STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY

DOCKET NO. 21-01-04
PURA ANNUAL REVIEW OF THE RATE ADJUSTMENT MECHANISMS
OF THE UNITED ILLUMINATING COMPANY

PROCEDURAL ORDER
(April 26, 2021)

Through this Procedural Order, the Authority hereby suspends the current procedural schedule in Docket No. 21-01-04 for a period up to and including July 2, 2021, so that the Settling Parties may address the myriad of issues identified herein (see pages 4 – 8) with respect to the proposed March 9, 2021 Settlement. The Settling Parties may address these issues through an amendment or amendments to the Proposed Settlement Agreement. In the event that the Settling Parties are not inclined to offer amendments, but rather wish to introduce evidence in support of the current proposal, the revised procedural schedule, to be issued at a later date, will also permit this approach.

Background

On November 6, 2020, the Public Utilities Regulatory Authority (Authority or PURA) established the instant proceeding, pursuant to Sections 16-19b, 16-245g, and 16-245l of the General Statutes of Connecticut (Conn. Gen. Stat.), to review The United Illuminating Company's (UI or Company) annual Rate Adjustment Mechanisms (RAM) filings. In its Decision dated December 2, 2020, in Docket No. 20-01-02, Administrative Proceeding to Review the United Illuminating Company's Standard Service and Supplier of Last Resort Service 2020 Procurement Results and Rates (Rate Adjustment Decision), the Authority modified the administrative rate adjustment process for the Non-Bypassable Federally Mandated Congestion Charges (NBFMCC), TAC (Transmission Adjustment Charge), Systems Benefits Charge (SBC), and the Revenue Decoupling Mechanism (RDM) reconciliation mechanisms. Specifically, the Rate Adjustment Decision outlined the process for PURA's review of the Company's annual RAM filings moving forward through which the Authority stated it will provisionally approve rate adjustments effective May 1 for the ensuing 12-month period; a possible second adjustment, effective September 1, may be warranted in certain circumstances. Rate Adjustment Decision, p. 1.

Order No. 3 of the Rate Adjustment Decision states: "No later than January 15 each year, UI shall submit any known and measurable revenues and expenditures expected to occur in the current calendar year that represent a significant departure from proxy calendar year data." Id., p. 12. On January 15, 2021, UI submitted its proposed known and measurable cost changes to the NBFMCC reconciliation component expected to occur in calendar year 2021.

Order No. 4 of the Rate Adjustment Decision states: "No later than March 1 each year, UI shall submit through the Company's annual RAM filing any proposed rate adjustments for the NBFMCC, TAC, SBC, and RDM components. The Company shall file actual revenues and expenditures for the previous calendar year, and include a supplemental filing that adjusts the proposed May 1 rates to reflect any known and measurable adjustments requested by the Company." Id. On March 1, 2021, UI submitted a motion to request a one-week extension to file the Company's annual RAM filing (Motion No. 3), which was granted by the Authority. On March 8, 2021, UI subsequently filed a second motion to request an additional day to submit the filing (Motion No. 6), which was also granted by the Authority.

By application dated March 9, 2021, UI submitted its 2020 RAM filing detailing the Company's calculated over- or under-recoveries for the NBFMCC, TAC, and SBC for the period of January 1, 2020, through December 31, 2020 (Application). The Application also includes a proposed increase to the RDM. In addition, on March 9, 2021, UI submitted a motion requesting the Authority's review and approval of a proposed settlement agreement (Proposed Settlement Agreement; Motion No. 8), entered into with the Office of Consumer Counsel (OCC), the Office of the Attorney General (AG), the Department of Energy and Environmental Protection (DEEP), and the PURA Office of Education, Outreach, and Enforcement (together, the Settling Parties), resolving certain issues relating to this and other proceedings, including Docket No. 17-12-03RE11, PURA Investigation into Distribution System Planning of the Electric Distribution Companies – New Rate Designs and Rates Review. The Settling Parties propose, *inter alia*, that UI amortize the collection of net RAM rate component balances from customers over a two-year period. Motion No. 8, p. 3.

