

**STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY**

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

PURA INVESTIGATION OF : DOCKET NO. 11-09-09
PUBLIC SERVICE COMPANIES :
RESPONSE TO 2011 STORMS : April 9, 2013

**PETITION TO IMPOSE ADDITIONAL PENALTIES ON CL&P FOR
IMPAIRING AND IMPEDING THE PURA INVESTIGATION
OF CL&P'S RESPONSE TO THE OCTOBER 2011 STORM**

George Jepsen, Attorney General for the State of Connecticut (“Attorney General”), pursuant to Conn. Gen. Stat. § 16-11, hereby petitions the Public Utilities Regulatory Authority (“PURA” or “Authority”) to impose additional penalties on the Connecticut Light and Power Company (“CL&P” or “Company”) for impairing and impeding the PURA investigation of CL&P’s response to the October 2011 Nor’easter in Docket No. 11-09-09.

In the aftermath of Tropical Storm Irene and the October 2011 Nor’easter, PURA opened an investigation to review the performance of Connecticut’s public service utilities following these two storms. One of the central concerns of the investigation, in addition to the efficiency and effectiveness of the utilities’ restoration efforts, was the nature and accuracy of the information provided to the public about restoration efforts and estimated time of restoration (“ETR”) of electric service for the hundreds of thousands of homes and businesses that had lost power.

In the course of that proceeding, the Attorney General and other participants made various formal requests of CL&P under the PURA rules for relevant documents and evidence to

examine, consider and use during the investigation. The Attorney General also sought complete and truthful testimony before the Authority on various issues relevant to the October 2011 Nor'easter, including CL&P's development of its ETR, the likelihood that the Company would achieve its goal of meeting its public commitment to restore power for 99% of its customers in every town by midnight on Sunday, November 6, 2011 and the accuracy of the information that the Company provided to the public.

Evidence uncovered after the PURA investigation reveals that CL&P failed to comply timely, fully and accurately with the information requests, effectively preventing PURA's access to the facts necessary to conduct a full and proper investigation and reach accurate conclusions. In light of CL&P's failures, the Attorney General asks PURA to impose a significant additional financial penalty upon CL&P, through a further reduction in the amount of storm costs it will be permitted to recover, in order to sanction this failure to provide proper discovery and to deter similar conduct in the future.

I. BACKGROUND

CL&P is a public service company as defined by Conn. Gen. Stat. § 16-1(4). As such, it has a public service obligation to the State of Connecticut and its ratepayers and is subject to PURA's full powers of regulation. Conn. Gen. Stat. § 16-11 requires that PURA, "so far as practicable, keep fully informed as to the . . . manner of operation of all public service companies" and states that PURA "may order such reasonable improvements . . . or changes in the manner of operations, as may be reasonably necessary in the public interest."

PURA opened Docket 11-09-09 to investigate the performance of Connecticut's electric distribution companies and other public service companies following Tropical Storm Irene and later expanded its review to include the October 2011 Nor'easter. These storms caused sustained

outages in utility service,¹ severely impacting hundreds of thousands of residents and revealing major shortcomings in certain public service companies' emergency preparedness and response capabilities. The damage wrought by the October Nor'easter was particularly severe in western and central Connecticut.

At the request of the Governor, on November 6, 2011 the Attorney General commenced his own investigation into CL&P's handling of the October 2011 Nor'easter to protect the legal interests of the State and the people of this State.² The documents produced in the PURA investigation were reviewed by the Attorney General both for their relevance in the PURA proceeding and in the Attorney General's separate investigation. The Attorney General's investigation continued after PURA issued its Final Decision on August 1, 2012. As part of the Attorney General's separate investigation, CL&P voluntarily produced documents to the Attorney General that should have been produced in the PURA proceeding in response to various interrogatories issued by the Attorney General but were not.

The Authority conducted its investigation pursuant to Conn. Gen. Stat. § 16-11, the statute that confers upon the PURA broad authority to ensure the manner of operation of all public service companies best serves the public interest. See Final Decision at 18 n.8. As stated by PURA in its Final Decision:

the PURA's intent in this proceeding is to conduct a review and critique of public service company obligations with an aim at identifying deficiencies and impose corrective measures in the method and manner of operations, consistent with the mandate of Conn. Gen. Stat. § 16-11. . . . In this manner, the PURA strives to achieve a higher and greater public good consistent with Conn. Gen. Stat. § 16-11.

¹ Irene caused more than 700,000 customers to lose power, some for as long as nine days. The October Nor'easter interrupted electric service to more than 800,000 Connecticut residents, many for as long as eleven days during cold temperatures.

² *See* Statement of Attorney General Jepsen Concerning Review of Utility Actions, <http://www.ct.gov/ag/cwp/view.asp?A=2341&Q=490336>.

Id. at 15.

The Authority intended its investigation in this matter to be comprehensive and thorough. The discovery in this case included more than 750 interrogatories and 86 late filed exhibits. Id. at 2. In addition, the PURA conducted seventeen days of hearings during which the Attorney General and other interested parties, including the Office of Consumer Counsel, cross-examined senior-level CL&P executives specifically about the Company's 99% ETR.

