STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY

PETITION OF THE CONNECTICUT LIGHT AND POWER COMPANY FOR APPROVAL TO RECOVER ITS 2011-2012 MAJOR STORM COSTS	:	DOCKET NO. 13-03-23
	:	November 1, 2013

BRIEF OF GEORGE JEPSEN, ATTORNEY GENERAL FOR THE STATE OF CONNECTICUT

George Jepsen, Attorney General for the State of Connecticut ("Attorney General"), hereby submits his brief in the above-captioned proceeding. On March 28, 2013, the Connecticut Light and Power Company ("CL&P" or the "Company") filed a Petition for Approval to Recover its 2011-2012 Major Storm Costs ("Petition"). CL&P's Petition seeks approval to charge its ratepayers approximately $414 million for the costs the Company claims are associated with major storm damage incurred in 2011 and 2012. Petition, 7. The Attorney General respectfully urges the Public Utilities Regulatory Authority ("PURA" or "Authority") to reject CL&P's Petition and disallow from recovery at least $90 million in storm costs. The Attorney General further urges the Authority to impose a substantial disallowance of CL&P's legitimately incurred incremental major storm costs as a penalty for its deficient and inadequate response to Tropical Storm Irene and the October 2011 Nor'easter. The adjustments proposed by the Attorney General generally should be in addition to those adjustments proposed by the Office of Consumer Counsel ("OCC") and the Prosecutorial Staff ("PRO") that the Authority concludes are reasonable and appropriate.

I. INTRODUCTION

The evidence presented in this proceeding and in Docket No. 11-09-09, *PURA Investigation of Public Service Companies Response to 2011 Storms* ("Docket No. 11-09-09") clearly shows that CL&P repeatedly failed to provide reasonable and adequate service during Tropical Storm

Irene and the October 2011 Nor'easter. CL&P's customers have the right to expect that in exchange for paying the rates charged, CL&P will provide reasonable, safe and adequate utility service, both during "blue sky" days and during major storms. CL&P was not adequately prepared for these major storms, however, and its response and restoration were in many respects deficient and inadequate.

The purpose of this proceeding is to determine the appropriate amount of its costs that CL&P may recover from its ratepayers for the 2011 and 2012 major storms identified in the Petition. CL&P has included a number of expense items in this proceeding that are not properly recoverable as major storm expenses. Both the OCC and PRO have presented testimony and evidence in this proceeding recommending certain adjustments and disallowances for recovery, which the Authority should consider fully. The Attorney General will not repeat those arguments here. Instead, the Attorney General will focus on other cost disallowances that the Authority should impose in this case. Specifically, the Authority should: (1) find CL&P incorrectly accounted for $16.34 million in Accumulated Deferred Income Taxes ("ADIT"), which should instead be applied to offset CL&P's total storm costs; (2) disallow recovery of all or a portion of the June 2011 storm costs as improperly included in this Petition; (3) find that CL&P mismanaged its affiliate storm reserve fund and should return $5 million in premium payments to CL&P ratepayers; (4) find that ratepayers are not responsible for thirty percent of the storm related tree work that CL&P should have collected from AT&T; and (5) CL&P's recovery by an additional $5 million protect ratepayers from CL&P's failure to make appropriate efforts to determine if it was entitled to certain substation insurance proceeds. The Authority should hold CL&P to its obligation to take reasonable steps to protect its ratepayers from major storm costs that are properly the responsibilities of others by, for example, enforcing

contracts and submitting insurance claims. The Authority cannot allow CL&P to treat its ratepayers as a first rather than a last resort for the storm related costs.

The Attorney General also urges the Authority to impose substantial penalties for CL&P's deficient and inadequate response to Tropical Storm Irene and the October 2011 Nor'easter, as the Authority determined was appropriate in Docket No. 11-09-09. The Attorney General recommends that these penalties should be in the area of thirty to fifty percent of the costs associated with those two storms, which would amount to penalties in the range of $85 to $140 million.

II. DISCUSSION

A. Impact of $40 million Write-down on CL&P's Storm Cost Recovery

On September 16, 2013, the Authority requested comments concerning the impact of the March 13, 2012 Settlement Agreement presented in Docket No. 12-01-07, *Application for Approval of Holding Company Transaction Involving Northeast Utilities and NSTAR* ("Settlement Agreement"), on CL&P's recovery of storm costs in this proceeding. In that Settlement Agreement, the Attorney General, the OCC, Northeast Utilities ("NU") and NSTAR (collectively the "Settling Parties") agreed to allow a proposed merger transaction between NU and NSTAR to proceed in return for certain concessions for the benefit of CL&P's ratepayers, the State of Connecticut and the people of the State of Connecticut. Section 4.3 of the Settlement Agreement provided that CL&P would "write-down" – or not seek to recover from ratepayers - $40 million in storm costs associated with the Company's restoration efforts following Tropical Storm Irene and the October 2011 Nor'easter. Specifically, section 4.3 states:

