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## **CCM expresses disappointment with draft PURA Decision on CL&P Storm Response; Asks for changes in final decision in “legal exceptions” filed today with PURA**

The Connecticut Conference of Municipalities (CCM) today (Monday, July 23, 2012):

(1) Expressed disappointment with the scope of the draft decision issued last week by the State’s Public Utility Regulatory Authority (PURA) regarding adequacy of Connecticut Light & Power’s response to two catastrophic storms that lashed Connecticut in 2011;

(2) Details the shortcomings that still need to be addressed from the perspective of municipal governments in legal exceptions filed today with PURA by CCM through the law firm of Murtha Cullina.

“Municipal leaders are deeply disappointed with the draft decision handed down last week by PURA,” said Jim Finley, CCM Executive Director and CEO. “It did not address numerous concerns articulated by CCM-member municipal leaders over the last 11 months. We strongly urge PURA to follow through on the issues articulated again today by CCM and include the necessary corrective remedies in its final decision that will be adopted on August 1.

“CCM participated in this proceeding in order to bring the perspective of Connecticut’s municipalities to this important proceeding, concluded Finley. “Unfortunately, as the Draft Decision stands, the participation of CCM and the four Fairfield County towns appears to have had no impact on the Authority’s preliminary conclusions. Although CCM appreciates PURA’s conclusion that CL&P’s

support of the municipal liaison program was deficient and inadequate, the final decision needs to go further.”

“CCM and its member municipalities respectfully request that the directors responsible for issuing the final decision in this matter reconsider the points raised in these written exceptions and render a final decision that acknowledges the municipal concerns expressed in this proceeding in a meaningful way.”

The draft decision thoroughly summarizes the sworn testimony provided by six Connecticut municipal leaders and answered questions during cross-examination at the public hearings. ***But the draft never incorporates that evidence into its analysis of cut, clear and make safe (“CCMS”) priorities or the Town Liaison Program. Nor does the municipal testimony play a role in holding The Connecticut Light and Power Company (“CL&P”) accountable for its negligent and false prediction of a Sunday night 99% power restoration. In most respects, the draft decision ignores the testimony of the municipal officials who testified on behalf of CCM and the four Fairfield County towns.***

However, CCM does acknowledge that PURA has taken a first step toward holding CL&P financially accountable for its deficient performance; and CCM supports the PURA orders requiring real time damage assessment and outage restoration data from field crews and a heightened state of readiness in the future.

Here are other highlights from CCM’s legal exceptions that were presented today to PURA (See attachment for complete document)

- **CCMS needs a specific higher priority.** The draft decision endorses business as usual at CL&P.
- **The current system does not work.** Leaving public roads impassible due to downed power lines for more than eight days is not acceptable.
- **Liberty Consulting did not have the benefit of municipal officials’ testimony.** The Liberty Report was issued on April 16, 2012, before the submission of testimony by six municipal officials and well before their appearance for hours of cross-examination.
- **Even Liberty Consulting agrees that CL&P had no control over CCMS.** The Company’s allocation of resources was ill-considered and apparently random. Yet the draft decision endorses the status quo.
- **The draft’s reasoning is flawed.** CL&P’s existing Emergency Response Plan says that opening major arteries is a top priority. The problem is that there is no common understanding of what a major artery is.
- **The draft contradicts Liberty’s recommendation for specific CCMS guidelines.** They are very clear about two conclusions. CL&P did not have control over the CCMS operation and there is a compelling need to craft specific guidelines regarding CCMS. In the face of these conclusions, which CCM endorses, the draft inexplicably states that utilities need to use their judgment to

allocate resources to CCMS.