In its Final Decision, issued on August 1, 2012, the Authority concluded that CL&P's performance in the aftermath of the 2011 storms was "deficient and inadequate" in a number of areas, including the "development and communication of restoration times to customers," and warranted regulatory sanction. Id. at 1, 114. PURA therefore established a rebuttable presumption that it should impose a reduction to CL&P's ROE in the Company's next rate case both as a penalty for poor management and to incent improvement. Id. In addition, the Authority noted that it retained authority to determine the appropriate amount of CL&P's 2011 storm cost recovery in a future proceeding. Id. The Authority also stated that when considering these penalties in future proceedings, it will consider the extent to which CL&P recognized its shortcomings and took concrete and measurable steps to improve its storm preparation and response. Id. at 115.

In discussing the rebuttable presumption of a ROE disallowance in its Final Decision, PURA relied on the record presented in this case, which it described as "exceedingly well developed" as to a number of aspects of CL&P's emergency planning and response, including restoration and communication. Id. at 18-19. The Authority relied on "the overall substantial weight of evidence developed in this record" to establish the presumption of a ROE penalty,

concluding that CL&P's performance was deficient in a number of areas, including its failure reasonably to develop and communicate restoration times to customers. Id.

In addressing the issue of ETRs in its Final Decision, the Authority specifically noted that, "the company consistently utilized its ERP [Emergency Response Plan] in the development of restoration estimates." Id. at 39. The PURA also stated in its Final Decision that "Company emails indicated that up until the morning of November 6, 2011, CL&P reasonably believed that it would be able to meet its 99% goal." Id. at 38. Based on the evidence presented in Docket No. 11-09-09, the PURA concluded that "CL&P's actions were deficient and inadequate in the development and communication of restoration times to customers and public officials," id. at 18, 40, and were sufficient "to warrant regulatory sanction." Id. at 40.

The Attorney General agrees with the Authority that CL&P's actions were deficient and inadequate. The Attorney General's investigation has revealed, however, that CL&P failed to provide and unreasonably delayed the production of responsive, relevant and highly probative documents and information in the PURA investigation. In so doing, CL&P impaired and impeded PURA's ability to fully investigate the Company's response to the 2011 Nor'easter.

The due administration of justice requires a free and fair opportunity for all parties to a proceeding to learn the material facts and determine whether to introduce testimony or cross-examine witnesses on such facts. CL&P prevented PURA from considering evidence that related directly to the reasonableness of the Company's development and communication of ETRs as well as the veracity of its representations of its 99% ETR following the October 2011 Nor'easter. This conduct necessarily and fundamentally compromised the PURA proceeding. The PURA's findings and conclusions regarding CL&P's ETRs, including that CL&P relied on

its ERP and reasonably believed it would meet its 99% goal until the morning of November 6, 2011, were at the very least based on a record that was incomplete and misleading.

CL&P impaired and impeded PURA's ability to carry out its statutory mandate to keep fully informed as to CL&P's manner of operations and "to achieve a great public good consistent with Conn. Gen. Stat. § 16-11." Final Decision, 15. The Attorney General does not ask that PURA reopen the evidentiary record and the investigation in Docket No. 11-09-09, but rather requests that the PURA factor CL&P's conduct into its determination of the appropriate amount of cost recovery related to the October 2011 Nor'easter.

II. CL&P REPRESENTED THAT IT PRODUCED ALL DOCUMENTS AND INFORMATION AND PROVIDED TRUTHFUL TESTIMONY CONCERNING ITS DEVELOPMENT AND COMMUNICATION OF ETRs AND PURA RELIED ON THOSE REPRESENTATIONS

The Attorney General issued three sets of interrogatories to CL&P in the PURA investigation containing a total of 125 specific requests. The third set of interrogatories issued on November 18, 2011 (the "Third Information Request") sought, among other things, information and documents pertaining to CL&P's development of the 99% ETR and the likelihood that it would meet that projection. The Third Information Request included the following interrogatories which are pertinent to the present Petition:

- AG-99.** Provide all documents related to ETRs, including but not limited to all data or algorithms produced from Outage Management Software (or other ETR-related databases), for the time period October 26 – November 10, 2011.
- AG-101.** Identify all communications related to CL&P's calculation of ETRs for the October 29 winter storm, including but not limited to communications with NU related to such calculations.
- AG-102.** Provide all documents concerning CL&P's calculation of ETRs for the October 29, 2011 winter storm.

