



STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY

May 6, 2021

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

NOTICE OF VIOLATION AND ASSESSMENT OF CIVIL PENALTY IN THE AMOUNT OF \$2,141,470

YOU HAVE TWENTY DAYS FROM THE RECEIPT OF THIS NOTICE TO REQUEST IN WRITING A HEARING BEFORE THE PUBLIC UTILITIES REGULATORY AUTHORITY

DOCKET NO. 20-08-03RE01 PURA CONSIDERATION OF CIVIL PENALTY AND ENFORCEMENT ACTION AGAINST THE ELECTRIC DISTRIBUTION COMPANIES AFTER STORM ISAIAS INVESTIGATION

Eileen Sheehan
The United Illuminating Company
180 Marsh Hill Road, MS AD-2A
Orange, CT 06477

Dear Ms. Sheehan,

Pursuant to the provisions of §§ 16-16, 16-32h, 16-32i, and 16-41 of the General Statutes of Connecticut (Conn. Gen. Stat.), the Public Utilities Regulatory Authority (Authority or PURA) issues this Notice of Violation and Assessment of Civil Penalty (NOV) against The United Illuminating Company (UI or Company) for failing to comply with standards of acceptable performance in emergency preparation or restoration of service in an emergency and with orders of the Authority, and for violations of accident reporting requirements.

In summary, the Authority prescribes a civil penalty in the total amount of two million, one-hundred forty-one thousand, four-hundred seventy dollar (\$2,141,470). This amount consists of a one million, seven-hundred eighty-one thousand, four-hundred seventy dollar (\$1,781,470) penalty for non-compliance with performance standard under Conn. Gen. Stat. § 16-32i and a three-hundred sixty thousand dollar (\$360,000) fine for violations of accident reporting requirements under Conn. Gen. Stat. § 16-16.

Pursuant to Conn. Gen. Stat. § 16-41(d), UI has the right to request a hearing by delivering to the Authority a written application for a hearing within 20 days from the date of receipt of this Notice. If a hearing is not requested, then this Notice shall, on the first day after the expiration of the 20-day period, become a final order of the Authority, and the matters asserted or charged in the Notice shall be deemed admitted.

I. BACKGROUND

On August 4, 2020, Tropical Storm Isaias hit Connecticut, causing extensive damage across the entire State, affecting all 17 communities served by The United Illuminating Company. In response to the onset of and initial response to Tropical Storm Isaias, Governor Lamont requested that the Authority investigate the electric distribution companies' (EDCs) preparation for and response to Tropical Storm Isaias. On August 6, 2020, the Authority established the investigation in Docket No. 20-08-03, Investigation into Electric Distribution Companies' Preparation for and Response to Tropical Storm Isaias.¹

As part of its investigation, the Authority assessed whether the EDCs complied with the standards for emergency preparation and restoration of service established in accordance with Conn. Gen. Stat. § 16-32h. The investigation further encompassed an assessment of each company's outage/damage prediction efforts, storm preparedness, adequacy of staffing and equipment, communications, outage/damage assessment activities, restoration management, and after action reporting. In addition, the proceeding comprised evidence gathering to support determinations on the prudence and reasonableness of the EDCs' storm preparation, response, and recovery activities.

By Decision dated April 28, 2021, in Docket No. 20-08-03 (Tropical Storm Isaias Decision), the Authority reported the results of its investigation, including findings that UI failed to comply with standards of acceptable performance in emergency preparation or restoration of service in an emergency and with orders of the Authority.² Specifically, the Authority found that UI did not satisfy the performance standards for executing its Make Safe responsibilities. The Authority also made findings relating to UI's accident reporting in the aftermath of Tropical Storm Isaias.

As a result, the Authority issues this NOV against UI for failing to comply with standards of acceptable performance in emergency preparation or restoration of service in an emergency and with orders of the Authority, and for violations of accident reporting requirements.

