STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY

APPLICATION OF THE UNITED ILLUMINATING COMPANY TO AMEND ITS RATE SCHEDULES: DOCKET NO. 22-08-08

August 7, 2023

WRITTEN EXCEPTIONS OF THE UNITED ILLUMINATING COMPANY

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The United Illuminating Company ("UI" or the "Company") submits these Written Exceptions in response to the Proposed Final Decision ("Draft Decision") issued by the Public Utilities Regulatory Authority ("PURF" or the "Authority") on July 21, 2023. As demonstrated herein, the Draft Decision is punitive and unlawful, determining every issue of consequence against the Company, notwithstanding Connecticut state law, constitutional standards, decades of reasoned case precedent and applicable ratemaking procedures, and substantial record evidence. Among many other harmful impacts, adoption of the Draft Decision without modification will require an immediate write-off of $37.3 million in regulatory assets, while imposing an actual return on equity of 5.48%, due to the enormous disallowances of operating expense and capital investment contemplated by the Draft Decision combined with an authorized ROE net of penalties of 8.28%, equal to the cost of debt.\(^1\) Individually, and as a collective whole, the determinations made in the Draft Decision are not instituting a lawful “ ratemaking method,” but rather appear as contrived, purposeful outcomes designed with the singular objective of distressing the Company because it is a public utility company. The Draft Decision exceeds all reasonable boundaries for a proper ratemaking decision.

\(^1\) On the date that the Draft Decision was issued, the Wall Street Journal, Prime rate, was reported at 8.25%.
To even the most casual observer, it is hard to discern why the Authority would want to cause such harm to a well-performing Connecticut public utility company. The provision of electric distribution service is an awesome responsibility, requiring a deep bench of highly skilled and dedicated employees who look out for customers on a 24/7 basis (through pandemics and 100-year storms), along with constant capital investment to sustain the physical integrity of the electric grid for the benefit of customers. The Company’s operations are complex, involving trucks, equipment, construction, field crews, engineering, planning, human resources, information-technology systems and back-office support for the entire apparatus to function – all of which come at a cost. Customers and municipalities depend heavily on the Company’s unflagging ability to provide essential electric service across a wide range of operating conditions and with minimal disruption. For this, UI employs thousands of people in Connecticut and is among the largest taxpayers in the 17 cities and towns in its service territory. The Company is an integral partner in supporting the State’s grid modernization initiatives, energy conservation, and transformation to a clean energy future. UI is also an active Connecticut business partner serving the State of Connecticut with engagement and commitment.

Yet, somehow, the perspective of the Draft Decision is that the entire intricate network will continue to function as is, although the “level and structure of rates” is utterly insufficient to cover the Company’s “operating costs including, but not limited to, appropriate staffing levels, and capital costs, to attract needed capital and to maintain [its] financial integrity,” as required by Conn. Gen. Stat. § 16-19e. If the Company cannot count on the Authority’s recognition that this essential service comes at a cost that far exceeds what customers pay in rates in a single year – requiring debt and equity to sustain the business – then the Company’s operations are propelled to a complete standstill. There is no benefit to customers in this result.
In fact, a regulatory environment that is now viewed as “one of the worst in the U.S.” is a slow-moving disaster for the Company’s customers and many other Connecticut stakeholders that depend upon, and benefit from, UI’s provision of the safe and reliable utility service that customers expect and rely on. Since its last rate case, UI has made investments totaling more than half a billion dollars for the benefit of customers and this investment is now at jeopardy with this Draft Decision. These investments have improved the quality of service for customers and ensured the continued safety of our electric system; yet the message that the Draft Decision is sending is to stop this investment – because that is the “policy choice” that the Draft Decision is implementing. The “on the ground impacts” of this policy choice will be damaging to the interests of customers because what is not done today for the health of the system will need to be done tomorrow and the cost of investment will be more expensive in the future than it is today. It is also a direct detriment to the State of Connecticut because the economic multiplier effects associated with productive utility operations is a silent, but foundational contributor to Connecticut’s business economy, given the hundreds of millions of dollars that UI and its affiliates inject into Connecticut every year. For these reasons and others identified below, the Company respectfully requests that the Authority reject the Draft Decision and issue a final decision that conforms to responsible rate-making practice and achieves a balanced outcome, which is a necessity for all interests involved – including UI customers and the broader State of

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2 See, Wells Fargo, Equity Research, May 4, 2023, at 1; RRA Regulatory Focus, March 21, 2023, at 1 (lowering its rating of the Connecticut regulatory environment for water utilities from Average/1 to Average/3); S&P Global Market Intelligence, February 24, 2023, ranking Connecticut as “Below Average/1” as the worst regulatory environment in New England and among the nine worst jurisdictions in the U.S.; UBS Global Research, January 2023, ranking Connecticut as Tier 5, and among the eight worst jurisdictions in the U.S. and Canada.
Connecticut.³ To the extent that the Authority requires additional time to achieve this result, the
Company would voluntarily forego its right to a final decision from the Authority on or before
the expiration of the statutory deadline set by operation of Conn. Gen. Stat. §16-19(b), up to and
including September 15, 2023. To effect this change, and obtain a full consensus of PURA’s
commissioners, the Authority could issue an adjusted schedule in this docket to set the date for
issuance of the final decision on or before September 15, 2023, with no objection from the
Company as to the application of current statutory deadline on August 25, 2023.

I. Executive Summary

A. As it Stands, the Draft Decision Will Have a Devastating Impact on UI and
Harm the Interests of the State of Connecticut.

Without modification, the Draft Decision will have immediate and long-lasting negative
impacts to UI’s business, operations and customers. The Draft Decision proposes sweeping
disallowances of capital additions, necessary operating expenses and regulatory deferrals
authorized by the Authority in prior decisions, with the net effect being the establishment of
distribution rates that are unlawful and patently confiscatory in violation of the 5th and 14th
Amendments of the U.S. Constitution. If adopted, the Draft Decision will strongly disincentivize
investment in Connecticut, with long-lasting, negative impacts to customers who rely on the
Company for the provision of safe, reliable and resilient distribution service. In particular,
adoption of the Draft Decision will defeat the Company’s ability to participate in grid-

³ The Draft Decision was issued on July 21, 2023, with a deadline for Written Exceptions of 4 p.m. on August
3, 2023, leaving just 13 days for the Company to respond to the 283-page Draft Decision. On July 25, 2023, by
Motion No. 69, the Company requested a two-week extension. On July 27, 2023, the Authority ruled on Motion No.
69, allowing only 3.5 additional days (over a weekend) to noontime on August 7, 2023. By submitting these writt en
exceptions in accordance with the 3.5-day extension, the Company is not waiving all rights to contest the final
decision. Moreover, the Company incorporates by reference the positions set forth in the evidentiary record, or the
Company’s pre-hearing brief, initial brief and reply brief, and expressly reserves all rights therein.
modernization investments necessary to allow for electrification of the heating and transportation sectors, posing a major obstacle to the clean energy future of Connecticut.

Moreover, throughout its 283 pages, the Draft Decision imparts the view that the negative outcomes are deserved because the Company has “failed” to carry its burden. However, the most harmful errors in the Draft Decision are not due to evidentiary failures, but rather are distinct choices of the Authority. Other issues are more fairly traceable to requirements and expectations never properly or reasonably articulated and in deviation from past practice. As a matter of fundamental fairness, the Company is able to respond to new requirements only with adequate notice. Rate setting should not be a game of evidentiary “gotcha” – the very definition of an unfair and unpredictable regulatory environment – but rather should strive to achieve a fair and appropriate outcome for the benefit of all stakeholders.

The Draft Decision causes unprecedented negative financial consequences for the Company, including an anticipated reduction in Net Income of more than 40% in 2023 and 2024, despite the fact that the Company has incurred over $800 million in capital expenditures since 2016; has had no rate increase for nearly five years; and has experienced compounded inflation of 18% over the same time period. Although it is this collective impact that creates the greatest harm to the Company, the following examples are decisions that standout in terms of a harmful and arbitrary outcome:
• **The Draft Decision is confiscatory in its total effect.** The Draft Decision denies approximately 99 percent of the Company proposed rate increase, notwithstanding the effects of inflation and the overall higher cost of goods and services in the current economy. This outcome jeopardizes UI’s ability to attract capital and to continue to invest in its infrastructure to provide high-quality, reliable service to customers.

• **The Draft Decision sets an authorized ROE that is too low to support equity investment.** Through a series of unwarranted penalties, the Draft Decision authorizes an ROE of only 8.28 percent, falling too far below the national average for electric utilities, which was 9.71% for the first quarter in 2023. 4 Electric utilities cannot reasonably invest capital resources in a system to receive a rate of return that is roughly 150 basis points lower than the industry average, particularly where capital is invested up front in reliance on reasonable regulatory treatment for timely and adequate recovery of those dollars, which is a concept obliterated by the Draft Decision.

• **The Draft Decision results in an effective rate of return for UI of only 5.48 percent,** which is more than 300 basis points below the ROE of 8.8 percent that the Draft Decision characterizes as “reasonable and sufficient” to attract capital. 5 This actual rate of return is approximately equal to UI’s cost of new long-term debt, or 5.05% (Decision at 65). Equity holders will not invest at the cost of debt. Equity holders must receive a risk premium because the return on and of equity is not guaranteed, whereas debt has mandatory interest and repayment terms. Both equity and debt are needed to finance a utility. The combination of an excessively low ROE and disallowance of virtually all expenses over what is included in current rates produces an inconsequential

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5 To demonstrate this impact, the Company has prepared the Affidavit of Jacob S. Hurwitz and the Affidavit of Ann E. Bulkley to accompany these Written Exceptions, along with a request for additional process to allow evidence into the record on the confiscatory impact of the overall decision and its component parts.
revenue increase that essentially maintains the Company’s actual rate of return, thereby depriving the Company of recovery of its necessary operating expenses and a reasonable rate of return. This outcome is confiscatory pursuant to federal and state constitutional standards, contrary to state law, and without substantial evidence in the record. Moreover, the Prime rate of 8.25 percent was reported by the Wall Street Journal on July 21, 2023 – the date the Draft Decision was issued, reflecting the overall high-cost capital and macroeconomic conditions in which the Company is operating, which is not captured to any degree in the cost of capital authorized by the Draft Decision.

- If adopted, the Draft Decision will require an immediate write-off of at least $37.3 million of regulatory assets, which is a materially negative impact given the size of UI. These regulatory assets are deferrals of costs previously allowed by the Authority and unlawfully disallowed in this case for facially flawed reasons.

Existing base rates were set by PURA in the 2016 Rate Case Decision - almost seven years ago - for a three-year period through 2019, based on a 2015 test year. Those rates were subsequently reduced to reflect the effects of the Tax Cuts and Jobs Act in Docket No. 16-06-04RE04. After many years without a rate change, and an inflationary impact of approximately 18 percent over the intervening time period, the Authority is authorizing an increase of less than 2 percent. This result does not satisfy applicable legal requirements, nor can it be reconciled with

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9 The total of $37.3 million is exclusive of an additional $10.5 million potential impact arising from the resultant unfunded regulatory tax asset created by the mandated write-off of Accumulated Deferred Income Tax (Draft Decision at 42).
record evidence on the Company’s actual revenue deficiency. Consequently, there is no rational basis for this outcome based on UI’s demonstrated financial need or performance.\textsuperscript{11}

In the final result, this type of decision does a complete disservice to the Company’s customers because the costs that will be required in the future to overcome the negative impacts now will be greater than any small benefit that is achieved by cutting the Company’s needed rate request to a virtual nullity. The current Draft Decision must be rejected and replaced with a “level and structure of rates” that allows UI to recover its reasonable and prudently incurred costs and provides the opportunity to earn a fair and reasonable return on the assets committed to serve its customers in Connecticut.

B. Key Changes to the Draft Decision Are Necessary to Make the Draft Decision Minimally Viable.

To conform to the legal principles and requirements applicable to a proceeding conducted under Conn. Gen. Stat. §§ 4-166 \textit{et seq.}, as well as Connecticut statutory law, and Connecticut and federal constitutional principles, there are certain fundamental changes that need to be made.\textsuperscript{12} As it stands, the Draft Decision causes a “total effect” that is confiscatory, producing unjust and unreasonable rates contrary to law. Thus, to achieve a minimally viable outcome, the Company requests that the Authority modify the following conclusions:

1. \textbf{Authorize a return on equity of 9.3 percent.} Substantial evidence in the record supports the establishment of an authorized return of 9.3 percent. The return to the equity owner must be commensurate with the terms on investments in other enterprises

\textsuperscript{11} In 2022, the Authority retained an independent management auditor to review every aspect of the Company’s operations pursuant to Conn. Gen. Stat. §16-8c. Over approximately 10 months, the independent auditor conducted a full examination of every aspect of the Company’s operations through 73 employee interviews and 734 data requests. In a 344-page final report, dated June 14, 2023, the independent auditor did not find any material weaknesses or managerial inadequacy with any aspect of UI’s operations or outcomes for customers.

\textsuperscript{12} Notwithstanding any suggestion of compromise set forth in these Written Exceptions, UI expressly reserves all rights and remedies at law and in equity, including its rights and arguments on appeal.
having corresponding risks and such returns should be sufficient to assure confidence in the financial integrity of the enterprise so as to maintain its credit and attract capital. Federal Power Commission et al v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944) ("Hope"); see also Connecticut Light and Power Co. v. Department of Public Utility Control and Division of Consumer Counsel, 216 Conn. 627, 633-34 (1990) (citing same).

2. **Eliminate the arbitrary ROE penalties that reduce the authorized ROE to 8.28%, equal to the cost of debt.** The Draft Decision reduces the authorized ROE by 52 basis points to 8.28%. None of the penalties are warranted or supported by the record evidence and none of the penalties have a sound basis as a matter of law, as demonstrated below. The Company cannot attract capital with an authorized rate of return that is equal to the cost of debt, as debt holders have less risk than equity holders.

3. **Eliminate the $37.3 million write-off to regulatory assets.** As discussed below, none of the disallowances instituted in relation to the Company’s existing regulatory assets are legitimate. All of these deferrals were authorized by prior decisions and ratemaking practices of the Authority and, as discussed below, are arbitrary and capricious. The proper treatment is amortization of the deferral, not disallowance.

4. **Adopt the OCC’s recommendation on the correct Plant-In-Service Adjustment.** On brief, the OCC recommended adjusting allowed Plant-In-Service from the Company’s request, resulting in a reduction to the Company’s recommended Rate Year 1 of $23.567 million. (OCC Initial Brief at 54.)

5. **Allow the recovery of prudently incurred, necessary operating expense, consistent with PURA ratemaking procedures and Connecticut law.** As discussed below, the Draft Decision eliminates numerous categories of necessary “operating expense,” which Connecticut law allows for recovery. Conn. Gen. Stat. § 16-19e(a)(4). The Draft Decision fails to apply the correct legal standard to the exclusion of these
expenses. Therefore, major expense categories should not be eliminated from the approved revenue requirement.

Most critically, the Draft Decision’s clear and unfortunate signal is that utility investment is at risk in Connecticut and will not be treated under fair terms. Although the Authority may be of the view that this type of decision will be perceived as being beneficial to customers – it is only a short-term gain for public perception. The Authority is also charged with attending to the interests of customers in the medium and long term and this type of unbalanced regulatory decision will undermine the Company’s stability and financial health to the detriment of customers and the State as time moves forward.

In this regard, although it may be PURA’s view that refusal to grant reasonable recovery of operating costs and to enable necessary investment is an outcome that can be achieved with the Draft Decision without any consequential change in utility operations, this proposition is false. The Company has to adjust to the signals sent by its regulators as to what is acceptable for recovery through rates given that it has both a public-service obligation to customers and a fiduciary obligation to the investors of capital necessary to the Company’s operations. Without a doubt, the Company will meet its obligation to provide safe and adequate service to customers. However, incremental investment will have to be limited and/or eliminated under the prohibitive terms established by the Draft Decision in order to maintain the financial integrity of the Company.\(^\text{13}\)

\(^\text{13}\) For example, if adopted without modification, the Draft Decision will compel necessary operational changes such as the delay of infrastructure replacement through proactive, systematic replacement programs because it requires relatively larger program investment. Instead, programs would be deferred in favor of replacement and repair of failing infrastructure on a reactive basis following localized equipment failures. Larger projects such as substation rebuilds would also have to be delayed because it will simply not be possible for the Company to risk the level of capital required to accomplish those upgrades for the foreseeable future. Similarly, programmatic replacement of the construction vehicle fleet would need to be delayed, requiring the Company to extend the life of vehicles beyond industry guidelines leading to more in-service failures, higher repair costs, potential impacts to employee and public safety and service disruptions to customers on blue and black sky days. None of this serves the interests of customers who will continue to rely on the distribution infrastructure and will ultimately pay the higher cost of doing this work in the future.
The Draft Decision is thus short-sighted – especially in light of the State’s desire to institute “Positive Benefit Ratemaking” and to be a leader in the fight against climate change.

A transition to a clean energy economy envisioning widespread utilization of electric vehicles, electric heat pumps and pervasive interconnection of distribution energy resources fundamentally cannot occur without incremental electric utility investment in the distribution system that is precluded in a poor regulatory environment. The Draft Decision would, for example, prohibit the installation of more than 900 electric vehicle chargers in UI’s service territory, despite the Lamont Administration’s announced goal of phasing out gas-powered cars by 2035.

C. There Are Pervasive Factual and Legal Flaws in the Draft Decision.

The Company has a constitutional right to earn a fair and reasonable rate of return on capital invested to provide utility service to customers. Bluefield Electric Works and Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679 (1923) (“Bluefield”). The U.S. Supreme Court has established that a “fair and reasonable rate of return” means that there is “enough revenue not only for operating expenses but also for the capital cost of the business, which includes service on the debt and dividends on stock, and by such standard the return to the equity owner should be commensurate with the terms on investments in other enterprises having corresponding risks and such returns should be sufficient to assure confidence in the financial integrity of the enterprise so as to maintain its credit and attract capital.” Hope, 320 U.S. 591, 603 (1944); see also Connecticut Light and Power Co., 216 Conn. at 633-34 (1990) (citing same)

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14 For example, on Wednesday, July 26, 2023, the Lamont Administration announced a goal of phasing out the sale of gas-powered cars by 2035, which is an objective that cannot be achieved without significant investment in the electric system to support electrification of transportation in the State of Connecticut. See, e.g., https://www.ctinsider.com/politics/article/ct-lamont-california-emission-standards-2035-evs-18260575.php.
To meet this constitutional standard, the Authority’s Draft Decision must be modified.

In particular, the Authority has not considered the combined effect of the numerous negative decisions set forth in the Draft Decision, collectively operating to: (1) reduce the authorized rate of return; and (2) prohibit the recovery of a substantial amount of unavoidable operating costs. Per the Draft Decision, distribution rates are set substantially below the actual cost of service, preventing an opportunity to achieve an adequate return. The Affidavit of Jacob S. Hurwitz and the Affidavit of Ann E. Bulkley, submitted herewith, establish the confiscatory impact of the overall decision and its component parts. A reasonable result, consistent with constitutional principles, cannot be achieved where the rate decision is treated as a mechanism to reduce ROE without allowing any increase in the cost of operating the system, where those costs are increasing and must be accounted for in order for distribution rates to enable the realization of a return on investment in the system.

As discussed below in detail, the Draft Decision also deviates from reasonable judgment in several respects. The Draft Decision contains numerous internal inconsistencies that lead to an unreasonable and arbitrary outcome contravening Connecticut statutory law. The Authority should reassess the Draft Decision in light of these inconsistencies. Examples of these outcomes include the following:

- **Elimination of Capital Plant Additions.** The Draft Decision repudiates a long-standing policy of supporting capital investment through the Rate Year. This policy is embedded in the Authority’s case precedent and the Authority’s own Standard Filing Requirements and has been pivotal in supporting the avoidance of more frequent base-rate cases in Connecticut (to the benefit of customers). Even putting this aside, the Authority has disallowed the costs of capital additions that were completed prior to the close of the record and therefore are not “pro forma” adjustments. The cost of these completed project additions should be recoverable in this case.

- **Improper Disallowance of Bridgeport Avenue Costs.** UI first proposed and received approvals from PURA for its Central Facility concept eighteen years ago in its 2005
rate case. The Company presented an update in its 2008 rate case and a final update in the 2013 rate case, when construction was complete. PURA was fully aware of the consolidation plans, including the sale of the former Electric System Work Center at 801 Bridgeport Avenue in Shelton. PURA supported UI’s consolidation plans throughout the process including approving the ultimate sale of 801 Bridgeport Avenue at a loss in December 2018. The consolidation analysis was completed and updated as part of the 2005, 2008 and 2013 rate cases and refreshed in 2023, utilizing the best-known information available at that time. PURA consistently found that continuing to pursue and build the Central Facility, including the 801 Bridgeport Avenue sale, was in the best interests of customers. Now, 10 years after the 2013 rate case, the Draft Decision arbitrarily rejects $15.6 million of the associated costs, notwithstanding the overall customer benefit of the Central Facility project and despite the fact that there was not a shred of evidence of a lower cost alternative.

- **Double-Counted Deduction to Mutual Aid.** The Draft Decision counts mutual aid revenue twice – once as a credit to the storm reserve (Draft Decision at page 154) and again in the Revenue Decoupling Mechanism (“RDM”) (Draft Decision at 230). Mutual aid costs are incremental to the Company, so the appropriate amount of time these revenues should be counted is zero. These revenues reimburse the Company for the cost of the mutual assistance it provides – and therefore should not be included in either the storm deferral or the RDM, as the Draft Decision alleges (Draft Decision at 154).

- **Asymmetrical Carrying Charges.** The Draft Decision removes carrying charges for regulatory assets (see, for example, Draft Decision at 40) but does not remove carrying charges from regulatory liabilities, creating an asymmetrical, arbitrary result (Draft Decision at 35-36).

- **Double-Counted Deduction to FTE Costs.** The Draft Decision reduces the Company’s proposed rate base by $2.5 million for “FTE Reduction Capitalization” (Draft Decision at 19). The Draft Decision explains that this adjustment relates to its proposed disallowance of a portion of UI’s incremental full-time equivalent (“FTE”) request (Draft Decision at 114). However, the Authority already disallowed all rate year plant additions (Draft Decision at 25-26). Adding this “FTE Reduction Capitalization” adjustment on top of that reduction means that the Draft Decision inappropriately is removing the same capital twice.

- **Improper Elimination of Pension Deferral.** The Authority erroneously reduced UI’s pension deferral on the basis that PURA’s decision to allow the deferral did not extend beyond the term of the 2016 rate plan, which is not correct. The Authority also made no adjustment to the Company’s proposed Other Post-Employment Benefit (“OPEB”) deferral in precisely the same circumstance that is in a liability position, creating an asymmetric and arbitrary result.

- **Improper Adjustment to Major Storm Threshold.** The Authority increases the major storm threshold established in 2013 from $1 million to $1.43 million. The logic driving

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15 LFE-029.
this change is that utility construction and maintenance costs have increased, therefore so should the threshold. The Authority, however, provides no recognition that the costs incurred by the Company have also increased proportionally, for storm response and blue sky activities, which is an arbitrary contradiction undermining the validity of this decision.

The rates imposed by the Draft Decision – which reject approximately 99 percent of the Company’s rate request and are designed to preclude the Company from ever reaching its allowed rate of return 16 – are confiscatory and fall short of federal constitutional standards 17 and state law 18. The Draft Decision should be rejected, and the Authority should adopt a rate structure that allows UI to recover its reasonable and prudently incurred costs and provides the opportunity to earn a fair and reasonable return on the assets committed to serve its customers in Connecticut. The adoption of a confiscatory ratemaking scheme is a significant departure from utility commissions nationally and would place Connecticut far behind its peers 19.

II. Written Exceptions

A. The Draft Decision Results in Rates that Are Confiscatory and Fail to Provide a Fair and Reasonable Return in Violation of State and Federal Constitutional Protections

As a public service company under Connecticut law, UI has a statutory obligation to provide safe and reliable electric distribution service to customers. Connecticut statutes provide that each regulated utility company operating in Connecticut, including electric distribution companies, are “granted a franchise to operate as a public service company, as defined in section 16-1” and are required to “provide service which is adequate to serve the public convenience and necessity . . . .” Conn. Gen. Stat. § 16-10a(a). In addition, “all public service companies shall

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16 As further described herein, a computation of the earned return on equity reported to PURA on August 4, 2023, adjusted for the impact of the Draft Decision, demonstrates that the return on equity resulting from the rate decision will be no more than 5.48 percent.

17 Hope, 320 U.S. at 603; Bluefield, 262 U.S. 679.


19 Affidavit of Ann E. Bulkley at ¶ 5.
perform all of their respective public responsibilities with economy, efficiency and care for public safety . . . and so as to promote economic development within the state with consideration for energy and electric conservation, . . . and for the prudent management of the natural environment.” Conn. Gen. Stat. § 16-19e(a)(3).

Although the Company’s assets are employed in the public interest to provide Connecticut consumers with reliable electric service, the assets are owned and operated by private investors. As a result, this partly public, partly private status of utility property creates certain legal rights and obligations under the Takings Clause of the Fifth Amendment. Duquesne Light Company and Pennsylvania Power Company v. Barasch, 488 U.S. 299, 307-308 (1989). Specifically, a state (or its political subdivision) violates the Takings Clause when it uses rate regulation to impose a rate that is “so low as to be confiscatory.” Duquesne, 488 U.S. at 307, 310; see, e.g., Woodbury Electric Co. v. Public Utilities Commission, 174 Conn. 258 (1978). Confiscation jurisprudence arises from the “partly public, partly private status of utility property,” which “creates its own set of questions under the Takings Clause” and invokes a distinct legal analysis. Duquesne, 488 U.S. at 307.

With respect to the constitutional framework relevant to state-level rate regulation, the U.S. Supreme Court has determined that regulated public utilities are entitled to “just and reasonable” rates, which is a two-part concept, including: (1) the recovery of reasonable and prudently incurred costs; and (2) the right to earn a fair and reasonable return on the assets committed to public service. The principle that regulated public utilities are entitled to a reasonable opportunity to recover their prudently incurred costs arising from the provision of utility service was established by the U.S. Supreme Court in Hope, 320 U.S. at 603. The principle that public utilities have the right to earn a fair and reasonable rate of return on capital invested to provide utility service to customers was established by the U.S. Supreme Court in Bluefield, 262 U.S. 679. These two principles are interrelated in that the recovery of prudently incurred costs is a prerequisite to the
ability to earn a fair and reasonable return. As demonstrated below, the Draft Decision takes away the opportunity to recover $37.3 million of prudently incurred deferred costs and restricts return on capital to an unreasonable rate of 5.48 percent.

The U.S. Supreme Court has established that a “fair and reasonable rate of return” means that there is “enough revenue not only for operating expenses but also for the capital cost of the business, which includes service on the debt and dividends on stock, and by such standard the return to the equity owner should be commensurate with the terms on investments in other enterprises having corresponding risks and such returns should be sufficient to assure confidence in the financial integrity of the enterprise so as to maintain its credit and attract capital.” Hope, 320 U.S. at 603; see also Connecticut Light and Power Co., 216 Conn. at 633-34. As demonstrated below, the Draft Decision disallows operating costs to an extent that will jeopardize the Company’s ability to conduct core work for safety, reliability and storm response, and yields a return that is insufficient to attract necessary capital from investors willing to put their money at risk with UI as compared to its peers. The Draft Decision signals that investors should go elsewhere with their money.

Together, Hope and Bluefield are the basis upon which public utility regulators approve rates that are fair, just and reasonable. In combination, these decisions assure that rates do not become “confiscatory” or constitute an unjust “taking” of those revenues and/or earnings to which the utility shareholders have a legal right. The constitutional guidelines for determining whether utility rates are confiscatory were enunciated by the U.S. Supreme Court in Hope. In that case, the U.S. Supreme Court noted “that the [jurisdictional ratemaking agency] was not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of ‘pragmatic adjustments.’” Hope, 320 U.S. at 602. Moreover, U.S. Supreme Court precedent acknowledges that “the rate-making process . . . involves
a balancing of the investor and consumer interests.”  Id. at 602-603.  Thus, when a rate decision is challenged in the courts, the question is whether that decision “viewed in its entirety” meets the requirements of law for “just and reasonable” rates.  Id.

The Connecticut Supreme Court has held that Conn. Gen. Stat. § 16-19e(a)(4) sets forth a test for establishing proper rates of public utilities incorporating the constitutional requirements affirmed by the U.S. Supreme Court in Hope for review of public utility rate-making cases based on claims of unconstitutional confiscation.20 Connecticut Light and Power Co. v. Department of Public Utility Control, 219 Conn. 51, 55 (1991).  In that regard, the Connecticut Supreme Court has reiterated that “the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks”21 ... [and] should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.”  Id. at 55-56, citing, Hope, at 603.  Further, the Court has stated that Conn. Gen. Stat. §16-19e(a)(4), “in identifying the various factors that the DPUC22 must consider when it establishes rates for public service companies, uses language that tracks, almost verbatim, the language that the United States Supreme Court used in Hope....”  Id. at 56, citing, Connecticut Light and Power Co., 216 Conn. at 635.

A confiscatory rate can result from the improper exclusion of a cost or item from rates, or from a rate of return that is too low to produce a reasonable return that would maintain investor

20  Specifically, Conn. Gen. Stat. § 16-19e(a)(4) requires that “the level and structure of rates be sufficient, but no more than sufficient, to allow public service companies to cover their operating costs including, but not limited to, appropriate staffing levels, and capital costs, to attract needed capital and to maintain their financial integrity, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable ....”


22  The Department of Public Utility Control was the predecessor agency of PURA.
confidence.23 See, e.g., Boston Gas Company v. Department of Public Utilities, 367 Mass. 92, 97-98 (1975); cf. Fitchburg Gas & Elec. Light Co., 371 Mass. at 884 n.5, 359 N.E.2d 1294 (“A utility’s income can be increased either by increasing its rate base or by increasing its permissible rate of return”). Moreover, although the weight and credibility of the evidence offered by the Company in the proceeding are matters within the province of PURA, a conclusion made by PURA that is not legally supported by the evidence constitutes an abuse of power. New Haven Electric Company v. Public Utilities Commission, 30 Conn. Supp. 149, 151-152 (1972); Connecticut Television, Inc. v. Public Utilities Commission, 159 Conn. 317, 329 (1970); Brook Ledge, Inc. v. Public Utilities Commission, 145 Conn. 617, 619 (1958).