- AG-103.** Provide all documents concerning CL&P’s ability or likelihood of meeting its ETRs for each day of the outages from the October 29, 2011 winter storm, including internal documents indicating to what extent ETRs were or were not achieved or were not achievable.
- AG-104.** Identify and provide all communications related to CL&P’s ability or likelihood of meeting its ETRs for each day of the outages from the October 29, 2011 winter storm.
- AG-105.** State whether you received any instructions, orders, advice, directives or recommendations from NU or any third-party consultant related to the ETRs you communicated to the public concerning the October 29 winter storm. Provide all documents related thereto.
- AG-118.** Identify all persons who are members of the CL&P Director Team (the “Director Team”).
- AG-119.** Describe the responsibilities and role played by the Director Team related to the October 29 winter storm. With respect to the Director Team:
- a. Identify all documents, including but not limited to, action plans, weather forecasts or resource requirements, created or referred to by the Director Team;
 - b. Identify all communications between or among the Director Team (or any individual member) or Senior CL&P or NU leadership; and
 - c. Provide all documents related thereto.
- AG-120.** For the time period October 26, 2011 through November 10, 2011, provide all internal documents that relate to any communication between CL&P and the Office of the Governor of Connecticut.
- AG-121.** For the time period October 26, 2011 through November 10, 2011, provide all documents that relate to any communication between CL&P and NU that relates to any communication between CL&P and the Office of the Governor of Connecticut.

Third Information Request at 16, 19.

The Third Information Request defined the term “document” as including “all materials and tangible forms of expression,” including, most pertinent to the present Petition, “papers, records, files, notes, emails,” “chronologies,” “minutes, summaries, analyses,” and “notes or

records of conversation or meeting.” *Id.* at § I, ¶ H. Further, the Third Information Request instructed that, “[d]ocuments provided shall be *complete* and, unless privileged, *unredacted*, submitted as found in the company’s files” *Id.* at § II, ¶ A (emphasis added).

At the PURA hearings held on April 23rd and 24th, 2012, CL&P company witnesses adopted the Company’s responses to the interrogatories set forth above in the Third Information Request without change, update, or limitation as their testimony under oath in the PURA proceeding. 4/23/12 Tr. at 958:20-960:11; 1017:23-10:18-18; 1030:13-10:32:19; 4/24/12 Tr. at 1199:1-1201:1. CL&P did not object to the definitions or instructions in the Third Information Request. Moreover, CL&P provided no indication, either in its written responses or in its testimony at the hearing, that its production responsive to the above interrogatories was in any way incomplete or did not contain all responsive documents and information available to the Company.

In addition, at the PURA hearing on April 23, 2012, CL&P expressly adopted its responses to the interrogatories propounded by Witt Associates as its testimony under oath in Docket No. 11-09-09. 4/23/12 Tr. at 1018-1019, 1027. In response to Witt Interrogatories 49 and 50, the Company stated that, “[t]own level projections were created as part of a *collaborative process* between the District Incident Commanders and the Area Commander. This information was updated each night after the restoration information was updated and the next day’s schedule was created.” (Emphasis added). Similarly, CL&P responded that the District or Area Work Center³ (“AWC”) projections were “first approved by the District Incident Commander,⁴ then by the Area Commander⁵ and the PIO [Public Information Officer].” (Footnotes added).

³ The Area Work Centers are comprised of several towns in geographic proximity to each other. For instance, the Simsbury AWC includes Simsbury, Canton, Farmington, Avon, West Hartford, Bloomfield, Barkhamsted, East Granby, Granby, and Hartland.

Finally, CL&P represented throughout the PURA investigation in Docket No. 11-09-09, both in its briefing and in its testimony, that up until the morning of November 6, 2011 it reasonably believed that it would achieve 99% restoration *in every town* by midnight Sunday, November 6th. Indeed, CL&P argued in its brief that its initial 99% projection “was generated in good faith using the best information it had available at that time” and that “throughout the duration of the restoration efforts, CL&P continued to refine its estimations based on, among other things, actual damage and crew availability.” CL&P Brief at 14-15. As reflected in PURA’s Final Decision, CL&P represented that “the record reflects that the process used to develop the restoration estimate was a process involving multiple individuals to arrive at a challenging, but still reasonable goal: 99% restoration by midnight of November 6, 2011. . . .” Final Decision at 37.

Moreover, the Authority clearly relied upon CL&P’s representations in its Final Decision. For example, PURA stated in its Final Decision that, “Company e-mails indicated that up until the morning of November 6, 2011, CL&P reasonably believed that it would be able to meet its 99% goal.” *Id.* at 38. PURA also concluded that CL&P “consistently utilized its ERP in the development of restoration estimates.” *Id.* at 39. As more fully described below, however, this reliance was based on an incomplete and misleading record.

⁴ A District Incident Commander is responsible for the damage assessment and restoration of specific towns within an AWC.

⁵ The Area Commander is responsible for the four geographic divisions that comprise CL&P’s service territory: Southern, Central, Western and Eastern Divisions. The Area Commander, therefore, is the primary CL&P executive responsible for overseeing the company’s entire storm response.

III. CL&P DELAYED OR FAILED TO PRODUCE MATERIAL INFORMATION AND DOCUMENTS THAT WERE DIRECTLY RESPONSIVE TO ATTORNEY GENERAL INTERROGATORIES AND RELEVANT TO THE PURA INVESTIGATION

CL&P undermined PURA's investigation by failing to produce material information responsive to the Attorney General's interrogatories while affirmatively representing that all material information responsive to the interrogatories had been produced. CL&P produced redacted, illegible and incomplete versions of probative, non-privileged documents and delayed and failed to provide other relevant documents and information. The Company's conduct undermined PURA's fact-finding process concerning issues central to the Authority's investigation, including CL&P's development and communication of its ETRs to customers and public officials, and hampered PURA's ability to assess the reasonableness of the Company's management following the October 2011 Nor'easter.