¹ Under Conn. Gen. Stat. § 16-32i, the Authority is required to "review the performance of each electric distribution company . . . , after any emergency, as defined in section 16-32e, (1) in which more than ten per cent of any such company's customers were without service for more than forty-eight consecutive hours, or (2) at the authority's discretion." The term "emergency" includes "hurricane, tornado, [and] storm." Conn. Gen. Stat. § 16-32e(a).

² In the Tropical Storm Isaias Decision, the Authority notified UI that the Authority would conduct this reopener proceeding to "consider issuing civil penalties and further enforcement orders for the instances of noncompliance found during this investigation." p. 12.

II. APPLICABLE STATUTES, REGULATIONS, AND ORDERS

After two major storms in 2011 (Tropical Storm Irene and the October Nor'easter) caused lengthy, wide-spread service outages, the General Assembly enacted, in 2012, Public Act 12-148, An Act Enhancing Emergency Preparedness and Response (Act). Among other things, the Act required the Authority to develop specific performance standards for the EDCs in responding to an emergency and authorized substantial penalties for noncompliance. Id., §§ 3 and 4.

Specifically, the Authority was required to “establish industry specific standards for acceptable performance by each utility in an emergency to protect public health and safety, to ensure the reliability of such utility's services to prevent and minimize the number of service outages or disruptions and to reduce the duration of such outages and disruptions, to facilitate restoration of such services after such outages or disruptions, and to identify the most cost-effective level of tree trimming and system hardening, including undergrounding, necessary to achieve the maximum reliability of the system and to minimize service outages.” Conn. Gen. Stat. § 16-32h(b).

Accordingly, the Authority conducted a proceeding in Docket No. 12-06-09, PURA Establishment of Performance Standards for Electric and Gas Companies, and issued a decision establishing the emergency performance standards for EDCs. Decision, November 1, 2012 (Performance Standards Decision). Among other things, the EDCs are required to “restore service to its customers in a safe and reasonable manner during all service interruptions and outages. During an Emergency Event, this shall include at a minimum implementing all applicable components of a utility's ERP related to restoration of service.” Performance Standards Decision, Appendix A, p. 8.

Notably, the Authority ordered the EDCs to incorporate the standards delineated in the Performance Standards Decision into their emergency response plans (ERPs) and to follow their ERPs in response and recovery activities related to emergencies. Id., Appendix A, pp. 2 and 8. As a result, an EDC's failure to comply with the Performance Standards Decision or its ERP constitutes a failure to comply with established standards for acceptable performance.

Separate from their responsibilities under Conn. Gen. Stat. §§ 16-32h and 16-32i, the EDCs also have an obligation to report certain accidents to the Authority. In particular, Conn. Gen. Stat. § 16-16 provides, in pertinent part:

Each public service company . . . shall, in the event of any accident attended with personal injury or involving public safety, which was or may have been connected with or due to the operation of its or his property, or caused by contact with the wires of any public service company . . . notify the authority thereof, by telephone or otherwise, as soon as may be reasonably possible after the occurrence of such accident, unless such accident is a minor accident, as defined by regulations of the authority. Each . . . company . . . shall report such minor accidents to the authority in writing, in summary

form, once each month. If notice of such accident, other than a minor accident, is given otherwise than in writing, it shall be confirmed in writing within five days after the occurrence of such accident. Any person, company or electric supplier failing to comply with the provisions of this section shall be fined not more than five hundred dollars for each offense.

III. STATEMENT OF VIOLATIONS

A. MAKE SAFE AND PRIORITY CALL RESPONSE

As part of the investigation in Docket No. 20-08-03, the Authority reviewed the Performance Standards Decision and UI's ERP to identify the standards that applied to providing timely, detailed, and accurate information to affected municipalities through liaisons and executing its Make Safe obligations. Tropical Storm Isaias Decision, pp. 61-66. Next, using the record evidence, the Authority documented UI's management of its liaison program and Make Safe responsibilities. Id., pp. 69-70, 88-92. Finally, the Authority made detailed findings and determinations based on the identified performance standards and the record evidence. Id., pp. 88-89, 93-95.

