

**STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY**

Petition of William Tong, Attorney)	
General for the State of Connecticut,)	Docket No. 21-08-24
and the Office of Consumer Counsel)	
for an Investigation of Eversource)	
Energy Regarding Gas Expansion)	January 10, 2022
Marketing)	

**BRIEF OF INTERVENORS CONSERVATION LAW
FOUNDATION, SAVE THE SOUND, AND SIERRA CLUB**

Intervenors Conservation Law Foundation, Save the Sound, and Sierra Club (collectively, “Public Interest Intervenors”) hereby submit this Brief to the Public Utilities Regulatory Authority (“PURA”) in the above captioned docket in response to PURA’s Request for Briefs in Phase 2 of this docket.¹ We conclude that PURA has broad statutory authority to modify its Decisions regarding the gas expansion plan, and that the 2014 Settlement Agreement modifying aspects of the plan does not limit this authority in any way. We respectfully request PURA to find that good cause exists to modify the gas expansion plan and to end the plan as soon as possible through further proceedings in this docket.

I. INTRODUCTION

PURA initiated this docket in August at the request of the Connecticut Office of the Attorney General and the Connecticut Office of Consumer Counsel, which jointly filed a petition asking PURA to investigate the Yankee Gas Services Company’s (d/b/a Eversource Energy) gas expansion marketing practices to assess the company’s compliance with applicable Connecticut law and to assess civil penalties for violations.² PURA bifurcated the docket into two phases:

¹ Docket No. 21-08-24, Notice of Request for Briefs for Phase 2 and Notice of Request for Written Comments (Dec. 20, 2021).

² Docket No. 21-08-24, Notice of Proceeding, 1 (Aug. 20, 2021).

Phase 1, to investigate the allegations raised in the petition, and Phase 2, to evaluate all three of the Connecticut gas companies’³ marketing practices for the gas expansion plan and to consider any appropriate modifications to the plan.⁴ In October, PURA granted Public Interest Intervenor’s motions for intervenor status in this docket.⁵

In December, PURA concluded Phase 1 of this docket by issuing a Notice of Violation and assessing a civil penalty of \$1,797,000 against Eversource Energy.⁶ Shortly thereafter, PURA issued a Notice of Request for Briefs for Phase 2 of this docket, asking Parties and Intervenor’s to “Discuss the applicability and legal standing of the settlement agreement entered into . . . on October 22, 2014 . . . [and] filed in Docket No. 13-06-02RE01 [which modified the gas expansion plan].”⁷ In the Notice, PURA requested that Parties and Intervenor’s specifically address the following statement from the 2014 Settlement Agreement: “This Agreement shall take effect upon PURA’s approval and shall continue in effect through the term of the Plan, unless earlier modified by PURA.”⁸

II. DISCUSSION

A. Statutory Framework

Under Connecticut’s General Statutes Chapter 277, PURA has authority to regulate public service companies, including the local gas distribution companies (“LDCs”). For example, PURA is statutorily authorized to adopt regulations pertaining to “[r]ates and charges, services,

³ Connecticut Natural Gas, Southern Connecticut Natural Gas, and Yankee Gas.

⁴ Docket No. 21-08-24, Motion No. 2 Ruling, 1 (Sept. 17, 2021).

⁵ Docket No. 21-08-24, Motion No. 9 Ruling (Oct. 29, 2021) (granting Conservation Law Foundation intervenor status); Docket No. 21-08-24, Motion No. 10 Ruling (Oct. 29, 2021) (granting Save the Sound and Sierra Club intervenor status).

⁶ Docket No. 21-08-24, Notice of Violation and Assessment of Civil Penalty (Dec. 17, 2021).

⁷ Docket No. 21-08-24, Notice of Request for Briefs for Phase 2 and Notice of Request for Written Comments, 2 (Dec. 20, 2021).

⁸ *Id.* (internal quotations omitted).

accounting practices, safety and the conduct of operations generally of public service companies subject to its jurisdiction as it deems reasonable and necessary.” Conn. Gen. Stat. § 16-6b(1). In ratemaking cases, PURA reviews the gas companies’ proposed rate amendments and has authority to modify the companies’ services, rates, and charges. Conn. Gen. Stat. § 16-19(a). In its adjudicatory role, PURA issues decisions, orders, and authorizations. Conn. Gen. Stat. § 16-9. Notably, PURA “may, at any time, for cause shown, upon hearing had after notice to all parties in interest, rescind, reverse or alter any decision, order or authorization by it made.” *Id.*

