



STATE OF CONNECTICUT

PUBLIC UTILITIES REGULATORY AUTHORITY

December 29, 2023
In reply, please refer to:
Docket No. 22-08-08
Motion No. 79

Daniel Venora, Esq.
Keegan Werlin LLP
1 Liberty Square, Suite 208
New Britain, CT 06051

Re: Docket No. 22-08-08 - Application of The United Illuminating Company to Amend Its Rate Schedule
Request for Interim Rate Increase under Conn. Gen. Stat. § 16-19(d)

Dear Attorney Venora:

On November 30, 2023, The United Illuminating Company (UI or Company) filed a petition (Petition) requesting the Public Utilities Regulatory Authority (Authority) approve a \$14 million interim rate increase to be effective February 1, 2024, pursuant to Conn. Gen. Stat. § 16-19(d). The \$14 million proposed rate increase would be in addition to the \$23 million rate increase approved by the Authority in its August 25, 2023 final decision in this docket (2023 Rate Increase), which became effective only on September 1, 2023. In doing so, the Company asks residential customers to endure a further 4.6% increase in distribution rates just as higher winter electric supply rates set in. The basis for this request is that UI's rate of return, or profit, "is far below what investors are due for the dollars they have invested" Exhibit UI-V/D/H/P-1, pp. 19-20. The Authority declines to exercise its discretion to implement an interim rate increase under these particular circumstances and as a result of procedural deficiencies in the Petition. As such, the Petition is denied.

The amendment of utility rates is governed by Conn. Gen. Stat. § 16-19(a), which provides a prescriptive process by which the Authority must hold hearings, "make such investigation . . . as is necessary," and issue a decision within a set period. However, for certain circumstances, the General Assembly conferred on the Authority the power to order "interim" rate adjustments, subject to reconciliation with "rates finally approved by the [A]uthority." Conn. Gen. Stat. § 16-19(d) and (g). Given the unusual nature of this power, interim rate adjustment authority is entirely within the discretion of the Authority. See Office of Consumer Counsel v. Dep't of Pub. Util. Control, 252 Conn. 115 (2000) (finding that "the legislature vested the

10 Franklin Square, New Britain, CT 06051

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department with discretion to determine whether an interim rate adjustment was necessary at all”). In reaching this conclusion, the Court considered the plain language of Conn. Gen. Stat. § 16-19(g), the “regulatory purpose articulated in General Statutes § 16-19e,” and the “statutory scheme.” *Id.*, pp. 121-24. The same legal analysis and conclusion holds true for the interim rate increase authority under Conn. Gen. Stat. § 16-19(d).¹ To find otherwise would require a significant departure from the principles of statutory interpretation and precedent. *See, e.g.*, Interim Decision, Jan. 11, 1983, Docket No. 82-11-055, Application of Kent Water Company to Increase its Rates and Charges (finding that “Section 16-19(d) states that an interim rate increase may be granted if . . .”) (emphasis added).²

The specific circumstances of this interim rate increase request weigh against the Authority exercising its discretionary powers for at least two reasons. First, the Petition is largely speculative, contravening the plain language of the statute. To approve an interim rate increase, the Authority must find “that such an interim rate increase is necessary to prevent substantial and material deterioration of the financial condition of a public service company, to prevent substantial deterioration of the adequacy and reliability of service to its customers or to conform to the applicable principles and guidelines set forth in section 16-19e.” Conn. Gen. Stat. § 16-19(g). Here, even if the facts alleged in the Petition are taken as true, the Authority could not conclude that the interim rate increase is necessary because the crux of the Company’s argument expressly relies on prognostications.