1. The Rates Imposed by the Draft Decision are Confiscatory.

The rates set in the Draft Decision are unjust and unreasonable and, therefore, confiscatory considering the “total effect” of the rate decision. Specifically, the Draft Decision is based on a series of arbitrary decisions that upon implementation would result in UI’s revenues increasing by less than one half of one percent. Existing base rates were set by PURA in the 2016 Rate Case Decision – almost seven years ago - for a three-year period through 2019, based on a 2015 test year. Those rates were subsequently reduced to reflect the effects of the Tax Cuts and Jobs Act in Docket No. 16-06-04RE04. After so many years without a rate change, such an insignificant revenue increase would render the rates insufficient to cover the vast majority of the incremental cost increases arising since 2019 in providing safe and reliable electric service.

In issuing a final decision on the Company’s rate application, PURA has to meet the constitutional threshold for “just and reasonable rates.” Therefore, the implication of the outcome imposed by the Draft Decision has to be either that PURA believes that the Company’s actual cost

23 “If an item were improperly excluded from the rate base, the rates set pursuant to that improper reduction of the rate base would deny a return on that item and, to that extent, could be confiscatory and unlawful.” Bos. Gas Co. v. Dep’t of Pub. Utilities, 367 Mass. 92, 98, 324 N.E.2d 372, 376 (1975).
of providing electric distribution service is effectively the same as it was in the 2016 Rate Case (despite rising costs and inflation) and that new base rates that increase current revenues by just $1.7 million will still suffice to meet the constitutional requirement for “just and reasonable rates,” as defined by the U.S. Supreme Court; or, PURA believes that the Company’s actual cost of service is higher than it was in the 2016 Rate Case but none of the cost items that would warrant an increase in base rates were demonstrated by the Company to be reasonably and prudently incurred and therefore are properly excluded from base rates. Either way, the outcome defies basic logic, economics and regulatory practice and demonstrates that the Draft Decision is seriously flawed from a legal perspective. The effect of such an insignificant revenue increase is to cause a lopsided equation where the Company is incurring increased costs to serve customers on the one hand and, on the other hand, the Draft Decision has barely changed the incoming revenue collections originally set in the 2016 Rate Case. The resulting rates are not “just and reasonable” in these circumstances and also violate constitutional and statutory requirements.

If the Company is unable to collect sufficient revenues from customers to cover its actual cost of providing electric service to customers, its opportunity to earn its authorized return on equity is defeated. The Company has no other source of revenues than customer rates, which means that the loss of revenue that is currently available to the Company causes a reduction in operating income. A reduction in operating income reduces the earned return on utility capital invested for the benefit of customers, all else equal.

Every quarter, pursuant to PURA’s longstanding reporting requirements, UI is required to report its net income and associated earned return on equity for the most recent 12-month period.

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24 The utility’s ability to earn its allowed return is entirely dependent on: (1) the degree to which actual, unavoidable costs incurred to serve customers are recovered through rates; and (2) the utility’s ability to control costs that are not in the cost of service.
As reported to PURA on August 4, 2023, UI’s earned return for the twelve months ended June 30, 2023 was **5.03 percent**. The Company submitted its rate application to PURA on September 9, 2022 to request an increase in base rates due to the fact that the Company is in a position of persistent under-earning compared to a previously authorized ROE of 9.10. Operating costs have increased well beyond the level recovered through existing base rates, thereby reducing the Company’s ability to earn its authorized return as demonstrated by the earned return reported on August 4, 2023. Since PURA is essentially maintaining the rate structure that was approved in 2016 that currently only allows the Company to earn a return on equity of 5.03 percent, the rates imposed by PURA in the Draft Decision are unjust, unreasonable and confiscatory.

2. **Due to the Broad Disallowance of Regulatory Deferrals and Necessary Operating Expenses, the Authority’s Rate Structure Results in Rates that Produce a Confiscatory Rate of Return of Only 5.48 Percent.**

Not only can the rate structure be shown to be unjust and unreasonable based on an analysis of UI’s earnings under current rates, the distribution rates imposed by PURA in the Draft Decision will not allow the Company to recover its reasonable and prudently incurred costs and provide the opportunity to earn a fair and reasonable return, in violation of the Hope and Bluefield standard and its Connecticut progeny. A computation of the earned return on equity reported to PURA on August 4, 2023, *adjusted for the impact of the Draft Decision*, demonstrates that the Company’s rate of return on equity will be **5.48 percent**. As reflected in Figures 1 - 6 below, the Company’s calculation of this 5.48 percent return on equity was performed in five steps. Each of those steps are explained and illustrated below.
In general, the Company’s methodology for developing the computations reflected in Figure 1 above is intended to reflect all the findings in the Draft Decision that impact the computation of UI’s earned ROE. For example, the earned ROE computation originally submitted by the Company on August 4, 2023, reflected UI’s actual equity ratio, not the equity ratio identified in the Draft Decision.

Therefore, as reflected in Figure 2 below, the first step in the Company’s calculation was to adjust for the Draft Decision’s Ordering Clause No. 17, requiring UI to use the lesser of its actual and authorized equity ratios. All else equal, this adjustment increases the Company’s earned return on equity to 5.18 percent after accounting for the effect on synchronized interest expense.
The next step in the Company’s calculation was to adjust for the Draft Decision’s proposed revenue increase and the associated impact of that increased revenue on income taxes, gross earnings tax, and uncollectible expenses. As shown below, this adjustment increased the resulting ROE to 5.35 percent.

References to “Exhibit 1d” refer to Exhibit 1d of the Company’s August 4, 2023, filing in Docket No. 76-03-07RE01.
Next, the Company removed the COVID, pension, and storm regulatory assets that it had originally included in rate base. After accounting for the effect of this reduction on deferred taxes and synchronized interest expense, this adjustment increased the calculated return to 5.65 percent.

**Figure 4: Step Three – Rate Base Reductions**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Value ($000s)</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Average Rate Base</td>
<td>$1,280,613</td>
<td>Step 1, Line 2</td>
</tr>
<tr>
<td>2</td>
<td>Less: COVID Deferral</td>
<td>$8,857</td>
<td>Exhibit 1c</td>
</tr>
<tr>
<td>3</td>
<td>Less: Pension Cost Recovery</td>
<td>$17,185</td>
<td>Exhibit 1c</td>
</tr>
<tr>
<td>4</td>
<td>Less: Storm Reserve</td>
<td>$26,236</td>
<td>Exhibit 1c</td>
</tr>
<tr>
<td>5</td>
<td>Subtotal</td>
<td>$52,278</td>
<td>Line 2 + Line 3 + Line 4</td>
</tr>
<tr>
<td>6</td>
<td>Deferred Tax Offset</td>
<td>$(14,076)</td>
<td>Line 5 x statutory tax rate of 26.93%</td>
</tr>
<tr>
<td>7</td>
<td>Adjusted Rate Base</td>
<td>$1,242,411</td>
<td>Line 1 - (Line 5 + Line 6)</td>
</tr>
<tr>
<td>8</td>
<td>Reported Utility Operating Income</td>
<td>$60,947</td>
<td>Exhibit 1d</td>
</tr>
<tr>
<td>9</td>
<td>Adjusted Utility Operating Income</td>
<td>$61,685</td>
<td>Line 8 + Step 2, Line 7</td>
</tr>
<tr>
<td>10</td>
<td>Adjusted Synchronized Interest Expense</td>
<td>$26,598</td>
<td>Line 7 x Step 1, Line 3 x Step 1, Line 4</td>
</tr>
<tr>
<td>11</td>
<td>Adjusted Equity Return - Q2 2023</td>
<td>$35,088</td>
<td>Line 9 - Line 10</td>
</tr>
<tr>
<td>12</td>
<td>Adjusted Equity Rate Base - Q2 2023</td>
<td>$621,205</td>
<td>Line 7 x (1 - Step 1, Line 3)</td>
</tr>
<tr>
<td>13</td>
<td>Adjusted Earned ROE</td>
<td>5.65%</td>
<td>Line 11 / Line 12</td>
</tr>
</tbody>
</table>

The Draft Decision also rejected many of the deferrals recorded by the Company. Accordingly, the next step in the Company’s computation was to remove the deferred revenues it recorded in the trailing twelve-month period ending June 30, 2023, which were rejected in the Draft Decision. As reflected below, this adjustment reduced the computed ROE to 5.03 percent.

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26 References to “Exhibit 1d” refer to Exhibit 1d of the Company’s August 4, 2023, filing in Docket No. 76-03-07RE01.

27 Please note that, for purposes of this analysis, the Company utilized information regarding its deferrals that was provided on the record in this case and that were explicitly identified in its August 4, 2023, filing in Docket No. 76-03-07RE01. As the Company’s books for the trailing twelve-month period ending June 30, 2023 were not finalized until after the close of the record in this proceeding, the actual deferrals recorded by the Company exceed those reflected herein.
Lastly, as required by Order No. 17 of the Draft Decision, the Company removed
disallowed expenses. This adjustment does not include all of the O&M expense reducations
reflected in Table 43 of the Draft Decision. In the Company’s view, many of the O&M expense
reductions reflected therein are not “disallowed” as the term should be interpreted in the context
of Order No. 17. Rather, many of the Draft Decision’s O&M expense reductions represent
instances where the Company projected its costs to increase, but the Draft Decision found, without
competent evidence those increases unlikely to materialize. For example, the Draft Decision
rejects the Company’s proposed inflation adjustment to corporate service charges on the basis that
corporate service charges have been relatively flat historically (after adjusting for the elimination
of the corporate capital charge). If corporate service charges do, in fact, increase, it does not seem
appropriate to omit such increase from the earned ROE calculation. Therefore, Figure 6 below
adjusts for only that portion of the Draft Decision’s O&M expense reductions that represent
disallowances of expenses the Company has already incurred.
Based on the foregoing analysis, under any foreseeable scenario, the rates imposed by the Authority in the Draft Decision will not provide UI with the opportunity to earn a return on equity in excess of 5.48 percent, which violates the Hope and Bluefield standards, as well as Conn. Gen. Stat. § 16-19e(a)(4), which codifies these standards. There is no analysis in the Draft Decision nor any evidence in the extensive record that supports a conclusion that a return on equity of 5.48 percent is “fair and reasonable” or commensurate with the returns for other utility enterprises with similar risks. To the contrary, the Draft Decision finds a fair cost of equity is 8.8 percent. This amounts to confiscatory ratemaking and would place Connecticut completely outside the accepted norm of its peer utility commissions nationally.28

28 Exh. UI-AEB-REBUTTAL-1B, at 8; UI-AEB-REBUTTAL-1A, at 35.
3. **The Rate of Return Applicable to the Company’s Rate Base as a Result of the Draft Decision Falls Far Short of the Constitutional Standard.**

In a base-rate proceeding, PURA is required by constitutional law principles to allow the utility to recover reasonable and prudently incurred expenses and to set a fair and reasonable return on utility capital, assuring that the return to the equity owner is “commensurate with returns on investments in other enterprises having corresponding risks … [and] sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.” *Connecticut Light and Power Co. v. Department of Public Utility Control, et al*, 219 Conn. 51, 55 (1991); see, also, *Hope*, at 603.

The Draft Decision states that “the Authority considers the analytical models, allowed ROEs in other jurisdictions, the prevailing market conditions, and the Company’s risk profile.” (Draft Decision at 88). The Draft Decision further contends that:

The DCF model as applied to the Authority Proxy Group indicated an ROE range of 8.40% to 9.33%, with a mean of 8.71% and a median of 8.93%. The CAPM model produced a similar ROE result of 8.85%. Combined with the Authority’s conclusion that ROEs approved in other jurisdictions indicated that an ROE no higher than 9% was appropriate, the data indicates that an ROE between 8.60% and 9.00% would provide a reasonable, market-based return.

(Draft Decision at 89).

In addition, the Draft Decision acknowledged that PURA must determine the ROE that is “sufficient, but no more than sufficient” for UI to “cover [its] capital costs, to attract needed capital and to maintain [its] financial integrity.” (Draft Decision at 88, citing Conn. Gen. Stat. § 16-19e(a)(4); *Woodbury Electric Co.*, 174 Conn. at 264). The Draft Decision further asserts that, “[c]ognizant of this legal framework, the Authority has analyzed a wide array of considerations in reaching a determination, including, without limitation, the Company’s capital structure, its financial condition, ROEs from other jurisdictions, analytical models, testimony from the Parties
and Intervenors, prevailing and anticipated market conditions, and the regulatory environment.”

(Id., emphasis added.)

There is no reference, statement, or analysis in PURA’s Draft Decision that considers or calculates the impact of the base-revenue adjustments on the Company’s actual return on invested capital given the Company’s existing under-earning position. Nor is there any consideration in the Draft Decision of the impact arising from the disallowance of numerous cost amounts that the Company is incurring to provide electric service to customers, or the impact of those disallowed costs on the Company’s actual return on invested capital. In a normal ratemaking context, new rates would provide sufficient increased revenues with the new rates set at a level that – if nothing changed from the date of the order – would produce a return on equity of 8.8 percent as the “just and reasonable ROE” arising from PURA’s decision. This did not happen in the Draft Decision.

In this case, the Draft Decision failed to consider the impact of its rate adjustments on the ability of new rates to support the “just and reasonable ROE” identified by PURA in the Draft Decision. As a result, the new base rates would not properly incorporate the impact of the 8.8 percent “just and reasonable ROE,” nor set rates at a level calculated to produce that return. Instead, the Draft Decision has drawn conclusions that a “just and reasonable ROE” is 8.8 percent, while at the same time implementing a series of arbitrary and capricious cost disallowances that effectively eliminate all incremental cost recovery, thereby preventing the Company from recovering its actual operating costs or a fair and reasonable return on invested capital.

This arbitrary outcome produces a “total effect” of yielding an actual ROE of 5.48 percent, which is 332 basis points below the alleged 8.8 percent “reasonable and sufficient” ROE identified in the Draft Decision. (Draft Decision at 89). Because the Draft Decision failed to check to see whether the aggregate impact of its numerous cost disallowances would undermine the validity of the Draft Decision in setting “just and reasonable” rates (as measured on the basis of the actual
rate of return enabled by the rates set by the Authority), the result is a rate decision that is “unjust and unreasonable” resulting in constitutionally invalid confiscation.

On top of this, the Draft Decision imposes a 52-basis point downward reduction to the 8.80 percent ROE that it deemed to be “reasonable.” As stated in the Draft Decision:

The Authority finds an unadjusted ROE of 8.80% to be reasonable. However, the Authority will adjust this ROE downward by 0.52% to address UI’s management and operational performance in certain areas, as described in detail in Section V.E.10, Reductions to ROE below. Therefore, until the performance issues are addressed in accordance with the Authority’s orders, the Company’s allowed ROE is 8.28%.

(Draft Decision at 66) (emphasis added).

In other words, the Draft Decision concedes that the allowed ROE of 8.28 percent is below the level determined by PURA to be “reasonable.” Moreover, the 8.28 percent ROE is below the low end of the ranges considered in the Draft Decision based on the DCF and CAPM. (Draft Decision at 88).

The Company invested over $300 million in the construction, upgrade and replacement of electric infrastructure since 2020 (RSR-0003 UI Attachment 2). Prior to initiating the rate proceeding in this docket, the Company was not recovering the cost of this investment through base rates and one of the outcomes of the rate proceeding is the inclusion of unremunerated capital investment in new base rates for recovery. However, the Company’s effective rate of return on all of that capital investment will be no more than 5.48 percent as a result of the Draft Decision. Given that PURA has found that 8.8 percent is the “reasonable and sufficient” ROE for UI to “cover [its] capital costs, to attract needed capital and to maintain [its] financial integrity,” an outcome that produces a rate of return of 5.48 percent on invested capital has, by definition, resulted in unjust and unreasonable rates. This is only exacerbated by the 52-basis point reduction and 8.28 percent
allowed ROE. (Draft Decision at 88, citing, Conn. Gen. Stat. § 16-19e(a)(4); Woodbury Electric Co., 174 Conn. at 264).

Accordingly, the base rates that are imposed by the Draft Decision are “unjust and unreasonable” in failing to allow the Company to cover its operating costs including, but not limited to, “appropriate staffing levels, and capital costs” to attract needed capital and to maintain financial integrity. Conn. Gen. Stat. § 16-19e(a)(4) (emphasis added). In fact, the substantial impact of the Draft Decision’s arbitrary and capricious decision-making is demonstrated most vibrantly by the fact that UI invested more than $256 million in the electric system between December 31, 2020 and December 31, 2022, resulting in incremental net plant of $110 million (net of accumulated depreciation). The revenue requirement associated with net plant of $110 million is incorporated into the new base rates set by the Draft Decision; yet, an overall reduction in base revenues is occurring, nonetheless. This means that the total disallowances and extractions effected by the Draft Decision are of such a large magnitude that a reduction in base revenue is occurring, notwithstanding the fact that $110 million of new net plant is added to base rates as a counterweight.

Together, Hope and Bluefield constitute the legal foundation upon which public utility regulators must approve rates that are just and reasonable. Adherence to the Hope and Bluefield standard is not discretionary. According to the U.S. Supreme Court, “just and reasonable” rates are rates that allow for (1) the recovery of reasonable and prudently incurred costs; and (2) the opportunity to earn a fair and reasonable return on the assets committed to public service. Connecticut statutory law incorporates this two-part standard and the “total effect” of PURA’s Draft Decision fails on these two tests. Conn. Gen. Stat. § 16-19e(a)(4). The Draft Decision

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29 Values derived by comparing gross plant and accumulated depreciation as reflected in RRU-0087 UI Attachment 5, at 33 to gross plant and accumulated depreciation as reflected in LFE-026 UI Attachment 2, at 5.
arbitrarily disallows a significant amount of valid and appropriate operating expense from the approved revenue requirement allowed for recovery through rates. The result is new rates that will strip current revenues from the Company. The effect of the Draft Decision is to reduce the Company’s effective rate of return to 5.48 percent, rather than setting “just and reasonable” rates that would be calibrated to recover the targeted rate of return of 8.8 percent that PURA determined to be the “reasonable and sufficient” ROE.

The Draft Decision therefore results in “unjust and unreasonable rates” on which UI cannot earn a fair and reasonable return on the assets it has committed to public service, violating PURA’s obligation to set rates in conformance with requirements of the U.S. Constitution. The purposeful adoption of a confiscatory ratemaking scheme is also a significant departure from utility commissions nationally and would position Connecticut as sending a clear message to investors to deploy their capital investments elsewhere. The result is patently confiscatory.

4. The Draft Decision Implements Statutes that Are Facial Unconstitutional and Applies these Statutes in Ways that Conflict with Connecticut Law.

An additional defect of the Draft Decision is that it attempts to institute recently enacted statutory provisions that are facially unconstitutional through arbitrary cost disallowances. For example, the Draft Decision implements Public Act No. 23-102, which only recently became effective, in ways that are not permitted under Connecticut Law. Under Connecticut General Statutes Section 55-3, “[n]o provision of the general statutes, not previously contained in the statutes of the state, which imposes any new obligation on any person or corporation, shall be construed to have retrospective effect.” Under this statute and related statutory-interpretation principles employed by Connecticut courts construing Connecticut statutes, a “substantive change in the law . . . may not be applied retroactively,” and “there is a presumption that ‘in enacting a statute, the legislature intended a change in existing law.’” Nettleton v. C & L Diners, LLC, 219
Conn. App. 648, 692 (2023). In general, agencies do not have the power to promulgate retroactive rules unless the legislature conveys that authority with “an express statutory grant.” Shannon v. Comm’r Housing, 322 Conn. 191, 203 (2016) (quotations omitted).

Public Act No. 23-102 went into effect on July 1, 2023. Any “new obligation” in the law thus cannot be “construed to have a retroactive effect.” Conn. Gen. Stat. § 55-3. For example, Section 2 of Public Act No. 23-102 provides that “[n]o public service company with more than seventy-five thousand customers shall recover through rates its direct or indirect costs associated with its attendance in, participation in, preparation for, or appeal of any rate proceeding conducted before the authority.” To the extent that the Draft Decision denies recovery of costs that were incurred before July 1, 2023, that denial of recovery is an impermissible, retroactive application of Public Act No. 23-102.

B. The Draft Decision’s Rate Base Adjustments are Unjust and Unreasonable in Contravention of Connecticut Law.

1. Overview

The Draft Decision modifies certain components of the Company’s proposed rate base, reducing the average pro forma rate base by $290.718 million to approximately $1.093 billion. (Draft Decision at 12). The rate base adjustments related to plant-in-service, accumulated depreciation, cash working capital, recovery of deferred assets, deferred taxes, municipal dashboard, light-duty electric vehicle (“EV”) program costs, and environmental remediation costs because, as discussed below, the adjustments are unjust and unreasonable.

As mentioned above, Conn. Gen. Stat. § 16-19e(a)(4) requires that “the level and structure of rates be sufficient, but no more than sufficient, to allow public service companies to cover their operating costs including, but not limited to, appropriate staffing levels, and capital costs, to attract needed capital and to maintain their financial integrity, and yet provide appropriate protection to
the relevant public interests, both existing and foreseeable ….” The Connecticut Supreme Court has held that Conn. Gen. Stat. § 16-19e(a)(4) (the governing statute for utility rates) sets forth a test for establishing proper rates of public utilities incorporating the constitutional requirements affirmed by the U.S. Supreme Court in Hope for review of public utility rate-making cases based on claims of unconstitutional confiscation.30 A confiscatory rate can result from the improper exclusion of a cost or item from rates. See, e.g., Boston Gas Company v. Department of Public Utilities, 367 Mass. 92, 97-98 (1975); cf. Fitchburg Gas & Elec. Light Co., 371 Mass. at 884 n.5, 359 N.E.2d 1294 (“A utility’s income can be increased either by increasing its rate base or by increasing its permissible rate of return”). That is the situation here.

Although, in a rate proceeding, there is no expectation that the Company will be granted a rate increase equivalent to its initial rate application because PURA always retains discretion to make reasonable adjustments as part of its adjudication of the case, so long as those adjustments are accurate and comport with the applicable legal standards for “just and reasonable rates.” However, as one example, the Draft Decision eliminates approximately $7.1 million in employee compensation for the appropriate staffing levels approved by PURA in its Draft Decision, among other disallowances (Draft Decision, at 190).31 Consequently, the adjustments to the Company’s proposed filing represent violations of Conn. Gen. Stat. §16-19e(a)(4) and (5), as those adjustments deprive the Company of its prudently incurred operating costs and capital expenditures. Additionally, as outlined below, the Draft Decision articulates a radical alteration, without explanation, from long-standing PURA precedent and without any prior notice to the Company of these shifting standards of review and is therefore arbitrary and capricious.

31 Reflects the $6,559,645 in “Total Reductions” for “Disallowed Payroll-Related Expenses,” plus $0.502 million in disallowed payroll tax expense.
2. **Plant-In-Service**

The Draft Decision arbitrarily and capriciously disallows cost recovery of plant-in-service and capital additions in the Rate Year, contrary to the Authority’s long-established precedent and rate case standards. As a result, the Draft Decision fails to produce rates that are just and reasonable, and sufficient to recover UI’s capital costs pursuant to Conn. Gen. Stat. § 16-19e(a)(4) and are thus confiscatory pursuant to Connecticut and federal Constitutional protections.

The Draft Decision “modifies certain components of the proposed rate base, reducing the average pro forma rate base by $290.718 million to approximately $1.093 billion.” (Draft Decision at 12). With respect to plant-in-service, the Draft Decision reduces the Company’s requested plant-in-service of $2.496 billion by disallowing $222.402 million in plant additions and retirements made (or forecast to be made), on the basis that the Company allegedly did not demonstrate that the projects were prudent and/or used and useful. These adjustments result in an approved plant-in-service of $2.274 billion. (Draft Decision at 13). The $222.402 million disallowance represents PURA’s adjustment to the Interim Period (January 1, 2022 through August 31, 2023) and Rate Year (September 1, 2023 through August 31, 2024) pro forma plant-in-service.\(^{32}\)

The Draft Decision asserts that the level of documentation provided by UI in support of its Test Year\(^{33}\) plant-in-service and the approximately $500 million of plant additions from 2017 – 2021 was “insufficient,” yet allows the full Test Year plant-in-service balance of $2.207 billion because no party took a specific position on the prudency of the plant additions from 2017 – 2021.\(^ {34}\) (Draft Decision at 16).

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\(^{32}\) Rate Year 2023/2024 in the Draft Decision is equivalent to the Company’s proposed Rate Year 1, which is the period from September 1, 2023 to August 31, 2024.

\(^{33}\) The Test Year in this docket is calendar year 2021.

\(^{34}\) In relation to plant in service, the Draft Decision implies that the Company’s burden of proof is “substantial evidence.” (Draft Decision at 17). However, this is not correct. Under Connecticut law, the Company meets its evidentiary burden under Conn. Gen. Stat. § 16-22 with a *preponderance* of evidence. “Substantial evidence” is the standard applicable to PURA’s decisions under the UAPA.
With respect to post-Test Year plant additions, the Draft Decision finds that the Company “did not meet its burden to demonstrate with substantial evidence that its proposed plant-in-service adjustments of $289.192 million for the Interim Period and Rate Year 2023/2024 are used and useful and are prudent and reasonable.” (Draft Decision at 17). As a result, the Draft Decision disallows $222.402 million of the $289.192 million request. The Draft Decision allows recovery of a portion of the Interim Period plant-in-service, in the amount of $70.612 million, and calculated a net increase to rate base of $66.790 million. The Draft Decision completely and unreasonably rejects the Authority’s long-standing ratemaking framework that has, until now, allowed funding for pro forma capital expenditures in the Rate Years.

In reaching this result, the Draft Decision is an unwarranted and unexplained — thus, an arbitrary and capricious departure from the Authority’s established precedent and rate case standards that have allowed reasonable cost recovery treatment for capital investments based on a pro forma rate year. The Company provided substantial evidence in support of its request that met or exceeded those standards, yet the Draft Decision substitutes a different – and ambiguous – standard to the Company’s application with no due process. PURA has provided insufficient guidance as to what level of evidence would be sufficient under the framework of the Draft Decision and, despite rejecting the SFR standard, the Draft Decision provides no guidance as to the criteria for the new standard. Moreover, the Authority did not provide notice that it intended to adopt and apply a different standard to the treatment of utility capital expenditures in this docket.35 Moreover, the Draft Decision makes subjective and arbitrary judgments regarding the sufficiency of the Company’s evidence in support of its capital expenditures, asserting that the Company’s evidence was insufficient, notwithstanding the fact that the level of proof in this case

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35 See, e.g., Conn. Gen. Stat. § 4-168, which establishes notice and administrative process requirements for an agency’s adoption of regulations.
exceeded the level of proof accepted by PURA in the Company’s 2016 Rate Case and other past rate cases, by a wide margin.

Specifically, the Company’s rate case application complied fully with the Authority’s standard filing requirements (“SFRs”), which are regulations that have been in place since at least September 30, 1997.36 The SFRs explicitly require public service companies to present forecasted rate base for the rate years, and this is consistent with precedent dating back decades. See 2016 UI Rate Case; Docket No. 17-10-46, Application of The Connecticut Light and Power Company to Amend its Rate Schedules; Docket No. 18-05-16, Application of Connecticut Natural Gas Corporation to Increase Rates and Charges; Docket No. 17-05-42, Application of The Southern Connecticut Gas Company to Increase Rates and Charges; Docket No. 09-12-05, Application of The Connecticut Light and Power Company to Amend its Rate Schedules; Docket No. 08-07-04, Application of The United Illuminating Company to Increase its Rates and Charges; Docket No. 05-06-04, Application of The United Illuminating Company to Increase its Rates and Charges (each approving distribution rates with forecasted rate base and plant additions).

Conversely, the Draft Decision does not articulate any clear standard on documentation requirements or areas where the Company’s filing failed to comply with the SFRs. The Draft Decision instead relies on two discovery requests issued not by PURA but by the Office of Consumer Counsel (“OCC”) as examples of necessary documentation, notwithstanding that the OCC’s discovery requests contravened its own witnesses who presented their recommendations based on pro forma capital additions over the three proposed rate years. (Draft Decision at 17-18; UI Reply Br. at 85-86, 88-91).

36 R.C.S.A. § 16-1-53a states in pertinent part that “[a]ny public utility with annual gross revenues in excess of fifty million dollars or fifty thousand or more customers shall complete the standard filing requirements in connection with all applications for any proposed amendment of its existing rates.”
In addition, the Draft Decision mis-applies the Authority’s regulations, asserting that “while the Company may provide evidence in the record subsequent to filing the Application to demonstrate prudency and usefulness, only the specific plant included in the Company’s Application is eligible for cost recovery and, thus, inclusion in rate base.” (Draft Decision at 18-19) (emphasis added). However, there is no legal basis to establish the Application date as the cut-off date for inclusion of plant additions. The Draft Decision relies on R.C.S.A. § 16-1-58 for this proposition, stating that any change or additional information relating to plant additions would require an amendment to the Application. (Draft Decision at 19, FN 1). This is incorrect and a misinterpretation of the regulation. In fact, § 16-1-58 applies to permissive amendments to rate applications, focused essentially on the level of rates and revenue requirement:

During the first thirty (30) days after the date on which the rate application is filed the applicant may revise the application. If the revision pertains to an amendment to the level of rates or the revenue requirements, then the revised application shall contain a complete revised statement and revised schedules for the proposed increases or changes in the existing rate schedule. In addition, all of the information required by Sections 16-1-53a, 16-1-55, 16-1-56, 16-1-57, and 16-1-59 shall be revised accordingly. After the first thirty (30) days following the date on which the rate application is filed the applicant may not amend or revise the level of rates shown therein except upon the granting of permission to amend by the commissioners upon motion by the applicant.

R.C.S.A. § 16-1-58 (emphasis added).