In short, the Authority found that UI did not meet standards of acceptable performance with regard to its Make Safe and priority call duties. Id. Specifically, the Authority found that UI's performance resulted in unreasonable delays in responding to priority safety events. Id., p. 93. In addition, the Authority found that UI failed to timely provide a dedicated Make Safe crew for the City of Bridgeport and, subsequently, failed to adequately communicate with Bridgeport and properly prioritize the city's critical restoration sites. Id., pp. 94-95.

B. ACCIDENT REPORTING

As part of its investigation in Docket No. 20-08-03, the Authority conducted a review of UI's incident reporting practices for the month of August 2020 to identify any accidents related to Tropical Storm Isaias and to ensure that UI's current reporting practices are compliant with applicable regulatory requirements. Id., pp. 121-124. The Authority found up to eight (8) instances of minor accidents that were not included in the August 2020 monthly accident report. Consequently, the Authority determined that UI failed to report minor accidents as required by Conn. Gen. Stat. § 16-16 and Conn. Agency Regs. § 16-16-3.

IV. CALCULATION OF CIVIL PENALTY

The Authority's imposition of civil penalties is governed by Conn. Gen. Stat. § 16-41, which states:

Any [public service company] . . . which the [A]uthority finds has failed to obey or comply with any such provision of this title, order or regulation shall be fined by order of the [A]uthority in accordance with the penalty prescribed for the violated provision of this title Each distinct violation of any such provision of this title, order or regulation shall be a separate offense and, in case of a continued violation, each day thereof shall be deemed a separate offense. Each such penalty . . . shall be excluded from operating expenses for purposes of rate-making.

Conn. Gen. Stat. § 16-41(a).

The penalty provision associated with compliance with performance standards is contained in Conn. Gen. Stat. § 16-32i, which provides, in pertinent part:

The [A]uthority, upon a finding that any [electric distribution company] failed to comply with any standard of acceptable performance in emergency preparation or restoration of service in an emergency, adopted pursuant to section 16-32h, or with any order of the authority, shall make orders, after a hearing that is conducted as a contested case in accordance with chapter 54, to enforce such standards or orders and may levy civil penalties against such company, pursuant to section 16-41, not to exceed a total of two and one-half per cent of such electric distribution or gas company's annual distribution revenue, for noncompliance in any such emergency.³

In light of the Authority's findings of UI's noncompliance with established performance standards, the Authority prescribes a civil penalty under Conn. Gen. Stat. § 16-32i of one-half of one percent (0.5%) of UI's annual distribution revenue. Based on UI's calculation of annual electric distribution revenues beginning May 1, 2020, of \$356,294,004, the assessed penalty is one million, seven-hundred eighty-one thousand, four-hundred seventy dollar (\$1,781,470).⁴

³ As of October 2, 2020, Section 9 of Public Act 20-5 amended Conn. Gen. Stat. § 16-32i to increase the maximum civil penalty from 2.5% to 4% and to modify how the penalty is returned to ratepayers. This NOV pertains to UI's actions associated with Tropical Storm Isaias in August 2020. Consequently, for purposes of this NOV only, the Authority is citing the statute as written and in effect at the time of Tropical Storm Isaias.

⁴ See, Docket No. 21-01-04, PURA Annual Review of the Rate Adjustment Mechanisms of The United Illuminating Company, Rate Adjustment Mechanism Attachment 2A, p. 5, <http://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/808d4537b08443998525869300754c9d?OpenDocument>.

In addition, pursuant to Conn. Gen. Stat. § 16-16, the Authority may prescribe civil penalties for accident reporting violations of not more than five hundred dollars (\$500) for each offense. As a result, the Authority will assess a fine of three-hundred sixty thousand dollars (\$360,000) for violations of accident reporting requirements noted herein. The Authority considers these accident reporting violations to be continuing violations from the date the August 2020 monthly accident report was due (September 10, 2020) to the date the Authority first had information on each of the 8 instances of minor accidents. The Authority determines the violations continued for up to 90 days.