In 2013, the Connecticut General Assembly authorized the gas expansion plan at issue in this docket. The statute established detailed procedural requirements and a specific timeline for developing and approving the gas expansion plan. First, the statute required the LDCs to submit a proposed expansion plan “[o]n or before June 15, 2013.” Conn. Gen. Stat. § 16-19ww(a). After submission, the Commissioner of the Department of Energy and Environmental Protection must review the proposed plan within thirty days “and issue a preliminary determination as to whether the plan is consistent with the goals of the [2013] Comprehensive Energy Strategy.” Conn. Gen. Stat. § 16-19ww(b). If the Commissioner found the plan to be consistent, PURA must “approve or modify the plan not later than one hundred twenty days after such plan is submitted.” Conn. Gen. Stat. § 16-19ww(c). A separate statutory provision provides that PURA may approve in a contested proceeding new rate mechanisms for the LDCs to recover costs of the gas expansion plan. Conn. Gen. Stat. § 16-19oo.

B. Related PURA Dockets

The original gas expansion plan was approved in 2013 and has been adjusted several times. In Docket No. 13-06-02, PURA approved, with modifications, the gas expansion plan proposed by the LDCs, with several metrics identified that would be monitored to determine if

the expansion program required reevaluation or adjustment.⁹ This docket was first reopened in 2014. In Docket No. 13-06-02RE01, PURA approved a settlement agreement entered into by the Office of Consumer Counsel, the Department of Energy and Environmental Protection, and the LDCs, which modified aspects of the gas expansion plan.¹⁰ The docket was subsequently reopened several times as further adjustments were made to the program.¹¹

In addition, PURA annually reviewed the LDCs' system expansion reconciliation filings required under the gas expansion plan. In December 2020, PURA approved the reconciliation of the companies' costs and revenue for 2019.¹² In this decision, PURA "determined that there are a number of issues [with the gas expansion plan] that warrant further examination and potentially a modified framework from what was developed in the early years of the program."¹³

PURA then opened Docket No. 13-06-02RE05 to investigate the problems that had been identified with the gas expansion plan. As stated in the Notice of Proceeding for this docket:

the purpose of the reopened proceeding is to re-examine certain elements of the natural gas expansion program, including, but not limited to, convening a working group to examine steps to mitigate project variances, reduce the number of customers that are non-compliant with their service agreements, revisit or redesign current marketing efforts related to program participation, and propose a modified system expansion plan framework that recognizes and solves the challenges experienced in recent years.¹⁴

PURA granted Public Interest Intervenors' motions for participant status in this docket.¹⁵ Public Interest Intervenors participated in the working group meetings facilitated by PURA's Office of Education, Outreach, and Enforcement ("EOE") and submitted written comments.

⁹ Docket No. 13-06-02, Final Decision (Nov. 22, 2013).

¹⁰ Docket No. 13-06-02RE01, Final Decision - Corrected, 1 (Jan. 14, 2015).

¹¹ See Docket Nos. 13-06-02RE02, 13-06-02RE03, and 13-06-02RE04.

¹² Docket No. 20-03-16, Decision (Dec. 23, 2020).

¹³ *Id.* at 17.

¹⁴ Docket No. 13-06-02RE05, Notice of Proceeding, 1 (Mar. 2, 2021).

¹⁵ Docket No. 13-06-02RE05, Motion No. 2 Ruling (Mar. 23, 2021) (granting participant status to Save the Sound and Sierra Club); Docket No. 13-06-02RE05, Motion No. 3 Ruling (Mar. 23, 2021) (granting participant status to Conservation Law Foundation).

The working group process concluded with a report filed by EOE which recommended modifications to the gas expansion plan and procedural next steps (“EOE Report”).¹⁶ The EOE Report concluded that the gas expansion plan should be “downsized” immediately and end at the ten-year mark.¹⁷ EOE also determined that “[i]t is likely too late for any efforts to successfully address” the poorly designed gas/oil price differential reevaluation trigger, which “may be reason enough for PURA to consider discontinuing the plan.”¹⁸ Shortly after the EOE Report was filed, PURA closed Docket No. 13-06-02RE05, noting that PURA would procedurally address the EOE Report in Docket No. 21-08-24 instead of Docket No. 13-06-02RE05, as originally planned.¹⁹

C. Applicability and Legal Standing of the 2014 Settlement Agreement

The 2014 Settlement Agreement filed in Docket No. 13-06-02RE01 was entered into by the Office of Consumer Counsel, the Department of Energy and Environmental Protection’s Bureau of Energy and Technology Policy, and the LDCs. This agreement, which was explicitly subject to PURA’s approval,²⁰ sought to modify aspects of PURA’s original decision approving the gas expansion plan,²¹ including assigning non-firm margin credits in accordance with newly passed legislation, Public Act No. 14-94.²² PURA reviewed the 2014 Settlement Agreement and

¹⁶ Docket No. 13-06-02RE05, PURA Office of Education, Outreach, and Enforcement Report on Docket 13-06-02RE05 (Dec. 10, 2021) (cross-filed in Docket No. 21-08-24).