The Draft Decision’s reliance on this regulation is misplaced. The evidence shows that the “level of rates” or revenue requirement were not affected by the inclusion of plant additions after the date of the Company’s Application, and in fact the Application included all historic capital as well as projected capital for the three proposed rate years. (UI Reply Br. at 85-91; Exh. UI-CJE-REBUTAL-1, at 4; OCC-157; OCC-309 through 317; OCC-193; LFE-001; LFE-001 Att. 2; LFE-017; Sch. F; see generally RSR-88; RSR-0002 UI Att 1; RSR-0003 UI Att. 1, RSR-0003 UI Att. 2; RSR-0001 UI Att. 1; RSR-90; RSR-26; RSR-4). The project list was a level of detail in support
of the Application, not an amendment to the Application. The Company had no need to update the revenue requirement for the added granularity offered by the project list in LFE-017. See also Docket No. 80-05-01, Application of the Timber Trails Corporation-Water Division To Increase Its Rates And Charges To All Customers (Sept. 30, 1980) (noting that the Authority “has accepted late filed exhibits updating revenues or expenses stated in an application, even if the exhibits are submitted more than 30 days after the filing of an application, especially where the original figure was an estimate”).

The Draft Decision’s take on the sufficiency of the Company’s capital documentation is an unwarranted and unsupported departure from past practices, the Authority’s own regulations, and is rooted in ambiguous subjectivity. A large portion of the disallowed capital relates to programs that UI proposed to continue in the Rate Years and have been cost-effective components of the Company’s infrastructure plans for many years, approved by PURA in numerous past rate cases. Many of these programs were initially developed in 2003. The programs have been presented to the Authority in at least four rate case proceedings and they have been subject to numerous management audits.37 The Draft Decision provides no explanation or support for the departure from regulations, prior orders and long-standing practice.

Going forward, the Draft Decision – if approved by the Authority as its final decision – presents a substantial risk to the Company’s on-going capital investment due to the ambiguous and subjective nature of the standard for cost recovery and lack of capital funding. The Draft Decision provides no clarity regarding the Authority’s requirements; it simply cites to examples of what

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37 For example, the 2016 Rate Case required a detailed overview of the Company’s capital programs to be filed in advance of the rate case filing (Order 14). Many of the now disallowed programs, along with many projects that are analogous to the disallowed programs, were included in this pre-filing report. The Authority took no exception to any of the capital programs in that docket, neither in the pre-filing report nor in the rate case. Docket No. 16-16-04, Application of The United Illuminating Company to Increase Its Rates and Charges, at 18, 20 (the “2016 Rate Case”). The Draft Decision stands in stark contrast to the balanced order in the 2016 Rate Case and prior rate cases.
does not meet expectations, leaving open the question of what level of proof, if any, might be
deemed to be adequate or acceptable. UI filed its case to meet the current standards, but the Draft
Decision applies a new, unarticulated standard that is the functional equivalent of “not this.” This
creates great uncertainty and risk related to future capital investment.

As noted, the Draft Decision relies principally on two OCC discovery requests, rather than
the SFRs, for its conclusions on the sufficiency of the Company’s documentation. One of those
discovery requests, OCC-193, illustrates the inherent conflict between the Draft Decision and the
Authority’s rate case standards. In OCC-193, OCC asked the Company to provide “any document
the Company relies on and/or utilizes that defines what is known and measurable and is required
in the form of supporting documentation for a capital addition to be included in the projected plant
additions during the interim period between the test year ended December 31, 2021, and
September 1, 2023, the beginning of Rate Year 1 and in each of the three respective rate years
being requested.” (OCC-193) (emphasis added). This question is a key example of the distortion
that results from conflating a pro forma forward-looking rate case – as required by the SFRs – and
an historic test year paradigm where investments are known and measurable. The question asked
the Company to provide any document the Company relies on that defines what is known and measurable
and is required in the form of supporting documentation for a capital addition to be included in the projected plant additions during the interim period. This question posed by the
OCC is an oxymoron. By definition, a projected plant addition cannot be known and measurable,
for it occurs in the future. The Company responded to this question in good faith by explaining
how it creates plans for its projected plant additions. The Company’s good faith response to this
flawed question became a key part of the Authority’s basis for disallowance.

Overall, the Company provided ample support for its plant additions in good faith
consistent with the SFRs and past orders. To the extent the Authority plans to change these
standards, it should do so in a separate adjudicatory process, not after the evidentiary record in this proceeding has closed based on logically flawed discovery questions issued by the OCC.  See Conn. Gen. Stat. §§4-168 et seq.; see also, e.g., UI In. Br. a 41-42, 64-67; UI Reply Br. at 85-91; Exh. UIR-RRP-1; Exh. UI-CJE-REBUTAL-1; OCC-157; OCC-309 through 317; OCC-193; LFE-001; LFE-001 Att. 2; LFE-017; Sch. F; see generally RSR-88; RSR-0002 UI Att 1; RSR-0003 UI Att. 1, RSR-0003 UI Att. 2; RSR-0001 UI Att. 1; RSR-90; RSR-26; RSR-4; Tr. 2/22/23, at 738, 742-43.

3. **Accumulated Depreciation**

The Draft Decision reduces the depreciation reserve by $18.993 million associated with its disallowance of plant additions, including disallowances of $4.158 million and $14.835 million for the Interim Period and the Rate Year 2023/2024, respectively. (Draft Decision at 21). The Draft Decision states that it “calculated this adjustment in a similar manner to how it calculated the adjustment to net plant.” (Draft Decision at 21).

Under Conn. Gen. Stat. § 16-19e(a)(4), PURA has an obligation to determine that the level and structure of rates is sufficient, but no more than sufficient, to allow public service companies to cover their operating costs including, but not limited to, appropriate staffing levels, and capital costs, to attract needed capital and to maintain their financial integrity, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable. With respect to the exclusion of post-test year additions and its projection of accumulated depreciation, the Draft Decision failed to apply this standard by manipulating the computation of rate base to artificially reduce the rate base balance and depriving the Company of its fair and reasonable return of capital invested for utility purposes. The Draft Decision’s disparate treatment of interrelated components of rate base is arbitrary and capricious and an abuse of discretion prejudicing the Company’s substantial rights. See, e.g., UI In. Br. at 211-216; UI Reply Br. at 147-151; Exhs. UI-LEK/AN-
4. **Cash Working Capital**

The Draft Decision reduces the cash working capital (“CWC”) included in the Company’s proposed average rate base by $18.025 million, providing for a reduced CWC allowance of $4.381 million. This conclusion violates Conn. Gen. Stat. § 16-19e(a)(4), which requires the Authority to determine that the level and structure of rates is sufficient, but no more than sufficient, to allow public service companies to cover their operating costs including, but not limited to, appropriate staffing levels, and capital costs, to attract needed capital and to maintain their financial integrity, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable. The Draft Decision fails to apply this standard in its computation of CWC to artificially reduce the rate base balance and deprives the Company of a fair and reasonable return. The Draft Decision makes two erroneous adjustments to the CWC allowance:

First, the Draft Decision disallows the use of the Company’s updated CWC allowance, which increased the CWC balance by $991,000, for an updated average balance of $17.598 million (see LFE-1, Att. 1; Sch. B-4.0). This change was due to revenue requirement adjustments, which led to “flow-through” effects to the Company’s CWC (LFE-1). The Draft Decision rejects this update ostensibly because certain other exhibits “were not updated” to reflect these flow-through changes. (Draft Decision at 22-23). However, this is an arbitrary and erroneous determination, in that the Company provided all of the information needed to validate the CWC amount. (LFE-1).

Second, and more significantly, the Draft Decision arbitrarily and erroneously rejects PURA’s long-established standard that allows the inclusion of non-cash items (such as
depreciation, amortization, and deferred taxes) in the CWC allowance. (Draft Decision at 23). The Draft Decision provides no reasoned analysis for departing from PURA’s own past practice, ignores the Company’s evidence that was based on this past practice, and summarily concludes that it “finds the OCC’s testimony to be credible.” (Draft Decision at 23). In one short paragraph, and without reasoned explanation, the Draft Decision rejects PURA’s long-established standard that allowed the inclusion of non-cash items in the CWC allowance in UI’s 2016 Rate Case, as well as Docket No. 03-07-02, Application of the Connecticut Light and Power Company to Amend its Rate Schedules, December 17, 2003, at 44; Docket No. 14-05-06, Application of The Connecticut Light and Power Company to Amend Rate Schedules, Dec. 17, 2014; 2016 Rate Case, at 23-24, Order No. 19; Docket No. 13-01-19, Application of the United Illuminating Company to Increase Rates and Charges, August 14, 2013, at 17-19; among others. The exclusion of the non-cash items reduces the beginning CWC balance by $15.697 million and reduces the ending CWC balance by $13.876 million to reflect disallowance of these items. (Draft Decision, at 23).

In Connecticut, PURA-jurisdictional utilities have historically been authorized to apply an expense to non-cash items such as depreciation, deferred taxes, and amortization expense (UI Reply Brief, at 101; Exh. UI-MJA-REBUTTAL-1, at 4-6; see Docket No. 14-05-06 (finding that “when the expenses reduce rate base, the Company is deprived of the return that investment in rate base affords”). The Company calculated its CWC in a manner consistent with prior Authority decisions (UI Reply Brief, at 101-102; see Exh. UI-MJA-REBUTTAL-1, at 5-11).38

The OCC testimony cited in the Draft Decision made the same argument OCC has advanced in past rate cases, which is that “because depreciation is a non-cash item, it does not

belong in cash working capital”\textsuperscript{39} and that “depreciation does not require an outlay of cash, there
is no timing gap and no need for additional funds.”\textsuperscript{40} Again, UI clarifies that depreciation expense
is not being recovered via the cash working capital allowance (UI Reply Brief, at 102; \textit{see} Exh. UI-MJA-REBUTTAL-1, at 10). It is the timing difference that, by appropriately including
depreciation in the cash working capital determination, allows investors the opportunity to be fully
and fairly compensated for investment in utility assets from the time cash is expended until the
time cash is recovered from customers (\textit{id.}). PURA has consistently allowed for the inclusion of
depreciation in cash working capital studies, and there is no evidence in the record that this
approach is flawed (Exh. UI-MJA-REBUTTAL-1, at 2-11). Additionally, PURA-jurisdictional
utilities have historically been authorized to apply an expense lead to non-cash items (UI In. Br. at
74-75; UI Reply Br. at 100-101; Exh. UI-MJA-1, at 9-15; UI-MJA-REBUTTAL-1, at 3-5).

Reasoned consistency in the rate-setting process dictates that like cases and filings should
be treated alike, and that changes from past policies and decisions should be accompanied by a
“reasoned analysis for departing” from established policies. \textit{See Germain v. Town of Manchester},
135 Conn. App. 202, 213-14 (2012). This standard indicates that “prior policies and standards are
being \textit{deliberately changed, and not casually ignored}, so that the agency’s path may be \textit{reasonably
discerned}.” \textit{Id.} Here, the Company followed the same approach used in years prior to establish
and prove its CWC through its lead-lag study and inclusion of non-cash items, such as deferred
taxes, amortization expense, and depreciation (UI. In. Br. at 74-75; UI Reply Br. at 100; Exh. UI-
MJA-1; UI-MJA-REBUTTAL-1, at 10-11).

The Draft Decision wholly ignores PURA’s precedent and provides no reasoned analysis
for its rejection of this precedent. As PURA has consistently allowed for the inclusion of

\textsuperscript{39} Schultz/Defever Testimony, p. 15, lines 20-21.

\textsuperscript{40} Schultz/Defever Testimony, p. 16.
depreciation in cash working capital studies and the Authority’s precedent for including certain non-cash items in the determination of the utilities’ working capital requirements is logical, sound, and consistent with that of other regulatory agencies, the Draft Decision fails to provide a “reasoned analysis for departing” from the well-established precedent that has been set in Connecticut. See Germain v. Town of Manchester, 135 Conn. App. 202, 213-14 (2012).

The Draft Decision is a clear deviation from established precedent in disallowing the inclusion of non-cash items in the Company’s cash working capital, and as such is arbitrary and capricious. See, e.g., UI Reply Br. at 100-103; UI In. Br. at 74-75; Exh. UI-MJA-1; UI-MJA-REBUTTAL-1, at 1-11; OCC-85; OCC-198; OCC-199; OCC-202; Docket No. 14-05-06, Application of The Connecticut Light and Power Company to Amend Rate Schedules, Dec. 17, 2014; 2016 Rate Case, at 23-24, Order No. 19; Docket No. 13-01-19, Application of the United Illuminating Company to Increase Rates and Charges, August 14, 2013, at 17-19; Germain v. Town of Manchester, 135 Conn. App. 202, 213-14 (2012).

5. Recovery of Deferred Assets

The Connecticut Supreme Court has previously determined that:

A regulatory asset is a liability of a utility ratepayers. Utility companies may incur large expenses in various ways—storm damages, installation of new facilities, increased taxes and so forth. These expenses, if passed immediately on to ratepayers, could create havoc. An immediate recovery of such expenses could cause sudden upward increases in rates, commonly termed ‘rate shock.’ In order to avoid rate shock, [public utility] commissions often will permit utility companies to recover their expenses from ratepayers on a deferred basis, listing the ratepayers' debt as a ‘regulatory asset.’ A regulatory asset is, therefore, a future debt of the ratepayers that can be passed on, together with interest, to the ratepayers.


41 Exh. UI-MJA-REBUTTAL-1, at 2-11.
This is not to say that amounts that are deferred are automatically recoverable simply because PURA’s ratemaking procedures and determinations allow for that deferral. Id. at 598. However, the Connecticut courts have concluded that it is “not necessary to pigeonhole or separate the analysis of a regulatory asset from that of deferred charges.” Thus, where PURA concludes that a utility must hold onto cost responsibilities for future amortization over a multi-year period, a “book value” is created that has to be considered in a later rate case. Id. at 590. In fact, the “very purpose of allowing a deferred expense is to provide an opportunity for recovery in a “future” rate proceeding.” Id. at 601. In addition, the Court has noted that:

In the absence of any more specific standards, we must conclude that the creation of a regulatory asset—or, in the department's parlance, a deferred expense—is governed by Statement No. 71, while the recovery of a regulatory asset in a rate proceeding is a matter within the department's discretion as limited by the considerations set forth in § 16–19e (a)(4). … Thus, a regulatory asset has been created when the department, at the time of the original deferral, gave reasonable assurances that recovery of the expense would be allowed at some future date. Id. at 601, citing, B. Jarnigan, Financial Accounting Standards—Explanation and Analysis (18th Ed.1996), at p. 1287 (company may record regulated asset when it is probable that revenues will be recovered equal to costs that are capitalized); and rate recovery ultimately may be allowed when the department has determined that the requirements of § 16–19e (a)(4) and (5) have been met.

a) **Pension Cost Recovery**

The Draft Decision disallows $6.928 million of the Company’s regulatory asset for previously capitalized non-service pension costs allegedly because non-service pension costs were no longer allowed to be capitalized after UI’s compulsory adoption of The Accounting Standards Update 2017-07, Compensation—Retirement Benefits (Topic 715): Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost (ASU 2017-07) in 2018, which is permanent change. The disallowance is arbitrary and capricious and unsupported by evidence. In addition, the Authority also made no adjustment to the Company’s proposed OPEB
deferral in precisely the same circumstance that is in a liability position, creating an asymmetric and arbitrary result.

As described in the Direct Testimony of the Revenue Requirement Panel, at 39, the Financial Accounting Standards Board (“FASB”) amended Accounting Standards Codification (“ASC”) Topic 715 (“ASC 715”) in March 2017. Prior to the FASB’s revision to ASC 715 in March 2017, non-service pension and OPEB costs were capitalizable. Following the FASB’s revision to ASC 715 in March 2017, non-service pension and OPEB costs were no longer capitalizable. (Exh. UI-RRP-1, at 39). Accordingly, all else equal, FASB’s revision to ASC 715 resulted in an increase in the Company’s pension and OPEB expense because amounts that could previously be capitalized were now required to flow through as a direct expense. Accordingly, the Company requested, and PURA approved in 2018, a regulatory asset to recover this meaningful increase in cost that resulted from factors outside the Company’s control. Docket No. 16-06-04, Letter Ruling on Motion No. 44 (May 17, 2018); see also Docket Nos. 16-06-04RE01 and 18-01-15, PURA Review of Rate Adjustments Related to the Federal Tax Cuts and Jobs Act, et al. (Jan. 23, 2019) at 11 (“The Authority directs UI to establish a regulatory liability to account for this difference in income tax expense and propose a method of returning such amount to customers in its next rate case filing. Such regulatory liability shall accrue carrying costs calculated at UI’s WACC”).

Specifically, in response to the Company’s Motion No. 44 in Docket No. 16-06-04, the Authority found as follows:

The Authority has established such regulatory asset accounts in the past, such as in the Decision dated March 14, 2007 in Docket No. 06-03-04PH01, Application of Connecticut Natural Gas Corporation for a Rate Increase – Revenue Requirement. The Authority approves the establishment of a pension regulatory asset due to a change in pension accounting requirements for UI. The Authority will, in Docket No. 16-06-04RE01, take up this issue and reconcile the amount of pension expense in this account to assure that
amounts capitalized in rate base and amounts expensed follow proper accounting procedures.

Despite this ruling, the Draft Decision arbitrarily changes the rules after the fact. Specifically, for the first time, the Draft Decision indicates that the Company was only allowed to defer amounts incurred during the course of the rate plan established in Docket No. 16-06-04 (i.e., the Company’s most recently completed base distribution rate case). The Draft Decision further indicates that the Company was not allowed to defer amounts incurred after the conclusion of the rate plan in Docket No. 16-06-04. This limitation was not discussed, identified, or communicated in any way prior to the Draft Decision. In fact, the Company’s Motion No. 44 specifically noted that “[a]llowing the Company to track and defer these costs until its next rate case will align the regulatory treatment of pension service cost expenses pursuant to ASC 715 that was approved for The Southern Connecticut Gas Company in Docket No. 17-05-42.” (emphasis added). As quoted above, the Authority held that it “approves the establishment of a pension regulatory asset.” The Draft Decision’s sudden, unannounced, and erratic departure from PURA’s previous rulings should be corrected.

Even if the Draft Decision’s conclusion on this matter were not precedentially dubious, it is neither logical nor supported by evidence. UI’s current base distribution rates were set, as the Draft Decision notes, in Docket No. 16-06-04. That rate proceeding occurred prior to the change in ASC 715. Therefore, considering the hypothetical scenario where UI’s non-service pension and OPEB costs are $100, and its capitalization rate were 30 percent, the amount reflected in UI’s base distribution rates following the end of its rate plan would be $70 (because UI’s rates today reflect the assumption that non-service pension and OPEB costs are eligible to be capitalized). However, the amount UI actually incurs in non-service pension and OPEB costs would be $100 (because of
the change in ASC 715). UI has no mechanism, outside of the regulatory asset in question here, to recoup the $30 increase (i.e., $100 minus $70).

Contrary to the “bald assertions” contained in the Draft Decision, the incremental $30 in expense is not in rate base. As the Authority should be aware, the rate base used to set the Company’s rates is “frozen” at the last value approved in a rate plan, until such value is adjusted again in the Company’s next rate case. As a result, the Company is not earning either a return on or of the incremental $30 in any year following the end of its last rate plan. Therefore, the Draft Decision’s disallowances of $6.928 million of the Company’s regulatory asset is confiscatory, arbitrary and capricious and should be corrected.

Beyond the flawed reasoning for disallowance of the pension regulatory asset, a most troubling aspect of the pension regulatory asset disallowance proposed in the Draft Decision is the apparent ruling that authorization to defer costs as regulatory assets or liabilities expires at the end of the rate years in the last rate case. This assertion in the Draft Decision overturns years of regulatory precedent in Connecticut, on which the Company has relied when it made decisions, including decisions about when it is necessary to file a rate case. Had the Company known that the authorization for regulatory deferrals had a certain expiration date, it could have acted to obtain regulatory approval to recover those costs. Now, to the detriment of the Company, the Draft Decision proclaims retroactively that the deferral of non-pension cost incurred after 2019 (i.e., the final rate year established in Docket No. 16-06-04) was not authorized, leaving the Company with no opportunity to recover these costs. The Draft Decision unlawfully changes the rules without notice, and therefore fails to allow just and reasonable rates. Conn. Gen. Stat. § 16-19e(a)(4). See also, e.g., UI In. Br. at 179-180; Exh. UI-RRP-1, at 39; RRU-0063 Att. 1; RRU-0270; OCC-0066; OCC-0067; RRU-0063; LFE-001 UI Att. 1; Sch. WP C-3.30.
b) COVID Deferral

The Draft Decision finds that the Company’s proposed COVID regulatory asset of $6.979 million is overstated by $0.827 million in carrying charges and $1.077 million in costs incurred from April 1, 2022, through June 30, 2022, and therefore decreases the deferred expense by $1.904 million. (Draft Decision at 26-27). The Draft Decision’s treatment of the COVID deferral is arbitrary, capricious and unlawful under Conn. Gen. Stat. § 16-19e(a)(4) for several reasons.

First, the Draft Decision imposes a double-standard and is inconsistent with PURA’s recent draft decision in Docket No. 23-01-04 (“2023 RAM Docket”). The period of time eligible for the COVID deferral used in the Draft Decision (i.e., the COVID deferral ended April 2022) differs from the period of time used by the Authority in its July 14, 2023 draft decision in the RAM Docket. In that docket, the Authority’s draft decision reduced the Company’s requested amount of GSC uncollectible expense for uncollectibles covering the entirety of 2022 (i.e., implying the COVID deferral covers all of 2022), rather than ending in April 2022 as was stated explicitly in the Draft Decision. This is an obvious error that must be corrected.

Second, the Draft Decision at page 28 applies a flawed analysis in correlating the 180-day arrears benchmark that relates only to active hardship charge-offs, to the write-off of non-hardship write-offs. The Draft Decision holds, in effect, that 180 days after the non-hardship disconnect moratorium was lifted in October 2021 (i.e., March 31, 2022) all COVID-era non-hardship arrears should have been resolved. However, the reliance on a cut-off date of March 31, 2022 is flawed. There is no connection whatsoever between the 180-day past-due threshold for active hardship charge-offs and the write-off of non-hardship arrears (Tr. 2/27/2023 at 1427; EOE-137). Non-hardship write-offs occur only after service to the customer has been terminated, which can result if the customer moves out, or if the customer is terminated for non-payment (LFE-052 UI Revised). In addition, the Authority permitted service terminations to recommence in late October 2021. To
the extent the Authority believes that 180 days of service terminations was sufficient for the Company to resolve its non-hardship COVID arrearage, the 180 days for the Company is late April 2022.42

Lastly, in disallowing the COVID Deferral from rate base and disallowing carrying charges, the Draft Decision fails to set a level of rates that is just and reasonable, and sufficient to recover the Company’s operating costs in accordance with Conn. Gen. Stat. § 16-19e(a)(4). The Draft Decision imposes an unreasonable burden on the Company in failing to allow recovery of the full financial cost UI incurred to provide utility service during the COVID pandemic, in accordance with the Authority’s directives. The Company did not cause the pandemic, and its actions with regard to customer arrearages during the pandemic were directed in large part by the Authority. To deny the Company any recovery of the financial costs incurred is arbitrary, capricious, and confiscatory.

Continuing to include the $1.077 million in costs incurred from April 1, 2022, through June 30, 2022, rather than removing such costs as was proposed in the Draft Decision, increases the amount of forward-looking carrying costs attributable to the COVID deferral by $0.092 million, from the $0.555 million reflected in the Draft Decision (Draft Decision, at 184) to $0.647 million. The corresponding annual amortization therefore should increase from the $2.342 million included in the Draft Decision (Draft Decision, at 184) to $2.732 million, as reflected in the table below.

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<tr>
<td>Plus: Apr. – June ’22 Deferrals</td>
<td>$1.077</td>
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<td>Plus: Carrying Costs</td>
<td>$0.647</td>
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<th>Value ($M)</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjusted COVID Deferral</td>
<td>$8.194</td>
<td></td>
</tr>
<tr>
<td>Annual Amortization (3 Year Period)</td>
<td>$2.731</td>
<td></td>
</tr>
</tbody>
</table>

See also, e.g., UI In. Br. at 182-183; RRU-0417; RRU-0062 Att. 1; CAE-0094; RRU-0179; EOE-0266; Sch. WP C-3.30; UI-RRP-1, at 40.

c) CAM GET Deferral

The Draft Decision finds that the Company’s proposed adjustment to the CAM GET regulatory liability is understated by $0.772 million and decreases the deferred expense by this amount. (Draft Decision at 30). Although the Company does not object to the Draft Decision’s adjustment to project the balance of the CAM GET deferral, it strongly objects to the Draft Decision’s failure to equitably apply its carrying charge adjustment to this regulatory liability. Specifically, the Draft Decision removes historically recorded carrying charges on all of the Company’s regulatory assets (see, for example, Draft Decision at page 40). Conversely, the Draft Decision does not remove the historically recorded carrying charges on the Company’s CAM GET regulatory liability, which is arbitrary and capricious. There is no theoretical justification for accepting historically recorded carrying charges on regulatory liabilities (which work in customers’ favor) but not on regulatory assets (which work in the Company’s favor).

The $3.607 million CAM GET liability in the Draft Decision includes carrying charge “credits” of $0.408 million. The Company, relying on the long-standing Authority practice to recognize carrying charges on permitted regulatory deferrals, included carrying costs in the calculation of the CAM GET deferral ordered by the Authority in Docket No. 20-02-01. As is the case with other regulatory assets and liabilities at issue in this proceeding, the direction to establish a regulatory liability for the CAM GET did not specifically direct the Company to accrue carrying costs on the regulatory liability. See Docket No. 20-02-01, Mar. 16, 2020 Letter from J. Gaudiosi,
If the Authority implements a policy to disallow carrying costs for regulatory assets absent specific authorization, it is asymmetric and arbitrary to require the Company to accrue carrying costs on regulatory liabilities absent a specific directive. Therefore, in this circumstance, the $3.607 million liability should be reduced by $0.408 million (see RRU-179 Att. 8; EOE-186).

d) Loss on the Sale of Bridgeport Avenue

The Draft Decision finds that the Company failed to justify and demonstrate the ratepayer benefits of the sale of the Bridgeport Avenue property and therefore disallows the Company’s requested regulatory asset of $15.583 million. (Draft Decision at 30). The Draft Decision asserts that the Company did not properly allocate the loss between UI’s transmission and distribution segment during the period it was in service; and that the Company failed to submit sufficient evidence demonstrating that ratepayer savings materialized as a result of the Bridgeport Avenue sale. (Draft Decision at 30). The Draft Decision also denies recovery of carrying costs on the regulatory asset, stating that a portion of the carrying charges are allocatable to transmission plant and that PURA did not authorize the Company to track and recover carry charges with respect to distribution plant. (Draft Decision at 34-35).

Contrary to the Draft Decision, UI provided evidence clearly demonstrating that the sale of Bridgeport Avenue at a loss was unequivocally an integral part of the lowest cost option for consolidating its operations in the Central Facility project. The Company’s initial brief at pages 169-179 and its reply brief at pages 26-36 present this evidence in detail, from the origins of the Central Facility strategy in 2002 to the Authority’s approval in 2018 of the Bridgeport Avenue sale. Throughout this time period the Company supported its decision-making process with contemporaneous cost analysis that was provided to PURA in dockets between 2008 – 2013, showing substantial customer savings in the consolidation strategy, including an anticipated loss on the sale of Bridgeport Avenue (see, e.g., LFE-028; OCC-0163; Tr. 2/23/23 at 918-19, 922
(explaining the Company’s plan from inception was to consider a net present value benefit to customers whatever was to come of 801 Bridgeport Avenue); see also 2005 UI Rate Case, at 19-22 ("Because the sale of the ESWC is an integral part of the Central Facility plan, at the time of the actual sale, the Department will review the entire sale transaction, as is the case in any land sale, and allow UI to establish a regulatory asset at that time for the actual amount of loss on sale"); 2008 UI Rate Case, at 79). In 2018, PURA approved the sale at a loss, as anticipated, finding that the proposed sale price of $6,600,000 represented fair market value (Exh. UI-RRP-REBUTTAL-1, at 34; OCC-0178 Rev.). Docket No. 17-10-40, at 6. As explained below, the Company’s current cost analysis provided in this rate case continues to demonstrate that the Central Facility plan, including the sale of Bridgeport Avenue, is the lowest cost option and has generated substantial cost savings and operational benefits for customers.

The Draft Decision’s contrary conclusions violate Conn. Gen. Stat. § 16-19e(a)(4) in that it fails to allow a level and structure of rates that is sufficient to allow UI to cover its operating costs including, but not limited to, appropriate staffing levels, and capital costs, to attract needed capital and to maintain its financial integrity, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable. The Draft Decision’s treatment of this regulatory asset, juxtaposed with the Authority’s prior rulings related to the Central Facility and approving the Bridgeport Avenue sale at this precise loss in 2018, reflect an arbitrary and capricious determination and an abuse of discretion prejudicing the Company’s substantial rights.

The conclusions in the Draft Decision contain several material errors. First, the Draft Decision applies the incorrect allocator to identify the amount of the regulatory asset attributable to the transmission segment. The Draft Decision states on page 32:

As an initial matter, although the Bridgeport Avenue property was used by UI’s transmission and distribution segment during the period it was in service, the Company did not allocate any portion of the loss to the transmission segment. Tr.,
Feb. 23, 2023, 904:9-19. Indeed, all Company application materials and information provided in interrogatory and late filed exhibit requests account for the Bridgeport Avenue property solely as distribution property. Interrog. Resp. EOE-165; Interrog. Resp. EOE-99. When the Authority requested the Company account for the transmission related portion of the Bridgeport Avenue property, the Company provided a transmission allocator of 17.72%, which is the Company’s transmission wage allocator for this rate case. Late Filed Ex. 27. However, given that the property was in rate base as plant-in-service, the appropriate allocator is actually 34.44% (Application, Sch. C-2.2A), which is the established transmission plant allocator. Applying the appropriate transmission plant allocator to the $10,155,205 loss results in an allocation of $3,497,453 to transmission plant and $6,657,752 to distribution plant. Consequently, the Authority denies recovery of $3,497,453 as it is allocable to transmission plant.

