March 30, 2025

Via Email governor.lamont@ct.gov
The Honorable Ned Lamont
Governor of Connecticut
Office of the Governor
State Capitol Building
210 Capitol Avenue
Hartford, CT 06106

Re: Correcting the Public Record

Dear Governor Lamont:

I am writing in connection with reports published by the CT Insider and other media outlets alleging that an energy retail business, Wattifi, Inc., co-owned in 2017 through 2023 by my client, Senator John W. Fonfara, "owes the state's Public Utilities Regulatory Authority (PURA) more than $1 million in late penalties after failing to pay a $57,000 fee."[1] Other press reports followed reiterating these false and injurious allegations. The campaign to discredit Wattifi – and, by association, Senator Fonfara – seems very likely calculated to impugn his reputation by those seeking to prevent his appointment to PURA.

In fact, as detailed below, the alleged penalties referenced in these news reports were groundless and improperly ordered – reflecting the very same unlawful PURA practices that have rightly received much scrutiny in recent months. Perhaps worse, these penalties appear to have been ordered in direct retaliation for Senator Fonfara voicing concerns about legislation that would have unwisely aggrandized the authority of PURA's chairperson.

I do not write this letter to advance Senator Fonfara's potential nomination to PURA. Nor, primarily, is my purpose to defend his reputation and integrity from these false and malicious attacks. Rather, I write on Senator Fonfara's behalf to defend the public's right to have its regulatory authorities comply with law and ethics and to be held accountable when they don't. I urge you to take immediate action to investigate the source of these false allegations and to address the harm that has been done.

I tried to address these concerns by writing to PURA and obtaining documents which would show the manner in which the penalties were approved, seeking notices, agendas, motions and votes. I was referred to the PURA website, which show no such documents, then told it would take ten weeks or more to comply with my request. I have been informed that PURA adopted the

[1] Reported by the CT Insider, *CT state senator seeking PURA seat co-owned electric firm that was repeatedly fined and penalized*, Jaqueline Rabe Thomas and Alex Putterman, February 28, 2025.

sanctions through an informal process. This is nonsense. The process was not informal, as detailed below it was illegal.

Background

In 2015, in response to concerns about the transparency and adequacy of information available to consumers participating in the retail electric supplier market, several statutory provisions were enacted to require reporting of specific information on residential customer electric bills.[2] These provisions required electric distribution companies (EDCs) to display certain information regarding competitive electric supply on the first page of residential bills for customers who had enrolled with a licensed supplier and were receiving an EDC bill for those services.

In 2018 (K. Dykes, Chairman), PURA issued a decision in Docket No. 14-07-19RE05, setting guidelines to govern the transmittal of the required information to the EDCs by competitive suppliers and establishing that competitive suppliers would contribute to the cost of the needed billing system changes (the "2018 Docket").[3] PURA instructed the EDCs, upon completion of the bill redesign, to submit a compliance filing to PURA indicating the total costs to be billed to suppliers for implementing those design changes.[4] PURA stated that, after an opportunity to review the costs in a reopened proceeding, the cost of reimbursing the EDCs would be allocated to each supplier based on certain criteria.[5]

PURA's 2018 Docket was an uncontested docket (unappealable) to set general policy guidelines for the EDCs and competitive suppliers, expressly deferring decisions about EDC cost prudence and supplier cost allocations to a subsequent contested docket (appealable) for final determination. In the reopened contested docket, PURA would review and approve all EDC costs; identify how much each supplier must pay; and identify each supplier meeting the payment criteria, among other determinations. PURA stated that it would "balance equity with feasibility when allocating costs among suppliers in the reopened docket."[6]

On September 28, 2021 (M. Gillett, Chairman), PURA issued a Notice of Proceeding in Docket No. 14-07-19RE07 to start the reopened proceeding for the purpose of conducting a prudence review on the EDC system costs and determining cost allocations to competitive suppliers ("Cost Allocation Docket").[7]

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[2] General Statutes of Connecticut §16-245d(a)(2)(A).

[3] Docket No. 14-07-19RE05, *PURA Investigation Into Redesign of the Residential Electric Billing Format – Review of Summary Information, Implementation and Display*, Final Decision, December 19, 2018.

[4] Id. at 2.

[5] Id.

[6] Id. at 34.

[7] Docket No. 14-07-19RE07, *PURA Investigation Into Redesign of the Residential Electric Billing Format – Cost Allocation Among Suppliers for System Redesign and Associated Costs*, Final Decision, July 26, 2023.

PURA's Illegal Process and Retaliatory Actions

Starting with the Notice of Proceeding issued on 9/28/21, PURA's subsequent actions deviated from law in the several significant ways:

1. Wattifi ceased operations prior to implementation of the EDC billing changes; never used or benefitted from the billing system; and should not have been allocated any costs.

Under Conn. Gen. Stat. § 16-245(d)(b), an EDC that **provides billing services to an electric supplier** is entitled to recover from the electric supplier all reasonable transaction costs to provide such billing services. Costs incurred by EDCs for the benefit of electric suppliers are allocated across electric suppliers that receive the benefit.