In summary, the Authority prescribes a civil penalty in the total amount of two million, one-hundred forty-one thousand, four-hundred seventy dollars (\$2,141,470).

V. METHOD OF RETURN OF ASSESSMENT

In accordance with Conn. Gen. Stat. § 16-32i, the Authority directs UI to return the assessment of the \$1,781,470 civil penalty in the form of credits to ratepayers of UI. The amount shall be returned as a separate line-item credit on customer bills on a per kWh basis to both residential and non-residential rate classes beginning on August 1, 2021, and lasting through July 31, 2022, with appropriate interest.

UI shall file a motion requesting the Authority's approval of the specific credit to ratepayers. In order to determine the appropriate share of the total to be returned to each rate class, the Company shall include with the motion an unlocked excel spreadsheet the energy sales in kWh for each of its residential and non-residential rate schedules for the period of May 2019 through April 2021, providing monthly amounts and a total. The filing shall include separate lines for total kWh of residential energy sales and the percent of residential energy sales for each month and as averaged over the time period. The filing shall also include a calculation of the proposed credit per kWh for each rate class to be returned over the period of August 1, 2021, through July 31, 2022.

The Authority directs UI to return the assessment of the \$360,000 fine for accident reporting violations to the State's general fund as ordered below.

VI. CONCLUSION

Based on the Authority's findings of noncompliance in the Tropical Storm Isaias Decision, the Authority prescribes a civil penalty in the total amount of two million, one-hundred forty-one thousand, four-hundred seventy dollars (\$2,141,470).

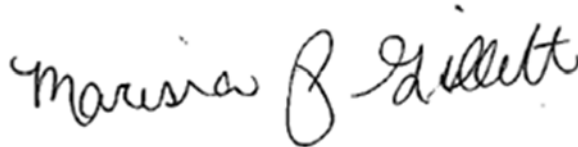
UI has a right to a hearing by delivering to the Authority a written application for a hearing within 20 days from the date of receipt of this NOV.

VII. ORDERS

1. UI is assessed a total civil penalty for the alleged violations stated above in the amount of two million, one-hundred forty-one thousand, four-hundred seventy dollars (\$2,141,470).
2. UI shall return the penalty assessment of one million, seven-hundred eighty-one thousand, four-hundred seventy dollar (\$1,781,470) in the form of credits to ratepayers of UI pursuant to Conn. Gen. Stat. § 16-32i in a manner to be approved by the Authority.
3. On or before May 26, 2021, the Company shall file a motion in this docket as directed in Section V, Method of Return of Assessment.
4. UI shall pay the penalty assessment of three-hundred sixty thousand dollars (\$360,000) for accident reporting violations by certified check, company check, bank check or money order, payable to the order of "Treasurer, State of Connecticut", or by wire transfer. If the Company makes payment by wire transfer, the Company shall contact PURA for wire instructions. This civil penalty shall be delivered to the Public Utilities Regulatory Authority, Ten Franklin Square, New Britain, CT 06051, no later than 20 days from the date of receipt of this NOV. The payment shall be identified as "20-08-03RE01 NOV Compliance". UI shall file documentation of such payment contemporaneously as a compliance filing in this docket.
5. The total civil penalty of two million, one hundred forty-one thousand, four-hundred seventy dollar (\$2,141,470) shall not be included as an operating expense of UI for purposes of ratemaking.
6. Any civil penalty unpaid on the due date or any portion thereof shall be subject to interest at the applicable rate.

Sincerely,

PUBLIC UTILITIES REGULATORY AUTHORITY

A handwritten signature in black ink, appearing to read "Marissa P. Gillett". The signature is written in a cursive, flowing style.

Marissa P. Gillett
Chairman

cc: service list