The Authority issued 3 sets of interrogatories on February 25, March 15, and March 19, 2021. By Notice of Hearing dated March 17, 2021, pursuant to Conn. Gen. Stat. §§ 16-19b, 16-245g, and 16-245l, the Authority held a public hearing on March 26, 2021, via teleconference, "to review UI's proposed rate adjustments filed on March 9, 2021, and to consider information pertaining to a settlement agreement filed in the above-referenced proceeding (Motion No. 8)." Notice of Hearing, dated March 17, 2021, p. 1.

On April 14, 2021, the Authority issued a Proposed Interim Decision in this proceeding and provided an opportunity for the Parties and Intervenors to file Written Exceptions and to present Oral Argument. The Authority held Oral Arguments on April 22, 2021. During Oral Arguments, UI, the AG, OCC, and DEEP indicated that they would not withdraw their support for the Proposed Settlement Agreement if the Authority did not reach a decision by May 1, 2021, despite the requested deadline for the Authority to rule on the motion by that date, as stipulated in Articles 1.5 and 2.6 of the Proposed Settlement Agreement.[1]

[1] Article 1.5 of the Proposed Settlement Agreement states: "The Settling Parties shall cooperate and use best efforts to obtain approval of the Settlement Agreement from PURA to allow for implementation of new rates on May 1, 2021. The Settling Parties will request the Authority to issue approval of the Settlement Agreement in its entirety by that date." Article 2.6 of the Proposed Settlement Agreement states: "If the Authority does not approve this Settlement Agreement in its entirety, or does not issue an order on the Settlement Agreement by May 1, 2021, each of the Settling Parties shall have the right to withdraw from the Settlement Agreement upon notice to the other parties and the Authority, and in that event the

Suspension of Procedural Schedule

While the Authority appreciates the intent of the Settling Parties, and particularly commends UI for its efforts, sometimes a settlement is just that, settling. During the course of the accelerated review schedule requested by the Settling Parties, there were numerous unanswered, unsubstantiated, and unproven claims and other issues identified as part of the Authority's initial consideration of the Settling Parties' proposal. The burden of proof that the Proposed Settlement Agreement provides appropriate protection to relevant public interests, both existing and foreseeable, pursuant to Conn. Gen. Stat. § 16-19e(a)(4) resided with the Settling Parties, and put simply, it was not met.

The Authority reminds all stakeholders that the scenario at present before PURA is not a binary choice between the Proposed Settlement Agreement versus no relief for ratepayers; quite the opposite in fact. Pursuant to Section 5 of Public Act 20-5, An Act Concerning Emergency Response by Electric Distribution Companies, the Regulation of Other Public Utilities and Nexus Provision for Certain Disaster-Related or Emergency-Related Work Performed in the State (Take Back Our Grid Act),[2] and its authority as codified in Conn. Gen. Stat. §§ 16-19(g), 16-19e, and 16-19oo, the Authority is actively investigating the implementation of an interim rate decrease, low-income rates, and economic development rates for customers of both electric distribution companies (EDCs) in Docket No. 17-12-03RE11. A proposed decision in Docket No. 17-12-03RE11 is tentatively scheduled for issuance in early July 2021. Further, as noted in the Proposed Interim Decision, "the Authority endeavored to adopt or otherwise build on certain provisions of the Proposed Settlement Agreement relevant to the Interim Decision to meet the legal standard and policy objectives outlined [in the Proposed Interim Decision]." Proposed Interim Decision, dated April 14, 2021, p. 8. Notably, the Authority adopted the most impactful ratepayer measure included in the Proposed Settlement Agreement; the return of $41.55 million already owed to customers.

Nonetheless, with the consent of the Settling Parties, the Authority hereby suspends the current procedural schedule in the instant proceeding for a period up to and including July 2, 2021, so that the Settling Parties may attempt to mitigate, cure, or rebut the following issues and potential harms that could fall to ratepayers should the Proposed Settlement Agreement be adopted in some form.

The Authority appreciates that settlements will always represent a give and take — a balancing of the interests involved. The Authority looks forward to reviewing the Settling Parties' next iteration of the proposal, to be submitted contemporaneously with analysis that supports a finding that such proposal provides appropriate protection to relevant public interests, both existing and foreseeable, pursuant to Conn. Gen. Stat. § 16-19e(a)(4).

