RETURN DATE: APRIL 1, 2014

OFFICE OF CONSUMER COUNSEL, BY AND THROUGH CONSUMER COUNSEL ELIN SWANSON KATZ	:	SUPERIOR COURT
	:	JUDICIAL DISTRICT
	:	OF NEW BRITAIN
Plaintiff	:	
V.	:	
PUBLIC UTILITIES REGULATORY AUTHORITY AND CONNECTICUT NATURAL GAS CORPORATION	:	
Defendants	:	MARCH 6, 2014

PETITION FOR ADMINISTRATIVE APPEAL

TO THE SUPERIOR COURT FOR THE JUDICIAL DISTRICT OF NEW BRITAIN ON THIS SIXTH OF MARCH, 2014, COMES THE OFFICE OF CONSUMER COUNSEL, BY AND THROUGH CONSUMER COUNSEL ELIN SWANSON KATZ, APPEALING PURSUANT TO SECTIONS 16-35 AND 4-183 OF THE CONNECTICUT GENERAL STATUTES FROM A FINAL DECISION OF THE PUBLIC UTILITIES REGULATORY AUTHORITY AND COMPLAINS AND SAYS:

INTRODUCTION

1. This is an appeal by the Office of Consumer Counsel ("OCC"), by and through Consumer Counsel Elin Swanson Katz, from a final decision ("Decision") of the Public Utilities Regulatory Authority ("PURA" or "Authority") dated January 22, 2014 in a proceeding PURA designated as Docket No. 13-06-08, Application of Connecticut Natural Gas Corporation to Increase its Rates and Charges.

2. The plaintiff, OCC, is an agency of the State of Connecticut, designated as the statutory advocate for Connecticut ratepayers in utility matters pursuant to CONN. GEN. STAT. § 16-2a.

3. OCC was a party to PURA Docket No. 13-06-08.

4. The defendant, PURA, is an agency of the State of Connecticut, charged by statute with the regulation of public service companies and the establishment of their rates.

5. The defendant, Connecticut Natural Gas Corporation ("CNG" or "Company"), is a public service company providing gas utility service in certain areas of Connecticut.

6. CNG filed an application for rate amendments with PURA on July 8, 2013, whereupon PURA opened Docket No. 13-06-08, a rate case and a contested case for purposes of the Uniform Administrative Procedure Act, Conn. Gen. Stat. § 4-166, et seq.

7. CNG was a party to PURA Docket No. 13-06-08.

8. The Decision establishes several rate amendments for CNG gas utility service.

Accumulated Deferred Income Tax Issue

9. The Department of Public Utility Control ("DPUC"), the predecessor of PURA, issued a Decision dated November 10, 2010 in Docket No. 10-07-09, Joint Application of UIL

Holding Corporation and Iberdrola USA Inc. for Approval of a Change of Control of Connecticut Natural Gas Corporation ("Change of Control Decision").

10. In the Change of Control Decision, the DPUC authorized a transfer of the control over CNG and a second gas utility, Southern Connecticut Gas Company ("SCG"), from Iberdrola USA Inc. ("Iberdrola") to UIL Holding Corporation ("UIL"), subject to certain conditions.

11. At the time of the change of control of CNG, CNG's accounting books for utility rate purposes included an account called an "Accumulated Deferred Income Tax" or "ADIT" account that had a credit balance of $78.3 million at the time of the change of control, which ADIT credit balance acts as an offset to rate base. Decision at 10.

12. As part of the change of control of CNG from Iberdrola to UIL, UIL made a federal tax election called a 338(h)(10) election.

13. UIL's 338(h)(10) election had the known effect of stepping up the tax basis of the acquired assets, thereby eliminating the ADIT account and depriving CNG's ratepayers of a return on the funds previously provided by ratepayers to the company.

14. Notwithstanding the 338(h)(10) election, CNG was asked by DPUC and PURA to track the level of its ADIT account balance as if the election had not occurred. For 2014, PURA calculates the average rate base amount of the ADIT account to be a credit balance of $60,272,000, as shown in the Decision on page 10.

15. DPUC stated, on pages 23-24 of the Change in Control Decision, that:

> [t]he Department's position is that the change of control should not impact the cost of utility services that are provided to ratepayers. In subsequent rate case proceedings, CNG and Southern would be required to show that all accounting treatments resulting from the Proposed Transaction will not have adverse impacts on rates.

This language from the Change of Control Decision is quoted in the Decision (that is, the Decision being appealed) on page 9.

16. The DPUC stated, on page 24 of the Change of Control Decision, that:

> UIL is hereby put on notice that, while the Department is allowing the 338(h)(10) Election, it is not recommending or by any stretch requiring such an election. UIL proceeds at its own risk regarding the ratemaking treatment that may or may not be afforded any election. The Department intends to safeguard ratepayers from adverse impacts due the change of control.

This language from the Change of Control Decision is quoted in the Decision on page 9.

17. In the Decision hereby being appealed, the Authority (the successor agency to the DPUC) noted that "[t]his rate case provides the first review for the Authority, from a ratemaking perspective, of UIL Holdings Corporation's (UIL) acquisition of CNG from Iberdrola, USA." Decision at 9.

18. The Authority in the Decision, at page 14, "finds a lack of evidence regarding CNG's claim that customers are in a better place now than prior to the change in control. Based on the evidence that the Company provided, there is no indication that the transaction has provided accrued benefits to ratepayers that would not have occurred absent the change in control."

19. CONN. GEN. STAT § 16-19(a) requires the Authority to review proposed utility rate amendments in accordance with the principles and guidelines set forth in CONN. GEN. STAT. § 16-19e, including to avoid setting rates at a level that would be more than just, reasonable, and adequate.