> Recovery of 2011 Storm Costs: CL&P will file with the Authority a request for recovery of costs associated with Tropical Storm Irene and the October 2011 snow storm ("2011 Storm Costs") net of insurance proceeds and the storm reserve fund. Such request will be subject to review and approval by the Authority in an

> adjudicatory proceeding. However, CL&P will limit its recovery to an amount $40 million less than the total 2011 Storm Costs ("$40 million write-down"). Nothing in this Agreement shall restrict any party from advocating, or the Authority from determining, an appropriate level of 2011 Storm Cost recovery that is lower than 2011 Storm Costs less the $40 million write-down. At the end of the Base Rate Freeze Period when new rates are implemented, any 2011 Storm Costs approved by the Authority for recovery will be recovered in rates consistent with standard cost review and recovery practice of the Authority over a six year recovery period.

In sum, after the Authority has made a specific finding determining CL&P's incremental major storm costs, and after CL&P exhausted all available offsets or mitigations of those costs, CL&P shall write-down $40 million of costs that would otherwise have been recoverable from ratepayers. Ratepayers, for their part, shall pay $40 million less that they would otherwise be required absent the write-down.

In its Application, CL&P identified $454 million in what it claims to be prudently incurred costs associated with major storms in 2011 and 2012. CL&P now seeks recovery from ratepayers of $414 million, which CL&P represents is a $40 million write-down of the $454 million.

The $40 million write-down applies to the actually incurred incremental storm costs associated only with Tropical Storm Irene and the October 2011 Nor'easter, which CL&P identified as $111.2 million and $175.1 million respectively, for a total of $286.3 million. Application, 7. Assuming that CL&P correctly identified its incremental costs for those two 2011 storms, which it did not, CL&P therefore would be entitled to request no more than $246.3 million from all sources for Tropical Storm Irene and the October 2011 Nor'easter. The remaining $40 million is CL&P's shareholders responsibility. The $40 million write-down does not apply to any of the other storms that are the subject of this proceeding.

With respect to Tropical Storm Irene and the October 2011 Nor'easter, the parties are free, under their settlement agreement, to dispute whether CL&P's Petition includes costs that are not incremental major storm costs, and the Authority is free to determine that CL&P's actual costs were an amount other than $286.3 million. For example, the parties are free to argue that certain costs, such as regular labor costs, are already embedded in base rates and therefore are not properly recovered as incremental major storm costs. Whatever figure the Authority ultimately determines reflects CL&P's actual incremental costs associated with Tropical Storm Irene and the October 2011 Nor'easter is then subject to the $40 million write-down. For instance, should the Authority conclude that CL&P actually incurred only $240 million in incremental storm costs, the Authority would then preliminarily establish $200 million in incremental storm costs potentially recoverable from ratepayers.

The parties are also free to argue that certain of the incremental costs that CL&P actually incurred in connection with Tropical Storm Irene and the October 2011 Nor'easter were imprudently incurred, and subject to disallowance for recovery. Because these costs were actually incurred by CL&P, and therefore part of the "total 2011 Storm Costs," imprudently incurred costs could be disallowed, but those costs are measured concurrent with, and not in addition to, the $40 million write-down. Using the example above, if the Authority determined that CL&P incurred $240 million in actual incremental 2011 Storm Costs, and also determined that $30 million of the 2011 Storm Costs were imprudently incurred, CL&P would still be entitled to recover $200 million in 2011 Storm Costs. On the other hand, if the Authority determined that $50 million of CL&P's 2011 Storm Costs were imprudently incurred, CL&P would be entitled to recover $190 million, which is $240 million less the $50 million is imprudently incurred costs.

The Settlement Agreement provides that CL&P may recover its 2011 storm costs over a six year period beginning December 1, 2014. Settlement Agreement §§ 4.3 and 1.2. The Authority need not make any rulings concerning the manner of recovery in this proceeding as that issue will be determined in CL&P's next rate proceeding and also because the legislature may wish to establish a low cost financing structure through securitization as an alternative to the six year Settlement provisions.

B. CL&P Incorrectly Accounted for $16.34 million in ADIT Revenues That Should Offset CL&P's Total Storm Costs

CL&P incorrectly accounted for more than $16 million in ADIT revenues and, as a result, failed to provide ratepayers the full promised benefits of the $40 million write-down in the merger Settlement Agreement. As noted above, Section 4.3 of the Settlement Agreement provides that the ratepayer benefit shall be $40 million and that amount shall be written down from the storm costs that CL&P actually incurred after netting out other sources of revenue that otherwise offset those storm costs. Specifically, Section 4.3 provides that CL&P shall recover "an amount $40 million less than the total 2011 Storm Costs."