¹⁷ *Id.* at 32.

¹⁸ *Id.* at 20.

¹⁹ Docket No. 13-06-02RE05, Docket Closing Other Than a Decision (Dec. 20, 2021).

²⁰ Docket No. 13-06-02RE01, Joint Motion for Approval of Settlement Agreement, Exhibit A - Settlement Agreement, 5 (Oct. 22, 2014) [hereinafter 2014 Settlement Agreement] (“This Agreement shall take effect upon PURA’s approval.”).

²¹ Docket No. 13-06-02RE01, Joint Motion for Approval of Settlement Agreement, 1-2 (“Recognizing the importance of collaboration in the context of implementing the natural gas infrastructure expansion plan . . . approved by PURA in Docket No. 13-06-02 by Decision dated November 22, 2013 . . . the Parties worked together to develop a framework for settlement which enhances the Decision by clarifying the guidelines for implementation, oversight controls and customer safeguards.”).

²² Docket No. 13-06-02RE01, Final Decision - Corrected, 1 (Jan. 14, 2015). Public Act No. 14-94 amended Conn. Gen. Stat. § 16-19ww(d).

approved it without modification.²³ The 2014 Agreement is relevant in the instant docket, Docket No. 21-08-24, insofar as the language was approved by PURA and thereby modified PURA's original Decision approving the gas expansion plan.

The 2014 Settlement Agreement is explicitly provisional: "This Agreement shall take effect upon PURA's approval and shall continue in effect through the term of the Plan, **unless earlier modified by PURA.**"²⁴ This provision recognizes that, should PURA issue a Decision approving the proposed settlement agreement, PURA may later modify that Decision. If PURA does not modify its Decision, then the terms of the 2014 Settlement Agreement will continue in effect for the life of the plan.²⁵ The 2014 Settlement Agreement in no way constrains PURA's ability to modify its Decision approving the agreement, or any other Decision regarding the gas expansion plan.

Indeed, PURA has broad statutory authority to modify any of its decisions, orders, and authorizations. Connecticut state law provides that PURA "**may, at any time, for cause shown, upon hearing had after notice to all parties in interest, rescind, reverse or alter any decision, order or authorization by it made.**" Conn. Gen. Stat. § 16-9 (emphasis added). In other words, PURA has unambiguous statutory authority²⁶ to modify its decisions provided: (1) there is cause shown, and (2) after providing notice and a hearing to all parties in interest. Therefore, PURA may modify its Decisions regarding the gas expansion plan after showing there is cause to do so

²³ *Id.* at 3.

²⁴ 2014 Settlement Agreement at 5 (emphasis added).

²⁵ The 2013 legislation authorized the gas expansion plan for a period of ten years. Conn. Gen. Stat. § 16-19ww(a). However, nothing in the statute requires the program to continue for the full ten years.

²⁶ Under Connecticut state law, "The meaning of a statute shall . . . be ascertained from the text of the statute itself . . . [if] the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." Conn. Gen. Stat. § 1-2z.

and providing notice and a hearing to interested parties. The EOE Report²⁷ documents numerous problems with the gas expansion plan, explicitly recommends modifications, and clearly establishes cause for PURA to modify its Decisions regarding the program.

III. CONCLUSION

PURA has broad statutory authority to modify its Decisions regarding the gas expansion plan, and the EOE Report clearly demonstrates that there is good cause for PURA to modify the plan. Nothing in the 2014 Settlement Agreement limits this authority. Public Interest Intervenors respectfully request PURA to find that good cause exists to modify the gas expansion plan and to end the plan as soon as possible through further proceedings in this docket.

Respectfully submitted,

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²⁷ Docket No. 13-06-02RE05, PURA Office of Education, Outreach, and Enforcement Report on Docket 13-06-02RE05 (Dec. 10, 2021) (cross-filed in Docket No. 21-08-24).

CERTIFICATE OF SERVICE

I hereby certify that on this day the foregoing document was filed with the Public Utilities Regulatory Authority, and copies of the foregoing document were served upon each person designated on the Authority's official service list in this proceeding in accordance with R.C.S.A. § 16-1-15.

Respectfully submitted this 10th day of January, 2022,

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