A. CL&P Failed To Produce Responsive and Material Evidence in the PURA Investigation Concerning the Reasonableness of CL&P's 99% Restoration Projection by Sunday, November 6th in Some of the Hardest Hit Areas of the State

As noted above, the Attorney General issued interrogatories in the PURA investigation that sought, among other things, "all documents concerning CL&P's ability or likelihood of meeting its ETRs for each day of the outages from the October 29, 2011 winter storm, including internal documents indicating to what extent ETRs were or were not achieved or were not achievable." AG-103. Although "document" was specifically defined to include notes, CL&P initially produced *no handwritten notes* in the PURA investigation in response to the Third Information Request, nor did it indicate that there were notes that were not being produced. See Third Information Request at § I, ¶ H.

Despite the Attorney General's specific and repeated requests for notes over the succeeding seven months after the interrogatories were issued, CL&P neither produced any handwritten notes nor represented that notes existed but were not being produced. It was not until the late filed exhibit hearing on May 21, 2012, five months after the responses to AG-103 were due, that CL&P finally disclosed the existence of some handwritten notes that were responsive to the Third Information Request. CL&P's witness, Roderick Kalbfleisch, the Area Commander, admitted on the record for the first time during cross-examination that he had notes from the operations calls. 5/21/12 Tr. at 2659:8-10. It then took until June 7, 2012 - - two business days before briefs were due - - for CL&P to finally produce in the PURA proceeding *some but not all* of the handwritten notes from only four senior executives; Kalbfleisch, Kevin Dupre (the Night shift Area Commander), Sherri Winslow (Central Division Commander), and Kenneth Bowes (CL&P VP, Energy Delivery Services). Late Filed Exhibit 068-SP02.⁶

Moreover, whole sections of the handwritten notes that were produced very late in the PURA proceeding were unreadable and many of the pages were incomplete or were redacted without either explanation or notation of redaction. For example, while CL&P eventually, on June 7, 2012, produced certain pages from the Central Division commander's bound journal,⁷ it failed to produce a number of other pages from that same journal that contained responsive and relevant evidence, including a Post-it note directly addressing the 99% ERT. It was only because the Attorney General's Office, as part of its separate investigation, later requested to inspect the original journal that the Post-it note came to light. The Post-it note, dated Tuesday, November

⁶ It should be noted that CL&P identified Kalbfleisch, Dupre and Winslow as among thirteen company officials who were members of the Director Team. Pursuant to AG-118 and AG-119, and in light of the significant roles each of them played in the restoration process, CL&P should have met with and requested responsive documents from each of them early in the process. *See, e.g.* AG-103.

⁷ The Central Division Commander was CL&P's senior official responsible for restoration in the Central Division. She kept a journal containing what appears to be a detailed and contemporaneous unofficial record of the Central Division's response to the October 2011 Nor'easter.

1st, reads “[an Analyzer in the Emergency Operations Center] called me for a 99% restoration estimate. I told him **Wednesday 11/9 @ 18:00** based on current staffing levels and the fact we may divert 20 incoming HQ crews to [the Tolland AWC] tomorrow.” NURVP-00002865 (attached as Exhibit A).⁸ Similarly, it was only because of inspecting the original handwritten bound journal that this Office determined that CL&P had in fact failed to provide relevant responsive information from that journal.

In addition, at no time during the PURA investigation did CL&P produce any handwritten notes from the Western Division Commander. Yet CL&P’s Western Division Commander had notes that were directly responsive to the Attorney General’s interrogatories and material to PURA’s investigation. For example, after the PURA hearings had concluded and as part of the Attorney General’s separate investigation, CL&P produced the Western Division Commander’s handwritten notes dated November 1st and entitled “Survey 99%.” These notes listed several AWCs with projections beyond Sunday, November 6th, including Danielson (**November 7th at 1600**), Hartford (**November 9th at 1800**), Plainfield (**November 7th at 1600**), and Willimantic (**November 7th at 1600**). The Simsbury AWC projection is listed as “None” and there is **no projection listed for the Tolland AWC**. NURVP-00003035 (attached as Exhibit B). This same commander also made handwritten notes on an email dated Wednesday, November 2d at 5:35 a.m. which detail the commander’s restoration projections for the AWCs in the Western Division. The commander appears to have initially calculated 99% projections for the Torrington/Falls Village and Waterbury AWCs as **Tuesday, 11/8** and then **crossed the dates out to read Monday, 11/7**. NURVP-00008673 (attached as Exhibit C). See also NURVP-00003064 (attached as Exhibit D) (containing a chart entitled “November 2, 2011

⁸ Unless otherwise noted, any bolded language herein reflects emphasis added by the Office of the Attorney General and is not contained in the original. The original documents are provided in the appendix to this Petition.