CL&P claimed that it had incurred $453,988,000 in total storm costs, net of its storm reserve and insurance payments. MJM PFT, Schedule B6.0, line 19. Pursuant to the Federal Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.* (the "Act"), CL&P was authorized to take an immediate tax deduction against earnings in the taxable year preceding the year in which a federally determined disaster occurred. FI-28. Because CL&P claimed $453,988,000 in storm costs incurred, it was authorized to claim $185,454,000 as a tax deduction. This $185 million is determined by multiplying CL&P's $454 million in storm costs by its effective tax rate of 40.85%. *See* MJM PFT, Schedule B6.0, note (b). This $185 million is reflected on CL&P's accounting ledgers as accumulated deferred income taxes – that is, recorded

as a liability of the company owed to its ratepayers. This $185 million cash benefit should offset CL&P's overall storm costs and reduce the storm reserve balance to $268,533,902. Pursuant to the merger Settlement Agreement, CL&P was then required to write down that $268 storm reserve balance by $40 million, meaning that ratepayers would be required to pay $228 million in net storm costs.

CL&P did not, however, give ratepayers the full benefit of the $185 million in tax benefits that it received from state and federal sources. Instead, CL&P credited ratepayers with $169,114,000 of those benefits as a direct offset to its total storm costs, which is $16.34 million less than ratepayers are due. MJM PFT, Schedule B6.0, line 24. CL&P calculated the $169 million ADIT credit by multiplying its 40.85% tax rate against $414 million, which represents the total $454 million in storm costs less the $40 million write-down provided for in the merger Settlement Agreement. MJM PFT, Schedule B6.0, note (b). In applying a $169 million ADIT rather than the full $185 million ADIT, CL&P calculates its total storm costs net of ADITs as $244,874,000 rather than the $228 million actual net storm costs as described above. MJM PFT, Schedule B6.0, note (b), line 27. Apparently CL&P proposes to retain for itself $16.34 million as a proportional share of the tax benefit associated with the $40 million write-down.

CL&P's proposal to retain this $16.34 million for its shareholders, however, is inconsistent with the plain language and intent of Section 4.3 of the Settlement Agreement, which was to reduce CL&P's recovery of storm costs by $40 million. By retaining the $16 million in ADIT payments for its shareholders, CL&P has reduced the $40 million benefit negotiated in the Settlement Agreement to less than $24 million.[1] At the same time, CL&P's

[1] Assuming there was no Settlement Agreement, customers would have been responsible for $269 million in storm costs ($454 million less the $185 million in federal tax credits). 100% of the tax benefits received ($185 million) would have offset CL&P's total storm costs. CL&P's

shareholders are "out of pocket" $24 million, instead of the negotiated $40 million write-down negotiated in the settlement.

CL&P's withholding of $16.34 million in ADIT funds is inconsistent with the letter and spirit of the merger Settlement Agreement. The parties to the settlement negotiated and agreed to a $40 million write-down, not a $24 million write-down. This commitment is fully evident from the publicly stated intentions of the parties to the merger Settlement Agreement. During the hearing on the merger Settlement Agreement, then NSTAR Chief Financial Officer James Judge testified that "CL&P will forego recovery of $40 million of storm-related costs." Tr., 1235. This representation is consistent with repeated public statements concerning the Settlement Agreement in press releases and in statements to investors. For example, in a July 31, 2012 call to investors concerning 2nd quarter results, Judge again stated "Additionally, we have agreed as part of our merger settlement not to recover $40 million of those [storm] costs and that $40 million was among the charges in the second quarter."[2] NSTAR's March 13, 2012 press release[3] announcing the Settlement Agreement stated:

> CL&P will submit to Connecticut's Public Utilities Regulatory Authority (PURA) a multi-year plan and cost-recovery mechanism for a $300 million investment in additional resiliency as part of its ongoing effort to improve system performance. CL&P will also forgo recovery of $40 million of the approximately $260 million of costs it incurred as a result of the two major storms of 2011, and it will defer storm recovery until after the company's next rate case.

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application of the write-down gives customers only the proportional tax benefits associated with $414 million ($454 million minus $40 million), or $169 million. In so doing, CL&P keeps $16.34 million in tax benefits associated with the $40 million write down and credits customers for only $169 million of the $185 million it received. In other words, under CL&P's application customers receive a $24 million benefit from the settlement, not the negotiated $40 million write-down in the Settlement Agreement.

[2]Transcript available at http://www.morningstar.com/earnings/41637522-northeast-utilities-nu-q2-2012.aspx?pindex=4

[3] Available at http://www.nstar.com/ss3/nstar_news/press_releases/2012/CT_Settlement.pdf

But as CL&P's proposed accounting shows, the Company did not "forgo recovery" of the $40 million – it has forgone recovery of only $24 million.

The Authority should correct CL&P's accounting to ensure that the $16.34 million in additional revenues is properly reflected as a ratepayer credit to offset CL&P's total storm costs. Only in this manner can the Authority enforce the plain terms of the merger Settlement Agreement and ensure that ratepayers receive the full $40 million in bargained for benefits. The Authority should therefore reduce CL&P's "Total Storm Reserve, Net of ADIT" from $244,874,000 to $228,534,000. MJM PFT, Schedule B6.0, line 27.