(emphasis added).

The Draft Decision’s use of the transmission plant allocator of 34.44 percent is incorrect. In fact, the appropriate allocator is the wage allocation factor of 17.72 percent, as shown in LFE-027. The property at 801 Bridgeport Avenue is considered general plant in FERC account 390, Structure and Improvements. General plant is allocated to Transmission and Distribution via the wage allocation factor of 17.72 percent, per UI’s FERC-approved formula rate tariff. Based on the 17.72 percent wage allocation factor, the principal amount attributable to transmission would be $1.799 million and the principal amount attributable UI-Distribution is $8.356 million, not $6.657 million as shown in the Draft Decision.

Second, the Draft Decision questions certain data provided by the Company in support of its case that the sale of Bridgeport Avenue at a loss was part of the lowest cost option for consolidation of the Company’s operations. The Draft Decision states on page 33 at footnote 19:

The Company subsequently supplemented Late Filed Ex. 29, which it asserts provides supporting workpapers for two specific cost categories (parking and facility lease expense), which were included in the Central Facility NPV analysis. These amounts were provided as schedules from previous rate cases, but it is unclear how these amounts relate to the assumptions included in the NPVs.

In fact, LFE-029 UI Attachment 2 showed O&M amounts for the Central Facility versus the alternatives of Status Quo Plus and De-centralized Alternative in the range of around $3 to $4
million dollars, once the Central Facility was forecast to be utilized in 2013. The LFE-029 Supplement in this proceeding demonstrates that actual cost savings realized are much greater than was forecast/anticipated prior to the Central Facility being utilized mid-2012. In particular, the Company’s evidence showed that three items, which total approximately $11 million of annual savings, provided benefits to UI customers following the utilization of the Central Facility buildings in mid-2012:

1. LFE-029 UI Supplemental Attachment 2. Connecticut Financial Center (CFC) per diem parking costs of $178 thousand annually was demonstrated to be saved in Docket No. 13-01-19. [reference excel tab named DN 13-01-19 WP C-3.23 back up cell I977].

2. LFE-029 UI Supplemental Attachment 3. Rent Credits for the Central Facility buildings are currently submitted as $3.797 million in Rate Year 1 of this proceeding [reference Schedule WP C-3.01 Rent Credits on lines 15, 16].

3. LFE-029 UI Supplemental Attachment 3. Rent Expense decreases or eliminated. [reference tab DN 13-10-19 C-3.21 A-B, lines 15, 31, 33, and 34]. The following table summarizes the rent expense savings:
<table>
<thead>
<tr>
<th>Schedule WP C-3.21 A-B Savings Summary</th>
<th>Amount</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>UI CFC Rent Expense</td>
<td>6,534</td>
<td>(1)</td>
</tr>
<tr>
<td>UI D portion of UIL IT Work Center Rent</td>
<td>283</td>
<td>(2)</td>
</tr>
<tr>
<td>Middletown Avenue Work Center Lease</td>
<td>213</td>
<td>(3)</td>
</tr>
<tr>
<td>Armstrong Park Lease</td>
<td>146</td>
<td>(4)</td>
</tr>
<tr>
<td><strong>Total Rent Expense Savings</strong></td>
<td><strong>7,176</strong></td>
<td></td>
</tr>
</tbody>
</table>

Notes:

(1) Reflects the removal of UI Distribution rent expense associated with the UI Connecticut Financial Center lease, which expired at the end of June 2012.

(2) UI D portion of Information Technology Work Center (located at 60 Parrott Drive, Shelton) lease, which ends February 14, 2014 and is allocated to the UIL Operating Companies using the Remaining UIL Allocation Factor.

(3) Rent expense removal associated with the Middletown Avenue (located in North Haven) lease which ended April 14, 2012.


Overall, the fact that the Company’s Central Facility plan, inclusive of the loss on the sale of Bridgeport Avenue, generated savings for customers and was the lowest cost option for consolidation of operation is not a close call. The Company produced contemporaneous financial analyses that supported this conclusion (LFE-029 Supp.), and no party submitted any evidence to the contrary. PURA dismissed the contemporaneous analysis UI provided in this case demonstrating customer benefit as a result of the sale of Bridgeport Avenue. The assertion in the Draft Decision that UI “failed to submit sufficient evidence in the record demonstrating that ratepayer savings materialized as a result of the Bridgeport Avenue sale” ignores LFE-29, which shows unequivocally that the project produced a total of approximately $11 million of annual savings in just three cost areas. Instead, PURA wrongly limits analyses to prior information from 2013. The Draft Decision fails to properly assess the weight of evidence and results in an arbitrary and unreasonable disallowance of this regulatory asset. (See, e.g., UI In. Br., at 169-179; Sch. WP C-3.30; LFE-001, Schedule WP C-3.30; LFE-028; LFE-028 UI Att. 2; LFE-029 Supp.; LFE-029...
Lastly, the Draft Decision unreasonably disallows carrying charges on the regulatory asset while simultaneously applying carrying charges to regulatory liabilities. Proposed Draft Decision, at 34-35). The Company’s brief and reply brief supported the basis for accruing carrying charges on Bridgeport Avenue. (UI In. Br. at 179-180; UI Reply Br. at 26-36).

See, e.g., UI In. Br., at 169-179; UI Reply Br. at 26-36; Sch. WP C-3.30; LFE-001, Schedule WP C-3.30; LFE-028; LFE-028 UI Att. 2; LFE-029 Supp.; LFE-029 UI Supp. Atts. 1 and 2; LFE-037; EOE-0165 UI Att. 1; LFE-036; Tr. 2/23/23 at 930-31; OCC-169; OCC-169 UI Att. 1; OCC-565; EOE-0099; Exh. UI-RRP-REBUTTAL-1, at 32-33, 40; OCC-0551; Docket No. 05-06-04, Application of the United Illuminating Company to Increase its Rates and Charges (Jan. 27, 2006) (“2005 Rate Case”). Docket No. 08-07-04, Application of the United Illuminating Company to Increase its Rates and Charges (Feb. 4, 2009) (“2008 Rate Case”); Docket No. 17-10-40, The United Illuminating Company Application for Approval to Sell Improved Land at 801 Bridgeport Ave., Shelton, CT (Jan. 10, 2018), at 2; Docket No. 11-08-08, Application of The United Illuminating Company for Approval of the Sale of Improved Real Property Located at 801 Bridgeport Avenue, Shelton, Connecticut (Nov. 16, 2011), at 2).

e) Deferred Storm Costs

The Draft Decision fails to establish just and reasonable rates as required by Conn. Gen. Stat. § 16-19e(a)(4), in its disallowance of costs in the Company’s storm regulatory asset. The Company calculated its regulatory asset of $25.695 million to be amortized over five years. (Sch. B-1.0A; Exh. UI-RRP-1 at 49). The Draft Decision disallows $10.756 million of these costs attributable to Tropical Storm Isais “prudency,” “double recovery,” and carrying costs (Draft Decision at 36). The disallowance should be eliminated for several reasons.
First, the Draft Decision disallows $120,846 of costs from the storm regulatory asset for alleged imprudence in the Company’s response to Tropical Storm Isaias. “Based on the findings in the 20-08-03 Decision as summarized above, the Authority finds that it is improper for UI to recover from ratepayers the costs for all personnel and organizations responsible for meeting the standards of acceptable performance.” (Draft Decision at 37). However, the Authority made no finding in Docket No. 20-08-03 that UI was imprudent in its storm response, or that UI’s actions resulted in higher costs. The Draft Decision contains absolutely no analysis of the Company’s actions under a prudence standard or that its actions in Storm Isaias led to higher costs. The Draft Decision imposes the cost disallowance merely as an additional penalty, without support in the evidentiary record, notwithstanding the substantial penalties already assessed on the Company by PURA in prior dockets for the very same conduct.43 PURA provided no notice that it would re-examine the Company’s storm response in this rate case for the purpose of imposing additional penalties, in the form of cost disallowances.

In addition, the Draft Decision’s calculation of the $120,846 is arbitrary because it is based on the “costs incurred by responsible entities during the first 96 hours of storm restoration” throughout the Company’s service territory, although the alleged performance deficiencies were limited to the City of Bridgeport. (Draft Decision at 37). Bridgeport is one of 17 municipalities in the Company’s service territory. The Company does not record storm costs “by town” and PURA has never directed it to do so. This disallowance far exceeds the component of the time of UI personnel that would have been dedicated to Bridgeport. It is arbitrary and excessive. The $120,846 grossly overstates the costs attributable to Bridgeport, and in any event, there is not a

43 Docket No. 20-08-03, Investigation into Electric Distribution Companies’ Preparation for and Response to Tropical Storm Isaias (Storm Decision), at 2-3, Docket No. 20-08-03RE01, Order on Motion No. 2 (May 26, 2021), at 2. Docket No. 20-08-03RE01, PURA Consideration of Civil Penalty and Enforcement Action Against the Electric Distribution Companies After Storm Isaias Investigation, July 14, 2021 (“NOV Decision”) at 11-12
shred of evidence (or finding in Docket No. 20-08-03) that the Company’s alleged performance deficiencies contributed to higher restoration costs.

Next, the Draft Decision disallows $3.672 million of costs for alleged “double recovery” of vegetation management incurred in 2022 and during Tropical Storm Isaias. (Draft Decision at 38). The Draft Decision is based on questionable logic and proffers a new, arbitrary “standard,” which is “if the Company is allowed to benefit from the selection of certain expenses it incurs in the course of doing business as eligible for extraordinary recovery mechanisms, the Authority must be thoroughly convinced that the costs are entirely incremental to business as usual and are not currently charged to ratepayers.” (Draft Decision at 38) (emphasis added). The Draft Decision then asserts that “the Company’s vegetation management expenses it incurred in 2020 and during Tropical Storm Isaias and determines that UI’s vegetation management expenses incurred during Tropical Storm Isaias are not properly characterized as purely incremental costs,” because UI “under spent” the amount of funding allowed in rates for UPZ in 2020 by $3.672 million. (Draft Decision at 38). This is a flawed analysis because it looks at the year 2020 UPZ spend in isolation, rather than the UPZ spend over time. The record evidence shows that that UI spent $3.339 million more in vegetation management expenses in 2019, thus offsetting the underspend in 2020. Exh. UI-CJE-Rebuttal-1 at 12.

Lastly, the disallowance of carrying costs on the storm regulatory asset, in the amount of $6.963 million (Draft Decision at 40-41) is inconsistent with PURA’s approval of the storm regulatory asset in prior rate cases. Docket No. 08-07-04, Application of The United Illuminating Company to Increase Its Rates and Charges, February 4, 2009 Final Decision, at 66; 2013 Rate Case Decision, at 35; 2016 Rate Case Decision, at 111-112. The Draft Decision asserts that “when the Authority established the storm regulatory asset, PURA never explicitly authorized allowances for carrying costs for a regulatory asset prior to a prudency determination. Decision, Feb. 4, 2009,
Docket No. 08-07-04, Application of the United Illuminating Company to Increase its Rates and Charges, p. 66; 2013 Rate Case Decision, pp. 33-34.” (Draft Decision at 40). However, the Company’s accrual of carrying charges on deferred storm costs is consistent with the Authority’s December 14, 2016 final decision in Docket 16-06-04, at page 132, where the Authority authorized the inclusion of storm reserves in rate base. Including a regulatory asset or liability in rate base effectively allows the Company to earn carrying costs on the underlying balance. Similarly, on page 14 of PURA’s August 13, 2013 final decision in Docket No. 13-01-19, PURA concluded that it was appropriate to include carrying charges at the Company’s approved cost of capital on unamortized enhanced tree trimming expenditures. Further, on page 35 of that decision, PURA allowed the Company to record carrying costs on amounts related to the elimination of the competitive transition assessment (“CTA”) (which was used to offset storm costs) to “make the Company whole for” timing differences (see also ODR-04; OCC-0577).

See, e.g., Sch. B-1.0A; SFR Schedule B-8.0; Sch. WP C-3.30; Exh. UI-RRP-1 at 49; RRU-0179; RRU-0179 UI Att. 5 at 111; RRU-0180; OCC-0077 UI Att. 1; RRU-0260, RRU-0426, RRU-0426 Supp., OCC-0159 UI Att. 1, and OCC-0577 (ODR-08, ODR-04); OCC-0214; AG-0001, OCC-0077, OCC-0160, OCC-0196, OCC-0196 Supp., RRU-0180, RRU-0185, RSR-0063 – 0069.

44 In addition, the Draft Decision’s computation of the going-forward carrying costs applicable to the Company’s storm regulatory asset appear to reflect a mathematical error. Specifically, the Draft Decision calculates carrying charges on the storm cost deferral of $1.279 million (Draft Decision, at 183). However, the correct amount of carrying charges on the storm cost deferral is $2.136 million, not $1.279 million, even after reflecting the various reductions to the storm cost deferral identified in the Draft Decision (which the Company disputes). After reflecting the five-year amortization period, this difference results in a $171,000 difference in annual amortization expense. The Company was able to recreate the Draft Decision’s calculation of carrying charges on its pension and COVID regulatory assets. However, the same methodology that produced carrying charges of approximately $1.129 million and $0.555 million for the pension and COVID regulatory assets, respectively, results in carrying charges of approximately $2.136 million for the storm regulatory asset. For example, the Draft Decision’s calculation of carrying charges on the pension regulatory asset. The pension regulatory asset approved in the Draft Decision is $7.898 million with a five-year amortization period, and it generated $1.129 million in carrying charges. The storm regulatory asset approved in the Draft Decision is $14.940 million, or nearly twice the value of the pension regulatory asset. Despite this difference, the carrying charges on the storm cost deferral reflected in the Draft Decision are just $1.279 million, or only slightly more than the carrying charges reflected on the pension cost deferral. This is not logical and should be corrected.
EOE-0162, EOE-0204, EOE-0269; OCC-0536; Docket No. 20-08-03, Investigation into Electric Distribution Companies’ Preparation for and Response to Tropical Storm Isaia (Storm Decision), at 2-3, Docket No. 20-08-03RE01, Order on Motion No. 2 (May 26, 2021), at 2. Docket No. 20-08-03RE01, PURA Consideration of Civil Penalty and Enforcement Action Against the Electric Distribution Companies After Storm Isaia Investigation, July 14, 2021 (“NOV Decision”) at 11-12; Docket No. 08-07-04, Application of The United Illuminating Company to Increase Its Rates and Charges, February 4, 2009 Final Decision, at 66; 2013 Rate Case Decision, at 35; 2016 Rate Case Decision, at 111-112; see also Conn. Gen. Stat. § 16-19e(a)(4); Exh. UI-EPP-1, at 16-22.

f) Carrying Costs on Deferred Assets

The Draft Decision applies arbitrary and asymmetric treatment to carrying costs on regulatory assets, including disallowance of carrying costs on deferrals previously accepted by PURA in prior dockets, as discussed earlier. The Draft Decision states that “absent express permission from the Authority, expenses are not recoverable from ratepayers until they are deemed prudent and recovered through distribution rates; thus, it is inappropriate for carrying charges to accrue before a prudency determination.” (Draft Decision at 34).

However, the Draft Decision further asserts that there is a difference between a “deferral” and a “regulatory asset” with respect to accrual of carrying costs, but this is not correct. A regulatory deferral is a regulatory asset, which is a principle that the Connecticut Supreme Court has affirmed, finding the terms to be a distinction without a difference under applicable accounting standards. Office of Consumer Counsel v. Department of Public Utility Control, 279 Conn. 584, 601 (2006). In this case, the Court held, “[i]n the absence of any more specific standards, we must conclude that the creation of a regulatory asset—or, in the department's parlance, a deferred expense—is governed by Statement No. 71, while the recovery of a regulatory asset in a rate proceeding is a matter within the department's broad discretion as limited by the considerations set
forth in § 16–19e (a)(4).”  Id. (emphasis added). “Thus, a regulatory asset has been created when the department, at the time of the original deferral, gave reasonable assurances that recovery of the expense would be allowed at some future date.”  Id.

The Draft Decision unreasonably and arbitrarily prohibits the accrual of carrying costs on regulatory assets until after a prudence determination, which fails to account for the actual, unavoidable cost that the Company incurs in using its capital resources to support activities and functions for the benefit of customers, while customers pay back those funds over time (RRU-444). Utilities must fund day-to-day operations, and they also invest in a mix of long-term assets (such as property, plant, and equipment) and short-term assets (such as net working capital). From a corporate finance perspective, financing sources are commonly matched in duration to the service lives of the underlying assets, so that repayment obligations are matched to the income produced by the assets. In practice, however, it is not practicable to trace one source of financing (e.g., long-term or short-term debt) to individual assets (RRU-444). Rather, the utility’s overall capital structure (comprised of various financing sources and durations) supports its overall asset base (comprised of assets of various lives) (RRU-444).45

The applicable regulatory standard with regard to the carrying cost on regulatory assets is the fair return standard, as established by the U.S. Supreme Court in Hope and Bluefield. The principle of a fair return applies because the Company has committed capital to funding its deferred costs, and that commitment of capital warrants the opportunity to earn a reasonable return (RRU-444). Furthermore, for the Company to have the opportunity to earn a reasonable return, it must have the opportunity to recover its WACC (RRU-444; OCC-551). These principles should apply from the point that the deferral is creating because this is the point in time at which the Company

has committed its capital, not a future date when the Authority concludes a prudence determination, which could be years after the deferred asset is established. If the deferral is later determined to be imprudent and not allowable for recovery, this is the point at which the question of carrying charges would arise, which is not the case here. Here, the Authority has arbitrarily and unlawfully disallowed cost recovery without any finding of imprudence.

In addition, the Draft Decision arbitrarily and unreasonably requires the Company to credit customers with carrying costs on all regulatory liabilities but does not allow consistent treatment for accrual of carrying charges on all regulatory assets. For example, the Draft Decision disallows regulatory assets and/or carrying charges on regulatory assets on the pension deferral, COVID deferral, Bridgeport Avenue, storm costs, storm reserve, EV charging, and environmental remediation costs (Draft Decision at 25, 26, 30, 36, 48, 182).

For these reasons, the Draft Decision is unlawful in failing to provide just and reasonable rates at a level sufficient to cover the Company’s operating costs. Conn. Gen. Stat. § 16-19e(a)(4).

6. **Deferred Taxes**

The Draft Decision incorrectly reduces rate base by $10.5 million based on an inappropriate order to increase unprotected excess accumulated deferred income taxes (“EADIT”). The Draft Decision also omits an increase to rate base for the accumulated deferred income taxes (“ADIT”) on tax basis repairs deductions that would be foregone if the final decision preserves the disallowed plant recoveries included in this Draft Decision. These errors need to be fixed. Please also see Section II.D.16 of these Written Exceptions.

7. **Adjustments for FTE Reductions**

The Draft Decision reduces the Company’s proposed rate base by $2.452 million for “FTE Reduction Capitalization.” (Draft Decision at 19). The Draft Decision asserts that this adjustment relates to its proposed disallowance of a portion of UI’s incremental FTE request. (Draft Decision
at 108). However, the Authority already disallowed all rate year plant additions. (Draft Decision at 19-20). Adding this “FTE Reduction Capitalization” adjustment on top of that reduction means that the Draft Decision is removing the same capital twice. The result is arbitrary and fails to produce just and reasonable rates as required by Conn. Gen. Stat. §16-19e(a)(4) and the reduction should be eliminated in the Final Decision.

a) **Vacancy Rate**

On a related point regarding FTEs, the Company accepts the Draft Decision’s use of UI’s distribution headcount of 485 as of February 2023 (Draft Decision, at 111). However, the Draft Decision erroneously omits 36 vacant hiring positions as of February 2023 (Draft Decision, at 110; LFE-079).

As described in Exhibit UI-RRP-1, at 18-19, the Company’s approach, setting aside the incremental positions requested, was to: (1) begin with its actual headcount; (2) add to that value open positions in active recruitment; and (3) apply the 6.2% vacancy rate (which was approved in the Draft Decision, at 111-112) to that consolidated result. In contrast, the Draft Decision uses only UI’s actual headcount, with no adjustment for open positions in active recruitment. This change in approach is internally inconsistent in light of the Draft Decision’s explicit approval of the Company’s proposed vacancy rate of 6.2% (Draft Decision, at 111-112).

The Draft Decision should have begun with the Company’s distribution headcount of 485 as of February 2023, added 36 vacant in hiring positions, and applied the approved 6.2% vacancy rate to the combined result of 516 for an adjusted baseline FTE complement of 489, rather than the 485 currently reflected in the Draft Decision (Draft Decision, at 111).

8. **Municipal Dashboard**

In the Draft Decision, the Municipal Dashboard is excluded from rate base in the amount of $825,000 (see Table 1 at page 13), as the Authority declines to approve recovery as a capital
asset. On page 44, the Draft Decision states that the Municipal Dashboard costs are of an annual nature and should be recategorized and recovered as an operating expense. However, the Draft Decision makes an error in implementing this adjustment, in that the $825,000 in capital is removed twice from rate base, as shown in Rows 1 and 21 of Table 1, which is reproduced below:

![Table 1: Pro Forma 2023/2024 Average Rate Base ($000)](image)

The Municipal Dashboard project was included in OCC-157 as an ongoing program estimated at $1,175,204, with no actual plant additions shown in LFE 17. Therefore, this value was part of the Plant-In-Service adjustment of ($222,402) in Row 1 of Table 1, and also listed in Table 3 on page 20 of the Draft Decision. This adjustment should be reduced by $825,000 to correct the double counting. In other words, all else equal, the Draft Decision’s calculated rate base should increase $825,000. See, e.g., UI In. Br. at 148, 165-166; UI-EPP-1, at 23-25; Tr. 3/2/23, at 2004, 2050-52, 2110; LFE-093; RSR-0037.
9. **Light Duty EV Program Costs**

The Draft Decision unreasonably denies cost recovery – with prejudice – of the Company’s regulatory asset for the light duty EV charging program. The Draft Decision states that UI missed its opportunity to recover $334,166 in program expenditures through August 31, 2022 because the Authority “previously directed the Company to seek recovery of any accrued LD EV Program-related regulatory asset costs in its next base rate case proceeding (i.e., the instant case).” (Draft Decision at 47). There is no finding that the costs were unnecessary or imprudent. (See Draft Decision at 47-48).

In fact, the costs disallowed by the Draft Decision were necessary and prudent, and well documented, consistent with the Authority’s directives in Docket No. 17-12-03RE04, at 45-46 (LFE-126; CAE-54; Tr. 3/7/23 at 2713-2714). The Company identified these costs to the Authority during these proceedings and identified its intent to continue deferral until the next rate case, providing full transparency for the Authority. The costs were incurred in close proximity to the date of UI’s Application, making it impractical to include them in the filing. (Tr. 3/7/23 at 2716-2717). In preparation of a rate case, it is necessary to “snap a line” in advance of the filing date to enable the completion of SFR schedules and related exhibits to be provided in support of the filing. The tables on page 47 of the Draft Decision demonstrate the vast majority of light duty EV program costs were incurred in the last quarter of 2022. (LFE-126).

In Docket No. 21-08-06, **Annual Review Of The Electric Vehicle Charging Program – Year 1** (Nov. 30, 2011), the Authority stated at page 33 that the “burden of demonstrating prudently incurred costs to implement the EV Charging Program rests with Eversource and UI, not the Authority, or any other docket Participant.” The Authority further specified:
In an effort to set expectations for the EDCs to provide sufficiently detailed cost information and evidence to support the finding that all reasonable efforts were taken to minimize costs, the EDCs shall be required to present evidence during their next rate case proceeding to demonstrate the following: (1) all reasonable competitive procurement processes were held; (2) all existing internal resources were leveraged to the extent possible; (3) investments in new resources were selected with current and future investments, programs, and public policies in mind; and (4) unnecessary costs were avoided.

(Id.).

In this order, the Authority indicated specific filing requirements for the presentation of these costs for recovery that would take time to assemble and were not immediately available at the time of the Company’s Application filing on September 9, 2022 for the costs in question. (Tr. 3/7/23 at 2716-2717). Although the final decision referenced that the presentation of costs should occur in the EDCs “next rate case proceeding,” the decision recognized that the program costs would be incurred over time and not necessarily on a regular cycle that would enable them to fit squarely into UI’s current rate case or the next. Docket No. 21-08-06 at 3 (deployment extending through 2025). Similarly, the Authority’s final decision in Docket No. 17-12-03RE04, PURA Investigation Into Distribution System Planning Of The Electric Distribution Companies – Zero Emission Vehicles (July 14, 2021) discussed the presentation of costs in base rate proceedings generally, and not necessarily limited to presentation in the “next” rate proceeding. (Docket No. 17-12-03RE04, at 45).

Contrary to the Draft Decision, customers are not harmed in any way by the Company’s proposal to continue deferral of the $334,166 until the next rate case, given the small dollar amount in relation to anticipated program costs, and the nominal rate impact. There is no finding in the Draft Decision that the costs are unnecessary or imprudent. In addition, it is not uncommon for there to be a substantial period of time between the incursion of a deferred cost and approval for recovery of the deferred cost. See Office of Consumer Counsel v. Department of Public Utility

In addition, it is unreasonable for the Draft Decision to disallow carrying charges on the regulatory asset, in that the program costs are incurred by UI in support of the State’s grid modernization and EV initiatives. In Docket No. 17-12-03RE04, PURA established a cost recovery framework that included allowance of carrying charges on these costs. Specifically, the Authority stated: “[t]he carrying charges assessed to the regulatory asset shall be no more than the Company’s last approved weighted average cost of capital.” (Docket No. 17-12-03RE04, at 45). As stated, PURA specifically identified its expectation that costs would be deferred, carrying charges would be assessed, and that the rate for carrying charges would be the Company’s last approved weighted average cost of capital.

The Draft Decision should be revised to allow recovery of the regulatory asset with carrying charges, or allow the Company to present these costs in a future rate case. They should not be disallowed with prejudice, as that unfairly penalizes the Company as it works diligently to support the State’s clean energy transition and EV deployment. See, e.g., Tr. 3/7/23 at 2709-2717; CAE-0054; LFE-126; Docket No. 17-12-03RE04; Docket No. 21-08-06; See Office of Consumer Counsel v. Department of Public Utility Control, 279 Conn. 584, 585-586 (2006).

10. Environmental Remediation

The Draft Decision unreasonably and arbitrarily disallows $458,000 of environmental remediation expense that the Company proposed to amortize over three years in the annual amount of $153,000. (Draft Decision at 48, 182). The disallowance results in a level of rates that is less than just and reasonable, and not sufficient to recover the Company’s operating costs in accordance with Conn. Gen. Stat. § 16-19e(a)(4).
The Draft Decision wrongly asserts that the Company “did not provide any evidence related to the prudency or reasonableness of the $458,000 expense.” (Draft Decision at 182). The Company’s response to OCC-212 provided over 400 pages of cost documentation supporting costs of $380,041.48 at East Shore and $30,431.99 at 801 Bridgeport Avenue incurred in the Test Year (2021). Additionally, approximately 80 pages of cost documents were provided in RRU-0272 for East Shore. The documentation demonstrates that the costs were reasonable and prudently incurred, contemporaneous with the Company’s rate case filing. As such, these costs should be allowed for recovery as proposed in the Company’s Application. See Docket No. 88-05-25, Application of The Connecticut Light and Power Company for Approval of New and Amended Rate Schedules (Dec. 21, 1988), at 55 (allowing pro forma expenses for coal tar remediation to be recovered in rates); Docket No. 93-02-04, Application of Connecticut Natural Gas Corporation to Amend its Rate Schedules (Dec. 15, 1993), at 11 (allowing creation of a deferred regulatory asset for the remediation of coal tar costs); Docket No. 05-03-17PH01, Application of The Southern Connecticut Gas Company for a Rate Increase – Revenue Requirements (Dec. 28, 2005) (allowing for the deferral and recovery of coal tar remediation costs related to MGP site); see also Docket No. 01-05-19PH01, Application of Yankee Gas Services Company for a Rate Increase (Jan. 30, 2002), at 34; Docket No. 04-06-01, Application of Yankee Gas Services Company for a Rate Increase (Dec. 8, 2004), at 7; Docket No. 06-12-02PH01, Application of Yankee Gas Services Company for a Rate Increase – Revenue Requirement (June 29, 2007), at 23.

As justification for the directives in the Draft Decision at pages 182 (footnote 96) and 280 (Order No. 26) to submit annual progress reports to DEEP and PURA for the East Shore site, the Draft Decision wrongly implies, and cites to no basis for its conclusion that the Company has shown, a lack of “prudent management of the natural environment.” Although the Company does not object to providing annual progress reports, the site remediation is being conducted pursuant
to and thereby governed by the Connecticut Voluntary Remediation Program (“VRP”) (C.G.S. §§ 22a-133x and 22a-133y). There is no evidence that the Company’s actions have been progressing in any manner other than one consistent with the VRP. Unlike certain other DEEP remediation programs (see, e.g., the Connecticut Property Transfer Act, C.G.S. §§ 22a-134 et seq.), the VRP statutes do not prescribe a specific timetable or an endpoint by which investigation and remediation of a property under the VRP must be completed. The VRP statutes do not require the submittal of progress reports to DEEP for a property that has been voluntarily entered into the VRP. The Draft Decision’s conclusion in footnote 96 of an “apparent lack of progress on the remediation of the East Shore Project” is an unfair characterization not based on record evidence and it is inconsistent with and contrary to the statutory framework governing cleanups under the VRP, and therefore should be stricken from the Draft Decision. See also Docket No. 05-06-04, Application of The United Illuminating Company To Increase Its Rates And Charges (Jan. 27, 2006), at 42 (stating “the Department will allow the Company to defer amounts spent on required environmental projects, above what is approved in rates in this docket, that aggregate over $100,000 on an annual basis to be considered in its next rate case proceeding”).