Restoration Projections” listing November 7th at midnight as the 99% deadline for these two AWCs).⁹

After the close of the PURA proceeding, CL&P eventually produced to the Attorney General handwritten documents from *seventeen* custodians, including notes of operations center calls. All of these documents were responsive to the Third Information Request and PURA had the right and the responsibility to consider this probative evidence in assessing the reasonableness of CL&P’s November 6 ETR and the representation that it followed its ERP.

Among the documents not provided in the PURA investigation is an email sent at 11:59 p.m. on November 3. The Day Shift Incident Commander for Simsbury (West Farms Mall) emailed the Simsbury AWC Commander and attached revised restoration projections for Farmington, Avon and West Hartford. The email to which the revised projections were attached states, “here it is . . . just under the wire. **Quite the work of fiction.** This is very difficult to fill out as you know we work by circuit not town. I took a **swag [scientific wild ass guess]** regarding counts and assumptions about how many crews I would get (just want this to be over). . . . **I don’t think this should be shared with any town official as it is not really a good picture of what we are doing. . . .**” NURVP-00004489-4494 (attached as Exhibit E).

The “work of fiction” referred to in the email was the 99% ETR for Farmington that had been changed from November 8th to November 6th by the Simsbury AWC Commander (Avon and West Hartford also had 99% ETRs of November 6th). Moreover, the crew projections had been revised; the number of line crews projected for Saturday (November 5th) and Sunday (November 6th) increased from 28 to 40 for each day.¹⁰ This email was responsive to several

⁹ The Western Division Commander was also identified by CL&P in response to AG-118 as a member of the Director Team. Thus these documents should have been produced as well, *see* footnote 6, *supra*.

¹⁰ On Thursday, November 3rd at 6:44 p.m., the Simsbury AWC Commander (Day Shift) emailed the Day Shift Incident Commander for Simsbury (West Farms Mall) attaching a spreadsheet for the Town of Farmington. The

interrogatories in the Attorney General's Third Information Request, including AG-99, AG-102, AG-103 and AG-104, but was not provided until October 5, 2012, after the conclusion of the PURA investigation.

In another instance, CL&P produced only a portion of an email string in the PURA investigation, leaving a misimpression about whether CL&P officials reasonably believed they would meet the Company's November 6 restoration goal. In an email dated November 3d at 3:18 p.m. and produced in the PURA proceeding, CL&P's Western Division Commander wrote to Kalbfleisch with a copy to James Muntz (a NU executive) requesting additional resources to meet the deadline. CLP-AG101-01640-1641 (attached as Exhibit F). The Western Division Commander stated that without these resources:

my effort to support the 99% company target will be significantly compromised. As you know my estimate for 99% was **originally calculated to be November 8th**. . . . At this point, unless I receive additional buckets (35 Cheshire, 35 Torrington, 30 Waterbury) tomorrow, the daily targets after today become **unrealistic, proved by simple math, and makes the Sunday 99% projection glide path unattainable**. Id.

The next day, on Friday, November 4th at 10:37 a.m., Kalbfleisch responded by explaining that the "service related calls" (i.e., repairing downed or damaged wires between utility poles and individual homes) were removed from the Western Division's power outage count on the assumption that service related outages would be restored using the "service crews" and not line crews. Id. Kalbfleisch's response to the Western Division Commander's email - - which was the entirety of the communication produced during the PURA investigation - - seemed to support CL&P's conclusion that the November 6th ETR for the entire Western Division was a realistic projection.

data in this spreadsheet included the commander's estimates for how many crews would be working in Farmington as part of the restoration effort (28 line crews and 18 tree crews from Saturday through Tuesday), and an estimate for how many customers would be restored on a daily basis. The commander estimated that by Sunday, Farmington would be approximately 83% restored and that 99% restoration would not occur until sometime on November 8th. CLP-AG046-00497-00499 (attached as Exhibit G).

But the email communication that was produced during the PURA proceeding was incomplete. Three minutes after Kalbfleisch responded, in an email not produced to the PURA proceeding, Muntz responded to Kalbfleisch stating:

Not a great assumption Rod. I think I am hearing the service crews can't do a high pct of the ones they are assigned, and they are finding more we don't know about, many of which they can't do. I do think they are doing the ones they can, of what they find. NURVP-00004227-4230 (attached as Exhibit H). In other words, CL&P produced Kalbfleisch's email in the PURA proceeding but did not provide Muntz's response, which appears to support the concerns raised by the Western Division Commander that the projected ETR was "unattainable." This email was responsive to interrogatories AG-99, AG-101, AG-102, AG-103 and AG-104 and was not produced to the Attorney General until October 5, 2012, after the conclusion of the PURA investigation.

CL&P's withholding of these and other documents prevented the PURA and other interested parties in the Authority's investigation from cross-examining Kalbfleisch and Muntz, both of whom sat on panels during the PURA proceeding, concerning these documents or from requesting that other CL&P employees, including senior commanders in the Central and Western Division, appear to testify before the PURA. CL&P's conduct significantly impeded the PURA process by preventing the PURA from learning all the facts and evidence concerning material issues in this case – the reasonableness of CL&P's November 6 restoration projection and the reasonableness of its communications to the public concerning that projection.