Settlement Agreement will be deemed to be withdrawn and will not constitute a part of the record in this or any other proceeding or used for any other purpose." See also, Article 1.6 of the Proposed Settlement Agreement: "…the implementation of new rates for the Company's RAM Rate Components shall be subject to a make-whole provision in the event the regulatory process extends past May 1, 2021 and new rates for the RAM Rate Components are not implemented until after this date. The purpose of this provision is to keep the Company and its customers in the same position as if RAM Rate Components had gone into effect on May 1, 2021."

[2] *Available at:* https://www.cga.ct.gov/2020/ACT/PA/PDF/2020PA-00005-R00HB-07006SS3-PA.PDF.

Outstanding Issues to Address

Based on the terms of the Proposed Settlement Agreement, including the proposed amortization of the net RAM component balances as outlined in Article 1.4, the Authority's ruling on the Proposed Settlement Agreement is inextricably linked to approval of any rate adjustments to the NBFMCC, TAC, SBC, and RDM reconciliation mechanisms. Accordingly, the Authority hereby directs UI to maintain its current rates, in effect as of January 1, 2020, for the NBFMCC, TAC, RDM, and SBC reconciliation mechanisms, until otherwise authorized by PURA.[3]

The Authority will issue a subsequent Notice of Technical Meeting or Hearing and accompanying procedural schedule in this proceeding and in coordination with an updated procedural schedule in Docket No. 17-12-03RE11. In the meantime, the Authority has identified the following non-exhaustive list of unanswered, unsubstantiated, and/or unproven claims and other issues that must be addressed by UI and the other Settling Parties during the next phase of this proceeding:

Short-Circuiting of Several Authority Investigations Being Conducted Pursuant to the Take Back Our Grid Act

1. Pursuant to Section 5 of the Take Back Our Grid Act, the Authority is currently investigating an interim rate decrease for customers of both Eversource and UI through Docket No. 17-12-03RE11. The Proposed Settlement Agreement would preclude the Authority from adopting an interim rate decrease for UI ratepayers in return for a one-time contribution from UI shareholders of $5 million. The Proposed Settlement Agreement does not achieve any actual rate decreases,[4] interim or otherwise, and instead would require UI ratepayers to continue to over-pay through at least May 2023 for both an ROE that may or may not be inflated compared with current economic conditions and would include a higher corporate tax rate than is currently imposed on the company (see below Issue Numbers 5 – 6). Rather, the Proposed Settlement Agreement relies primarily on monies already owed to ratepayers ($41.55 million), which the Authority ordered paid back to customers through its Proposed Interim Decision, in combination with a one-time contribution from UI shareholders ($5 million) to provide a credit that only partially offsets monies owed by ratepayers for calendar year 2020 RAM under-recoveries ($58.085 million), while also allowing the 2021 RAM component increases to go into effect at the same time.

[3] Notably, this order does not apply to the Authority's separate directive that UI begin the return of the 2019 over-recovery to residential customers beginning on May 1, 2021. See, Correspondence dated March 9, 2021 in Docket No. 16-06-04.

[4] See Attachment 1 to Motion No. 8, dated March 9, 2021. Because the $46.55 million credit is spread over 20 months, while the 2020 RAM under-recoveries of $58.085 million are amortized over 24 months, there is an artificial credit, essentially a rounding error, of 0.02% for a residential customer's bill between 5/1/21 – 4/30/22, and 0.03% between 5/1/22 – 12/31/22. For the remaining four months (1/1/23 – 4/30/23), however, the bill impact pursuant to the Proposed Settlement Agreement is 4.10%. Additionally, these calculations do not include the 2021 RAM components, which would have gone into effect on May 1, 2021, pursuant to this settlement and generated a net bill impact for all customers.

2. Settlement Article 1.2.5 precludes the Authority from implementing any regulation or metric intended to move the Company toward performance-based regulation (which the Authority is required to do pursuant to Section 1 of the Take Back Our Grid Act) until at least May 2023.