See, e.g., UI In. Br. at 268-272; UI Reply Br. at 200-201; UI-RRP-1, at 41-45; Tr. 3/6/23 at 2320, Tr. 3/21/23 at 3455-3456); RRU-0366; LFE-60; LFE-060 Supp.; LFE-060 Supp. Att. 1; OCC-639; RRU-0367 Supp. RRU-0367; RRU-0368; OCC-0639; LFE-001; Tr. 2/27/23 at 1612; OCC-609 Att. 1; SFR Sch. WP C-3.12.

C. The Cost of Capital in the Draft Decision Fails to Conform to the Guidelines Established by Law and Is Arbitrary and Capricious

1. The Draft Decision’s Proposed Capital Structure is Arbitrary and Capricious and Not Supported by the Record Evidence.

PURA adopted a capital structure for the Company, consisting of 50 percent common equity, and 50 percent long-term debt with a 4.32 percent long-term debt rate and a return on equity
(“ROE”) of 8.80 percent, which is subsequently reduced by 52 basis points for various penalties (Draft Decision at 52). PURA’s decision applies the wrong legal standard, lacks justification and is based on information not included in the record for the proceeding, and, thus, is arbitrary and capricious. PURA’s Draft Decision should be modified to eliminate these errors.

First, PURA arbitrarily and capriciously adopted a capital structure with 50 percent common equity (Draft Decision at 65). PURA identified the utility average capital structure as 53.32% equity and then stated that it “weighs the equity capitalization using the holding company data more heavily than values calculated using [utility] data,” because it is the parent company that is issuing common equity. (Id.) However, PURA ignores the fact that the “equity” in the utility capital structure is not common equity issued to the marketplace, but the equity of the utility operation accumulated largely through retained earnings (Draft Decision at 65). Accordingly, there is no rational basis for PURA to deviate from the utility capital structure.

Further, the Authority states that it has “concluded that the core metrics remained in the ranges that would allow the Company to maintain its current A- credit rating for S&P, Baa1 for Moody’s, and A- for Fitch,” with a 50% equity and 50% debt capital structure. (id.) Here, PURA’s decision is arbitrary and capricious because: (1) PURA fails to apply the actual credit-rating criteria for determining whether the 50/50 capital structure will, in fact, maintain the Company’s credit ratings (Draft Decision at 65); (2) PURA conversely finds that the approved capital structure and ROE will, in fact, harm the Company’s credit ratings (id. at 98); (3) PURA relies on computations of the credit rating metrics requested from the Company that do not assume disallowance of all expenses in the final decision, which would materially affect cash flow (id. at 99-104).

Ultimately PURA fails to provide any justification as to how it has arrived at the 50/50 capital structure as opposed to the Company’s proposed 52% equity ratio, which is exactly the

PURA acknowledged that the proxy group of operating companies had an average common equity ratio of 53.32 percent (Draft Decision, at 65). Therefore, PURA should reconsider and establish the Company’s capital structure with an equity quotient of 52 percent.

2. The Draft Decision’s Proposed 8.8 Percent ROE is Arbitrary and Capricious and Not Supported by the Record Evidence.

PURA adopted a ROE of 8.80 percent, prior to any reductions, based on a DCF approach, which resulted in a mean of 8.71 percent and a median ROE of 8.93 percent (Draft Decision, at 75, 82, 89). However, PURA did not apply the correct legal standard. In the Draft Decision, PURA states that:

Within this range, the Authority must determine the ROE that is “sufficient, but no more than sufficient” for the Company to “cover [its] capital costs, to attract needed capital and to maintain [its] financial integrity.” Conn. Gen. Stat. § 16-19e(a)(4). In doing so, the Authority “is not bound to the use of any single formula or combination of formulae” but must balance “investor and consumer interests” and make “pragmatic adjustments.” Woodbury Water Co., 174 Conn. At 264.

Decision at 88.

This quotation is not the standard for setting the authorized rate of return and is not quoted in its entirety in the Draft Decision. The actual language of Conn. Gen. Stat. § 16-19e(a)(4) states:
In the exercise of its powers under the provisions of this title, the Public Utilities Regulatory Authority shall examine and regulate the … establishment of the level and structure of rates in accordance with the following principles: … (4) that the level and structure of rates be sufficient, but no more than sufficient, to allow public service companies to cover their operating costs including, but not limited to, appropriate staffing levels, and capital costs, to attract needed capital and to maintain their financial integrity, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable ….

(emphasis added).

Although not quoted by PURA, the U.S. Supreme Court has established that a “fair and reasonable rate of return” means that there is:

[E]nough revenue not only for operating expenses but also for the capital cost of the business, which includes service on the debt and dividends on stock, and by such standard the return to the equity owner should be commensurate with the terms on investments in other enterprises having corresponding risks and such returns should be sufficient to assure confidence in the financial integrity of the enterprise so as to maintain its credit and attract capital.

Hope, 320 U.S. 591, at 603; see also CL&P v. DPUC, 216 Conn. at 633-34 (citing same).

In the Draft Decision, PURA failed to apply the correct legal standard to its determination of ROE. For example, the word “commensurate” does not appear in the Draft Decision, although the crux of PURA’s inquiry on ROE should center on the setting of ROE to be commensurate with the returns on investments in other enterprises having corresponding risks. Thus, the Authority has failed to apply the correct, constitutional standard in evaluating the Company’s appropriate ROE.

In addition, the Draft Decision’s calculation of ROE is flawed and resting on pertinent information not in the record for the proceeding. PURA’s DCF analysis is independent of the assumptions relied upon by any witness in the proceeding and does not reflect the analysis performed by any witness. For example, PURA averages projected EPS growth rates from three sources with the Value Line, projected DPS, BVPS and Retention growth rates for a mean and median growth rate of 4.79 percent and 4.82 percent respectively (Draft Decision at 69). However,
the parties proposed higher growth rates. More specifically, the Company proposed a 5.83 percent growth rate, the OCC proposed a growth rate of 5.38 percent and the EOE proposed a non-constant growth rate of 5.81 percent (Draft Decision, at 74). As a result, PURA’s growth rate estimate is significantly below the Company’s growth rate estimate and that of the OCC, both of which rely on EPS growth rates. Relying on the EPS growth rates supported in the record, and using the remainder of the PURA’s DCF assumptions, the result would have been a mean and median DCF values of 9.21 percent and 9.47 percent respectively.

Furthermore, the average of the growth rates presented by the experts in this proceeding was 5.2 percent (Draft Decision, at 69). If the average of the growth rates presented by the experts had been used, the DCF model results in an ROE of 9.14 percent to 9.27 percent. Therefore, PURA’s DCF results are clearly understated. PURA does not provide a justification as to why it is using the lower growth rate, but rather states only “for the same reasons previously articulated in prior cases,” the Authority is using lower growth rates (id.).

PURA developed a CAPM approach resulting in a mean of 8.85 percent (Draft Decision, at 82). This calculation is also flawed. At the outset, it should be noted that PURA used a mean and median for the DCF analysis, but does not consider the mean and median in the CAPM, presenting only the mean results. Significantly, PURA utilized data not in the record for the proceeding, but in fact well beyond the date of record evidence, or March 30, 2023, as the date for the risk-free rate used in the CAPM. In addition, PURA’s characterization of the Company’s range of risk-free rates as 3.50 percent to 4.00 percent was erroneous (Draft Decision at 79). PURA did not recognize that the interest rates increased over the duration of the case and therefore the interest

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46 The Company calculated a mean and median growth rate for the Company Proxy Group of 5.83% and 5.81%, respectively. Ex. UI-AEB-Rebuttal. The OCC proposed to use the growth rate of 5.375% in its DCF calculation for its proxy group (Woolridge PFT at 53; Ex. JRW-5), and 5.50% as the growth rate for the Company proxy group (id.). In contrast, the Draft Decision applies a mean and median growth rate of 4.79% and 4.82%, respectively. (Draft Decision at 69).
rates filed in the Company’s direct were out of date by the time of the rebuttal testimony. The Company’s update to current market data as of November 30, 2022 demonstrated a risk-free rate of 4.07 percent based on a 30-day average of the yield as of that date. This figure of 4.07 percent should have been used rather than 3.75 percent used by PURA (Draft Decision, at 80).

For the Equity Risk Premium, PURA selected 6 percent (Draft Decision, at 81). However, PURA averaged multiple Equity Risk Premium data sources rather than averaging the recommendations of each of the experts in this case. PURA’s use of a 6 percent Equity Risk Premium is the lowest of the three recommended ERPs in the proceeding, it is not higher than the average, as suggested by the data presented in Table 35 (Draft Decision at 81). By using all sources, rather than averaging the recommendations of the experts, the Authority has understated the Equity Risk Premium. A simple average of the Equity Risk Premiums relied upon by the Company, OCC and EOE would have been 7.29 percent. If the CAPM was developed using all of the Authority’s other assumptions and the average of the Equity Risk Premiums recommended by EOE, OCC and the Company, the ROE that resulted would be 9.94 percent. It should also be noted that in Docket No. 16-06-04, the Company’s last rate case, PURA used the “average of the Company’s range, the OCC and Duff & Phelps’ recommendations for an average to reach a 6.75%” equity risk premium. Docket No. 16-06-04, at 85. Therefore, PURA’s approach to calculating the Equity Risk Premium in this proceeding is not even consistent with how it calculated it in the past and, the Draft Decision provides no logical or rational basis for a change in approach.

In Docket No. 16-06-04, PURA awarded the Company a ROE of 9.10 percent. Docket No. 16-06-04, at 86. Since then, as noted by PURA, “long-term interest rates have increased approximately 1.30%” and “the COVID-19 pandemic and inflation resulted in increased market volatility rates; this volatility is still present in market trends.” Draft Decision, at 86. Therefore, economic conditions would clearly suggest that a ROE above 9.10 percent was justified. Instead,
it has been lowered to 8.80 percent. PURA states that “allowed ROEs should not increase in lock step with increases in interest rates” and that the “correlation between interest rates and ROEs appears to be historically one-sided.” Draft Decision, at 86-87. However, this statement is not supported by record evidence. No argument or evidence was presented in this proceeding that with interest rates being 130 basis points higher than in 2016, there is justification to lower the ROE by 30 basis points.

In fact, as noted by PURA the average ROE for distribution-only electric utilities in 2022 was higher than 2021. Draft Decision, at 84. With the average ROE for distribution-only electric utilities in 2022 being 9.11 percent, the statement that “a review of recently allowed ROEs for distribution-only electric utilities indicates that a ROE of no higher than 9% would be warranted,” is a false proposition. Id. (italics added). More specifically, the range of ROEs comprising the average of 9.11% is not comparable because it includes returns for the Illinois electric utilities that are established based on a formula rate plan with full cost recovery updated annually.47 This regulatory construct is not comparable to cost of service regulation in Connecticut.

Excluding these observations, the average authorized ROE for all electric utilities increased from 9.54 percent to 9.63 percent. Further, the range of authorized ROEs for distribution electric utilities excluding the Illinois formula rate plans was 9.00 percent to 10.00 percent, demonstrating that the value of 8.8% fails to meet the constitutional standard.48 The U.S. Supreme Court has established that a “fair and reasonable rate of return” means that there is “enough revenue not only for operating expenses but also for the capital cost of the business, which includes service on the debt and dividends on stock, and by such standard the return to the equity owner should be commensurate with the terms on investments in other enterprises having corresponding risks and

such returns should be sufficient to assure confidence in the financial integrity of the enterprise so as to maintain its credit and attract capital.”  *Hope*, 320 U.S. at 603; see also *CL&P v. DPUC*, 216 Conn. at 633-34 (citing same).

PURÀ’s proposed ROE rests on extra-record evidence and is without evidentiary support. PURÀ’s proposed ROE also fails the constitutional standard of a return commensurate with the terms of investments in other utility companies. Accordingly, PURÀ should revisit the ROE computation. For all the above reasons, a ROE of 9.3 percent or higher is necessary to meet the constitutional standard. A ROE of 9.3 percent or higher would be consistent with the “average authorized ROEs for electric distribution companies [of] 9.10%, 9.04%, and 9.11% in the first three quarters of 2022.”  (Woolridge Surrebuttal at 4-5).

3. **The ROE Penalties Are Arbitrary and Unsupported by Record Evidence.**

Adding to the overall confiscatory impact of the Draft Decision, PURÀ reduces the unreasonably low ROE of 8.8 percent by an additional 52 basis points allegedly to “address performance and management issues,” resulting in an authorized ROE of only 8.28 percent. (Draft Decision, at 1, 98). The 52-basis point reduction – below the 8.8 percent level PURÀ finds to be “reasonable and sufficient” for the setting of rates – is flawed for several reasons. These penalties are outside the scope of the Authority’s jurisdiction in this rate case, are duplicative of penalties assessed by PURÀ in other dockets, and are unreasonable, arbitrary and excessive. Each basis
point reduction equates to an annual penalty of approximately $54,653,\textsuperscript{49} for a cumulative annual impact to UI of $2.842 million, as compared to annual net income of $45.246 million.\textsuperscript{50}

This result is extraordinarily harmful to the Company’s financial viability and highly disproportionate to the scope of the alleged transgressions. For these reasons, PURA should remove these penalties.

The Draft Decision’s ROE reductions are allegedly based on findings of “imprudent and deficient management” by PURA, but the Draft Decision merely relies on conclusory statements and engages in no prudence analysis on any these items as required by Connecticut law. The Connecticut courts have found that the “prudence of a management decision depends on good faith and reasonableness \textit{judged at the time the decision is made.”} Connecticut Light & Power Co., 216 Conn. at 645 (emphasis added). Therefore, as a legal matter, “hindsight” judgments and conclusions are improper in relation to the analysis of the reasonableness or prudence of a utility’s actions. Office of Consumer Counsel v. Dept. of Public Utility Control, 44 Conn. Supp. 21, 31 (1994) (“OCC v. DPUC”). In OCC v. DPUC, the Connecticut Superior Court provided a clear statement of the definition of hindsight and how it can or cannot be used in a prudence review:

Aside from the public policy issues, the department's decision was based on its theory that “hindsight” should not be used to analyze the prudence of a utility's actions leading up to a power failure, at least in the context of a proceeding to determine whether the utility's rates should be adjusted. The Supreme Court has endorsed that concept in general terms. “The prudence of a management decision depends on good faith and reasonableness, \textit{judged at the time the decision is made.”} In its decision, the department reiterated that concept in defining the standard of prudence that the law imposes on the company. “[T]he actions or omissions of a utility with respect to the operation and management of a nuclear power plant will

\textsuperscript{49} Based on the Draft Decision’s pro forma rate base of $1,092,904 million (Draft Decision, at 13) and equity ratio of 50 percent (Draft Decision, at 58). The full revenue requirement impact of the ROE penalties would also reflect a gross revenue conversion factor of 148.73\% (LFE-001 UI Attachment 1, Schedule A-2.0, adjusted to reflect the correct uncollectible rate of 0.90\%)(i.e., $1,092,904M x 50\% x 0.01\% x 148.73\% = $81,275).

\textsuperscript{50} Based on the Draft Decision’s pro forma rate base of $1,092,904 million (Draft Decision, at 13) equity ratio of 50 percent (Draft Decision, at 58), and authorized ROE of 8.28\% (i.e., $1,092,904 x 50\% x 8.28\% = $45.246 million).
be measured against those of a reasonably prudent nuclear power plant operator on the basis of facts which were known or which should reasonably have been known by the utility at the time of the actions or omissions.”

(Id. at 31-32, citations omitted, emphasis added).

Therefore, under Connecticut law, the requisite analytical elements of the prudence standard applied in the context of a prudence review, as follows:

1. There must be evidence of reasonableness and good faith;

2. Reasonableness must be judged at the time the decision is made, without the benefit of hindsight;

3. Reasonableness must be based on information that was known, or reasonably should have been known, prior to any action or inaction by a person or company; and

4. The hindsight prohibition is applicable where a utility has acted on the basis of state-of-the-art information and it is later determined that those actions were, nevertheless, inadequate. To overcome the hindsight prohibition, the utility must be demonstrated to have known what the prudent course of action was, but refused or neglected to take it.

216 Conn. at 645; 44 Conn. Supp. at 31-32.

Legally, it is not enough for PURA to draw hindsight conclusions and make pronouncements about what a prudent utility would do based on PURA’s retrospective view of the event. Rather, PURA has an absolute obligation to conduct its prudence review consistent with the legal elements comprising the prudence standard. These legal elements require an evaluation of whether the evidence is sufficient to rebut the presumption that the Company’s decision-making process and actions or inactions flowing therefrom were reasonable, good faith decisions based on what the Company knew or should have known under the circumstances that existed at the time the decision was made. This is a far different concept than performing an after-the-fact review with the benefit of knowledge as to what actually transpired and then generating a series of findings based on that knowledge.
Moreover, there is a substantial deficiency in the notice underlying certain of the Authority’s ROE reductions, particularly where those penalties are raised for the first time on brief at the end of the case when the Company is not able to put evidence on the record regarding the issue raised. If ROE penalties are utilized as a matter of course, but are not raised as factual issues in the proceeding at the early stages, then the Company is stripped of the opportunity to present evidence or rebut other evidence, which may ultimately be held against the Company. Moreover, ROE penalties should not be assessed without an imprudence finding to support the penalty. As explained below, none of the findings in the Draft Decision offered to substantiate the ROE penalties are based on a proper prudence analysis.

a) English Station

PURA’s Draft Decision denies the Company due process, violates Connecticut law and exceeds PURA’s jurisdiction by imposing a 20-basis point ROE reduction as a penalty related to alleged deficiencies in investigation and remediation at English Station, an asset that the Company does not own and is not in rate base. The 20-basis point reduction equates to a $1.625 million annual penalty with no defined end date; conflicts with the legal requirements associated with the Company’s remediation; and violates the notice provisions and right to a hearing set forth in C.G.S. § 22a-6b, as explained below.

Based on arguments by the Attorney General and DEEP asserted only on brief and without offering any evidentiary support in the hearing, the Authority concludes that the Company’s “failure to timely and effectively remediate English Station constitutes imprudent and deficient management and, accordingly, imposes a 20-basis point reduction to the Company’s allowed ROE.” (Draft Decision at 95). This determination exceeds the scope of PURA’s jurisdiction in this rate case and is not based on a reasoned prudence analysis. The ROE reduction is a penalty, based on the Authority’s erroneous conclusion that the Company was imprudent and deficient in
its management to remediate English Station consistent with the Partial Consent Order COWSPCB 15-001 (the “PCO” or the “Consent Order”). The PCO was signed by DEEP and the Company and entered as a final order by the DEEP Hearing Officer in a still pending DEEP Administrative Proceeding (Order No. AOWSPCB 13-001). In taking its action, the Draft Decision ignores the provisions of the PCO that expressly address the Commissioner of Energy and Environmental Protection’s (“DEEP Commissioner”) enforcement of the PCO (see, e.g., PCO Paragraphs B.15 and B.23), as well as the statutorily prescribed procedure and due process set forth in C.G.S. Section 22a-6b, which gives DEEP the exclusive jurisdiction to address compliance with the PCO.

The legal error in the Draft Decision is further compounded by the fact that, per the Draft Decision, the penalty would be imposed annually and is unclear as to how long the annual penalty would or could apply. The PCO includes multiple full compliance scenarios and termination of the PCO occurs by operation of its terms when one of these scenarios occurs; there is no requirement or process, as provided in the Draft Decision, for a petition to DEEP to terminate the PCO. The Draft Decision impermissibly requires that the penalty apply “until English Station is remediated such that the Company has achieved ‘full compliance’ as contemplated in the PCO or has otherwise received DEEP’s written approval stating the Company has satisfied its obligations under the PCO” (Draft Decision, at 98), thereby further exceeding PURA’s exclusive jurisdiction with respect to matters of environmental remediation, including the exclusive authority to address compliance issues, including the exclusive ability to potentially assess penalties related to DEEP final orders pursuant to C.G.S.§ 22a-6b, subject to statutorily prescribed procedures as well as a right to appeal.51

51 These procedures include notice sent by certified mail that includes: (1) A reference to the sections of the statute, regulation, order or permit involved; (2) A short and plain statement of the matters asserted or charged; (3) A statement of the amount of the civil penalty or penalties or the method for calculating the penalty or penalties to be imposed upon finding after hearing that a violation has occurred or upon a default; and (4) A statement of the party’s right to a hearing. Conn. Gen. Stat. § 22a-6b.
Even if PURA had jurisdiction to assess penalties (and it does not), none of the statutory procedures were followed prior to PURA establishing a penalty. Further, because the PCO provides that the Company shall pay to the State of Connecticut the difference (if any) between $30 million and eligible costs incurred by UI when complying with the PCO, the PCO already includes a penalty to be paid by UI. In the Draft Decision, the Authority is unilaterally, and without adequate notification and due process, changing the requirements of the PCO. Such action violates C.G.S. § 22a-6dd and Paragraph B.15 of the PCO, pursuant to which the requirements and standards for remediation required of the Company under the PCO shall not be modified by DEEP unless both DEEP and the Company agree to such modification.

Furthermore, the issues raised by DEEP and the Attorney General regarding English Station are beyond the scope of this rate case. The Company has not owned English Station since the year 2000 and the assets are not included in distribution rate base. In addition, costs related to the Company’s English Station remediation efforts have never been reflected in base distribution rates, nor are such costs presently requested to be recovered in base distribution rates. The Company properly accounts for these costs to ensure they are not included in customer rates.

Even if the issue were within the scope of this rate case, DEEP and the Attorney General provided no evidence relating to the Consent Order, the Company’s work scope and activities under the PCO, the measures DEEP has taken within its jurisdiction to oversee, regulate, enforce or interact with the Company regarding progress under the PCO, or any other factors that would inform a reasoned analysis of the English Station investigation and remediation. The Draft

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52 RRU-0367 Supp.; RRU-0367; RRU-0368; OCC-0639; LFE-001; see Tr. 2/27/23 at 1612.

53 The Authority also did not consider the currently stayed DEEP administrative proceeding (Order No. AOWSPCB 13-001), including the regular Status Reports DEEP has been filing with the Hearing Officer in this administrative proceeding. In these Status Reports, DEEP has informed the Hearing Officer of actions by the Company and DEEP in connection with implementation of the investigation and remediation under the PCO, regular meetings of DEEP and the Company, the complex nature of this investigation and remediation and the site in general, unanticipated conditions and related actions which have been undertaken by the Company, and the fact of extensive
Decisions jumps to a conclusion that UI’s “failure to timely and effectively remediate English Station constitutes imprudent and deficient management,” although there is no evidence in the record as to what constitutes “timely and effective remediation” under the PCO and Connecticut law. In entertaining the outside-the-scope legal arguments of DEEP and the Attorney General – *advanced for the first time on brief* – PURA denies the Company due process by imposing a ROE reduction related to English Station. DEEP and the Attorney General provided no testimony on these issues and did not provide an opportunity for UI to ask discovery or cross-examine witnesses on these issues.

Most importantly, there is no evidence that UI has “mismanaged” the English Station remediation under the Consent Order, which was entered into with DEEP and is subject to the jurisdiction and authority of DEEP. No party provided any information suggesting that DEEP lacks the jurisdiction, authority, or expertise to regulate, assess and enforce UI’s actions under the Consent Order, to identify claimed noncompliance, and to require compliance with the Consent Order, and no party presents evidence in the record demonstrating that any of these claims are accurate and reflective of alleged “mismanagement.” The parties have not properly raised this issue for consideration in this rate case and PURA should reject their claims.

In the Draft Decision, PURA cites to three factors in reaching its conclusion of “imprudent and deficient management”:

- “UI has failed to complete the English Station remediation, nearly seven years after executing the PCO and several years past the agreed upon date. Hr’g Tr. Mar. 21, 2023, 3367:14-16.”

- “Of additional concern, the Company has cycled through six project managers at English Station during this period. Hr’g Tr. Mar. 21, 2023, 3343:18-21.”

interaction with stakeholders in addition to DEEP and the Company, including the new property owners (whose approval is required for certain activities by UI under the PCO) and the City of New Haven. *See, State of Connecticut v. Asnat Realty, LLC, et al., Order #AOWSPCB 13-001.*
• “Furthermore, despite acknowledging its responsibility for maintaining site security while remediation activities are ongoing, OAG’s cross examination revealed that English Station’s surrounding fences and gates had been vandalized with graffiti and that the vandalism had yet to be addressed. Hr’g Tr. Mar. 21, 2023, 3352:16-24.”

(Draft Decision, at 95).

None of these factors support a finding of imprudent and deficient management justifying the recurring penalty proposed in the Draft Decision. Assuming the appropriateness of PURA doing so, which the Company disputes, the Draft Decision wholly fails to engage in a prudence analysis of these factors. With respect to the limited information in the record that could be argued to relate to timeline and progress to date on the investigation and remediation, the Draft Decision makes a hindsight conclusion based on no evidence of what would constitute reasonable actions and decisions by a utility related to such investigation and remediation, assuming the Company alone controls that timeline and progress, and ignoring the reality of other stakeholders in the process. The Draft Decision cites no evidence by which to judge the reasonableness and good faith of UI’s actions; improperly engages in hindsight judgment, rather than assessing the reasonableness of UI’s actions at each step of the remediation and judged at the time the decisions were made; cites to no evidence of the information that was known, or reasonably should have been known, prior to any action or inaction by the Company; and cites no evidence of a prudent course of action that UI refused or neglected to take.

Similarly, the allegation that UI “cycled through six project managers” as a basis for a finding of imprudence is not based on a prudence analysis in the Draft Decision. Moreover, the finding that the number of UI project managers had any negative impact on the remediation is contrary to the record evidence that these changes have not delayed the remediation and have not increased the clean-up costs at English Station (Tr. 3/21/23 at 3343-44). The Attorney General speculated that the “frequency of this managerial turnover has clearly hindered the pace of UI’s
work,” without substantiating that claim (AG Br. at 13). The Attorney General also suggests that the managerial changes “[call] into question the Company’s commitment to local control” (id. at 13, 15), but ignores the fact that Avangrid, UIL and UI are all headquartered in Orange, Connecticut. In addition, the current and prior project managers are based in close proximity at 100 Marsh Hill Road and 180 Marsh Hill Road in Orange, Connecticut (Exh. UI-CJE-1 at 1; Tr. 3/21/23 at 3348, 3352). There is no evidence in the record challenging the expertise of the project managers or correlating the changes in project managers to having any negative impact on the remediation. Of note, the Draft Decision fails to acknowledge that, while the PCO (see Paragraph B.1) expressly addresses UI’s engagement of a Licensed Environmental Professional throughout the term of the PCO, the PCO does not include any provision regarding the Company’s project managers.

The Draft Decision’s conclusion regarding UI’s failure to maintain site security as required by the Consent Order is also erroneous. DEEP and the Attorney General complained that UI has not met its commitment to maintain site security due to graffiti on a fence along Grand Avenue in New Haven, CT (DEEP Br. at 20; AG Br. at 13). However, at Paragraph B.3, the Consent Order affirmatively addresses the requirements for site security, stating that UI “shall maintain security at the Site to, at a minimum, the current level of security maintained at the Site by the Current Owner and approved by the Commissioner” (OCC-0609 Att. 1 at 53-54). Additionally, DEEP and the Attorney General provide no evidence about when this graffiti may have been created. Mr. Mullin’s testimony was simply that he did not know when that graffiti may have been placed on the fence. The notion that UI has therefore not met its commitment is misstated and inaccurate. DEEP and the Attorney General provide no evidence that graffiti on the fence constitutes a lack of the site security requirements.
Lastly, the Draft Decision relies in part on the Merger Decision, stating “the Authority is empowered to, and indeed must, enforce compliance with the terms of its Merger Decision.” (Draft Decision, at 95). However, the Merger Decision does not empower the Authority to oversee or enforce compliance with the Consent Order, assess penalties for such actions, or make prudence determinations regarding compliance with the Consent Order, which is exclusively within the jurisdiction of DEEP. The Merger Decision approved a comprehensive settlement agreement (“Settlement Agreement”) among the parties that included the following commitment regarding English Station:

UI has signed a Proposed Partial Consent Order (“Consent Order”) that, when approved by the Commissioner of DEEP and subject to the closing of the Proposed Transaction and other terms and conditions in the Consent Order, requires UI to investigate and remediate certain environmental conditions within the perimeter of the English Station site. To the extent that the investigation and remediation is less than $30 million, UI will remit to the State of Connecticut the difference between such costs and $30 million for a public purpose as determined in the discretion of the Governor, the AG, and the Commissioner of DEEP. The remediation will benefit the City of New Haven, and will further the State’s broader goals of revitalizing contaminated sites. Accordingly, this would provide a public interest benefit estimated at $30 million.

Merger Decision, App.1 at 3.

In the Merger Decision, the Authority held that future remediation costs on the English Station site would not “revert to ratepayers” and that such costs were the responsibility of shareholders, consistent with its prior determinations. Merger Decision at 21. DEEP Staff and UI subsequently filed the Consent Order with DEEP’s Office of Adjudications and it was accepted and approved in an August 4, 2016 final decision (OCC-0609 Att. 1 at 1). The Consent Order, as well as the implementation thereof, was and is not subject to PURA approval. PURA’s role in


relation to this commitment is to oversee UI’s treatment of investigation and remediation costs, such that the costs up to $30 million are not borne by ratepayers. UI affirmatively demonstrated that the costs related to the Company’s English Station investigation and remediation efforts have never been reflected in base distribution rates, nor are such costs presently requested to be recovered in base distribution rates.

For these reasons, the Authority should revise the Draft Decision and eliminate the ROE reduction related to English Station. Consistent with the terms of the PCO and State policy as legislated by the General Assembly, jurisdiction over the implementation and enforcement of the PCO rests solely with DEEP.

b) Customer Service Performance

In addition to flaws and legal infirmities of assessing an ROE reduction as discussed above, the Draft Decision imposes a 20-basis point reduction to the Company’s ROE associated with alleged shortcomings in its customer service performance, based not on evidence but on conclusory allegations in EOE’s brief. (Draft Decision, at 96). EOE provided no evidence on performance standards UI is alleged to have violated, and the penalty is duplicative of NOVs issued in other dockets. The legal error in the Draft Decision is compounded by the fact that the penalty would apply for an indeterminant period of time, “until PBR metrics are in place for at least two years to provide the Authority with sufficient data to evaluate the Company’s customer service improvements,” subject to a subjective determination whether UI has shown “a satisfactory and sustained record of improved customer service and full compliance.” (Draft Decision, at 98).