B. CL&P Failed to Produce Responsive and Material Evidence in the PURA Proceeding Concerning Whether CL&P Recognized On Friday, November 4th that it Would Not Meet its Self-Imposed 99% Deadline of Sunday November 6th in Every Town

As noted herein, the PURA found that Company emails evidenced that until the morning of November 6, 2011, CL&P believed that it would be able to meet its 99% restoration goal. See

Final Decision, 38. Evidence later provided to the Attorney General but either not produced in the PURA investigation or produced so late in the PURA proceeding that it could not be effectively used, however, suggests that by Friday, November 4, 2011, Company employees in the CL&P Emergency Operations Center (“EOC”) recognized that some towns served by CL&P would not be 99% restored by Sunday, November 6. This evidence was directly responsive to the Attorney General’s Third Information Request. It included the following:

- A timeline entry dated Friday, November 4th at 9:25 a.m. which states, “[s]uggested revision to goal by Bob Hybsch. **Do not promise by community.** We already have some communities fully restored. However, **some communities may be over 1% by midnight Sunday making us unable to reach our goal the way it is currently stated.**” NURVP-00003077 (attached as Exhibit I).^{11 12}
- Notes taken by a senior CL&P commander responsible for restoration in the Central Division concerning the operations call with Hybsch dated November 4th at 9:23 a.m. stating “**99% of customers in the State** and restoration Plan for your Town. Sunday midnight. 1.2 million (12,363 remaining @ Sunday midnight). **Play down per community.**” NURVP-00002889 (attached as Exhibit K).¹³
- Handwritten notes of a senior CL&P commander working in the Simsbury AWC entitled “Storm Alfred Restoration Observations,” which included the following: “[m]ore severe damage, widespread,” “[n]o acknowledgement of damage extent when providing restoration projections (mgmt. v. public goals)” and “**99% for ea. town @ same time unrealistic.**” NURVP-00003001 (attached as Exhibit L).¹⁴
- Handwritten notes of Kenneth Bowes (CL&P VP assisting in the Tolland AWC) stating: “**Numbers solve overall but not by town.**” NURVP-00002202 (Q-LF-068-SP-02-Attachment 3 [Bowes]) (attached as Exhibit N).¹⁵

¹¹ Despite this, CL&P officials continued to state publicly that the Company would restore 99% for all of its customers in every town by Sunday, November 6th. See, e.g., CLP-AG101-01233-1235 (attached as Exhibit J); CLP-AG-120 (Briefing Sheet for November 4th evening press conference).

¹² This note was produced to the Attorney General on July 30, 2012, after the close of hearings in the PURA proceeding.

¹³ This note was produced to the Attorney General on July 30, 2012, after the close of hearings in the PURA proceeding.

¹⁴ This note was produced to the Attorney General on July 30, 2012, after the close of hearings in the PURA proceeding.

¹⁵ This note was produced in the PURA proceeding, but not until June 7, 2012, two (2) business days before the Attorney General’s Brief was due. This late disclosure effectively prevented the Attorney General from using this document to cross-examine Bowes, who had testified earlier at the PURA hearings.

The timeline noted above refers to a CL&P created contemporaneous written record or narrative description of important discussions and decisions made within the EOC at the onset of and through the restoration phase of the October 2011 Nor'easter. There are two versions of this timeline: one produced very late in the PURA proceeding (hereinafter the "PURA Timeline") that omitted several important entries without designating the omissions as "redacted," and a second version provided to the Attorney General after the close of the PURA proceeding in the Attorney General's separate investigation that contains a complete narrative of discussions and decisions made in the EOC (hereinafter the "EOC Timeline").¹⁶

CL&P produced the PURA Timeline for the October 2011 Nor'easter in the PURA proceeding on May 25, 2011, *after* the final late filed hearings had concluded. Q-LF-068-SP-01, Late Filed Ex. HD-10. The PURA Timeline, however, is substantially and materially different than the EOC Timeline that CL&P produced to the Attorney General on July 30, 2012. First, the PURA Timeline is 19 pages, whereas the EOC Timeline - - the "original" unredacted version of the timeline -- is twenty-nine pages, ten more than the PURA Timeline. Second, the PURA Timeline omitted information that is material and responsive to the Attorney General's Third Information Request, including the November 4th entry concerning Hybsch's "revision" of the 99% projection which stated "do not promise by community" and stated that some communities may be over 1% by midnight Sunday making CL&P unable to reach its goal. The PURA Timeline also omitted all entries *after Monday, 10/31 at 10:30 a.m. and before Thursday, 11/3 at 1 p.m.* and contained no designation that any of this information had been redacted. Finally, the PURA Timeline was sequentially numbered so that it was not evident that many pages were removed from the version of the PURA Timeline produced in the Authority's investigation.

¹⁶ The complete, unredacted version of the document is responsive to several interrogatories, including AG-99, AG-101 and AG-103. Moreover, since it contains summaries of communications between and among members of the Director's Team, it was directly responsive to AG-119.