3. Settlement Article 1.3 purports to allow the Authority to continue its investigation of establishing low-income discount rates and economic development tariffs pursuant to Section 5 of the Take Back Our Grid Act, but limits the manner in which the items could be implemented to the sole option of relying on the Company's existing decoupling mechanism. Limiting the way in which the Authority can implement a measure it has been directed to pursue by the legislature will only result in a less inclusive suite of options for the Authority to consider, thereby impacting the effective and equitable implementation of such measure and potentially limiting its value to ratepayers. Notably, the Proposed Settlement Agreement does not reflect signatories from non-governmental stakeholders advocating on behalf of low-income or economic development tariffs, e.g., Operation Fuel, the Center for Children's Advocacy, Connecticut Legal Service, Inc., or the Connecticut Industrial Energy Consumers.

4. Put simply, the Proposed Settlement Agreement conflicts with the clear and unambiguous legislative intent in adopting the Take Back Our Grid Act.

Issuance of $41.55 Million in Tax Liabilities Owed to UI Customers

5. The $41.55 million credit at the crux of the Proposed Settlement Agreement in fact represents monies that were over-collected from all UI customers, to which the customers are rightfully entitled already. The monies were (and continue to be) over-collected from customers because UI's current distribution rates incorporate recovery of federal corporate taxes that were not adjusted downward following the reduction in the federal corporate tax rate from 35% to 21% due to the Federal Tax Cuts and Jobs Act, signed into law on December 22, 2017.

    a. As such, the Settling Parties must address whether it is appropriate to label the return of such monies as a "CT COVID Relief Credit," or whether only the proposed one-time contribution of $5 million from UI shareholders should be labeled as such.

6. Without a corresponding decrease in UI's current base distribution rates, which the Proposed Settlement Agreement does <u>not</u> contemplate, the Company will continue to over-collect from its customers since its current rate structure does not reflect the reduction in the federal corporate tax rate from 35% to 21% due to the Federal Tax Cuts and Jobs Act, signed into law on December 22, 2017. The over-collection will be exacerbated by the settlement term that precludes the Authority from altering distribution base rates through at least May 2023.

a. The Proposed Settlement Agreement does not address the disposition of the over-collections that will accrue from UI customers between January 1, 2022, and May 23, 2023. Such monies are reasonably expected to range from $10 - $15 million. Given that the Proposed Settlement Agreement, pursuant to Article 1.1.1 "extinguish(es) any remaining liability on behalf of UI" to return the prior over-collections as specified in Docket No. 18-01-15, PURA Review of Rate Adjustments Related to the Federal Tax Cuts and Jobs Act, the prospective over-collections appear instead to accrue to the Company with no specifications regarding how or whether such monies would be returned to the ratepayers ever. Given the Authority's recent experience with parties' positions on ambiguous settlement terms, such ambiguity is not tolerable.

b. If a settlement term is amended to instead clarify that any over-collections that accrue up through the next base rate proceeding will be returned to ratepayers, would ratepayers again have to wait several years for such monies to be fully returned, as proposed by the current Settlement Agreement? Some of the Settling Parties have argued against longer amortization periods due to intergenerational equity concerns; those Settling Parties should discuss whether concerns about intergenerational equities are applicable here and, if not, how the concern about intergenerational equities is different in this instance.

c. UI has not sufficiently explained the reason(s) why the Company would be unable to return the $41.55 million already owed to customers on any schedule reasonably directed by the Authority, as opposed to the nearly two-year amortization period proposed by the Settling Parties.

7. Given concerns raised by certain Settling Parties regarding intergenerational equities and carrying costs that can accrue from amortization periods, address why the proposal does not simply reconcile the $41.55 million over-collection (plus the $5 million proposed UI shareholder contribution) against the 2020 RAM under-recoveries of $58.085 million. While in such a scenario (i.e., amortizing and applying carrying charges to the reconciled amount of ~$11.535 million) there would not be a separate line item artificially labeled as a credit, the net monetary benefit to UI ratepayers appears preferential (i.e., the total carry charges would likely be lower) – especially if coupled with an adjustment to the Company's base distribution rates to reflect the lowered federal tax rates as would have otherwise been required pursuant to the Authority's Proposed Interim Decision.[5]

8. UI has not provided a sufficient explanation, with supporting exhibits, to demonstrate whether its proposed methodology to allocate the $41.55 million in credits the Company owes to its customers reflects the over-charges incurred by each customer class since January 1, 2018. In other words, concerns persist that the Proposed Settlement Agreement would return the over-collections to ratepayers in a different method and manner than they were initially collected.