C. CL&P is Precluded from Seeking any Recovery of the June 2011 Storm Costs

In its Petition CL&P seeks to recover costs associated with two separate thunderstorms, one on June 8, 2011 and another on June 9, 2011. As noted above, however, CL&P's parent holding company, NU, entered into a settlement agreement with the Attorney General and the OCC that specifically defined the "2011 Storm Costs" subject to recovery as "Tropical Storm Irene and the October 2011 snow storm" and subjected those costs to a $40 million write-down. Settlement Agreement, Section 4.3. That settlement was executed on March 13, 2012 – more than nine months after the June 2011 storms. The $40 million write-down of the 2011 Storm Costs was the product of lengthy negotiations among the parties.

In March 2013, one year after executing the Settlement Agreement, CL&P then sought recovery of nearly $11 million for other storms that occurred prior to Tropical Storm Irene and the October 2011 snow storm. CL&P was fully aware of the costs associated with these two June 2011 storms at the time it executed the merger Settlement Agreement which addressed its "2011 Storm Costs." CL&P's inclusion of these two new storm costs in its Petition effectively seeks to claw back nearly $11 million of the negotiated $40 million write-down. The Authority

should reject any recovery of the costs associated with these two storms. To the extent CL&P had any legitimate claims to recover any of the costs from the two June 2011 storms, it waived those claims when it executed a settlement agreement defining the recoverable "2011 Storm Costs" as "Tropical Storm Irene and the October 2011 snow storm" less a $40 million write-down.

D. The June 8 2011 Storm Should be Excluded Because it is Not a Major Storm

Even if the Authority concludes that the Settlement Agreement does not preclude recovery of the storm costs associated with the two June 2011 thunderstorms, the Authority should reject any recovery of the costs associated with the June 8 2011 thunderstorm. The June 8, 2011 event did not rise to the level of a "major storm" to merit separate, subsequent recovery from ratepayers.

CL&P inappropriately combined the incremental costs associated with restoration for the June 8, 2011 thunderstorm with the June 9, 2011 thunderstorm as if the two events were one single storm. They were not. The thunderstorms on June 8 and June 9 were separate events on separate days with vastly different impacts on CL&P's service territory. The number of customer outages from the June 8 events was relatively minimal in comparison to the separate and much larger storm that took place a day later on June 9. OCC-44, Attachment A, p 1 of 5. At no time on June 8 does the number of outages rise above a few thousand, whereas the June 9 storm, which hit near 5:00 p.m. on June 9, instantly knocked out power to more than 140,000 customers. *Id*. Nothing about the events on June 8, or for that matter the events prior to the evening of June 9, remotely resembles a major storm event.

CL&P does not argue that the June 8, 2011 storm on its own exceeds the $5 million in incremental costs threshold necessary for recovery as a major storm. But for a coincidence that

another storm system hit Connecticut the next day, there is no question that this June 8, 2011 thunderstorm would not qualify as a major storm for cost recovery purposes.

The costs associated with non-major storms are already embedded in the rates customers pay the utility to maintain safe and adequate service. Customers should not be required to pay for those costs twice. Although CL&P did not break down the costs from the two storms on June 8 and 9, 2011, the cost allocation presented by PRO's witness Charles O. Morgan – an allocation based upon the number of trouble spots for each respective storm - forms a reasonable proxy for estimating these costs. *See* Morgan PFT, 8-9. CL&P reported the June 8, 2011 storm caused 381 trouble spots and a June 9, 2011 total of 2,603 trouble spots, which means the June 8 storm created 14.6 percent of the total storm costs that should be disallowed. Since CL&P reported a total of $10.9 million in the June 2011 storms, the PURA should at the very least disallow $1.59 million, representing the costs allocated to the non-major storm of June 8, 2011.

E. The Inter Affiliate Storm Reserve was Improperly and Imprudently Managed

CL&P participated in a storm reserve "insurance" arrangement with its NU affiliates, the Western Massachusetts Electric Company ("WMECO") and Public Service Company of New Hampshire ("PSNH"). PRO-20. The arrangement was structured as a "self-insured" reserve fund, whereby the affiliates contributed periodically to the reserve fund and could withdraw from that fund when they suffered storm damage in excess of $10 million. *Id*.; PRO-20, Attachment 1, p.2. After the $10 million deductible, the liability was capped at $15 million per occurrence. *Id*. The program was managed by a third party, Energy Insurance Services, Inc. *Id*.

The size of the required contribution was based upon the overall size of the participating affiliates measured by the "gross utility plant." Late Filed Exhibit ("LFE") 4. CL&P, as the largest of the three participating affiliates, bore a proportionally larger share of the obligations.