The 20-basis point reduction is allegedly based on the following factors:

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56 Paragraph B.24 of the PCO preserves UI’s right to request that the State discuss options for recovering or funding any costs above $30 million from third parties.

57 RRU-0367 Supp.; RRU-0367; RRU-0368; OCC-0639; LFE-001; see Tr. 2/27/23 at 1612.
• “EOE noted that, despite the Authority requiring UI to prescreen customers for financial hardship, UI still fails to ask hardship prequalification questions in every call, leading to customers being placed in incorrect assistance programs that, if appropriately placed, *may have* substantially lowered the customer’s payments, or customers not being placed in any payment arrangement at all, hardship or otherwise.” (Draft Decision, at 96).

• “The results of EOE’s customer service audits are *troubling*, especially since the Authority has issued Notices of Violation in connection with similar customer service issues and provided extensive customer service guidance to the Company, particularly in its energy affordability proceedings (e.g., Docket Nos. 17-12-03RE01, 21-07-01, and 22-05-01).” (Draft Decision at 97) (emphasis added).

• “EOE’s brief chronicles further *troubling* UI customer service practices.” (Draft Decision, at 97) (emphasis added).

• The record evidence in this proceeding “has uncovered that UI’s oversight and management of its third-party call center vendors is ineffective.” (Draft Decision at 98).

None of these factors support a finding of imprudent management, and the Draft Decision wholly fails to engage in a prudence analysis of these factors. Contrary to Connecticut law, the Draft Decision makes conclusory determinations based on speculation (that perfection in administering prescreening calls *may have* substantially lowered the customer’s payments, or customers not being placed in any payment arrangement at all, hardship or otherwise”); subjective determinations in place of legally required prudence analysis (citing allegations of EOE of conduct that is “troubling” but not demonstrated to be imprudent); and conclusions not supported by record
evidence (that UI’s management of its external call vendors failed to meet industry standards). In reaching a determination of imprudent management without actually applying the required prudence analysis, the Draft Decision cites no evidence by which to judge the reasonableness and good faith of UI’s actions; illegally engages in hindsight judgment, rather than assessing the reasonableness of UI’s actions at each step of the customer service process and judged at the time the decisions were made; cites to no evidence of the information that was known, or reasonably should have been known, prior to any action or inaction by the Company; and cites no evidence of a prudent course of action that UI refused or neglected to take.

In addition, none of the isolated incidents cited in the Draft Decision as the basis for the ROE penalty are quantified in terms of customer impact. In fact, there is no evidence that any of the alleged deficiencies caused actual harm or were a result of improper actions on the part of Company management. There is no evidence to support the magnitude of the penalty in relation to the alleged harm, and thus it is arbitrary and capricious and must be removed from the Draft Decision.

c) Transmission Adjustment Clause Accounting

The Draft Decision concludes that UI’s transmission adjustment clause ("TAC") accounting warrants an ROE reduction, and, accordingly, reduces UI’s ROE by five basis points. (Draft Decision, at 92). Although the Draft Decision states that PURA applies the prudence standard to assess a utility’s management and operations (Draft Decision, at 91), it did not actually do so in relation to the TAC accounting issue and suffers from the same infirmities discussed above. As cited in the Draft Decision, the Company witnesses were asked no direct questions at hearing on the reasonableness of management’s actions and decisions related to TAC accounting, despite the Company having addressed the issue in its pre-hearing brief and in discovery responses.
(Draft Decision at 91 (citing general cross-examination at hearing on “tax policy”); UI Pre-Hearing Br. at 23-31; RRU-62; RRU-72; RRU-76; RRU-502)

Instead, the Draft Decision cites PURA’s final decision in Docket No. 22-01-04 (the “2022 RAM Decision”), which discusses language from FERC Order 668, and speculates that “a reasonable person in the Company management’s position would exercise care to make sure it was aware of an order from FERC that may impact its business operations.” (Draft Decision, at 91). However, the facts relevant to PURA’s determination of “imprudent and inefficient management” were not fully developed in the evidentiary record in Docket No. 22-01-04. Exh. UI-CJE/JC-REBUTTAL-1 at 18. The Draft Decision asserts that the Company’s testimony is “unconvincing” but there is no contrary evidence in the record of any accounting standard or industry practice that UI is alleged to have violated. In reaching a determination of imprudent management without actually applying the required prudence analysis, the Draft Decision cites no evidence by which to judge the reasonableness and good faith of UI’s actions; improperly engages in hindsight judgment, cites to the existence of a FERC order and otherwise ignores the Company’s evidence as to what was known, or reasonably should have been known, prior to any action or inaction by the Company; and cites no evidence of a prudent course of action but that UI refused or neglected to take such course of action.

In addition, the Draft Decision compounds this legal error by imposing the ROE reduction without a discernable end date. The five-basis point ROE reduction will remain in place for at least three years “to ensure that the Authority has a large enough sample size from the Company’s annual RAM filings to judge whether UI’s management has shown improvement in identifying opportunities for ratepayer benefits.” (Draft Decision, at 92). This is an unreasonable and arbitrary standard that is disproportionate to any alleged customer harm.
d) **Storm Performance**

The Draft Decision recognizes UI’s actions since Tropical Storm Isaias and its “redoubled efforts to engage with municipalities,” and therefore imposes a five-basis point reduction to the Company’s ROE rather than a 15-basis point reduction as initially contemplated in Docket No. 20-08-03. Although UI appreciates the recognition of its efforts, it objects to the imposition of any ROE reduction associated with its storm performance in Tropical Storm Isaias including but not limited to the reasons stated above.

The Company’s evidence demonstrated that the reduction for storm performance should not be implemented because it was not based on a finding of imprudent conduct by UI or a failure to adhere to the ERP or other established performance standards (Exh. UI-CJE/JC-REBUTTAL-1, at 4, 5-12). The reduction would be excessive in light of the substantial monetary penalty previously levied upon the Company from the Storm Decision (Exh. UI-CJE/JC-REBUTTAL-1, at 4, 6-7). Most importantly, the Company’s testimony demonstrated that the ROE reduction is not necessary “to properly incentivize improved storm response performance by UI”\(^\text{58}\) because the Company has already made substantial process improvements and ERP enhancements subsequent to the Storm Decision, both proactively and as directed by PURA, that address all of PURA’s underlying concerns from the Storm Decision (Exh. UI-CJE/JC-REBUTTAL-1, at 4, 12-17). As explained in more detail in UI’s initial brief and reply brief, the Company’s actions following Tropical Storm Isaias and PURA’s issuance of the Storm Decision demonstrate that the ROE reduction is not warranted (UI Br. at 231-242).

\(^{58}\) Storm Decision at 127.
In addition, the Draft Decision compounds this legal error by imposing the ROE reduction for an indeterminant length of time and based on events wholly outside of UI’s control. Under the Draft Decision, the duration of the ROE penalty is based on the weather, dependent on how the Company performs in a Level 4 storm event or greater. The Draft Decision states “UI may petition the Authority to remove the five (5) basis point ROE reduction following satisfactory emergency response performance to a storm event. To make this petition, UI must demonstrate satisfactory performance following a storm of magnitude equal to or greater than an Event Level 4.” (Draft Decision, at 94). This is an unreasonable, arbitrary and unlawful standard.

Further, the ultimate decision on whether to remove the ROE penalty reduction is subject to popular vote, in that UI must support its request with “letters of support from municipal officials indicating that UI has performed its duties satisfactorily. The Authority will consider those letters, in addition to other factors (e.g., performing all emergency response duties reasonably), in its evaluation of whether UI met its obligations.” (Draft Decision, at 94). In effect, the Draft Decision shifts PURA’s responsibility for assessing the Company’s performance in accordance with the ERP standards to the municipalities, and their subjective determination whether UI has performed “satisfactorily.” This is an arbitrary and unreasonable standard that contravenes the meaning and intent of Conn. Gen. Stat. § 16-32i.

See, e.g., UI Br. at 231-242; UI Reply Br. at 57-59; UI Pre-Hearing Br. at 11-22; Exh. UI-CJE/JC-REBUTTAL-1, at 4, 5-17; Storm Decision, at 127.

e) Cost of Service Study and Rate Design

Lastly, the Draft Decision imposes a two-basis point reduction to the Company’s ROE “for submitting an incomplete cost of service study and rate design analysis. The basis point reduction will remain in place until the effective date of rates from the next rate case, provided the Company has remedied these deficiencies.” (Draft Decision, at 89). In essence, this penalty is assessed
because “[r]ather than relying on its ACOSS to support its rate design proposal, UI instead proposed an alternative rate design that applied equal percentage changes of the bundled revenue requirements for each rate schedule.” (Draft Decision, at 89). This was a reasonable proposal by UI in light of the potential rate impact to Rate R and RT customers that would have resulted from straight application of the ACOSS results. (UI Reply Br. at 185-186; LFE-004; LFE-004 Supp.). UI’s evidence further showed that the ACOSS model, its assumptions, and results are reliable and valid for rate-setting purposes, consistent with other long-standing rate design principles such as rate gradualism. LFE-004. Contrary to the Draft Decision, the ACOSS was not deficient, the Company simply made a rate design proposal for PURA’s consideration.

The ACOSS and rate design proposal were presented in good faith by UI for consideration by the Authority. The proposal was presented in the Company’s initial testimony and subject to scrutiny in the course of this proceeding, which is the purpose of the adjudicatory process. The Draft Decision cites some of the initial testimony from the Company’s rates witness who provided his perspective on the justification for the Company’s rate design proposal, but this was clarified later in the evidentiary hearing during cross-examination on LFE-004. Tr. 3/21/23 at 3228-3232. The two-basis point ROE reduction for this item is unreasonable, unwarranted and unlawful for the reasons articulated in this section and the preceding sections.

See, e.g., UI Initial Br. at 286-288; UI Reply Br. at 185-186; LFE-004; LFE-004 Supp; Tr. 3/21/23 at 3228- 3233.

D. The Draft Decision Arbitrarily and Unlawfully Disallows Necessary Operating Expenses.

1. Overview

The Draft Decision arbitrarily and capriciously disallows $14.753 million of rate recovery that is necessary to cover UI’s core operating expenses. The Draft Decision disallows, through
significant reductions or wholesale eliminations, 14 categories of O&M expenses, all of which are necessary for the Company to provide service to customers, ensure adequate staffing levels, and reflective of prudent and efficient management. Conn. Gen. Stat. §§ 16-19e(a)(4) and (5). The disallowances are arbitrary and capricious, contrary to the weight of substantial evidence, inconsistent with PURA precedent, and devoid of prudence analysis under the framework required by Connecticut law. As a result, the Draft Decision fails to provide rates that are sufficient to allow UI to cover its “operating costs including, but not limited to, appropriate staffing levels, and capital costs, to attract needed capital and to maintain their financial integrity, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable . . . .” Conn. Gen. Stat. § 16-19e(a)(4).

As outlined below, the Company provided substantial documentation to support the reasonableness and good faith employed in its decision-making process for the operating expenses proposed in its case. The adjustments in the Draft Decision to the Company’s proposed O&M expenses item are, in contrast, not supported by the evidence and not indicative of the Authority’s required analysis under the operative prudence standard of review. The Company’s proposals for recovery of its O&M expenses are reasonable and necessary for rates established under Conn. Gen. Stat. 16-19e(a).

2. Employee Incentive Compensation

The Company’s Application included its employee compensation costs that are necessary to ensure proper staffing levels, including $1.495 million in variable pay (otherwise known as incentive compensation) for its union and non-union workforce (LFE-001 Sch. C-3.23). Variable

59 As stated earlier in these written exceptions, the Connecticut courts have found 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. v. Dept. of Public Utility Control, 216 Conn. 627, 645 (1990) (emphasis added). As a legal matter, “hindsight” judgments and conclusions are improper in relation to the analysis of the reasonableness or prudence of a utility’s actions. OCC v. DPUC, 44 Conn. Supp. at 31.
pay is one part of the Company’s “total compensation structure,” which is designed to provide the Company’s employees with competitive wages and benefits, consistent with the market. The Company’s variable pay program is structured for attainment of objectives established by Avangrid, Inc., Avangrid Networks, Inc. (“Networks”) and the Company, as well as employee-related objectives in a manner that is directly aligned with customer interests (Company Br. at 106-109). The Company’s total compensation, including variable pay, is benchmarked against peer group companies, and is the subject of rigorous analysis and third-party verification to ensure that the Company is able to attract and retain qualified workers, which is necessary to ensure adequate staffing levels (Company Br. at 119; RRU-513). See Conn. Gen. Stat §16-19e(a)(4).

The Company provided substantial evidence, including documentary and testimonial evidence on the structure and function of its total compensation program and variable pay plan (Company Brief at 106-109; Exh. UI-CBP-1; OCC-32; Tr. 3/2/23, at 1877-88). This evidence demonstrates that, upon achievement of organizational and individual objectives, the employee may receive variable pay based on their performance (OCC-32). Importantly, if either Avangrid, Inc. or Avangrid Networks fails to achieve the objectives at issue (essentially a threshold), the Company awards no variable pay to its employees (OCC-32). In this manner, the APA aligns employee and customer interests, by rewarding employees for their part in achieving objectives that benefit customers (Exh. UI-CBP-1, at 14-16; OCC-32).

In contravention of this overwhelming evidence, the Authority denied the entirety of the Company’s request to recover employee incentive compensation (Draft Decision, at 127). Notably, this applies to union and non-union employees. The Draft Decision gives several reasons for this denial, none of which are applicable legal standards for cost recovery of operating and maintenance expenses, and all of which have the direct effect of undermining the Company’s ability to ensure adequate staffing levels consistent with Conn. Gen. Stat. §16-19e. The Draft
Decision states that because all eligible employees have received an amount of variable pay (i.e., a portion of their total compensation) between 2017-2021, the Authority has “significant doubts” that the program is structured to provide benefits to customers in terms of goal targets and achievement of those goals (Draft Decision, at 128). It also states that the Company failed to provide a study or analysis that quantified the benefits to customers or the necessity of variable pay to the provision of utility service, and faults the Company for providing evidence in response to interrogatories and at the evidentiary hearings on those points, labeling them “bald assertions” (id.). The Draft Decision concludes the Company failed to meet its burden that such costs were reasonable and necessary to provide service to its customers.

PURA’s disallowance of 100 percent of the Company’s employee incentive compensation is arbitrary and capricious and an abuse of discretion prejudicing the Company’s substantial rights. Incentive compensation is an integral part of total employee compensation and a necessary operating cost to ensure appropriate staffing levels (Company Brief at 89-91). Under Conn. Gen. Stat. §16-19(e)(a)(4), PURA is obligated to assure that the level and structure of rates is “sufficient, but no more than sufficient, to allow public service companies to cover their operating costs including, but not limited to, appropriate staffing levels, and capital costs, to attract needed capital and to maintain their financial integrity, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable …” Conn. Gen. Stat. § 16-19(e)(a)(4) (emphasis added). Under Conn. Gen. Stat. § 16-19(e)(a)(5), PURA is to determine that the level and structure of rates charged customers shall reflect prudent and efficient management of the franchise operation. Moreover, the prudence of a management decision depends on good faith and

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60 The outright rejection of interrogatory responses and oral testimony provided under oath by Company professionals raises questions regarding whether there is any evidence that the Authority would accept on the veracity of the Company’s statements. Simply put, if sworn interrogatories and sworn oral testimony are to be labeled as “bald” assertions that lack merit or backing, then the Company has no notice of that evidence that should be submitted to be sufficient on these points.
reasonableness, judged at the time the decision is made.” CL&P v. DPUC, 216 Conn. at 645 (emphasis added).

In the Draft Decision, PURA fails to apply the applicable legal standards in §§ 16-19e(a)(4) and (5) to any extent in evaluating UI’s request to recover this component of employee compensation. For example, under the applicable legal standard established in §16-19e(a)(5), PURA was required to evaluate whether allowing recovery of this “level and structure of rates charged customers . . . reflect[s] prudent and efficient management” by UI. Conn. Gen. Stat. § 16-19e(a)(5). Specifically, the Connecticut Supreme Court explained that when a utility company seeks to recover in rates a cost of providing utility service, the prudence standard requires assessment of the utility’s management decision based on its good faith and reasonableness judged at the time the decision was made. Connecticut Light and Power Co., 216 Conn. at 645, citing Violet v. Federal Energy Regulatory Commission, 800 F.2d 280, 282–83 (1st Cir.1986). Although the Company bears the burden of proving the prudence of its operating costs for inclusion in rates, PURA never even reached this examination in the Draft Decision because PURA failed to perform the correct examination under §16-19e(a)(4), as well as to properly conduct a prudence inquiry under § 16-19e(a)(5).

PURA does not apply the required prudency framework, but instead disallows the Company’s incentive compensation based on ad hoc determinations as to whether shareholders obtain a benefit, or whether customers experience a benefit. A prudence review involves the Company putting forth its reasons that it incurs the costs; how it incurs the costs; how it works to contain the costs; and why the costs are necessary to provide utility service to customers in order to show that the costs are reasonable, warranted and necessary in the course of providing service to customers. UI did exactly that in support of these costs.
In turn, PURA is required to look at the evidence and determine whether the Company’s decisions to incur the cost based on all of the record evidence exhibits “good faith and reasonableness, judged at the time the decision is made.” Here, the Draft Decision makes absolutely no attempt to apply the correct standard and contains no analysis as to how the Company has failed in demonstrating “good faith and reasonableness” in relation to this component of employee compensation. The Draft Decision simply provides a series of conclusions on random aspects of the overall picture, which falls far short of a correct application of the statutory standards in § 16-19e(a). There is no organized description by PURA of the Company’s program, nor analysis of how, why and to what extent the Company conducts the program as part of its “prudent and efficient management of the franchise operation.” PURA does not discuss or analyze -- or even reference -- in the Draft Decision as to how the variable pay plan works for employees, or how the individual performance is evaluated and weighted (Draft Decision at 50, 113-129, 135-136). Any discussion of this kind is absent from the Draft Decision and it is not possible to determine how this component of employee compensation failed the statutory prudence test. The Authority’s failure to apply the correct legal standard results in a decision which can only be characterized as arbitrary and capricious and thus unlawful.

In addition, the outcome of the Draft Decision is inconsistent with the Authority’s own determinations since the 2005 UI rate case that allowed recovery of a reasonable percentage of the Company’s incentive compensation cost. As summarized in the 2016 UI Rate Case Decision:

In the Decision dated January 27, 2006 in Docket No. 05 06 04, Application of The United Illuminating Company to Increase Its Rates and Charges, (2005 UI Rate Case Decision) the Authority approved the annual incentive compensation of $3.994 million for inclusion in rates. This amount was the average of the Company’s 2002-2004 incentive payments. In the Decision dated February 4, 2009 in Docket No. 08 07-04, Application of The United Illuminating Company To Increase Its Rates and Charges, (2008 UI Rate Case Decision) the Authority reaffirmed its Decision to limit the amount of incentive compensation to be included in rates at $3.994 million. 2008 UI Rate Case Decision, pp. 37 41. In the
2013 UI Rate Case Decision, the Authority capped the distribution incentive compensation at $3.660 million for rate year 1 and $3.778 for rate year 2. 2013 UI Rate Case Decision, p. 60.

(2016 UI Rate Case Decision, at 39-40). In addition, the 2016 UI Rate Case Decision allowed recovery of incentive compensation as follows:

Accordingly, the Authority allows the starting point for incentive compensation as $3.778 million, which represents the previously allowed incentive compensation for rate year 2 in the 2013 UI Rate Case Decision at p. 60. The incentive compensation of $3.778 million is then escalated by 3%, for proforma 2015 for an allowed incentive compensation expense of $3.891 million. Application, Schedule WP 3.23 A-C, p. 4. For rate year 1, the allowed incentive compensation expense is $4.027 million, which is the pro forma 2015 incentive compensation of $3.891 million then escalated by 3.5% which is the weighted average of the base payroll escalation percentages for management and weekly/hourly employees. Responses to Interrogatories OCC-087 and OCC-390 Revised. Rate year 2 incentive compensation allowed is $4.152 million which is rate year 1 escalated by 3.1%, which is the weighted average of the base payroll escalation percentages for 2018. For rate year 3, the allowed incentive compensation is $4.280 million, which is the rate year 2 incentive compensation escalated by 3.1%, which is the weighted average of the base payroll escalation percentages for 2019.

(2016 UI Rate Case Decision, at 39-40).

The Draft Decision provides no reasoned analysis for departure from the Authority’s precedent on this topic. (Draft Decision, at 50, 113-129, 135-136).

The Company made a reasonable request to recover its employee compensation costs, including variable pay for its union and non-union employees (Company Br. at 103-106; Exh-UI-CBP-1; OCC-216; OCC-219; see Exhs. UI-CBP-2; UI-CBP-3; UI-CPB-4; UI-CPB-5). The overwhelming record evidence demonstrates that this expense is reasonable, market-based, supported by compensation studies, and governed by an extensive evaluation process to ensure that the level and amount of variable pay achieved by an individual employee is tied to their personal performance and personal goals, many of which directly impact the customer (Company Br. at 106-109; Exh. UI-CBP-1, at 14-16; OCC-32; OCC-32 UI Att. 1; OCC-35; Tr. 3/2/23 at 1864, 1867-70, 1877-88). Absent recovery of this O&M expense, the Company’s rates are
insufficient to ensure adequate staffing levels. The Authority should reassess the Draft Decision to allow this cost, consistent with Connecticut law. Conn. Gen. Stat. §§ 16-19e(a); CL&P v. DPUC. See, e.g., Company Br. at 27-28; 89-91, 106-109, 119; Company Reply Br. at 122-136; LFE-001; SFR C-3.23 WP; LFE-079; RRU-513; OCC-32; OCC-32 UI Att. 1; OCC-35; OCC-186; OCC-216; OCC-219; RRU-192; Tr. 3/2/23 at 1864, 1867-70, 1877-88; Tr. 3/6/23 at 2401; Exhs. UI-CBP-1; UI-CBP-3; UI-CBP-4; UI-RRP-REBUTTAL-1, at 22; UI-CSP-1, at 10-11; UI-CBP-REBUTTAL-1, at 2-6; Docket No. 08-07-04, Application of The United Illuminating Company to Increase its Rates and Charges, Feb. 4, 2009, at 33-34; Docket No. 09-12-05, Application of The Connecticut Light and Power Company to Amend its Rate Schedules, June 30, 2010 at 44; CL&P v. DPUC, 216 Conn. at 645.

3. Pension Expense

The Draft Decision materially reduces, without support, the Company’s proposed pension expense (Draft Decision at 132-134). The Company’s proposed pension expense was $3.320 million (RRU-519; LFE-001). The Company’s pension and OPEB costs are determined in accordance with Accounting Standards Codification (“ASC”) 715 (Exh. UI-RRP-1, at 21; RRU-0269). These costs were developed on a calendar year basis, which aligns with the UI pension and OPEB plan years (Exh. UI-RRP-1, at 21). These costs are developed annually with the Company’s outside actuaries and include a review of all the key assumptions (Exh. UI-RRP-1, at 21). The amounts included in the Company’s O&M expense are the gross costs, reduced by: (1) amounts allocated to capital; (2) amounts for UIL employees included in the plan, which are allocated across the UIL utilities; and (3) amounts allocated to transmission or other non-distribution cost components (Exh. UI-RRP-1, at 21). UI updated the Rate Year expenses during the pendency of the case to reflect the most current discount rates and asset values, as well as the Company’s
Pension Freeze (LFE-001; RRU-0519). The Company also provided documentation of historical amounts (RRU-0270).

The Draft Decision rejects $2.1 million of UI’s proposed level of pension and OPEB expense as being unsupported by record evidence (Draft Decision at 134). The Draft Decision’s claims are belied by the record evidence in the case (RRU-0519). The Draft Decision bases its denial of the Company’s pension expense reflected in LFE-001 of $3.32 million on a citation in LFE-001 that points to Exhibit UI-CBP-7 as support for the update, stating that Exhibit UI-CBP-7 fails to support this change (Draft Decision at 134). The Company’s response to LFE-001, at page 4, states the following with respect to this expense:

As described in the Company’s response to RRU-0519, the Company has updated its forecast of pension and OPEB expense to reflect the effects of the pension freeze. (LFE-001).

The Company’s response to RRU-0519 supports the Company’s requested amount of rate year pension and OPEB expense and was filed on February 1, 2023, during the discovery period of the case, in advance of evidentiary hearings and prior to late filed exhibit hearings. Specifically, the Company’s requested amount of rate year pension expense of $3.320 million is reflected on RRU-0519 UI Attachment 1, at 1, line 26, and the Company’s requested amount of rate year OPEB expense of ($1.425) million is reflected on RRU-0519 UI Attachment 1, at 1, line 53. The derivation of these amounts, including the associated actuarial assumptions and projections, is provided on RRU-0519 UI Attachment 1, at 2-3 (id.).

Based on the Company’s review, the reference to Exhibit UI-CBP-7 in LFE-001 was a typographical error, and a holdover from the Company’s September 9, 2022 initial filing, where Exhibit UI-CBP-7 did support the Company’s initial pension expense. However, the Company clearly supported its proposed increase in pension expense through record evidence in the
discovery process and made its witnesses available during evidentiary and late filed exhibit hearings to address these projections. In fact, the Company’s initial filing in this proceeding transparently indicated its intent to update this element of the revenue requirement computation. Specifically, the Direct Testimony of the Revenue Requirements Panel indicated as follows with respect to pension and OPEB costs:

Q. Does UI expect to update the assumptions and asset values during the rate case proceeding?

A. Yes. As in prior cases, UI will update the Rate Year expenses during the pendency of this case to reflect more current discount rates and asset values. Further, as described in the Direct Testimony of the Compensation and Benefits Panel, the Company froze pension benefit accruals effective June 30, 2022. The Company will update its Rate Year pension expense projections when updated actuarial reports reflecting this change are available. The Company will also update its Rate Year 401(k) and other benefit expense projections to reflect the anticipated increase in 401(k) expenses and mitigation payments that are attributable to the pension freeze.

(Exhibit UI-RRP-1, at 21-22)

The Company’s updated pension expense is supported by the record evidence, therefore the Draft Decision’s findings on this matter are incorrect and should be changed in the Final Decision. See, e.g., Company Br. at 117-118; Exh. UI-RRP-1, at 21; UI-CBP-7; LFE-001; RRU-0516; RRU-0518; RRU-020; RRU-0256; RRU-0521; RRU-0527; RRU-0529; RRU-0519; RRU-0519 UI Att. 1; RRU-0269; SFR Sch. C-3.24 WP.

4. Travel, Education and Training

The Company requested recovery of $589,000 in Rate Year 1 for the costs necessary for travel, education and training expenses (LFE-001; SFR Sch. C-3.22 WP). The Company provided evidence that these are necessary operating costs that include, but are not limited to, technical and professional development training programs, seminars and conferences, and business travel (OCC-080). The Company will continue to incur employee travel, education, and training expense in the
rate years to meet compliance training requirements, strengthen employee skills and knowledge, maintain professional licenses, and provide required training related to new hires, new managers, and new supervisors (OCC-080). The rate year expenses also include increased field mobility training and related training materials that will allow field workers and apprentices to contribute to the safe and reliable provision of service to and emergency work for UI customers (OCC-080). The Company provided a summary of the specific increases to travel, education, and training costs (OCC-148), as well as documentation supporting the requested increases (OCC-148 UI Att. 2 CONFIDENTIAL through 7 CONFIDENTIAL).

The Company’s evidence shows that its travel, education and training expenses are reasonably and necessarily incurred to ensure that its workforce is able to serve customers. Despite this evidence, the Draft Decision rejects these costs in their entirety (Draft Decision at 136). The Draft Decision summarily concluded that “the Company has failed to demonstrate that these expenses provided any quantifiable benefit to ratepayers and are reasonable and necessary to provide service to ratepayers.” (id.).

The Authority’s stated rationale in denying these business expenses was that although the “company provided invoices and training materials” to document and support these expenses, “the benefits are not readily quantifiable,” and therefore the expenses were disallowed (Draft Decision at 136). The Draft Decision applies an incorrect standard and fails to conduct a prudence analysis of the Company’s expenses associated with travel, education, and training as is required by Conn. Gen. Stat §16-19e(a). As discussed earlier, a prudence review involves the Company putting forth its reasons that it incurs the costs; how it incurs the costs; how it works to contain the costs; and why the costs are necessary to provide utility service to customers in order to show that the costs are reasonable, warranted and necessary in the course of providing service to customers, which is
exactly what the Company provided (Tr. 3/2/23 at 2209-2211; Tr. 3/7/23 at 2496-98, 3533-34; Company Reply Br. at 163). The Draft Decision failed to conduct an appropriate analysis.

Further, the Draft Decision failed to explain why it was appropriate to reflect travel, education, and training expenses in the revenue requirements it established in Company’s last three rate cases (at least), but now it is no longer appropriate to allow such expenses. Specifically, (1) in the Company’s 2016 rate case, the Authority determined the level of travel, education, and training expenses to reflect in the Company’s revenue requirement based on the five-year average level of expense incurred by the Company (2016 UI Rate Case Decision, at 41-42), (2) in the Company’s 2013 rate case, the Authority approved travel, education, and training expenses of $1.090 million (2013 UI Rate Case Decision, at 56), and (3) in the Company’s 2008 rate case, the Authority approved $1.142 million in travel, education, and training expenses (2008 UI Rate Case Decision, at 66). The Authority did not require the Company to demonstrate a “quantifiable benefit” in any of these three proceedings.

The Company has fully supported this expense as a necessary operating cost and the Draft Decision’s wholesale rejection results in rates that are less than sufficient to cover these costs. Conn. Gen. Stat. § 16-19e(a). The Draft Decision should be changed to allow recovery of these costs. See, e.g., UI Br. at 210-211; LFE-001; SFR Sch. C-3.22 WP; OCC-080; OCC-148; OCC-148 UI Att. 2 CONFIDENTIAL through 7 CONFIDENTIAL; Tr. 3/2/23 at 2209-2211; Tr. 3/7/23 at 2496-98, 3533-34; see Company Reply Br. at 163.