- **The draft decision will impede the progress of the CCMS Task Force.** With the draft decision's strong endorsement of CL&P's present approach, the Company obviously has zero incentive to work constructively to change its approach to CCMS in a subsequent emergency.
- **The draft can easily be fixed.** *It is apparent from Liberty's observations and the testimony of municipal officials that CL&P's approach to CCMS was uneven. In some towns, crews remained on CCMS assignments too long. In others, CCMS operations were neglected for over a week, putting thousands of Connecticut residents at risk because their homes were inaccessible to emergency vehicles. The Authority concludes that this haphazard approach to CCMS reflects deficient performance by CL&P. The Company's present approach – lacking specific guidelines and relying on the random application of the Company's judgment – is unacceptable. The starting point for creating specific guidelines through the DEMHS process should be the compromise offered by CCM in its proposed modifications to the Company's Emergency Response Plan. That approach makes it clear CCMS operations have priority over power restoration except where localized circumstances with greater safety consequences are present.*
- **CL&P should be held accountable for its negligent Sunday night restoration prediction.** The record contains extensive evidence describing the damage caused by CL&P's stubborn refusal to modify its Sunday night 99% restoration prediction.
- **The draft's analysis of the town liaison program includes irreconcilable inconsistencies.** Unless the final decision does a better job of focusing on the glaring deficiencies in the implementation of the liaison program, the Company will have little incentive to continue to pursue meaningful change in this program.

STATE OF CONNECTICUT  
PUBLIC UTILITIES REGULATORY AUTHORITY

PURA INVESTIGATION OF PUBLIC SERVICE COMPANIES' RESPONSE TO 2011 STORMS : DOCKET NO. 11-09-09  
: JULY 23, 2012

**WRITTEN EXCEPTIONS OF THE CONNECTICUT CONFERENCE OF MUNICIPALITIES**

The Connecticut Conference of Municipalities ("CCM") submits these written exceptions in order to assist the Public Utilities Regulatory Authority ("PURA" or the "Authority") in crafting a final decision that acknowledges and gives proper weight to the critical public safety concerns articulated by the six public officials who provided sworn testimony in this proceeding. While the Draft Decision plainly reflects extensive effort by PURA staff, it was uniformly disappointing from the perspective of Connecticut's municipalities.

The Draft Decision thoroughly summarizes the sworn testimony provided by six Connecticut municipal leaders who submitted pre-filed testimony and answered questions during cross-examination at the public hearings. But the Draft never incorporates that evidence into its analysis of cut, clear and make safe ("CCMS") priorities or the Town Liaison Program. Nor does the municipal testimony play a role in holding The Connecticut Light and Power Company ("CL&P") accountable for its negligent and false prediction of a Sunday night 99% power restoration. In most respects, the Draft Decision ignores the testimony of the municipal officials who testified on behalf of CCM and the four Fairfield County towns. The balance of these Written Exceptions explain why and how the Draft Decision must be modified in

order to arrive at a final decision that will improve the quality of emergency response in Connecticut.

### **CCMS NEEDS A SPECIFIC HIGHER PRIORITY**

Despite hours of testimony from municipal leaders describing public streets that were closed for more than a week, emergency vehicles driving over downed power lines to rescue trapped residents needing medical attention and homeowners who began cutting utility wires themselves out of frustration, the Draft Decision at page 44 endorses business as usual at CL&P. The Draft inappropriately relies on the Liberty Consulting report, uses flawed reasoning and does not accord proper weight to the evidence produced in this proceeding.

CCM witnesses as well as elected officials from the four Fairfield County towns testified over and over again that their major priority was ensuring that CCMS receive a higher priority than was the case in the two 2011 storms. They made it perfectly clear that opening public roads in a timely manner was essential to maintain public safety, even though CCMS operations extend overall restoration time. Relying on the Liberty Consulting report, the Draft ignores all of this evidence.

### **The Current System Does Not Work**

Leaving public roads impassible due to downed power lines for more than eight days is not acceptable. Yet this is exactly what happened after the October Nor'easter based upon CL&P's implementation of its current system and using its judgment to allocate resources. Unless the State of Connecticut is prepared to accept jeopardizing public safety by endorsing public road closures of more than one week, the Company's priorities must be changed.

### **Liberty Consulting Did Not Have the Benefit of Municipal Officials' Testimony**

As in many elements of the Draft Decision, on CCMS issues, the Draft defers to the conclusions of the Authority's consultant, Liberty Consulting. With respect to the many technical elements of this broad investigation, CCM understands and accepts the Authority's approach. Recent agency reorganizations and the specialized expertise required to analyze utility restoration efforts make the retention of outside experts essential in order for PURA to discharge its obligations in a case like this. That said, the timing of the Liberty Consulting Report and its focus on restoration render the report nearly useless in terms of getting CCMS priorities right.