The 2023 Rate Increase was the subject of a year-long, intensive proceeding, resulting in a \$23 million rate increase that was only in effect for 3 months when the Company filed the Petition. As such, it is simply too soon to determine the actual impact of the 2023 Rate Increase on the Company. Notably, the Company specifically acknowledges that “the computation of an actual ROE of 4.61%, as of September 30, 2023, reflects only one month of the rate increase . . .” Ex. UI-V/D/H/P-1, p. 14. Further, the Company correctly concedes that it “cannot see into the future to know what may happen over the course of operations in 2024.” *Id.*, p. 25. Rather, the Company “expects that its ROE . . . will not exceed the range of 6% for the foreseeable future.” *Id.*, p. 14 (emphasis added). Similarly, the “Company expects the diminished level of investment may erode [UI’s] excellent reliability performance . . .” *Id.*, p. 10 (emphasis added).

¹ Importantly, the Court found that interim rate authority under Conn. Gen. Stat. § 16-19(g) is the reciprocal of Conn. Gen. Stat. § 16-19(d). *Id.*, p. 128 (“the legislature, recognizing the existence of a mechanism whereby utilities could petition for and obtain an interim rate increase, sought to provide a mechanism whereby the department could order an interim rate decrease to benefit ratepayers.”).

² This determination is consistent with the Authority’s time-tested finding that Conn. Gen. Stat. §§ 16-19(d) and (g) “share significant language and are analogs of each other.” Final Decision, June 30, 2009, Docket No. 08-12-06 Application of Connecticut Natural Gas Corporation for Rate Increase, p. 143 (noting that “[t]he parallels between the interim rate decrease and increase statutes are unmistakable.”).

However, the extraordinary interim rate increase authority under Conn. Gen. Stat. § 16-19(g) is only to be used when “necessary” — in other words, to address an actual fiscal problem, not a hypothetical one. Importantly, the Company had less than 3 months of data when it filed the Petition and has not yet fully implemented or seen the results of its purported “austerity measures” and “difficult choices.” See Ex. UI-FDR-1, p. 3 (“The [2023] Rate Decision has necessitated UI to impose strict austerity measures across the organization to preserve capital, and to make difficult choices”); Ex. UI-V/D/H/P-1, p. 16 (The 2023 Rate Increase is “creating substantial pressure for the Company to take austerity steps that it would not otherwise take”).

Of course, residential customers, especially hardship customers, and businesses of all sizes have been implementing “austerity measures” and making “difficult choices” for years just to meet costs, not simply to “preserve capital” or to “improve the Rate of Return.” Ex. UI-V/D/H/P-1, p. 29. In that regard, the Company seems to be properly responding to the current economic reality, even if belatedly. For example, the Company will strive to achieve a temporary \$2 million of savings through “efficiencies” in 2024. *Id.* While laudable, this represents only 1.3% of the \$151 million approved by the Authority for the Company’s operations and maintenance expenses. However, the Company concludes that “opportunities to make a material improvement in the financial return are limited” *Id.*, p. 28. In short, the Company asks the Authority to invoke its discretionary power to address a problem that the Company, with limited data, predicts may occur but which the Company might also be able to mitigate or avoid through efficient and prudent management. As such, the Petition’s reliance on assumptions and conjecture is not consistent with the requirement that the interim rate increase be “necessary.” Conn. Gen. Stat. § 16-19(g).³

Secondly, the Petition depends upon the unreasonable supposition that the Authority agrees with the Company that the 2023 Rate Increase is fundamentally flawed. Throughout the Petition, the Company makes clear that the requested

³ As a further “austerity measure,” the Company intimates that it will cut its core capital budget in half and cease other capital investments going forward. The rationale for this decision is that the “[2023 Rate Increase] did not provide any recovery for actual or forecasted capital investments beyond August 31, 2022.” Ex. UI-V/D/H/P-1, p. 29. More specifically, the Company states that “[e]very dollar UI invests in the electric distribution system worsens the Company’s financial condition, because current rates are not sufficient to cover these costs.” Ex. UI-FDR-1, p. 10. These statements reveal a fundamental misunderstanding (or misrepresentation) of the basic principle of cost recovery for utility capital investments. “Current rates” are designed to cover expected operating costs and to provide a reasonable return on prudently invested capital. Rates are not designed to provide a return on capital that UI invests going forward. It is well established that UI is entitled to fully recover useful and prudent investments in future rate proceedings and that, as a public service company, UI is obligated to continue to make prudent investments in the distribution system. Threatening to forsake this obligation under the guise of current rates is nonsensical and undermines the Company’s credibility.