20. Section 16-19e requires that the level and structure of utility rates "be sufficient, but no more than sufficient, to allow public service companies to cover their operating costs … and capital costs."

21. If ratepayers are not held harmless from the extinguishment of the ADIT account resulting from UI's 338(h)(10) election during the change of control, ratepayers will fail to receive the offset to revenue requirements associated with a rate base credit of $60,272,000, as calculated by the Authority in the Decision at 10. As stated in paragraph 18, *supra*, the Authority found that no countervailing rate benefits have accrued from the change in control transaction to offset that loss.

22. The Decision, at 15-18, discusses UI's claim that any hold harmless adjustment to make ratepayers whole for UI's choice to take the 338 election during the change of control would create a "normalization violation" for federal tax purposes, and finds evidence to support the creation of a normalization violation to be "unconvincing." Decision at 18.

23. Nonetheless, the Decision fails to make a hold harmless adjustment. Instead, at page 18, the Authority ordered the Company to seek a private letter ruling from the Internal Revenue Service as to whether protecting ratepayers from extinguishment of the ADIT account through a hold harmless adjustment would create a normalization violation for federal tax purposes. Pending that ruling, the Decision established rates that reflect extinguishment of the ADIT account, thereby putting all of the risk of an adverse IRS ruling on ratepayers.

24. The Decision makes no quantitative finding as to the financial consequences of a normalization violation, and ignores record evidence that such consequences would be less harmful to ratepayers than the failure to implement a hold harmless adjustment.

25. By allowing CNG's rates to reflect extinguishment of the ADIT account, PURA has violated its precedent, the Change of Control Decision. Specifically, PURA is contradicting its prior rulings that the "change of control should not impact the cost of utility services that are provided to ratepayers," and that "[t]he Department intends to safeguard ratepayers from adverse

impacts due to the change in control." Ratepayers are not safeguarded through the Decision from adverse impacts from the change in control of CNG; instead, ratepayers face the loss of tens of millions of dollars of rate base offset.

26. By violating its precedent as aforesaid, by ignoring the record evidence that protecting ratepayers with a rate credit and potentially incurring a normalization violation would be less harmful than failing to protect ratepayers at all, and by allowing UIL shareholders to reap a windfall at ratepayer expense with no finding of quantifiable ratepayer benefit, PURA failed to apply reasoned decision-making and failed to reach a just and reasonable result, in violation of CONN. GEN. STAT. § § 16-19(a) and 16-19e.

Distribution Integrity Management Program Issue

27. The Decision, at pages 119-20 approves a mechanism sought by CNG called a "true-up" mechanism for CNG's Distribution Integrity Management Program ("DIMP"). DIMP involves replacement of gas mains.

28. A true-up mechanism allows the Authority to adjust rates between rate cases based on actual expenditures relating to a particular item. True-up mechanisms constitute single issue ratemaking, an exception to the usual approach of allowing rate amendments only in full rate cases that take all of the rate items into account and develops rates based on forecasted expenditures.

29. The Decision's approval of a DIMP true-up mechanism will allow the Authority to adjust CNG's rates every year, as discussed in the Decision at pages 112 and at pages 119-20.

30. The legislature has specifically allowed only certain types of adjustment clauses that (1) are based on actual expenditures, rather than forecasted expenditures, and (2) allow adjustments of rates based on a single item or issue rather than the full set of rate issues. These

adjustment clauses are exceptions to the general prohibitions against (1) retroactive ratemaking, and (2) single issue ratemaking.

31. The three types of adjustment clauses that the legislature has permitted the Authority to establish under CONN. GEN. STAT. § 16-19b are the purchased gas adjustment clause (Section 16-19b(b)), the energy adjustment clause (Section 16-19b(c)) and the transmission adjustment clause (Section 16-19b(d)). There are explicit hearing requirements and other monitoring and oversight requirements that the Authority must follow in implementing these rate adjustment clauses.

32. The legislature has also permitted the Authority to establish the following additional adjustment clauses: (1) electric and gas conservation adjustment clauses, pursuant to CONN. GEN. STAT. § 16-235m(d)(1), to fund energy efficiency budgets up to a certain cap; (2) a water infrastructure and conservation adjustment ("WICA"), pursuant to CONN. GEN. STAT. § § 16-262v and 16-262w; and (3) sales decoupling mechanisms pursuant to CONN. GEN. STAT. § 16-19tt (gas and electric) and Section 3 of Public Act 13-278 (water). Again, there are specific hearing requirements the Authority must follow in implementing these adjustment clauses.

33. The DIMP true-up mechanism approved in the Decision is an unauthorized and illegal adjustment clause.

34. By application of the doctrine of statutory interpretation known as *expressio unius est exclusio alterius*, PURA does not have the authority to implement an adjustment clause other than those adjustment clauses specifically created by the legislature and listed in paragraphs 31 and 32, *supra*.

35. PURA exceeded its statutory authority in approving the DIMP mechanism.

CONCLUSION

36. For all the foregoing reasons, the Authority's Decision is:

a) in violation of statutory provisions,
b) in excess of PURA's statutory authority,
c) affected by other errors in law,
d) clearly erroneous in view of the reliable probative and substantial evidence on the whole record, and
e) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

37. OCC has exhausted all administrative remedies and is aggrieved by the Decision of the Authority.

WHEREFORE, the Plaintiff, Office of Consumer Counsel, requests that this Court provide for the following relief:

(i) Grant this appeal and reverse the Authority's rulings regarding the ADIT account and the establishment of the DIMP mechanism; and

(ii) Grant such other relief in law or equity as is required or appropriate.

Dated at New Britain, Connecticut, this 6th day of March, 2014.

Plaintiff,

OFFICE OF CONSUMER COUNSEL

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