The Liberty Consulting Report was issued on April 16, 2012, before the submission of pre-filed testimony by six municipal officials and well before their appearance for hours of cross-examination at the hearings held in this proceeding. Nor does the report cite any independent interviews with municipal officials. Accordingly, Liberty Consulting did not have the benefit of the insights provided by these public officials.

The absence of municipal input into the Liberty Consulting Report is starkly apparent. Undisputed evidence demonstrates that more than one hundred public streets were closed due to downed power lines five days after the October Nor'easter. See testimony summarized in the Draft at pages 6-8. Dozens remained impassible into week two. Id. at 8. No participant has challenged this evidence. Yet, here is the Liberty Consulting perspective on CCMS:

Due to the lack of control by a number of [CL&P] managers, the crews worked with the towns for a longer period than they should.

Liberty Consulting Report at 165.

Although the authors of the Liberty Consulting Report had no information from the town officials

who testified in this case, there can be no dispute that, in a significant number of towns, over-allocating resources to CCMS did not occur. It did not happen in Tolland where dozens of roads were closed for more than a week because of downed power lines. It did not happen in South Windsor where 25 roads were still closed a week after the event. It did not happen in Simsbury where the National Guard had to assist in CCMS operations five days after the event and entangled power lines that trapped residents in their homes for more than a week. It did not happen in Newtown where 80 roads were closed five days after the October storm. These facts are undisputed.

### **Even Liberty Consulting Agrees that CL&P Had No Control Over CCMS**

The picture that emerges from all of this is that CL&P's allocation of resources was ill-considered and seemingly random. According to Liberty Consulting, in some towns CL&P put too high a priority on CCMS (although we are never told where these towns are nor is there any sworn testimony in the record documenting this phenomenon). In other towns, there is no doubt that the company put too little emphasis on CCMS and jeopardized public safety as a result. There is only one logical conclusion to be drawn from this evidence: CL&P's approach to CCMS was haphazard. Yet the Draft Decision endorses the status quo and emphasizes that the utilities need to be able to apply their judgment to resource allocation.

CL&P's present methods are plainly deficient. CL&P does not keep any metrics on CCMS. It does not know when CCMS operations were completed after either storm event. And the results needlessly exposed many Connecticut residents to danger from dangling power lines and public streets that were impassable for over a week.

### **The Draft's Reasoning is Flawed**

Page 44 of the Draft Decision observes that "excessive allocation of crews to CCMS work, while restoration efforts result in diminishing returns." CCM never advocated "excessive" allocation of resources to CCMS or ignoring restoration efforts. CL&P's existing Emergency Response Plan already states that opening major arteries is a top priority. The problem is that there is no common understanding of what a major artery is, CL&P does not keep track of when these roads are opened and, consequently, cannot be held accountable for an inappropriate emergency response.

In an effort to be constructive, CCM offered specific modification to the Company's Emergency Response Plan (attached hereto as Exhibit A). These proposed changes acknowledged the high priority of CCMS and, at the same time, conceded that there could be higher public safety priorities that would trump certain CCMS activities. The problem that emerged from the October Nor'easter was not a utility that held off on CCMS while it attended to higher public safety priorities. The problem, instead, was that CL&P was single-mindedly restoring power to customers regardless to their priority because that was what they told the Governor they were going to do.

### **The Draft Contradicts Liberty's Recommendation for Specific CCMS Guidelines**

Although the authors of the Liberty Consulting Report were not fully informed about the unacceptable failures of the CCMS effort in many towns, they are very clear about two conclusions. First, CL&P did not have control over the CCMS operation. See Liberty Consulting Report at 168. Second, there is a compelling need to craft specific guidelines regarding CCMS. Liberty Consulting Recommendation 4; id. at 169.

In the face of these conclusions, which CCM endorses, the Draft inexplicably states that utilities need to continue to use their judgment to allocate resources to CCMS. Draft at 44. That conclusion is completely at odds with Liberty Consulting's recommendation that specific CCMS guidelines should be crafted.