5. Industry Dues

The Company requested recovery of $293,000 in Rate Year 1 with business-related (i.e., industry) membership dues (UI Br. at 215; SFR Sch. C-3.3 A-C). The Company provided evidence
and testimony that its participation in these groups directly benefits customers (OCC-20). Membership in these groups provides the Company with direct access to best practices across the industry to improve reliability, project management and operating practices, and also provides resources that enable participants to identify challenges in the customer experience and help improve on those experiences (OCC-20). The improved design and operation of the electric distribution system has very important public benefits. Participation in the program enables the Company improve the reliability, resiliency, efficiency, and safety of the distribution system. All of these characteristics translate directly to customer benefit in the use of the distribution system for electricity supply (OCC-20).

Although these are necessary operating costs, the Draft Decision denies the Company’s request in its entirety (Draft Decision at 136-137). The Draft Decision asserts that the Company failed to demonstrate that memberships in these industry organizations provide a “quantifiable benefit to ratepayers and are reasonable and necessary to provide service to ratepayers” and directs “shareholders to bear these costs….” (Draft Decision, at 137).

Similar to its disallowances of other operating expenses, the Draft Decision does not apply the relevant prudence analysis in its determination to disallow 100 percent of these expenses. Conn. Gen. Stat. § 16-19e(a). The Company, in contrast, put forth evidence of why it incurs the costs; how it incurs the costs; how it works to contain the costs; and why the costs are necessary to provide utility service to customers in order to show that the costs are reasonable, warranted and necessary in the course of providing service to customers (OCC-20; UI Br. at 214, OCC-20; SFR Sch. C-3.3 A-C). Despite this evidence, the Draft Decision did not evaluate whether the Company’s decisions to incur the cost based on all of the record evidence exhibits “good faith and

61 These groups include the Electric Power Research Institute, JD Power, DTN, LLC and the Project Management Institute (UI Br. at 207; OCC-020).
reasonableness, judged at the time the decision is made.” The Draft Decision’s analysis is devoid of legal support and should be reassessed to allow recovery of the Company’s industry membership costs.

a) **EPRI Membership Funding**

The Draft Decision also disallows UI’s request related to expanding its Electric Power Research Institute (“EPRI”) membership, alleging there is insufficient evidence in the record explaining how the expanded membership will specifically benefit ratepayers, and “conflicting and confusing testimony in the record regarding the actual cost for the expanded EPRI membership.” (Draft Decision at 210). Notwithstanding these assertions, the Company provided clear evidence in support of the benefits of an expanded EPRI membership. The disallowance is internally inconsistent with other elements of the Draft Decision expressing support for research projects that yield analytical tools or actionable insights directly relevant to UI’s operations or service territory (Draft Decision at 152), which would be the case with research opportunities from the expanded EPRI membership.

The Company’s proposed expanded EPRI participation includes funding research related to energy storage, DER integration, electric transportation, and electrification. The research aligns with existing PURA dockets, specifically, Docket Nos. 17-12-03RE03 (Energy Storage), 17-12-03RE04 (Zero Emission Vehicles), and 17-12-03RE06 (Interconnection Standards and Practices). The Company attempted to clarify the funding being requested for the clean energy research participation in its Reply Brief (UI Reply Br. at 177-178). The Company provided the total amount paid for its existing EPRI membership from 2017 ($290,000) through 2022 ($342,286) in its response to OCC-387. The amounts paid represent participation in the Distribution Systems, Distribution Operations and Planning, Occupational Health & Safety, Integrating DER, and Energy Storage & Distributed Generation research. The Company further proposed expanding its
existing clean energy research to include incremental research areas that align to the Authority’s proceedings.

In order to reflect that incremental scope, specifically, the Company removed the funding of the clean energy research areas from Sch. WP C-3.03 and included the funding in Sch. C-3.11. EPRI research funding for Rate Year 2023/2024, as shown in Sch. WP C-3.03, is $251,000, which represents a reduction of approximately $91,000 ($342,286 - $251,000). The Company’s proposed EPRI expanded participation ($135,000) was provided in its response to interrogatory UPA-0006 and was included in Sch. WP C-3.11. The $17,000 increase referenced in the Draft Decision in Sch. WP C-3.03 represents the total increase in all distribution dues expense and not solely the increase in EPRI dues expense.

For these reasons, the Authority should revise the Draft Decision and allow funding for the expanded EPRI membership.

See, e.g., UI Br. at 214; SFR Sch. C-3.3 A-C; OCC-20; see UI Reply Br. at 177-178; Exh. UI-CETP-1, at 31; Tr. 3/8/23 at 2806; OCC-246; OCC-246 UI Att. 3.

6. Telecommunications Expense

The Company requested recovery of $3.464 million of distribution telecommunications expense for Rate Year 1 (LFE-001). The Company’s computer and telecommunications expenses in the Test Year and Rate Years include smart grid-related costs and software maintenance and subscription costs (Exh. UI-RRP-1, at 27). These amounts are provided in Schedule C-3.13 and Schedule C-3.18. The record also contains historical amounts (RRU-0345; RRU-0552; OCC-0146; Company Br. at 82). Notwithstanding this evidence, the Draft Decision reduced the Company’s request by $1.075 million as “unexplained” and unsupported (Draft Decision at 137-138). This reduction is unwarranted and disallows cost recovery necessary to meet the Company’s
telecommunications operating expense and its ability to effectively and safely monitor crucial facilities, in violation of Conn. Gen. Stat. § 16-19e(a) (OCC-146).

The Company requires telecommunication services to provide safe and reliable electric distribution service to customers. These services enable the Company to utilize SCADA, AMI, and IT communications, all of which are necessary to serve customers. The Draft Decision’s reduction will impact the Company’s ability to provide services for distribution automation and critical facilities, as well as hampering the Company’s necessary expansion of the telecommunications networks and infrastructure. These are necessary operating costs and full recovery of these expenses is appropriate pursuant to Conn. Gen. Stat. §16-19e (see LFE-001, C-3.18WP (outlining categories of telecommunications expense categories); OCC-146 (supporting the telecommunications expense associated with smart grids)). This proposed reduction will similarly inhibit growth in distribution automation while limiting the Company’s ability to add diverse telecom transport where warranted (see id.; RRU-343; RRU-345).

Put simply, in today’s digital age, telecommunications are a necessary and proper operating expense of a modern utility. Conn. Gen. Stat. §16-19e. The Company provided documentary evidence to demonstrate and support its test year telecommunications expense and proposed rate year telecommunications expense (RRU-343; RRU-345; OCC-146). The Company also provided adequate explanation of the difference between the 2016 test year and the current test year telecommunication expense (RRU-343). The Draft Decision will materially impact the Company’s ability to provide these necessary services and the Company requires adequate support from its regulator to recover the costs of these necessary operating expenses. Conn. Gen. Stat. §16-19e. The Authority should revise the Draft Decision and allow recovery of the Company’s telecommunications expense, as updated by LFE-001.
7. **Corporate Service Charges**

The Company provided substantial evidence in support of its corporate service charges in Rate Year 1 in the amount of $37.862 million (Exh. UI-RRP-1, at 28; Sch. C-3.27; LFE-001; LFE-001 UI Att. 1). UI receives allocated costs for shared services performed by Avangrid Services Company, Avangrid Management Company (“AMC”) and UIL Holdings Corporation (“UIL”), for services such as information technology, finance and related services, human resources, legal services, and other administrative functions (Exh. UI-RRP-1, at 28; Sch. WP C-3.27; EOE-0002 UI Att. 1 at 42-43). The amounts included in the Company’s final revenue requirement reflected reductions made by the Company during the pendency of the case.

The Draft Decision disallows $3.646 million in corporate services charges, based on elimination of or reductions to the items including the inflation adjustment, investor relations costs, among others. (Draft Decision, at 138-139). These are necessary and warranted costs to provide utility service. The Draft Decision will materially impact the Company’s ability to provide these necessary services and the Company requires adequate support from its regulator to recover the costs of these necessary operating expenses. Conn. Gen. Stat. §16-19e. The Authority should revise its Decision and allow recovery of the Company’s corporate services charges.

See, e.g., UI Br. at 121-130; UI Reply Br. at 138-139; Exh. UI-RRP-1, at 13-16, 28; Sch. C-3.27; LFE-001; LFE-001 UI Att. 1; LFE-074; LFE-074 UI Att. 1; EOE-0002; EOE-0002 Att.

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62 As described in the Company’s response to EOE-0135, the Company has removed costs for which it did not intend to seek rate recovery (e.g., non-qualified pension plan costs, certain community relations costs, and certain public affairs costs). As described in the Company’s response to EOE-0270, this results in a $2,187 (in thousands of dollars) reduction to the Company’s proposed pro forma test year. Please note that this correction encompasses the adjustments described in the Company’s responses to OCC-0003 and EOE-0152. These corrections are reflected on Schedule WP C-3.27. In addition, following discussion at hearing, the Company has removed $7 (in thousands of dollars) of additional executive compensation tied to the achievement of civic and community engagement goals (LFE-001). The Company provided documentation in EOE-0135 UI Attachments 1 – 3 to demonstrate the corporate service charges reflected in the Company’s revenue requirement as allocated from ASC to UIL, and from UIL to UI. Costs charged to UI by affiliates other than UIL are generally directly charged (EOE-0135).
The Draft Decision disallows $2.8 million of inflation adjustments based on a “pattern of overall declining costs in this area” (Draft Decision at 139). The Draft Decision rejected UI’s assertion that the decreasing trend in corporate service charges should be attributed to the removal of the corporate capital charge based on the Authority’s analysis comparing the corporate service charge with the removal of the capital charge (Draft Decision, at 140). This analysis is flawed. The Authority states that it “normalized” the Company’s corporate service charges to demonstrate that corporate service charge costs have been flat or decreasing, and therefore inflation is not appropriate to include for these costs (Draft Decision at 140). However, a fair comparison of the Company’s corporate service charges reveals that since 2017 corporate service charges have generally increased over time (see OCC-013). The table below derived from data initially produced in OCC-13 shows the corporate capital charge and charges moved to Pool Costs beginning in 2021 removed:

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a) Inflation

The Draft Decision disallows $2.8 million of inflation adjustments based on a “pattern of overall declining costs in this area” (Draft Decision at 139). The Draft Decision rejected UI’s assertion that the decreasing trend in corporate service charges should be attributed to the removal of the corporate capital charge based on the Authority’s analysis comparing the corporate service charge with the removal of the capital charge (Draft Decision, at 140). This analysis is flawed. The Authority states that it “normalized” the Company’s corporate service charges to demonstrate that corporate service charge costs have been flat or decreasing, and therefore inflation is not appropriate to include for these costs (Draft Decision at 140). However, a fair comparison of the Company’s corporate service charges reveals that since 2017 corporate service charges have generally increased over time (see OCC-013). The table below derived from data initially produced in OCC-13 shows the corporate capital charge and charges moved to Pool Costs beginning in 2021 removed:
As shown in the table, the Company’s corporate service charges have seen an increasing trend since 2017, escalating from approximately $30.7 million in 2017 to $37.19 million in the test year (id.). In fact, the only year with decreasing costs was 2023, where certain employee resources were reallocated to better align with their roles within Avangrid post-UIL integration.

The Authority has held that it “typically allows utilities to apply a general inflation factor to operation and maintenance (O&M) expenses not specifically adjusted elsewhere.” Docket No. 13-02-20, Application of Aquarion Water Company of Connecticut to Amend its Rates (Sept. 24, 2013) at 66. “Without an inflation adjustment, the Company would not be made whole for increases in its O&M expenses not adjusted for elsewhere.” Id. With respect to corporate service charges, the record evidence demonstrates that the Company’s corporate service charges are increasing over time, and that the Company has made no specific adjustment for these costs elsewhere (OCC-013). As such, absent an inflation adjustment, the Company would not be made whole for these increasing expenses, in violation of PURA precedent and Conn. Gen. Stat. §16-

See, e.g., UI Br. at 85-88; UI Reply Br. at 44; Exhs. UI-RRP-1, at 11-13; UI-RRP-REBUTTAL at 16, 18; UI-AEB-REBUTTAL-1B, at 14-15, 17-18; RRU-0543; LFE-066; LFE-066 UI Att. 1; OCC-0084 UI Att. 14; OCC-0533 UI Att. 1; Docket No. 13-02-20, Application of Aquarion Water Company of Connecticut to Amend its Rates (Sept. 24, 2013) at 66; NSTAR Electric Company, D.P.U. 22-22 (Nov. 30, 2022), at 72; see also Exh. UI-AEB-REBUTTAL-1B, at 67; RRU-0544; RRU-0545; RRU-0546.

b) Investor Relations

The Draft Decision removes 100 percent of the Company’s proposed investor relations expense on the basis that the Company did not show the costs are reasonable and necessary to provide service to customers, and that “investor relations expenses primarily benefit shareholders.” (Draft Decision, at 139.). The Company must attract capital to fund its operations, which requires it to maintain an investment relations function. Conn. Gen. Stat. §16-19e(a). The Company met its burden of demonstrating these expenses as a necessary part of its operations. In the 2016 UI Rate Case, the Authority allowed 25 percent of these costs to be recovered in rates, based on the same type of information. (2016 UI Rate Case at 37). The Draft Decision provides no reasoned analysis for a result here that would disallow the costs in full. Thus, the Authority should allow recovery of these costs as a necessary operating cost.
8. **Storm Response Costs**

a) **Storm Reserve**

The Draft Decision finds that the current storm reserve accrual level of $2 million is adequate and therefore decreases the Company’s proposed storm reserve expense by $1 million. (Draft Decision, at 144). The Draft Decision mischaracterizes the Company’s position, stating that “UI argues that it needs the increase to enable the Company to secure sufficient resources in advance of unpredictable storms.” (Id. citing Exh. UI-EPP-1, at 17). In fact, the Company proposed an increase in the storm reserve accrual level from $2 million to $3 million based on the Company’s actual storm experience over the previous five years (i.e., increased, unpredictable storm events), with the intent of the request being to mitigate cost uncertainty for customers (UI Br. at 149; UI Reply Br. at 141; Exh. UI-EPP-1, at 22). Increasing the storm reserve as proposed will decrease cost uncertainty and helps stabilize rates for customers by setting aside a reserve more aligned with historical storm costs (UI Reply Br., at 141; Exh. UI-EPP-1, at 22).

The Company acknowledges that maintaining the storm reserve at the current level has limited immediate impact to UI, but requests that the Authority consider the benefit to customers and higher potential for rate-shock that could result from the lower storm reserve, taking into consideration the well-established heightened occurrences of storm events (see UI Reply Br., at 141; Exh. UI-EPP-1, at 18, 20).

See, e.g., UI Br. at 158-164; UI Reply Br. at 139-141; Exhs. UI-EPP-1, at 16-17, 19-22; OCC-536; EOE-162; see OCC-160; Exh. UI-EPP-3.

b) **Major Storm Threshold**

The Draft Decision increases the threshold by which the Company can charge storm costs to the storm reserve account to recognize the Company’s increased operating costs. (Draft Decision, at 146). Currently, the Company is allowed to charge storm expenses to the storm
reserve if the incremental expense for an event is at least $1 million (major storm threshold). (Id.). Based on cost escalation using the Handy Whitman Index for utilities in the North Atlantic region to convert July 1, 2013 dollars to July 1, 2022 dollars, PURA increases the major storm threshold to $1.43 million and directs the Company to retain documentation demonstrating it applied the Handy-Whitman Index when it next requests recovery of major storm costs in the storm reserve. (Id.).

The Draft Decision increases this threshold without providing an offset for the increased expenses that will accrue. Nor does PURA recognize anywhere in the decision that the Company’s operating costs would have increased a proportional amount over this timeframe. As a result, the result is arbitrary and not supported by evidence. The Draft Decision makes this adjustment without having provided the Company the opportunity to demonstrate the corresponding impact of increased expenses, showing a larger cost burden on the Company. The Company should have been afforded the opportunity to identify the O&M impact of this action and create a pathway for recovery. The Authority should reassess the Draft Decision and maintain the current threshold, as the current proposed result is arbitrary and unlawfully prohibits recovery of these costs as a necessary operating expense.

c) Mutual Aid

The Draft Decision improperly directs UI to record all mutual aid revenue in the storm reserve as an additional accrual to the storm reserve, which is a fundamentally erroneous treatment (Draft Decision, at 147-148). The Draft Decision comes to this conclusion on the basis that, if work is performed by contractors or with internal employee overtime, then UI is incurring more costs to complete this work when employees are supporting other utilities through mutual aid. However, this outcome undermines the purpose and benefit of participating in mutual aid and
penalizes the Company for sending its crews to provide mutual aid to other utilities, and contravenes the benefits of participating in mutual aid. This direction is flawed in several respects.

First, the Authority has also directed that Mutual Aid revenue be included in the RDM (Draft Decision, Table 78). As explained by Company Witness Hurwitz (Tr. 2/27/23 at 1451 (new sources of revenue that are accompanied by a new type of expense are inappropriate to include in RDM), there is no valid way to count the same dollar of revenue in two places. Second, the Authority’s rationale completely disregards the incremental cost the Company incurs to perform the mutual aid work. The result of the Draft Decision is that the Company is denied any avenue to recover these incremental Mutual Aid costs, which are not included in Distribution base rates or any other rate mechanism. If the Authority insists on crediting the revenue collected for Mutual Aid to the storm reserve, the only valid way to accomplish that is to also charge the incremental cost of Mutual Aid to the storm reserve. Otherwise, the incremental cost of Mutual Aid is borne solely by shareholders without any opportunity to recover those costs in violation of Connecticut law.

The utility industry relies on mutual aid to perform restoration after major weather events because it is the most cost-effective way of doing so (see generally UI Reply Br. at 138-139; Tr. 2/24/23 at 1265-67; 3/2/23 at 2102-03; EOE-202). The Authority, in its own analysis in the Draft Decision, finds that the cost to staff for large storm restoration far exceeds the cost of mutual assistance. See Docket No. 17-12-03RE08, PURA Investigation into Distribution System Planning of the Electric Distribution Companies – Resilience and Reliability Standards and Programs, at 11-14, 38, 58 (discussing cost-benefit analysis of FTEs for storm response, how resiliency preparation includes securing mutual aid costs and the existence of mutual aid programs to make resources available following devastating events). All utilities benefit from, and contribute to, the mutual aid system, including UI, which provides resources at mutual aid rates,
and is compensated for those costs (see UI Reply Br. at 138-139, Tr. 2/24/23 at 1265-67; 3/2/23 at 2102-03; EOE-202; Exh. UI-EPP-1, at 19). While those resources are away, the Company is concurrently being compensated through base rates for the cost of those employees, but the work still must be completed (see Exh. UI-EPP-1, at 19). The Company uses contractors or overtime as a tool to strike this balance (id.; UI Initial Br. at 161). As a result, the Company may incur higher costs than the costs covered in rates. The Authority seeks a solution in adding all of the revenue for mutual aid into the major storm accrual, but such a resolution does not fairly compensate the Company for costs incurred.

The Authority should remove the directive to record all mutual aid revenue in the storm reserve as an additional accrual to the storm reserve. Absent this change, the Company’s rates will be less than sufficient to recover its operating costs pursuant to Conn. Gen. Stat. § 16-19e(a)(4).

See, e.g., Company Br. at 211; Company Reply Br. at 138-139; Exhs. UI-EPP-1, at 19; Tr. 2/24/23 at 1265-67; 3/2/23 at 2102-03; EOE-202.

9. **CLEAN EARTH Lab Funding**

The Company proposed annual recovery of $225,000 to support the CLEAN EARTH Lab initiative, plus a Company cost-share of 10 percent, in addition to one FTE at an annual cost of $173,000 (RSR-014; RSR-022). The Company’s proposal was designed to cover the costs of research grants for the UConn research facility, fellowships for student research, lab equipment, and administrative matters, including at least two research endeavors per year (RSR-015; OCC-259). The early-stage nature of the R&D conducted by the proposed lab are intended to provide insights intended to inform prudent decision-making by the Company that could lead to, for example, significant investment in innovative technologies or business models in the mid- to long-term or allow the Company to avoid certain investments or expenditures altogether (OCC-259).
The Draft Decision materially reduces the funding for the CLEAN EARTH initiative by 75 percent of the requested R&D funding (to $56,250 annually), conditional on the Company proposing specific research proposals, as outlined in Orders to this Decision (Draft Decision, at 152). The Draft Decision disallows the costs of the FTE required to support this program. (Draft Decision, at 151).

If the Draft Decision does not allow the Company’s funding request as proposed, the Authority should remove all expenses associated with the CLEAN EARTH initiative because the program is not viable at the reduced funding level. The funding level authorized in the Draft Decision makes the Company’s proposal untenable. The Company’s proposal sought to strike a balance, where it requested a reasonable amount of funding in each of the rate years to facilitate critical research (Exh. UI-JR-1, at 7, 10-13; RSR-016; OCC-259; RSR-098; RSR-014; RSR-015; RSR-019; RSR-022; RSR-105). The Draft Decision undercuts the Company’s proposal, resulting in funding that is insufficient to facilitate these areas of energy research. At the reduced level, it would be inefficient and wasteful to apply $56,000 in customer funds to this initiative because the reduced amount is insufficient to produce meaningful results. The Company funding level will make it impossible to accomplish the goals of the program and therefore UI would not move forward with this initiative.

See, e.g., UI Br. at 201-205; UI Reply Br. at 178-79; OCC-258; OCC-259; RSR-014; RSR-015; RSR-016; RSR-017; RSR-019; RSR-022; RSR-098; RSR-097; RSR-105; Exh. UI-JR-1, at 7, 10-13; see Docket No. 12-07-06, Application of The Connecticut Light and Power Company for Approval of its System Resiliency Plan; Docket No. 12-07-06RE01; see generally Exh. UI-CETP-1.
10. **Municipal Dashboard**

The Draft Decision approved annual O&M expense funding for the Company’s municipal dashboard as the Authority deems coordination and communication with municipalities during emergency events a high priority. (Draft Decision, at 153). The Draft Decision found that the dashboard will help UI coordinate with towns and was reasonable and necessary. (Id.).

The Company appreciates the Authority’s analysis of this important project. The Company identifies the municipal dashboard separately here to point out a mathematical error contained in the Draft Decision on pages 19-20 and page 44. Specifically, on page 44 of the Draft Decision, the Authority denied the Company’s proposal to capitalize the municipal dashboard (Draft Decision at 44). On Pages 19 and 20, the Draft Decision discusses certain adjustments to the Company’s proposed rate base. The annual expense in the rate year under the draft decision would be the same as proposed by the company of $825,000 with a reclassification between depreciation expense and O&M. This adjustment appears to be included in the Approved Plant-in Service Adjustment as shown in table 70 on page 181, annual depreciation expense has been reduced. The corresponding addition to O&M expense is included on page 107 in table 43 in Professional Services. Please also see Section II.B.8 of these written exceptions. The Final Decision should correct the error.

See, e.g., UI In. Br. at 148, 165-166; UI-EPP-1, at 23-25; Tr. 3/2/23, at 2004, 2050-52, 2110; LFE-093; RSR-0037.

11. **UConn Weather Modeling Funding**

The Draft Decision rejects the Company’s annual proposed O&M expense associated with funding necessary with the UConn Outage Prediction Model. (Draft Decision at 153). The UConn model provides human oversight and insight into all predictions before being issued (Exh. UI-EPP-1, at 26). However, this model was developed in 2015 (id.). At this time, the UConn model
requires additional data and the most updated enhancements available to increase its accuracy and effectiveness (id.). The Company proposed an additional investment in this model, including hydrodynamic modeling of the UI service territory, at a cost of $150,000 per year for three years (id.). Similar to the practice of weather forecasters, having more than one model to predict outages can improve the Company’s ability to ensure an effective response to a severe weather event by having a more comprehensive understanding of possible outcomes (id.). The hydrodynamic research is expected to improve the Company’s understanding of how to more accurately predict the timing, height, and destructive force of water in areas vulnerable to flooding (id.).

Despite the evidence relating to the need to update this model and to utilize multiple weather forecasting services, the Draft Decision rejected this request in its entirety. (Draft Decision at 153). The Draft Decision asserts that the Company already uses multiple weather models, including a damage prediction model from DTN, which are orders of magnitude less expensive (id.). It also stated that the Company failed to adequately demonstrate the benefits of this project (id.).

The Authority should reassess the Draft Decision and allow the proposed funding for this important initiative. The Company has demonstrated it to be a reasonable and necessary operating cost consistent with Conn. Gen. Stat. § 16-19e(a). The Draft Decision fails to justify the disallowance based on evaluation whether the Company’s decisions to incur the cost based on all of the record evidence exhibits “good faith and reasonableness, judged at the time the decision is made” or why providing additional funding to weather modeling is not necessary in this age of extreme weather events and heightened regulatory oversight of emergency response. See Docket No. 20-12-46 (establishing penalties to be levied against the Company in the event of extended duration outages). The Company’s proposed UConn weather modeling expense represents a prudent and efficient method of improving its weather predictive services, storm preparedness and
planning (Exh. UI-EPP-1, at 7-8). These expenses are necessary and proper and should be allowed for recovery.

12. **Pole Attachment Costs; Engineering and Delivery**

The Draft Decision found that the Company’s forecast on pole attachment applications, which was based on the best available information from pole attachers, is unsupported and instead projects pole attachment requests of 10,500 based on the average of 2018 – 2022. (Draft Decision, at 160). The Draft Decision found projections from the attachers to be unreliable and refers to the final decision dated May 11, 2022 in Docket No. 19-01-52RE01, PURA Investigation of Developments in the Third-Party Pole Attachment Process – Make Ready (“19-01-52RE01 Decision”), which, the Draft Decision states, established that the applicant complete the engineering and survey work, rather than the pole owner. (Draft Decision, at 160 citing 19-01-52RE01 Decision, App. B, at 1). On this basis, the Draft Decision finds that pole owners will see fewer traditional pole applications as a result of this decision. (Id.).

The Company disagrees with this analysis. Although the 19-01-52RE01 Decision established the option of one-touch make-ready (“OTMR”), the decision still allowed for the traditional attachment process. 19-01-52RE01 Decision, App. B, at 1. While the Authority stated it “expects that the pole owners, SPAs, attachers, consumer advocates, and other stakeholders will [ ] continue to work together to improve the implementation of the OTMR framework,” the 19-01-52RE01 Decision did not mandate or require attachers to use this option. To date, not one attacher has engaged in pre-engineering applications, nor has an attacher engaged in OTMR. (See Docket No. 19-01-52RE01, PURA Investigation of Developments in Third Party Pole Attachment Process – Make Ready (February 2, 2023 Compliance Filing on Order No. 2). The Company filed its compliance filing with 19-01-52RE01’s Final Decision, Order 2, on February 2, 2023, and no attacher opting to use the OTMR method was included in either report. (Id.).
Without evidence that the attachers are planning to opt for OTMR, and no applications actually utilizing OTMR, the Company appropriately continues to rely on the attachers’ own forecasts in presenting their future needs and rely on its use of internal FTEs and contractors to complete the coinciding work, which includes the pole attachment application and engineering phase (UI Reply Br. at 192; Tr. 2/21/23 at 571-572). Based on the evidence in the record, the Draft Decision’s forecast adjustment of 10,500 pole attachment applications is unreasonable, and without evidentiary basis, as is its correlating approval of eight incremental FTEs rather than the 25 requested (for the Company-forecasted 25,877 pole attachments in 2023 and 2024, per year). The $1.376 million decrease is insufficient to account for future pole attachment work and preclude UI from recovering these costs as a necessary operating expense.

See, e.g., UI Reply Br. at 192; Tr. 2/21/23 at 571-572; 19-01-52RE01 Decision.

13. Central Facility Rent Credit

The Draft Decision increases by $2.58 million the Company’s proposed rent credits associated with the Central Facility from $3.797 million, to $6.377 (Draft Decision at 170-171). However, the Draft Decision is devoid of citations to the record or any indication as to the support for this adjustment. The Draft Decision posits a conclusory revenue requirement of the Central Facility that was greater than the Company’s actual calculation, and then calculated a greatly increased cost per square foot of the Central Facility (id.) asserting that this is the “actual cost” of the Central Facility (id.). The Draft Decision’s arbitrary increase in rent credits is unsupported by record evidence and should be reassessed.63

63 The Central Facility rent credit in the Draft Decision would result in all of UI’s affiliates, including Connecticut Natural Gas Corporation (“CNG”) and The Southern Connecticut Gas Company (“SCG”), along with Transmission, paying more. (See Draft Decision at 171 regarding the allocation of rent expense). For example, the interrogatory response referenced in the Draft Decision in relation to the allocation factor, RRU-201 Attachment 4, notes that CNG and SCG get allocated 6.19% and 6.12% of the cost in 2022, respectively, when that allocator is used.
In addition, the Draft Decision’s analysis of the Central Facility rent credits is internally inconsistent (Draft Decision at 36, 170-170). The first reason cited in the Draft Decision for disallowing the Company’s loss on the sale of Bridgeport Avenue is that the Company did not allocate the loss between its transmission and distribution operations. (Draft Decision at 36). However, the Draft Decision relies on a revenue requirement analysis for the Central Facility (i.e., the buildings constructed by the Company to replace Bridgeport Avenue) that does not reflect an allocation between its transmission and distribution operations. (Draft Decision at 170-71). In fact, the Draft Decision explicitly removes the adjustment applied by the Company (see id. at 177). Simply put, it is a double standard and internally inconsistent to criticize the Company for failing to apply the allocation factor on the one hand, then remove the allocation factor on the other hand when it hurts the Company.64

Additionally, it violates the principle of cost causation. The Central Facility is comprised of two buildings. The Company’s FERC-approved transmission rates split its general property between its transmission and distribution operations. In other words, the cost of the Company’s general property is borne by both the Company’s transmission and distribution customers. The Draft Decision’s findings with respect to the Central Facility rent credits inure all the benefit to UI’s distribution customers, even though they bear only a portion of the costs.