CL&P's failure to provide these and other documents prevented the PURA and other interested parties from, for example, cross-examining Hybsch concerning his instruction to staff during the morning call to revise the 99% ETR because that goal was not attainable – a critical piece of evidence that contradicts CL&P's repeated testimony that it reasonably believed up until the morning of Sunday, November 6th that it would achieve 99% restoration by midnight of that same day.¹⁷ This evidence would have been directly relevant and probative regarding one of the PURA proceeding's central issues -- the reasonableness of CL&P's communication of restoration times to customers and public officials. CL&P's failure to provide this information in the PURA investigation impaired and impeded the investigation. CL&P prevented the Authority from learning all facts and evidence concerning a material issue in this case.

C. CL&P Failed to Produce Responsive and Material Evidence in the PURA Investigation That Suggests CL&P Continued to Disregard the Facts Reported by its Staff and its own Stated Procedures in Providing Restoration Estimates to State and Municipal Leaders and the Public on Sunday, November 6th and Thereafter

In the PURA investigation, CL&P both significantly delayed the production of some material documents and completely failed to produce other documents concerning the Company's continued commitment to its initial projected 99% ETR of Sunday, November 6, 2011 and, after it became apparent to the Company that it would not meet that goal, its revised 99% ETRs. These documents were responsive to the Attorney General's Third Information Request and are particularly probative of two issues central to PURA's inquiry: (i) whether the Company followed its internal procedures for approving restoration projections; and (ii) whether the Company issued inaccurate and misleading revised projections to public officials and its

¹⁷ It also contradicts public statements by CL&P's then CEO, Jeffrey Butler, at a press conference held during the evening of November 4, 2011. *See*, <http://www.youtube.com/watch?v=TAu0rvMhT48>.

customers even after it became clear on November 6th that CL&P would not meet its self-imposed 99% restoration deadline.

By Saturday November 5, nearly one hundred thousand CL&P customers remained without power and government officials strained to provide services and accurate information to increasingly desperate and frustrated residents. An email that CL&P failed to provide in the PURA investigation shows that on Saturday, November 5th, the Governor specifically asked CL&P to provide his office and the public with a realistic and honest assessment of when power would actually be restored to its customers in the hardest hit communities. The Governor's office requested the following:

So, by 8am tomorrow, I want to see the following things from CL&P: A restoration schedule broken down by town by hour. If at 8 a.m. tomorrow, **CL&P knows it's not going to meet its goal**, I want to know, **and the people of Connecticut deserve to know**, when that goal is going to be met.

NURVP-00002535 (attached as Exhibit O) (emphasis added).¹⁸

During the 6:00 a.m. EOC conference call on November 6th, CL&P's Central Division Commander updated CL&P's leadership on the likelihood of meeting the 99% restoration projection by midnight of November 6 for towns within her area of responsibility. Her handwritten journal notes state that she told her superiors that significant work remained to be done in the Central Division and that she was projecting that several towns, especially some in the Tolland AWC, would not be 99% restored until **Tuesday, November 8, 2011**. Specifically, the Central Division Commander's notes state that, "[f]or the Tolland AWC – [i]n most Towns we expect the areas to be **reduced to 50% out by midnight Sunday**." She estimated that three of the towns within the AWC (Coventry, Union, and Willington) were on target to achieve 99% by **Monday, November 7 at midnight** and 11 towns would achieve 99% by **mid-day Tuesday**,

¹⁸ This document was responsive to AG-103 and AG-104. It was not produced to the Attorney General until July 30, 2012.

November 8. Further, she stated that, “assuming receipt of 50 additional crews with the prescribed ETA’s (9a-11a)” and “addtl support with EDS,” six towns in the Simsbury AWC were on track to achieve 99% by **mid-day Monday, November 7** and the town of Simsbury would achieve **99% by 1800 Tuesday, November 8.** Id. NURVP-00002896 (attached as Exhibit P); (Q-LF-068-SP-02 (Attachment 2) [Winslow]) (attached as Exhibit Q). This journal entry, clearly responsive to multiple Attorney General interrogatories, was not provided in the PURA investigation until June 7, 2012, well after hearings in the PURA proceeding had concluded.¹⁹

Moreover, an entry in the PURA Timeline appears to reference the information the Central Division Commander provided on the Sunday morning EOC call. However, rather than accurately capturing her apparent revised projection that many towns in the Tolland and Simsbury AWCs would not meet the November 6 restoration target, the PURA Timeline instead notes that the Central Division Commander “pulled together a challenging plan, but achievable, for reaching 99% [by midnight November 6th]”.