[5] See Proposed Interim Decision, dated April 14, 2021, p. 16.

UI's Rate of Return on Common Equity (ROE) and the Proposed "Distribution Base Rate Freeze"

9. In seven of the past eight quarters, UI has over-earned compared to its allowed rate of return of 9.10%. Since its last base rate case proceeding, the Company exceeded its allowed ROE by the following amounts: in 2017, UI exceeded its allowed ROE by $2,551,734; in 2018, ROE was exceeded by $6,068,291; and in 2019, its allowed ROE was exceeded by $12,975,838.25.

    a. UI is permitted to retain half of all over-earnings; only 50% of over-earnings are returned to customers through its Earnings Sharing Mechanism (ESM). At least one stakeholder has pointed out that the plain language of the Authority's previous Rate Case Decision[6] provides that the ESM is only valid during the three-year rate plan, and thus no longer binding on the Company to share even half of its overearnings with customers after 2019. If such an interpretation prevails, UI would be able to retain 100% of its overearnings through May 2023. The Proposed Settlement Agreement does not extend the applicability of the ESM.

    b. Additional data and analysis is required to better anticipate the factors that may result in UI's continued over-earning on its rate of return up and until the proposed distribution base rate freeze ends on May 1, 2023.

10. Further analysis and understanding of the practical significance and timing implications of the proposed "distribution base rate freeze" until May 1, 2023, is required. For example, pursuant to Section 2 of the Take Back Our Grid Act, the Authority's review period for a rate case application filed by the EDCs was extended to up to 350 days; in other words, a distribution base rate adjustment would likely not go into effect until at least that amount of time after the Company files its next rate case application (e.g., if the Company filed a rate application in May 2021, UI's new distribution rates would not take effect until May 2022).

11. Freezing distribution rates until 2023, as outlined in the Proposed Settlement Agreement, would result in foregoing additional mechanisms to potentially provide near-term relief to ratepayers, such as a decrease in the cost of debt and lower interest rates available currently as compared to when rates were last evaluated in 2016. Further examination of the economic conditions and other factors that impacted the Company's rate of return on common equity is required to evaluate the value of the proposed distribution base rate freeze for ratepayers.

12. Settling Parties have yet to address how they, collectively or individually, intend to comprehensively educate the UI ratepayers, elected officials, and members of the public that the purported rate freeze through May 2023 will not in fact freeze the majority of line items on customer bills, including the standard service, bypassable FMCC, non-bypassable FMCC, system benefit charge, conservation charge,

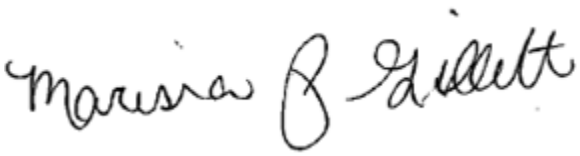
[6] The Authority last approved UI's distribution base rates in its Decision dated December 14, 2016, in Docket No. 16-06-04, Application of The United Illuminating Company to Increase its Rates and Charges.

renewables charge, transmission, and distribution decoupling charge and that retail electric rates will, in fact, continue to change multiple times per year.[7]

13. Both in this docket, and elsewhere publicly, the Settling Parties have purported that their primary interests in signing the Settlement Agreement was providing "rate stability." However, many, if not all, of the Settling Parties also argued against a longer than two-year amortization of the 2020 under-recoveries of the RAM rate components. The Settling Parties have not rectified the fact that longer amortization periods provide greater rate stability, as is evidenced by the Settling Parties recommending a two-year amortization over a one-year amortization in the first place, and how a higher rate over two years is preferable, from a rate stability perspective, than a lower rate over six years.

Dated at New Britain, Connecticut this 26th day of April, 2021.

PUBLIC UTILITIES REGULATORY AUTHORITY



Marissa P. Gillett
Chairman

(GBC)

Notice filed with the Secretary of the State on April 26, 2021.

[7] See Tr. dated 3/26/21, p. 100: "CHAIRMAN GILLETT: Right. And in the Company's, especially recent experience, is it the Company's impression that customers are able to distinguish between distribution policy line items and the generation line items? MR. MCDONNELL: I would say based on recent media reports of the last 12 months, I would say customers are unable to distinguish between those components."