxy companies. All the parties principally relied upon the DCF model, with a CAPM as a secondary resource.

As noted above, the principal goal of setting an appropriate ROE is to match investor expectations of a fair return comparable to the returns investors can expect to earn on investments with similar risk, that are sufficient to assure confidence in the company's financial integrity and adequate to maintain the company's credit and attract capital. *See* Woolridge Direct Testimony at 2-3. The return must be sufficient, but not more than sufficient, to attract investors so the utility can raise sufficient capital to provide safe and efficient utility service.

The Authority should reject the Company's DCF testimony as it relies on upwardly biased earnings estimates. As described by the OCC's consultant:

> Ms. Bulkley's DCF analyses are: (1) exclusively using the overly optimistic and upwardly biased EPS growth rate forecasts of Wall Street analysts and *Value Line*; and (2) claiming that the DCF results underestimate the market-determined cost of equity capital due to high utility stock valuations and low dividend yields.

Woolridge Direct Testimony at 73.

Specifically, the Company's discounted cash flow analysis used a growth rate based upon projected earnings per share forecasts by historically optimistic Wall Street analysts and without consideration of the dividend growth rate. As OCC's witness stated:

> [I]t is well known that the long-term EPS growth rate forecasts of Wall Street securities analysts are overly optimistic and upwardly biased. This has been demonstrated in a number of academic studies over the years. Hence, using these growth rates as a DCF growth rate will provide an overstated equity cost rate. On this issue, a study by Easton and Sommers (2007) found that optimism in analysts' growth rate forecasts leads to an upward bias in estimates of the cost of equity capital of almost 3.0 percentage points.

Woolridge Direct Testimony at 47-48. Stated otherwise, not all earnings are paid out as dividends—some of the earnings must be reinvested in the company to ensure future growth. Considering earnings per share exclusively creates a false and unsustainable high growth rate. Because UI selectively used an unsustainably high expected growth rate, its DCF model overestimates the true cost of capital and, therefore, its recommended ROE.

EOE's witness Rothschild identifies the same structural flaws in UI's analysis. Specifically, Rothschild agrees:

> [Bulkley's] constant growth DCF method is unreliable because it mechanically uses analyst 5-year EPS growth rates as a proxy for growth without considering the mathematical relationship between retention rates, dividend payments, and growth. A company cannot invest and grow with money it has paid out to investors as a dividend.

Rothschild Direct Testimony at 82-83. Rothschild's DCF model provides similar results on the low-end of the range for cost of equity (a 14 basis point differential), however Buckley's projections skew more than 200 basis points higher on the high end of the range. As Rothschild stated:

> The primary reason our DCF models produce different COE results is because of the growth rate component. Ms. Bulkley's DCF analysis using analyst 5-year EPS growth rate projects produces a cost of equity result of 8.21% and 10.89%. My sustainable growth DCF and option-implied growth DCF methods produce

> cost of equity results of 8.80% - 8.97% and 8.35% - 8.97% respectively. The differences between the DCF results shown above range between 14 basis points (8.35% - 8.21%) and 202 basis points (10.89% - 8.87%). Ms. Bulkley uses growth rate components of 1.90% and 16.00 %. I use growth rate components of 4.40% to 5.81%. The low end of Ms. Bulkley's DCF results are within range of my results, lower in some cases, but the high end of her DCF results (10.89%) is so high because she uses unsustainable growth rates as high as 16%.

Rothschild Direct Testimony at 84.

The Authority should similarly reject UI's Empirical CAPM analysis ("ECAPM"), a variation of the traditional CAPM methodology for determining an appropriate ROE. As OCC's expert stated:

> ECAPM has not been theoretically or empirically validated in refereed journals. ECAPM provides for weights that are used to adjust the risk-free rate and market risk premium in applying ECAPM. Bulkley uses 0.25 and 0.75 factors to boost the equity risk premium measure, but provides no empirical justification for those figures.
>
> Beyond the lack of any theoretical or empirical validation of ECAPM, there are two errors in Bulkley's version of ECAPM: (1) I am not aware of any tests of the CAPM that use adjusted betas such as those used by Bulkley; and (2) adjusted betas, which were previously discussed, address the empirical issues with CAPM.

Woolridge Direct Testimony at 78. EOE witness Rothschild agrees that the Company's CAPM analysis inappropriately "is based considerably on economist published projections and not investors' expectations as indicated by current market yields." Rothschild Direct Testimony at 87. Because investors provide the capital, their own expectations are the relevant point to compare.

The Company's true cost of capital is simply much lower than presented by the Company's witness. Capital costs remain low generally, and there is now a lower tax rate for investors which has made stock investment more attractive. As the OCC's cost of capital expert concluded:

> (1) [D]espite the increase in year-over-year inflation, long-term inflation expectations are still below 2.50%; (2) the yield curve is currently inverted –

> which suggests that investors expect yields to decline and that a recession in the next year is very likely, which would also put downward pressure on interest rates; (3) interest rates have fallen significantly, since their peak in October of 2022; (4) utility stock prices have held up very well in 2022 compared to the overall market; and (5) while authorized ROEs for utilities hit all-time lows in 2020 and 2021, these ROEs did not decline nearly as much as interest rates.

Woolridge Direct Testimony at 5-6. For these reasons, as well as those more fully explained in the testimony of Woodridge on behalf of the OCC, and Rothschild on behalf of EOE, the Attorney General supports a recommended ROE in the range of 8.68 percent to 9 percent.

III. CONCLUSION

For the foregoing reasons, the Attorney General respectfully requests that the Authority reject UI's rate increase Application. UI has failed to meet its evidentiary burden for a distribution rate increase, and the rates UI proposes are grossly unaffordable to its customers. PURA should instead approve a one-year rate plan making appropriate adjustments to current distribution rates. In addition, PURA should find that UI imprudently managed the UPZ program and its English Station remediation obligations. PURA should also disallow costs for UI to complete the UPZ program and impose at least a 20 basis point, or $2 million per year, ROE penalty on UI for its English Station imprudence until it meets its commitments to the State.

The Attorney General appreciates the Authority's thorough examination of UI's Rate Application and careful attention to the important consumer protection matters in this brief.

Respectfully submitted,

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Service is hereby provided
to all parties and intervenors
on this agency's service list
for this proceeding.

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