Tr., 915. There was apparently no corresponding principle limiting the amount of recovery allowed the affiliates. The arrangement was

> structured under the principal that not all participating affiliates would need to withdraw funds at the same time. Therefore the contributions made by each affiliate based on their actual and anticipated withdrawals could be used to provide storm funding among the participating group of affiliates, and if a shortfall occurred, the reinsurer would advance the funds subject to repayment terms outlined in the program guidelines. Under this structure, the expectation was that the amounts that would be withdrawn over time by each respective affiliate would be covered by the "premiums" or contributions paid by that respective affiliate over time.

PRO-19.

CL&P's records indicate that it contributed substantially more into the reserve fund than it withdrew. Tr., 913-14; LFE-5. The Company has no record of its contributions or withdrawals between 1994 and 2000. PRO-19. Between 2001 and 2012, when the arrangement was terminated, CL&P contributed $18 million but withdrew only $13 million. Tr., 913-14; *Id*. Moreover, because the other affiliates took full advantage of this reserve fund in the years prior to the 2011-12 storms, there was a net negative balance in the storm reserve account in 2011. Tr., 915; LFE-5. As a result, by the time the arrangement was terminated in 2012, CL&P owed $4.2 million to the reserve fund. Tr., 814, 915.

Perhaps more troubling, CL&P declined to even submit a claim for the $15 million for which it was eligible following Tropical Storm Irene. Tr., 812-14. The Company explained that:

> [w]here the funds withdrawn exceeded the funds "on deposit," which was frequently the case, the reinsurer would fund the shortfall (subject to the applicable administrative fees and interest) and the shortfall would become an additional amount subject to reimbursement by the participating companies (thereby resulting in, or increasing, the negative balance).

LFE-5-SP01.

This response, however, is inadequate. As noted above, at the time the arrangement was terminated, the reserve fund had a negative balance and the negative balance became the responsibility of all the affiliates. CL&P, by virtue of its size, was principally responsible for repaying the debt accrued by paying storm cost claims from WMECO and PSNH. But when CL&P's ratepayers stood to benefit from this insurance arrangement, CL&P chose not to submit a claim. In so doing, CL&P chose to subject its ratepayers to storm costs that were properly allocable to other NU affiliate companies.

> Q. (Ramas) And if the Company had chose to use the fund in 2011, am I correct that the withdrawals would have been spread between all the affiliates as opposed to just CL&P?
> A. (Mahoney) Yes, each affiliate would pay their fair share.
> Q. (Ramas) So then by not withdrawing from the fund and including the full cost in this docket, then doesn't that result in CL&P ratepayers paying that full amount, whereas perhaps there could have been an opportunity that the costs be spread amongst the affiliates under the operation of the insurance plan?
> A. (Mahoney) Well, this was looked at in terms of all the affiliates because this program, again, was between all of our affiliates, and it was determined that it wasn't in the best interest of all the affiliates, not strictly looking at CL&P.
> Q. (Ramas) Was there any analysis done from the perspective of CL&P ratepayers and if perhaps they could have benefitted through the allocation between the other affiliates under the operation of the plan?
> A. (Mahoney) I am not aware of any.
> . . . . . .
> Q. (Ramas) Okay. So who is it that would have decided not to – to have CL&P not avail itself of the plan for the 2011 and 2012 storms prior to the termination of that plan? Would it have been a CL&P decision, a Northeast Utilities decision? Who would have ultimately made that decision?
> A. (Mahoney) My recollection was the treasurer and the comptroller made the decision. They were both NUSCO employees.

Tr., 812-14.

CL&P did not explain why it was in the interests of all the affiliates to have CL&P ratepayers principally fund WMECO and PSNH storm costs, but it was not in the interests of the affiliates to have WMECO and PSNH ratepayers partially fund CL&P storm costs. CL&P freely

admitted it made no effort even to analyze whether it might benefit CL&P ratepayers to make a claim from a storm reserve that CL&P ratepayers funded for 18 years. Tr., 814; PRO-19.

CL&P's failure to avail itself of the storm reserve fund was imprudent. The Company made no effort to shield its customers from the major storm costs by taking advantage of a storm reserve fund that CL&P's customers paid into. That CL&P admitted it had never even examined the potential benefits for customers is inexcusable, and such conduct cannot be tolerated. Tr., 814. CL&P operated this "storm reserve" scheme to the detriment of CL&P ratepayers. CL&P's ratepayers deserve to receive the benefit of every dollar they contributed to the fund.

From 2001 onward, CL&P ratepayers paid $5 million more in contributions to this fund than they received in withdrawals. As noted above, CL&P failed to keep records of its contributions and withdrawals from 1994 through 2000. In the absence of CL&P's records, the Authority cannot determine with certainty how much additional CL&P loss CL&P may have incurred from participating in this insurance fund. The Authority should therefore disallow at least $5 million in storm cost recovery for CL&P's grossly inequitable approach to its "insurance" plan. Moreover, this disallowance should not be subject to the $40 million write-down cap. First, customers should never have been forced to pay into an insurance plan that CL&P operated in a manner that provided no benefits to ratepayers. Second, pursuant to Section 4.3 of the Settlement Agreement, the actual storm costs for Tropical Storm Irene and the October 2011 Nor'easter are calculated net of any insurance payments. NU's affiliate storm reserve funds should have been available to CL&P to defray the storm costs associated with Tropical Storm Irene and the October 2011 Nor'easter.