interim rate increase is in expectation of a favorable resolution of the administrative appeal of the 2023 Rate Increase. See Petition, pp. 1-2 (the Petition “is necessitated by the [2023 Rate Increase], which rendered a series of determinations . . . that do not comport with Connecticut law, nor valid ratemaking practice.”); Ex. UI-V/D/H/P-1, p. 27 (“an overriding consideration is that there are numerous determinations reached by PURA in the [2023] Rate Decision that are erroneous in some manner – whether mathematically, from a ratemaking perspective or legally.”); Ex. UI-FDR-1, p. 3 (“The Company seeks interim rate relief pending the outcome of the appeal [of the 2023 Rate Increase] . . .”).⁴ In short, the Company seeks an advance on its presumed litigation victory, albeit seeking only 50 cents on the dollar — reflecting some degree of uncertainty.

The Authority has no reason to believe the unanimously approved 2023 Rate Increase contains any material infirmities. To hold otherwise would require a recognition of changed conditions or plain error and the reopening and modification of the 2023 Rate Increase decision. See Conn. Gen. Stat. §§ 16-9 and 4-181a(b). The mere existence of an administrative appeal is an insufficient basis on which to reconsider a decision. Further, given that the Petition directly links the interim rate increase to the administrative appeal, any approval of an interim rate increase here would be a de facto concession or admission that the 2023 Rate Increase contains substantive reversible errors. This the Authority has no reason to do.

Apart from these substantive reasons to refrain from exercising the Authority’s discretion here, the Petition is procedurally flawed. The temporary rate increase authority under Conn. Gen. Stat. § 16-19(g) has, for decades, been interpreted as an interim prerogative to be exercised in the context of a pending rate case. See, e.g., Final Decision, Jan. 19, 2000, Docket No. 99-11-15, Application of Jewett City Water Company to Increase Rates and Revenue; Final Decision, Aug. 10, 1989, Application of Judea Water Company for an Increase in its Rates to all Customers; Final Decision, Aug. 8, 1986, Docket No. 85-12-15 Application of Bozrah Light & Power Company to Increase Rates and Revenue; Interim Decision, Aug. 7, 1984, Docket No. 84-06-01, Application of the United Illuminating Co. to Increase Its Rates & Revenues - Request for Interim Rate Relief; Interim Decision, July 3, 1984, Docket No. 84-04-04, Application of New York Tel. Co. to Increase Its Rates & Revenues.⁵

Given the lengthy duration required to fully adjudicate a rate amendment application, an interim rate increase during the pendency of the proceeding is a reasonable accommodation for utilities experiencing the circumstances prescribed in Conn. Gen. Stat. § 16-19(d). As such, for over forty years, the interim rate increase

⁴ The Company also references a future rate case filing but provides no indication that one is forthcoming.

⁵ A review of precedent demonstrates that the Authority has rarely exercised its power under Conn. Gen. Stat. § 16-19(d) during the last 40 years.

authority under Conn. Gen. Stat. § 16-19(d) has only been exercised in the context of a pending rate proceeding. There is good reason for this.