CL&P did produce in the PURA investigation the report it provided to the Governor. On November 6th, at 8:49 a.m., CL&P provided the Governor with a report purporting to contain the precise restoration information that he requested the night before. Those projections, however, bore no resemblance to the estimates that the Central Division Commander appears to have provided during the 6 a.m. EOC call. CLP-AG101-00476-479 (attached as Exhibit R). The list submitted to the Governor’s office contained no projections beyond Monday, November 7th at

¹⁹ The Central Division Commander’s journal is a critical document that was clearly responsive to interrogatories AG-103 and AG-119. Given the important role she played in restoration in the Division hardest hit by the October 2011 Nor’easter, it is reasonable to assume she would be among the key employees canvassed for documents responsive to the interrogatories. This excerpt, however, was not produced to the Attorney General until June 7, 2012, and as discussed above, the complete unredacted document was not finally turned over until July 30, 2012, well after the close of the PURA investigation.

midnight. For the towns in the Tolland AWC that the Central Division Commander stated would be 99% restored by November 7th, these projections remained unchanged – midnight, Sunday, November 6th.

In another email dated November 6, 2011 at 10:27 p.m. that CL&P did not produce in the PURA proceeding, Muntz directed his staff that “[i]f we miss a **99 go with noon tomorrow if less than 200 [customers without power], 6 pm if more.**” NURVP-00006544-6546 (attached as Exhibit S) (emphasis added). The only reasonable inference from this response is that Muntz was suggesting that if there are less than 200 customers without power in a particular town, then revise the 99% ERTs to noon on November 7th. If, however, there are more than 200 customers without power, then the default restoration projection will be 6 p.m. on November 7th - - regardless of whether the number of outages in that particular town was 201, 2001 or more. If this interpretation is correct, then Muntz’s seeming “off the cuff” methodology appears to be at odds with the estimates provided by the ground commanders from the Central Division (which includes a projection that at least 11 towns would not be 99% restored until **November 8th**) and at odds with CL&P’s testimony before the PURA concerning how the Company calculated the ETRs.

The methodology used in creating the ETRs was a relevant and critically important issue in the PURA proceeding. CL&P defended its restoration estimates throughout this proceeding as produced using a “collaborative process,” consistent with established protocols and calculated pursuant to a very specific methodology rooted in its ERP. For example, CL&P stated in response to Witt-018 that it developed its 99% ERT by applying “historical restoration curves to the 100% projection” Witt-018.

The evidence not produced in the PURA investigation raises serious questions regarding the reasonableness and accuracy of the restoration estimates that CL&P provided to the Governor and the public on November 6, 2012. The evidence not produced also bears directly on PURA's finding in its Final Decision that CL&P "consistently utilized its ERP in the development of restoration estimates." Final Decision at 38. This evidence was responsive to the Attorney General's Third Information Request in the PURA investigation and, had it been provided in the PURA investigation in a timely manner, would have allowed PURA, the Attorney General and other participants the opportunity to question and further examine the reasonableness of CL&P's restoration projections and its public communications concerning those projections through, for example, witness testimony.²⁰

IV. CL&P'S FAILURE TO PROVIDE MATERIAL INFORMATION COMPROMISED THE PURA PROCESS, IMPAIRED AND IMPEDED THE DUE ADMINISTRATION OF JUSTICE AND WARRANTS THE IMPOSITION OF ADDITIONAL PENALTIES AGAINST CL&P

CL&P impaired and impeded the Authority's investigation. The Company failed to provide significant material evidence responsive to certain Attorney General interrogatories, produced altered, heavily redacted and incomplete versions of responsive documents without disclosure of the alterations, redactions and omissions, and delayed the production of other probative information. CL&P's conduct interfered with PURA's investigation and prevented the Authority from fully developing the record in this case. CL&P seriously undermined the integrity of the PURA proceeding and impeded the due administration of justice.

²⁰ See, e.g., Conn. Gen. Stat. § 16-8 ("the authority, or any director thereof, in the performance of its duties or in connection with any hearing, or at the request of any person . . . , may summon and examine, under oath, such witnesses, and may direct the production of, and examine or cause to be produced and examined, such . . . documents . . . as it may find advisable . . .")

CL&P did not object to any of the Attorney General's interrogatories and did not indicate that it withheld from production in Docket No. 11-09-09 responsive documents on the grounds of privilege or for any other reason. Rather, CL&P indicated that its production was full, complete and responsive. The burden of production lay solely with CL&P, and the integrity of Authority's investigation relied on the thoroughness of that production. CL&P failed to meet its obligations and, in so doing, compromised PURA's investigation, findings and conclusions.

The PURA should consider CL&P's failure to produce responsive and material documents when imposing the penalty on the Company's allowed level of storm cost recovery related to the October 2011 Nor'easter as described in the Final Decision in Docket No. 11-09-09. The penalties ultimately imposed on CL&P should be sufficient to penalize the Company for its conduct and to deter it and others from engaging in this type of behavior in pending and future proceedings.

V. CONCLUSION

The PURA is statutorily charged with the important responsibility of regulating CL&P and other utility companies in this State. A robust investigative process is essential to PURA's regulatory duties and responsibilities. By failing to meet its basic responsibility to provide full and truthful facts, CL&P undercut the regulatory process and deprived the PURA, and the public, of a meaningful review of a critical element of the Company's response to the October 2011 Nor'easter, its development and communication of ETRs. The PURA should take this misconduct seriously and hold CL&P accountable for its actions.

Respectfully submitted,

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The undersigned hereby
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