F. CL&P Imprudently Failed to Require AT&T To Pay its Share of Storm Restoration Costs

CL&P imprudently failed to hold AT&T responsible for its rightful share of storm related tree work costs. In 1994 CL&P and AT&T (then the Southern New England Telephone Company) entered into an Intercompany Operating Procedure ("IOP") governing the respective responsibilities of the companies for the maintenance and repair of their jointly owned facilities. OCC-4, Attachment 10. Section 80.07 of the IOP provides as follows:

> Storm Related Tree Work
>
> Storm-related tree work refers to the tree work necessitated by weather conditions such as hurricanes, tornados, high wind and lightning storms, ice storms, and heavy wet snow storms. Storm-related tree work will be initiated immediately by the affected Company(s) without the prior concurrence of the other Company, and shall be performed as deemed necessary at the time to restore service. The cost associated with storm related tree work shall be divided such that the Electric Company shall pay 70% and the Telephone Company shall pay 30% of the total storm related tree work costs.

OCC-4, Attachment 10.

Despite the clear language providing that AT&T "shall pay 30% of the total storm related tree work," CL&P made no effort to collect 30% of the tree work costs for any of the storms included in the Petition and in fact never even billed AT&T for a substantial portion of its storm-related tree work costs. LF-15; Tr., 845-47. AT&T apparently pays CL&P only what it considers "direct" vegetation management costs. The costs that AT&T considers "indirect" and refuses to pay include: (1) travel costs to bring in out of state crews for large storms; (2) meals and lodging for out of state crews; and (3) "stand by" labor costs associated with the pre-positioning of crews before a storm comes (and waiting until it passes) before they begin work. Tr., 842-45. Of course these costs are real costs that CL&P incurred in each of the major storms included in the Petition.

CL&P made absolutely no effort to protect ratepayers and pursue AT&T for reimbursement of these costs.

Q. (Ramas)	And does CL&P then do anything further to pursue additional costs that AT&T is – decided to pull out?
A. (Goodson)	No, because --
A. (Bowes)	Or not from AT&T.
Q. (Ramas)	You don't pursue them further from AT&T?
A. (Goodson)	We do not.

Tr., 848. CL&P based this decision upon the parties' "historic interpretation" of the IOP. Tr., 847. CL&P testified that it had previously billed AT&T these costs, but after AT&T refused to pay those costs CL&P made no further effort to press AT&T on behalf of their ratepayers.

The total storm related tree work costs CL&P incurred for the five storms was $69,328,637. LF-15, line 12. CL&P billed AT&T, however, for only one third of $38,494,689 – what it considered the "direct" vegetation management costs. LF-15, line16. CL&P declined to bill AT&T for the remaining $30,833,938 – costs for which CL&P now seeks 100% recovery from its ratepayers.

CL&P's failure to make any effort to hold AT&T to its clear obligation to pay 30% of the "total storm related tree work costs" was imprudent. The Authority should not allow CL&P to collect from its ratepayers costs that it should have recovered from AT&T pursuant to its IOP. That CL&P made not the slightest effort to do so – that it chose to burden its own customers rather than even try to enforce its contract with AT&T – is further evidence that the Company has failed to take necessary reasonable actions to protect ratepayers. The Authority must protect ratepayers from CL&P's failure to enforce its legal rights on behalf of those ratepayers. Accordingly,the Authority should disallow $9,250,184 from recovery from ratepayers, which represents 30% of the $30,833,948 that is properly the responsibility of AT&T. This disallowance should not run concurrently with the $40 million write-down, as these costs should

have been paid by AT&T and are therefore not storm costs within the meaning of the merger Settlement Agreement.

G. CL&P Imprudently Failed to Pursue Recovery on Its Substation Insurance Policies

CL&P maintains an insurance policy for damage to its substations and any infrastructure within 1000 feet of those facilities. LFE-6; Tr., 853-55; 859. The policy has a deductible of $2.5 million. *Id*., Tr., 853-55. CL&P stated that it incurred only minimal damage to its substations during the five storms. Tr., 862-63. CL&P admitted, however, that it made no effort to determine whether it incurred any damage to infrastructure within 1000 feet of these facilities. CL&P had no accounting and no estimation for the value of such potentially insured losses. Tr., 865-66.

CL&P has 238 substations in its service territory. Tr., 859. The area circumscribed within the insured 1000 foot radius of these substations therefore amounts to more than 17,000 acres,[4] and these 17,000 acres necessarily contain expensive transmission and distribution infrastructure. CL&P could easily have exceeded its $2.5 million insurance deductible. Yet even by the time of these hearings – almost two years from the massive 2011 storms – CL&P has still never even sought to determine whether it sustained damage that could be covered by its insurance. Tr., 865-66. This reflects yet another instance in which CL&P made no effort to protect its customers from paying storm costs that could have been covered by other legally obligated sources.