## **The Draft Decision Will Impede the Progress of the CCMS Task Force**

The Draft's conclusion on page 44 with respect to CCMS is that CL&P and the Towns should continue to work together on the working group sponsored by the Department of Emergency Management and Homeland Security to determine enhancements in this area. But with the Draft Decision's strong endorsement of CL&P's present approach, the company obviously has zero incentive to work constructively to change its approach to CCMS in a subsequent emergency. Conversely, if the Draft Decision were to affirmatively acknowledge the serious flaws in CL&P's present approach to CCMS, that working group process would have a much better chance of success.

### **G. The Draft Can Easily Be Fixed**

To remedy the glaring deficiencies in the Draft regarding CCMS, the final decision should delete the two paragraphs on page 44 (beginning with "Liberty concludes . . ." and "The Authority does not believe . . .") and substitute the following:

It is apparent from Liberty's observations and the testimony of municipal officials that CL&P's approach to CCMS was uneven. In some towns, crews remained on CCMS assignments too long. In others, CCMS operations were neglected for over a week, putting thousands of Connecticut residents at risk because their homes were inaccessible to emergency vehicles. The Authority concludes that this haphazard approach to CCMS reflects deficient performance by CL&P. The Company's present approach – lacking specific guidelines and relying on the random application of the Company's judgment – is unacceptable. The starting point for creating specific guidelines through the DEMHS process should be the compromise offered by CCM in its proposed modifications to the Company's Emergency Response Plan. That approach makes it clear that CCMS operations have priority over power restoration except where localized circumstances with greater public safety consequences are present.

## **CL&P SHOULD BE HELD ACCOUNTABLE FOR ITS NEGLIGENT SUNDAY NIGHT RESTORATION PREDICTION**

The record contains extensive evidence describing the damage caused by CL&P's stubborn refusal to modify its Sunday night 99% restoration prediction. Residents who had relocated to other areas of the state temporarily flocked back to towns like Simsbury, flooding emergency shelters. Other residents stayed in their homes longer than they should have because they relied on the Company's prediction. In places like Simsbury and Tolland, by Friday, November 4, 2011, the Company either should have had updated damage assessment reports that demonstrated the impossibility of a Sunday night restoration (in which case clinging to the prediction for the next two days was negligent), or it understood the impossibility of meeting its goal and continued to broadcast it anyway (in which case the misrepresentation was intentional).

The Draft spends four pages summarizing the testimony on this issue. Following the recitation of conflicting evidence, the Draft never analyzes that evidence, never applies any judgment or assessment of creditability to that evidence and never reaches a conclusion concerning the Sunday night restoration prediction. The Authority has an obligation to address this issue.

## **THE DRAFT'S ANALYSIS OF THE TOWN LIAISON PROGRAM INCLUDES IRRECONCILABLE INCONSISTENCIES**

The first sentence of the Draft Decision states that the Authority concludes that CL&P's support of its municipal liaison program was "deficient and inadequate." Draft Decision at page 1. Yet the Draft's actual analysis of this issue at pages 29-36 relies on the Liberty Consulting Report to conclude that the CL&P town liaison program was a bold and new initiative that worked well in some towns and will continue to evolve without any further action by the Authority.

The Draft's analysis misses a fundamental point. When it comes to emergency response plans, having a system in place that works sometimes, but not others, is not acceptable. The failure of CL&P to establish meaningful two-way communication using its town liaisons, as is required by the company's 2011 Emergency Response Plan, is documented beyond dispute in the record of this proceeding. Unless the final decision does a better job of focusing on the glaring deficiencies in the implementation of the liaison program during the 2011 storm events, CL&P will have little incentive to continue to pursue meaningful change in this program.

### **CONCLUSION**

CCM participated in this proceeding in order to bring the perspective of Connecticut's municipalities to this important proceeding. Unfortunately, as the Draft Decision stands, the participation of CCM and the four Fairfield County towns appears to have had no impact on the Authority's conclusions. CCM and its member municipalities respectfully request that the Directors responsible for issuing the final decision in this matter reconsider the points raised in these written exceptions and render a final decision that acknowledges the municipal concerns expressed in this proceeding in a meaningful way.

Respectfully submitted,

CONNECTICUT CONFERENCE OF MUNICIPALITIES



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