Second, the Draft Decision provides no support for how it arrives at a Central Facility revenue requirement of $20.976 million (Draft Decision at 170-71). Adjusting LFE-57 for the Draft Decision’s findings with respect to allocation and cost of capital, the revenue requirement comes out to just over $16 million, substantially less than the $20.97 million noted by the Authority.

64 In Docket No. 16-06-04, the Authority approved the Company’s rent credit amount and methodology (Docket No. 16-06-04, at 58 (no adjustment to proposed rent and lease expense). Here, the Authority is rejecting without explanation this precedent, which is relied on for other aspects of the Draft Decision.
Authority. (Draft Decision at 170-71). All else equal, this amount would be further reduced once adjusted for the plant disallowances identified in the Draft Decision. As the Draft Decision fails to support or explain its calculation, and the Company is unable to replicate this calculation or how it was derived, the Authority’s calculation of a Central Facility revenue requirement is arbitrary and represents an abuse of discretion by the Authority. The Authority should reassess this issue and restore the Company’s proposed Central Facility rent credits as proposed.

Lastly, even setting aside all of the above, if the final decision is not adjusted and there is a substantial increase to the Company’s rent credit for the Central Facility, the resulting increase in the value of the rent credit relative to the Company’s proposal should not impact UI’s O&M expense, as is currently reflected in the Draft Decision (Draft Decision, at 107). Rather, this adjustment should impact UI’s other revenues, as shown in Schedule C-3.01. This is critically important for proper operation of the RDM. If the Draft Decision is unchanged, the Company will return these amounts to customers twice: once as a reduction to expense, and again when such amounts are counted as an “other revenue” in the operation of the RDM.

14. **Inflation Adjustment**

The Company requested recovery of expenses subject to inflation at a rate of 8.61 percent (Exh. UI-RRP-1; OCC-84). This amount was reduced from the actual calculation of 10.61 percent, subject to the Company’s proposed inflation mitigation proposal (id.). The Authority rejected the Company’s proposal, stating that the Company’s approach is flawed because it incorrectly provides for inflation to accrue during the interim period dating from the first quarter of 2022 through the third quarter of 2024 (Draft Decision at 173-74). The Draft Decision does not indicate what this approach is based on or how it is an appropriate calculation (id.). It states:

Using actual GDP Chained Price Index quarterly rate change average for Q1 2022 to Q2 2022 (i.e., 1.58% and 3.15% for an average of 2.36%) and GDP forecasted GDP chained price index quarterly rate change for Q2 2024 and Q3 2024 (i.e.,
10.21% and 10.61% for an average of 10.41%). The difference of the two averages (8.04%) will be used for ratemaking purposes. See UI Interrog. Resp OCC-84, Att. 14.

(Draft Decision at 173).

This results in a reduction of $628,000 and is unsupported by citations to the record or PURA precedent. The Authority has held that it “typically allows utilities to apply a general inflation factor to operation and maintenance (O&M) expenses not specifically adjusted elsewhere.” Docket No. 13-02-20, at 66. “Without an inflation adjustment, the Company would not be made whole for increases in its O&M expenses not adjusted for elsewhere.” Id. The Authority has consistently allowed inflation adjustments to various categories of UI’s O&M expense, including most recently in the 2013 UI Rate Case and 2016 UI Rate Case.

First, the Draft Decision relies on incorrect and stale data. It reflects the Company’s initially filed inflation data, provided in OCC-0084 UI Attachment 14, rather than the Company’s updated inflation data provided later on in discovery in RRU-0542 and LFE-001 (Draft Decision at 173).

Second, the Draft Decision materially deprives the Company of inflation incurred in the first two quarters of 2022 (Draft Decision at 173). Although the Company’s test year is 2021, the Draft Decision erroneously subtracts the average inflation rate in the first two quarters of 2022 when performing this calculation (Draft Decision at 173-74). Subtracting inflation associated with the first two quarters of 2022 denies the Company an opportunity to recover the cost associated with inflation in that period, which would violate the Authority’s long-standing practice of making the Company whole for O&M expenses subject to inflation. Docket No. 13-02-20, at 66. “Without an inflation adjustment, the Company would not be made whole for increases in its O&M expenses not adjusted for elsewhere.” Id.
As the Draft Decision is incorrectly calculated, based on stale data, and would deprive the Company of its ability to be made whole, the Final Decision should revise these findings and accept the Company’s inflation calculation as outlined in LFE-001.

See, e.g., UI Br. at 85-88; UI Reply Br. at 44; Exhs. UI-RRP-1, at 11-13; UI-RRP-REBUTTAL at 16, 18; UI-AEB-REBUTTAL-1B, at 14-15, 17-18; RRU-0543; LFE-066; LFE-066 UI Att. 1; OCC-0084 UI Att. 14; OCC-0533 UI Att. 1; Docket No. 13-02-20, Application of Aquarion Water Company of Connecticut to Amend its Rates (Sept. 24, 2013) at 66; NSTAR Electric Company, D.P.U. 22-22 (Nov. 30, 2022), at 72; see also Exh. UI-AEB-REBUTTAL-1B, at 67; RRU-0544; RRU-0545; RRU-0546.

15. Rate Case Expense

The Company requested to recover $1.523 million in rate case expense amortized over three years. (LFE-001; Company Brief at 183-186). The Draft Decision Authority concludes “that UI failed to sustain its burden that the outside labor expenses were reasonable and prudent; further, even if the Company had met its burden, the requested rate case expenses are barred from recovery under Conn. Gen. Stat. § 16-243p(b).” (Draft Decision at 186). This analysis is flawed.65

First, the Company sustained its burden of proof by providing substantial evidence in support of its costs. (Company Brief at 183; EOE-98; LFE-001, Sch. WP C-3.30; EOE-0159). Despite the Company’s evidence, the Draft Decision summarily asserts that the Company provided “no information explaining why such costs were reasonable and prudent, nor do they articulate any associated benefit to ratepayers.” The Draft Decision misstates and misapplies the legal standard.

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65 The Company reserves its rights to present constitutional claims with respect to the recovery of its rate case expense.
PURA has an obligation to conduct its prudence review consistent with the legal elements comprising the prudence standard. These legal elements require an evaluation of whether the evidence is sufficient to rebut the presumption that the Company’s decision-making process and actions or inactions flowing therefrom were reasonable, good faith decisions based on what the Company knew or should have known under the circumstances that existed at the time the decision was made. This is a far different concept than performing an after-the-fact review, with full knowledge of what actually transpired and then generating a series of findings based on that knowledge.

The Company demonstrated its reasonable rate case expense with evidence in the record, and thus made a *prima facie* showing in support of these costs. In contrast, the Draft Decision cites to no evidence by which the Authority has determined the reasonableness and good faith of UI’s actions; improperly engages in hindsight judgment, rather than assessing the reasonableness of UI’s actions at each step of the process and judged at the time the decisions were made; and cites to no evidence of the information that was known, or reasonably should have been known, prior to incurring these costs that would support its disallowance. In addition, the Draft Decision applies a different standard (i.e., “associated benefit to ratepayers”) that is not supported by law. Thus, the outcome of the Draft Decision is inconsistent with the Authority’s decision in the 2016 UI Rate Case that provided reasonable cost recovery of the Company’s rate case expense. 2016 UI Rate Case at 25-26. The Draft Decision provides no reasoned analysis for a different outcome here.

Lastly, the Draft Decision asserts that 100 percent of the Company’s rate case expense is barred from recovery under Conn. Gen. Stat. § 16-243p(b), despite express language in the statute to exclude only the portion of rate case costs “associated with its *attendance or participation in*
any rate-making hearing before the authority” (emphasis added). The Draft Decision misapplies the plain meaning rule under Conn. Gen. Stat. § 1-2z. The Draft Decision improperly relies on snippets of legislative testimony related to P.A. 20-5 that does not represent the legislative history of the bill and compounds the error by referring to more recent legislative testimony relating to S.B. 7 purporting to “clarify” the plain language of Conn. Gen. Stat. § 16-243p(b).

Under Connecticut statutory law, the law applicable in an agency proceeding is the law that “was in effect at the time when” those agency proceedings began. Hughley v. Comm'n on Hum. Rts. & Opportunities, No. CV 970573414, 1998 WL 96433, at *1 (Conn. Super. Ct. Feb. 24, 1998) (explaining that “[t]he law applicable in this case is that which was in effect at the time when the plaintiff filed his original complaint with the commission”). Under Connecticut law, a “substantive change in the law . . . may not be applied retroactively,” and “there is a presumption that ‘in enacting a statute, the legislature intended a change in existing law.’” Nettleton v. C & L Diners, LLC, 219 Conn. App. 648, 692 (2023). In general, agencies do not have the power to promulgate retroactive rules unless the legislature conveys that authority with “an express statutory grant.” Shannon v. Comm’r Housing, 322 Conn. 191, 203 (2016) (quotations omitted).

Thus, the Draft Decision is based on flawed legal analysis and produces an arbitrary and unreasonable result. The Draft Decision’s analysis of Conn. Gen. Stat. § 16-243p is an illegal attempt to expand the scope of the statute beyond its plain language. As such, the Company should be granted full recovery of the Company’s rate case expense. See, e.g., UI Br. at 185-186; UI Reply Br. at 141-143; LFE-001, Sch. WP C-3.30; EOE-0159; LFE-088; LFE-088 Supp.; LFE-082; Seramonte Associates LLC v. Town of Hamden, 345 Conn. 76, 84-85 (2022); see §16-243p(b) Conn. Gen. Stat. § 16-19; Conn. Gen. Stat. §1-2z; Conn. Gen. Stat. §16-25.

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66 UI addressed this topic in detail in its pre-hearing brief on January 18, 2023, initial brief on April 26, 2023, and reply brief on May 9, 2023.
16. Excess Accumulated Deferred Income Taxes

The Draft Decision on page 43 states the following:

Here the Authority finds that the record supports two EADIT adjustments that, ultimately, result in an increase to unprotected EADIT of $10.500 million and a recategorization of EADIT from protected to unprotected in the amount of $6.241 million. The basis for the first EADIT adjustment is an inconsistency in the information the Company provided in discovery with what was included in the Company’s testimony. The Company’s testimony quantifies unprotected EADIT as $6.841 million. Tax Panel PFT, p. 5. Yet, the Company’s response to RRU-422, Att. 3 quantified the Company’s unprotected EADIT as $17.341 million.

In response to the finding increasing EADIT by $105 million, the information provided by the Company in discovery was consistent with the Company’s testimony. The $17.3 million cited in RRU-422 sourced from the July 2019 Order No.2 Compliance Filing in Docket 18-01-15 that preceded the Settlement Agreement. That earlier value included $11.8 million in unfunded impact. Because customers did not pay for this component, it was removed from the refundable value included in the Settlement Agreement. In addition, the Order No.2 EADIT distribution unprotected value was derived using a combination of direct assignment and allocation. The values included in the Settlement Agreement were entirely based upon an allocation approach with no direct assignment in accordance with UI’s FERC allocation methodology. This second change increased refundable distribution unprotected EADITs by approximately $1.3M. Together, these two changes net to $10.5 million. The following table illustrates these points.

67 The Tax Cuts and Jobs Act Settlement Agreement was entered into by UI, OCC, AG, DEEP and EOE on June 23, 2021 and filed in Docket No. 21-01-04, PURA Annual Review of the Rate Adjustment Mechanisms of The United Illuminating Company (Sept. 15, 2021) (Exh. UI-DB/GRM-1 at 4).

68 The $11.8M represents the non-transmission portion of the $18.6M difference between the $59.106M updated unfunded 2017 excess ADIT tax reform balance per the 2019 FERC Form 1 at page 278 and the $40.486M Order No. 2 unfunded balance [$29,582 per RRU 422 x 1.3686].
The Draft Decision makes a second EADIT adjustment. PURA describes this adjustment on pp. 43-43 where it notes that it “recategorizes the amount of protected EADIT amortized since the Tax Act Settlement Agreement to unprotected. Specifically, the Tax Act Settlement Agreement only addressed protected EADIT amounts that had accumulated from January 1, 2018, to June 30, 2021. As such, any protected EADIT that has accumulated from July 1, 2021, through Rate Year 2023/2024 (i.e., through August 31, 2024), should be recategorized to unprotected EADIT and made available to customers. This amounts to approximately $6.241 million (on a grossed-up basis). 25 Interrog. Resp. RRU-422, Att. 3. The Company’s Application Schedule WPC-3.32 demonstrates that the Company has recognized $1.235 million in amortization for its protected EADIT for Rate Year 2023/2024. The Authority orders the net of these amounts (i.e., $5.006 million) to be recategorized from protected EADIT to unprotected EADIT and to be returned to
customers over a five-year period using straight-line amortization ($1.001 million per year) starting with Rate Year 2023/2024. Similar to the unprotected EADIT adjustment discussed above, there would be a corresponding impact on UI’s rate base. Specifically, UI’s rate base would be increased by the additional amount of amortization (to reflect the reduction in the EADIT liability). Therefore, the Authority increases the total unprotected EADIT by $15.506 ($10.500 + $5.006) million. This amount is amortized over five years, which results in annual amortization of $3.101 million.”

PURA’s finding here is incorrect because it proposes to refund amounts already refunded. For this reason, the related rate base adjustment is likewise incorrect and should be removed from the decision. As shown in RRU 300 Attachment 1, the UI Settlement Agreement clearly displayed four categories of refundable tax balances. The four categories were post remeasurement, protected EADITs (Jan -June 2021), protected EADITs (CYs 2018-2020) and unprotected ADITs. The Settlement also included include a fifth impact of $1.900M of (grossed up) base rate adjustment as an estimate of the post June 2021 EADITs. This annual impact was in addition to a base rate post remeasurement adjustment of $7.560 million. These two adjustments together totaled $9.460M and were included in 2021-06-01 Attachment 1 line 13. See also p. 5 of the Company’s Tax Panel testimony, Exhibit UI-DB/GRM-1 and the table which lays out these same balances and settlement amortizations that have been or are in the process of being given back. Furthermore, Tax Panel testimony Table DB/GRM-2: Catch-Up Modifications Summary shows that too much of a refund was provided and therefore a catch-up adjustment is needed with regard to protected ADITs. Only a small portion remains for 2023 that will be given back in August 2023. Therefore, there is nothing left to be recategorized because the adjustment was included in the settlement and the amortization has already been given back to customers. Furthermore, if the
Draft Decision’s recharacterization and duplication of these protected amounts is affirmed, such holding may be considered violative of the normalization rules.

E. Other Tax and Accounting Issues

1. Income Taxes

The Draft Decision reduces the Company’s proposed level of income tax to reflect its findings regarding the Company’s rate base, revenues, and expenses (Draft Decision, at 192-193). Specifically, the Draft Decision reduces the Company’s proposed level of state income tax from $4.588 million to $0.662 million (Draft Decision, at 192-193), and it reduces the Company’s proposed level of federal income tax from $19.338 million to $9.169 million (Draft Decision, at 193).

Although, as described throughout these Written Exceptions, the Company disagrees with most findings in the Draft Decision, the Company recognizes that findings with respect to rate base, revenues, and expenses have ripple effects on the computation of income tax expense. However, the Draft Decision is flawed in that it does not fully reflect the extent of these inter-relationships.

The Company’s proposed amount of state and federal income taxes of $4.588 million and $19.338 million, respectively, assumed that the Company would earn approximately $2.230 million in Connecticut State Investment Tax Credits (LFE-001 UI Attachment 1, Schedule WP C-3.32, at 2). As the name implies, these are state tax credits the Company receives for investing in Connecticut. The bullets below demonstrate how the Company’s proposed amount of $2.230 is directly tied to its going forward capital spending:

- LFE-001 UI Attachment 2, tab “FERC Form”, cell G37 demonstrates that the Company calculated a 1.52 percent “FCIC/UI-D CapEx” rate based on UI’s experience in 2021 (i.e., the historical test year) (for context, “FCIC” stands for “Fixed Capital Investment Credit”).
LFE-001 UI Attachment 2, tab “DIT”, excel rows 45, 96, and 147 demonstrate that the Company calculated the amount of FCIC credit on a monthly basis by multiplying the above “FCIC/UI-D CapEx” rate by that month’s projected level of capital spending.

LFE-001 UI Attachment 2, tab “Flow-Through”, cell D5 demonstrates that the Company’s proposed rate year value of $2,230 on LFE-001 UI Attachment 1, Schedule WP C-3.32, at 2, was derived simply by summing the appropriate monthly values constituting the rate year on the “DIT” tab.

As the Draft Decision disallowed all of the Company’s proposed capital investment that was not in service as of the application date, it is inappropriate to continue reflecting the beneficial tax credits produced by that capital investment in the computation of income tax. This error should be corrected in the Authority’s final decision and the level of income tax reflected in the proposed revenue requirement should increase $1.762 million, all else equal (i.e., $2,230 million, with a partially offsetting 21% decrease for the change in federal income taxes).

2. International Financial Reporting Standards

Order No. 3 of the Draft Decision states: “The Company shall not recognize deferred assets and liabilities under IFRS for regulatory reporting filed with the Authority. UI shall continue to record regulatory assets and liabilities under US GAAP. This Order does not preclude UI from reporting deferred assets and liabilities under IFRS in consolidated financial reports filed by its ‘ultimate’ foreign parent company.” (Draft Decision, at 277).

To be clear, the Company is not requesting to change the accounting system (US GAAP) it follows for information and reports to be filed with the Authority, as suggested on page 57 of the Draft Decision. Instead, the Company requests merely the IFRS recognition language included in its testimony for the reasons described in its brief at pages 31-32.
F. Rate Adjustment Mechanisms and Other Rate Issues

1. Revenue Decoupling Mechanism

The Draft Decision at pages 194 – 200 directs the Company to apply various modifications to the Revenue Decoupling Mechanism (“RDM”), which are flawed and result in rates that are less than just and reasonable pursuant to Conn. Gen. Stat. § 16-19e(a)(4). The Company disputes the disallowance of carrying costs to the decoupling rider, as well as the treatment of other revenues in the RDM calculation. For example, PURA’s inclusion of Mutual Aid revenues is inappropriate because Mutual Aid represents money the Company receives as reimbursement for incremental costs (e.g., overtime) from assisting other utilities respond to storms. Requiring UI to return this money to customers would leave UI with no mechanism to recoup its costs. Further, including mutual aid here and in the storm deferral would have UI give this money back twice, which is clearly inappropriate.

Similarly, the Authority’s inclusion of GenConn revenues is patently arbitrary and capricious. The Company explained in response to RRU-450 that UI was the “pass-through” entity through which UIL (and, by extension, Avangrid Service Company and AMC) billed GenConn for costs incurred providing support services. In other words, UIL billed UI for its GenConn-related costs, and UI, in turn, billed GenConn. UI explained in detail in CAE-013 and CAE-042 in Docket No. 23-01-04 that including GenConn revenues in the RDM calculation would result in UI returning revenues to customers without any mechanism to recoup its offsetting costs.

Lastly, the Company clarifies that it will continue the current practice of including revenues collected for regulatory amortizations in the RDM calculation in the year the revenue is realized. The items noted in Table 77 and 78 of the Draft Decision as regulatory amortizations and regulatory deferrals represent accounting entries for financial statement presentation and do not represent dollars collected by the Company from customers in that year. As described in CAE-
2. Earnings Sharing Mechanism

The Draft Decision embeds several changes in the treatment of the Earnings Sharing Mechanism, which are thoroughly contrived to result in a skewed earnings calculation that would show the Company’s earnings to be higher than actually exists. This constitutes an abuse of discretion.

First, the Authority is requiring UI to use the lesser of its actual and its authorized equity ratio for ESM purposes. This is a fundamentally erroneous approach to determine the Company’s earnings subject to sharing under Connecticut law. UI’s actual equity ratio is significantly higher than its authorized equity ratio. This differential keeps its cost of debt low – by employing less leverage, UI is less risky, all else equal. UI is passing the benefits of this reduced cost of debt on to customers in the revenue requirement in this case – the Company proposed, and PURA appears to have accepted, the Company’s actual cost of debt. Requiring UI to reflect an artificially low equity ratio in the ESM computation gives customers the benefit on both sides – once in the form of a reduced cost of debt in the revenue requirement, and again in the form of a reduced equity ratio in the ESM calculation.

Second, the Authority is requiring the Company to exclude certain expenses that will be actually incurred by the Company from the ESM calculation. This is completely improper and will result in earnings that are reported to be higher than they actually are. PURA has excluded several categories of expense on the basis that the Company has “failed” its burden of proof; however, this does not make the expenses magically disappear. The expenses still occur and are just arbitrarily excluded from recovery through rates. Moreover, as explained earlier in these written exceptions, not all of PURA’s expense reductions are “disallowances.” Rather, several of
the Draft Decision’s reductions are for instances where PURA did not accept the Company’s cost forecast. For example, PURA rejected the Company’s proposed inflation adjustment to corporate service charges because corporate service charges have not increased, historically. If corporate service charges do, in fact, increase, these increases detract from the Company’s profit level and must be included in the ESM calculation for that reason.

PURA’s attempt to require computation of earnings through contrived manipulations of actual cost is the epitome of arbitrary and capricious decision-making and should be removed from the Draft Decision.

3. Rate EDR

UI requests that the Authority reconsider its proposed requirements\(^{69}\) for marketing a special contract process to customers pending further consideration of how the current special contract process may be adapted to market to customers (Draft Decision at 246). While the Company expects that marketing discounted rates via a special contract process to customers will garner significant interest from both existing and new businesses in Connecticut, the Company does not currently have a formal set of rules for administering volumes of special contract requests. Special contracts have previously been submitted on a case by case basis to the Authority for approval in rather exceptional circumstances, often involving large customers where a bypass risk exists, or where they elect to receive non-standard service at a discounted rate. UI has not requested approval for special contracts over many years and the last special contract expired at the end of 2009.

Similar to a retention tariff, there is a risk that reduced revenue from marketing special contract discounts could negatively impact rates over time, though provisions to limit the size and

\(^{69}\) These requirements include Order Nos. 23, 24 and 39 along with the directives on page 246 pertaining to a “special contracting process” or “special contracting policy.”
scope of the offering could alleviate the risk of a potential impact to non-participants.70 Administering discount requests through an individualized approach and negotiated rates significantly adds to the complexity and cost of the Company administering economic development rates.71 UI has previously stated that if an individualized approach is preferred, having objective criteria, such as a size or load factor requirement, with which to base enrollments and discounts can lower the administrative cost burden and avoid perceived unfairness.72

Given these factors, the Final Decision should not require the Company to market the availability of special contracts to wide swaths of its customer base. The Company does not object to evaluating the viability of special contracts, and the costs associated therewith, in a future ratemaking proceeding.

With respect to the implementation of the Company’s Economic Development Rider (“EDR”), the Company appreciates the Authority’s analysis and discussion of its EDR proposal contained in the Draft Decision (Draft Decision at 242-247). The Company has several minor clarification requests to be made in the Final Decision to provide it with regulatory certainty as to the implementation of the EDR. Specifically, the Company requests clarification that the following items will be eligible for inclusion in the EDR regulatory asset:

1) EDR marketing plan development, including incremental internal labor and/or external consultants.
2) EDR marketing materials development including incremental internal labor and/or external consultants.
3) Costs associated with the establishment of liaison and relationships with the Department of Economic Development and Connecticut Business organizations to promote the EDR.

71 UI-RP-REBUTTAL-1, p. 32-33. Special contract offerings require PURA approval and involve robust consideration of whether it is in the public interest after an evaluation of customer-specific costs and benefits. UI-RP-REBUTTAL-1, p. 32. The Company bears a risk of significant financial burden of making evaluations, entering negotiations and participation in rates proceedings before PURA for potentially numerous special contracts.
72 UI-RP-REBUTTAL-1, p. 33.
4) Additions to or modifications to IT systems necessary to establish the EDR.

As explained at evidentiary hearings, the Company’s proposed regulatory asset would be designed to capture incremental costs that would not have been incurred outside of the proposed EDR (Tr. 2/17/23 at 262). The above-identified costs all qualify as these types of incremental costs, however the Draft Decision requires the Company to track “total distribution revenue obtained through the Rate EDR program, less any incremental distribution capital recovery, operating and maintenance expenses, and general and administrative expenses incurred to serve the incremental load.” (Draft Decision at 245 (citing Exh. UI-MC/MM-1). Given the questioning that occurred at the evidentiary hearing regarding the regulatory asset (Tr. 2/17/23 at 260-62), the Company appreciates the Authority’s clarification that the above-identified cost categories may be included in the asset to the extent that each are necessary “general and administrative expenses incurred to serve” the future EDR customers.

The Company also requests clarity on the Net Present Value hurdle rate analysis. Specifically, The Draft Decision states:

In the event that the NPV is negative, the Company shall offer 50% of any projected savings as a discount to the customer over the Term. In this way, the Authority can ensure that at least 50% of the benefit from the incremental or new load is allocated to existing ratepayers.

The Company requests clarification on the above sentence, as if the NPV is negative, there would be no projected savings to provide as a discount to the customer. In order to comply with this directive, the Company must fully understand the relationship between a negative NPV situation, and any benefits to be returned to the customer at issue. The Final Decision should clarify the intent of this sentence, and whether it is directing the Company to pass-back non-existing savings.

Lastly, the Company has two requests with respect to the timelines contained in the Draft Decision. First, the Company requests that the deadline to file its implementation plan be changed
from December 1, 2023 to July 1, 2024. This will allow for approximately 9 months from the date of the Final Decision to issue relevant RFPs, obtain consultants and staff, and develop marketing materials necessary to run the program efficiently and effectively. Consistent with this requested deadline change, the Company also requests a modification from the current deadline of April 1, 2024, to implement the tariff. Given timing to adjust potential IT modifications and company requests an extension to January 1, 2025, but no less than eight (8) months after than the implementation plan is approved by the Authority. This lead time is necessary to ensure that the Company can adequately address any changes or modifications to the Company’s implementation plan as directed by the Authority, and can slate any required EDR-related IT changes into its IT planning and development processes. The Company would, of course, seek to deploy this program in an expeditious manner, but if IT changes are ultimately required, a deadline of January 1, 2025 will allow for sufficient time to do so.

4. Rate TOU

The Company requests a minor correction to the following statements in the Draft Decision on Time of Use Rates:

Initially, UI claimed that adjusting its TOU on-/off-peak time periods would require a significant time and cost investment. Interrog. Resp. EOE-213; Tr. 2/17/23, 357:13-19. Specifically, UI asserted that it would need to manually reprogram every meter in order to implement any changes to the on-peak time period for Rate RT customers. Id. However, subsequently, UI stated that it could remotely reprogram participating meters “en masse.” Hr’g Tr., Feb. 17, 2023, 431:6-19; Tr. 2/21/23, 595:17-19. UI also subsequently stated that it could adjust the TOU period through modifications in the billing system rather than resort to manually reprogramming every meter. Tr. 2/17/23, 436:2-13; Late Filed Ex. 9

The Company seeks to clarify that, while the Company has been able to manually reprogram one meter at a time in the lab, but this is a laborious complex manual process. The comment made in the hearing transcript to reprogram meters “en masse” referred to a potential
pilot program to program meters over-the-air (Tr., 2/17/23, 430:6-12). However, as noted in LFE-9, “If PURA directed the Company to change the time of use period, the Company believes that changing the SAP billing system to bill based on AMI meter interval data could be a more scalable solution to support customer choice and new tariffs, but further investigation is required to provide a planning grade cost estimate.”

5. **Rate M – Outdoor Lighting**

The Draft Decision at page 230 directs the Company to submit compliance tariffs and states: “[f]or residential rate classes Rate R, RT, and M, the revenue increases approved in Section X.C., Class Revenue Allocation, and the reduction to the class revenue requirement for Rates R and RT due to the reduction in the customer charge shall be applied to usage rates.” (emphasis added). In short, the Draft Decision directs UI to apply the increase to Rate M (outdoor lighting) to usage (kWh) rates. However, Rate M does not have, and has never had a distribution kWh charge. All distribution outdoor lighting charges are monthly fixed charges. PURA should revise the Draft Decision to apply the increase for Rate M to the existing fixed charges. The order cannot be implemented as proposed in the Draft Decision.

6. **Interclass Allocations**

The Draft Decision does not provide specific direction on the interclass revenue requirement allocation for rates other than R, RT, and M, which is discussed on pages 225 through 227 of the Draft Decision. The Draft Decision states: “[t]herefore, the Authority directs the Company to apply the approved distribution revenue increase for Rate R, RT, and M customer classes at a 1.02 weighting (or an additional 2%).” (Draft Decision, at 227).
The Company respectfully requests that the Authority either provide a table with the percent changes in allowed retail distribution revenue to all the rate schedules, or identify the specific calculations (or algorithms) to make the required interclass allocations.

G. Compliance Items

1. Pleasure Beach Island Compliance

Order No #22 of the Draft Decision currently states the following: “No later than December 1, 2023, in accordance with Section VII.F., Pleasure Beach Island, the Company shall submit as a compliance filing in this proceeding the results of the RFP including the details of all bids, including the winning bid.” This allows the Company approximately 3 months to conduct its RFP process and meet the requisite compliance filing timeline. The Company respectfully requests that this timeframe be adjusted to allow the Company 12 months to develop, write, issue, review the results, award contracts, and send the results to PURA. The Company has a robust procurement practice to ensure that its RFPs are issued appropriately and ultimately awarded to the correct vendor based on the Company’s protocols. While the Company appreciates the Authority’s consideration of this project, a three-month window is inadequate to fully develop and issue and RFP, receive and review feedback, and ensure that the winning bidder complies with the Company’s guidelines. A 12-month window prior to the submission of a compliance filing will allow appropriate cost controls and specificity in the RFP process and help facilitate the PBI project.

III. Conclusion

Based on the foregoing reasons, the Company respectfully requests the Authority to reassess the Draft Decision and make the changes set forth in these written exceptions.
RESPECTFULLY SUBMITTED,
THE UNITED ILLUMINATING COMPANY

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Its Attorneys
CERTIFICATION

I hereby certify that on August 7, 2023, a copy of the foregoing was sent to the Public Utilities Regulatory Authority, the Office of Consumer Counsel, and to the official service list in this proceeding in Compliance with Conn. Regs. §16-1-15, as amended.

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Brendan P. Vaughan

Brendan P. Vaughan