Notably, the imposition of a temporary rate adjustment is an extraordinary measure, and the General Assembly affirmatively limited the effect of the temporary rate increase until a final rate approval under Conn. Gen. Stat. § 16-19(a). The specific use of the word “interim” manifests that the temporary increase must be tethered to a rate amendment process. Importantly though, the utility company controls the timing of its rate application and might be disincentivized to file a § 16-19(a) application if a favorable temporary rate increase is granted. This could indefinitely extend an interim rate increase and delay a full review of the utility’s rates — converting an “interim” rate increase into a de facto rate increase. The Petition exemplifies this very problem through its acknowledgment that a rate application “will not occur for a substantial time period.” Petition, p. 7 (noting the interim rate increase will be in effect “up to two years or longer . . .”). Consequently, the legislature’s carefully designed durational limit on interim rate increases would be contravened by allowing interim rate increases separate from a pending rate amendment proceeding.⁶

In addition, by considering interim rate increases in the context of a full rate case, the Authority has the benefit of the robust financial information available in the Company’s rate application. This permits the Authority to conduct a reasonably thorough, even if accelerated, review of the Company’s financial condition to determine the necessity for an interim adjustment. Consequently, given the language and intent of Conn. Gen. Stat. § 16-19(d), as well as the long-standing precedent, the Authority will not consider an interim rate increase request absent a pending Conn. Gen. Stat. § 16-19(a) rate amendment application. Pragmatically, if a utility is actually experiencing a deterioration of its financial condition or its rates no longer conform to the principles in Conn. Gen. Stat. § 16-19e, there is no reason not to file a rate amendment application and, if necessary, seek an interim rate increase during the pendency of the application. Here, UI is entitled to file such an application at any time and, if appropriate, contemporaneously request an interim rate increase to be reconciled with the rates ultimately approved in that proceeding.

A final consideration in this case is whether the Petition constitutes the reopening of a rate proceeding and is, therefore, subject to a unanimous vote of the utility commissioners. Conn. Gen. Stat. § 16-19(f). If the Petition was filed as part of a full rate amendment application (as with previous interim rate increase requests), it would certainly not be considered a “reopener” but, instead, would be a derivative exercise of ratemaking authority under Conn. Gen. Stat. § 16-19(a) and (d).

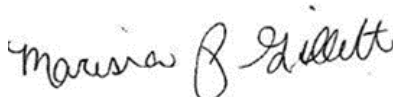
⁶ The interim rate decrease authority under Conn. Gen. Stat. § 16-19(d) contains similar language regarding reconciliation with rates finally approved by the Authority; however, in the event of a rate decrease, the utility can, if it deems appropriate, immediately file a full rate application. No similar limitation on the duration of the interim rate adjustment is applicable to rate increases unless conducted in the context of a pending rate application.

However, the Petition was filed as a direct result of the Company's dissatisfaction with the 2023 Rate Increase, and, more importantly, the remedy sought depends ultimately upon the reversal or modification of the 2023 Rate Increase. As noted above, in order to grant the interim rate relief, the Authority would need to reach a determination — specifically, that the rates approved in the 2023 Rate Increase do not conform with the principles in Conn. Gen. Stat. § 16-19e — that is in direct contradiction of findings and conclusions made in the 2023 Rate Increase. Consequently, the Petition appears to constitute an application to reopen the 2023 Rate Increase proceeding, which can only be granted with the unanimous consent from the three commissioners. The lack of such consent provides another reason to deny the Petition.

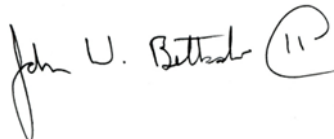
In summary, the Authority declines to exercise its discretionary power under Conn. Gen. Stat. § 16-19(d) for a number of reasons, including that the interim rate increase sought by the Company can and should only be considered as part of a full § 16-19(a) rate amendment proceeding. Here, the Petition is simply a collateral attack, grounded in conjecture, on the 2023 Rate Increase. For the reasons stated above, this is not the proper vehicle to address the Company's financial condition. The Company is free to file a § 16-19(a) rate amendment application (which may include an interim rate increase request) at any time.

Sincerely,

PUBLIC UTILITIES REGULATORY AUTHORITY



Marissa P. Gillett



John W. Betkoski, III



Michael A. Caron

cc: Service List