It is of course impossible to ascertain what insurance revenues CL&P might have received had it evaluated its substation damage, and it is therefore impossible to assign a precise

[4] The area can be calculated as follows. A circle with a 1000 foot radius has an area of Pi X (radius squared). 3.1415629 X (1000 squared) = 3141562.9 square feet. 3141562.9 X 238 substations = 7476970 square feet. One acre = 43560 square feet. 7476970 square feet / 43560 square feet per acre = 17165 acres.

value to any amount the Authority should disallow as imprudent. The insurance policies would likely have been triggered only by the very largest storms, Tropical Storms Irene and Sandy, and the October 2011 Nor'easter. The Attorney General recommends that the Authority impose a penalty of no less than $5 million against CL&P for failing to take minimal steps to protect its ratepayers' interest.

H. The Authority Should Impose Substantial Additional Disallowances as a Consequence of the Five Areas in Which CL&P's Response to the 2011 Storms Was Deficient and Inadequate

In its Final Decision in Docket No. 11-09-09, *PURA Investigation of Public Service Companies Response to 2011 Storms* ("Docket No. 11-09-09"), the Authority determined that CL&P's responses to Tropical Storm Irene and the October 2011 Nor'easter were inadequate and deficient in five principal areas. Specifically, the Authority concluded that:

> The Connecticut Light and Power Company's performance in the aftermath of the 2011 storms was deficient and inadequate in the areas of outage and service restoration preparation of personnel, support of its municipal liaison program, development and communication of restoration times to customers, and overall communication to customers, other service providers and municipalities, as to warrant regulatory sanction. In this Decision, the Public Utilities Regulatory Authority also concludes that because of The Connecticut Light and Power Company's failure to obtain adequate assistance in advance of the October 29, 2011 storm, its response to that storm was deficient. Because of The Connecticut Light and Power Company's failure to adequately fulfill its duties imposed by law and to adequately and suitably provide for the overall public interest with regard to these particular areas of performance, the Public Utilities Regulatory Authority establishes in this Decision, a rebuttable presumption that The Connecticut Light and Power Company should have imposed on it, an appropriate reduction to its allowed return on equity in its next ratemaking proceeding as a penalty for poor management performance and to provide incentives for improvement. In addition, in conformance with the merger agreement between Northeast Utilities and NSTAR, the Public Utilities Regulatory Authority retains further jurisdictional approval for recovery of an appropriate level of 2011 storm costs at the time The Connecticut Light and Power Company seeks recovery of any such costs.

Final Decision, Docket No. 11-09-09, 1. The Authority further stated that "[t]he AG, the OCC and other participants will have the opportunity to challenge any request for storm cost recovery at the time of CL&P's next rate case." Final Decision, Docket No. 11-09-09, 17.

The evidence in Docket No. 11-09-09 fully supported the Authority's determination that CL&P's storm response was so inadequate and deficient as to "warrant regulatory sanction." *Id*. CL&P was utterly unprepared to respond to the large 2011 storms. The Authority's consultant, The Liberty Consulting Group ("Liberty") found that "CL&P's storm performance was below average." Liberty Report, 1. Liberty cited to failures in CL&P's tree trimming program, its restoration estimates, its management command system, its ability to acquire outside resources and its coordination with towns as all deficient. Liberty Report, 1-2. CL&P did not seek meaningful outside resources until after the storm hit and caused numerous service outages. Liberty Report, 78; Davies Report, 21.

In addition, CL&P's Emergency Response Plan ("ERP") did not adequately stress training and drills. Liberty Report, 13, 18. CL&P employees questioned the plan and its application during the two 2011 storms and suggested that it was written for regulators, not applied during the 2011 storms, lacked adequate specificity or that while it may have worked on paper, it was not the subject of adequate training. Liberty Report, 18-19. There is no evidence that CL&P drilled or exercised its ERP for at least five years prior to the 2011 storms. Witt Report, 17.

There was also substantial evidence in the record that CL&P's municipal liaisons were poorly prepared, poorly supported and often ineffective. The results of CL&P's unpreparedness and mismanagement were disastrous for the affected towns and their citizens. Docket No. 11-09-09, Werbner Pre-Filed Testimony, 3. Elected representative from the towns of Simsbury,

South Windsor, Tolland, Redding, Newtown, and Ridgefield appeared before the Authority and testified concerning CL&P's failures and the impacts on their towns. Final Decision, Docket No. 11-09-09, 5-9. For example, CL&P could not tell Tolland leaders where company crews were working, where the outages in town were, or provide real-time progress reports on restoration. Werbner PFT, 4. CL&P's inability to provide accurate restoration projections "had a material adverse impact on the town's ability to protect the health and safety of town residents." Glassman PFT, 5. Simsbury had no accurate information on which to schedule its shelter operations and care for its elderly and disabled. Id.

The Authority received more than one thousand written complaints, and an additional one thousand telephone calls from customers.

> The majority of the customers who were affected by the 2011 Storms were concerned with the length of time it took the companies to restore service and the difficulty receiving information from the companies. Several customers stated that the companies were unprepared, mismanaged, and had underestimated the magnitude of the storm by not having sufficient repair crews available. Consumers believed that the lack of information provided by the companies left them unable to prepare for a longer than normal outage.
>
> Customer comment varied, but frustration regarding the amount of time the utility companies required to repair and restore service was a common theme. Several customers mentioned that Connecticut has the highest electric rates in the country and therefore, warrants better customer service. Customers suggested ways to help avoid future outages such as trimming trees and burying power lines. Others felt that customers with wells or septic systems should have their restoration of service prioritized because of the public health issues.

Final Decision, Docket No. 11-09-09, 5.

CL&P's unreasonable level of unpreparedness for major storms and its failure to respond to the 2011 storms in a reasonable and prudent manner caused the service restoration process to take longer than it otherwise would have. The failure of the municipal liaison program, as well as the delay in restoration for many customers, caused the towns to incur significant additional

costs. Tr., 409-14. As the Attorney General argued in Docket No. 11-09-09, CL&P's imprudence, especially with respect to the Nor'easter, turned extended power outages into crisis situations, caused significant public anxiety and severely impacted residents' and towns' abilities to effectively deal with the outages.

The Authority now has the opportunity to make good on its promise to hold the Company accountable for its many profound failures in the 2011 storms. The Attorney General believes that the Authority should impose a substantial additional disallowance of CL&P's otherwise legitimately incurred costs for those two storms. CL&P identified $111.2 million in incremental costs associated with Tropical Storm Irene and an additional $175.1 million in incremental costs associated with the October 2011 Nor'easter. The Attorney General recommends that the Authority disallow thirty to fifty percent of the costs from those storms as a penalty for CL&P's deficient and inadequate storm response in 2011. This would translate into a disallowance ranging from $85 million to $140 million.

Any disallowance for storm costs associated with the 2011 storms would be subject to the $40 million Settlement Agreement write-down. As a result, the additional impact of a write-down in that range would range from $45 million to $100 million. This amount, while substantial, properly reflects the seriousness of the failings on CL&P's part to provide safe, adequate and reliable service to its customers. As many customers complained, CL&P ratepayers pay among the highest rates in the United States. While CL&P cannot prevent damaging storms, their customers deserve reasonable management response to those storms when they do come.

A disallowance in this range is consistent with past PURA practices as well. This Authority has repeatedly imposed substantial cost recovery disallowances where it has found

CL&P acted imprudently. *See e.g.* Final Decision, Docket No. 96-10-06, *DPUC Investigation Into Whether The Connecticut Light and Power Company Fulfilled Its Public Service Responsibilities With Respect To Its Nuclear Operations* (Imprudence disallowance of $600 million in replacement power costs due to shutdown of Millstone reactors / disallowance of additional $360 million in other incremental costs)[5]; Final Decision, Docket No 90-02-03, *Connecticut Yankee Nuclear Plant Shutdown* (Imprudence disallowance of $31,269,000 in replacement power costs for shutdown of Millstone reactor)[6]; Docket No 91-10-02, *DPUC Investigation into the Millstone 1 Shutdown on October 4, 1990* (Imprudence disallowance of $2,865,000 in replacement power costs for shutdown of Millstone reactor)[7]. In none of these cases were CL&P's customers placed in as extreme circumstances as the extended outages following Tropical Storm Irene and the October 2011 Nor'easter. The Authority should therefore impose cost recovery disallowances of at least $90 million as described above.

[5] http://www.dpuc.state.ct.us/FINALDEC.NSF/0d1e102026cb64d98525644800691cfe/c04189b326f26210852564f70067170b?OpenDocument&Highlight=0,96-10-06

6http://www.dpuc.state.ct.us/FINALDEC.NSF/0d1e102026cb64d98525644800691cfe/9859926a05428ae985255fad006183f1?OpenDocument&Highlight=0,90-02-03

[7] http://www.dpuc.state.ct.us/FINALDEC.NSF/0d1e102026cb64d98525644800691cfe/b9ee075767b4efcd85255fb00055b3b5?OpenDocument&Highlight=0,91-10-02

III. SUMMARY OF ATTORNEY GENERAL ADJUSTMENTS

Event/Issue	**CL&P Request**	**Proposed Adjustment**
Section 4.3 Merger Settlement Agreement	N/A	$16.34 million
June 2011 Storms	$10.9 million	$10.9 million (in the alternative, $1.59 million)
Affiliate Insurance	N/A	$5 million
AT&T Obligations	N/A	$9,250,000
Substation Insurance	N/A	$5 million
2011 Storms Tropical Storm Irene October 2011 Nor'easter	$286.3	$85 to $140 million
Attorney General Recommendations		$131 - $186 million
Less $40 million write-down		$91 – $146 million

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

_____

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