Wattifi did not use EDC billing services. In fact, Wattifi **could not use** the EDCs' billing services because Wattifi's PURA-approved service offering (ISO-NE Day-Ahead hourly pricing) was **not compatible** with the fixed-price billing format(s) of either EDC. Instead, Wattifi spent tens of thousands of dollars building its own billing system to accommodate its wholesale day-ahead pricing offer. In addition, the fee imposed on electricity suppliers for the upgrade to the EDCs' billing format was for residential customers only. Wattifi had only **eleven** residential customers while serving load in Connecticut. It was not possible, or necessary, for Wattifi to use the electronic billing services that the EDCs offer to competitive suppliers.

Moreover, by the time that PURA completed its dawdling two-year review of the matter in July 2023, Wattifi had ceased operations entirely, as detailed below. Why should a defunct entity, with no continuing operations or customers, be charged the costs of billing system changes that it had never used and would not ever use?

2. PURA Illegally Delegated Its Review of the Cost Allocation Docket.

Both Title 16 of the general statutes and the Connecticut Uniform Administrative Procedures Act ("UAPA") at Conn. Gen. Stat. § 4-166 *et seq.* govern proceedings conducted by PURA. Title 16 applies to both contested and uncontested proceedings conducted by PURA. Section § 16-2(c) requires that "**any matter**" coming before PURA is assigned to a panel of three or more utility commissioners. The "decision of the panel, if unanimous, is the decision of the authority." Conversely, if the decision of the panel is not unanimous, "**the matter** shall be approved by a majority vote of the utility commissioners."

A companion statute, Conn. Gen. Stat. § 1-225(a), requires that "the votes of ***each member*** of any such public agency ***upon any issue*** before such public agency shall be reduced to writing and made available for public inspection within forty-eight hours ***and shall also be recorded*** in the minutes of the session at which taken."

PURA's Notice of Proceeding for the Cost Allocation Docket stated that it "**delegates the review of this matter** to its Office of Education, Outreach, and Enforcement (EOE) pursuant to Conn. Gen. Stat. § 16-19j." However, § 16-19j does not allow PURA to delegate contested proceedings to EOE. Section 16-19j allows PURA only to assign "a portion of the staff … to be made **a party** to any proceeding," not for EOE to run the case or decide its outcome. Even if PURA could delegate its review in a contested case to EOE, which it cannot, no "delegation of authority" was ever produced to the record showing that the three-member panel had actually voted to delegate their authority to EOE. The Notice of Proceeding was signed by Executive Secretary Jeffrey Gaudiosi, not by any commissioners. *There is no record of a vote by the commissioners delegating their authority to EOE*.

In addition, PURA's Notice of Proceeding directed EOE to submit a "proposed final decision" to PURA for "matters" in which "no objections" were registered by docket participants, outlining EOE's "findings and recommendations." Also, the Notice stated that the proposed final decision submitted by the EOE would be "voted on by a panel of commissioners at the next available Regular Meeting." *This never occurred.*

On August 19, 2022, EOE submitted a motion to PURA, requesting that PURA adopt its proposed final decision, which resulted from collaboration with competitive suppliers. PURA failed to act on this motion until June 22, 2023, when a motion ruling was issued by Executive Secretary Jeffrey Gaudiosi (not signed by any commissioners), finding that EOE's proposed final decision needed "modification."[8] *There is no record of a vote by the commissioners deciding that EOE's proposed final decision should be modified, or for what reason.*

As a consequence of these failures, this Executive Secretary ruling is void as a matter of law.

3. PURA unlawfully precluded Wattifi from appealing the cost allocation.

Senator Fonfara has been questioned about why his company did not appeal the cost allocation attributed to Wattifi that formed the basis for the widely discussed penalties. The reason is very simple. He did not have a legal avenue for appeal because, in its final decision in the Cost Allocation Docket, PURA improperly characterized the docket as an uncontested docket from which no appeal is available.[9] Appeals are available under the UAPA only for contested proceedings. Refusing the right of appeal is a tactic and pattern of conduct increasingly utilized by PURA during Chair Gillett's tenure to thwart judicial review.

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[8] On the same day, PURA issued its own proposed final decision in the Cost Allocation Docket incorporating substantial changes to EOE's version of the decision, including an expanded, retroactive assessment of cost allocation.

[9] Docket No. 14-07-19RE07, *PURA Investigation Into Redesign of the Residential Electric Billing Format – Cost Allocation Among Suppliers for System Redesign and Associated Costs*, Final Decision, July 26, 2023, at 2, fn.4 (stating, Notably, the agency's designation of a case as contested or uncontested is not germane to the analysis. In this instance, a previous statement from a 2021 document is erroneous, **as the instant proceeding does not satisfy the test for a contested proceeding**.") (emphasis added, citations omitted).

Title 16 of the General Statutes, the UAPA and PURA's own regulations all require PURA to take a number of procedural steps in contested proceeding, including conducting a hearing, compiling an evidentiary record and making decisions supported by substantial evidence.[10] In the Cost Allocation Docket, PURA illegally delegated the proceeding to EOE and did not conduct **any** proceeding on its own, let alone the full panoply of proceedings required in contested dockets. Specifically, PURA failed to conduct a hearing or to compile an evidentiary record to support any of the findings it reached in the draft decision (issued 6/22/2023) and, ultimately, in the final decision (issued 7/26/2023). These are required elements of a contested case under the UAPA. As a result, PURA had no proper basis on which to issue a draft or final decision in the docket, particularly one that expanded the criteria for cost responsibility beyond what EOE had recommended. *Both PURA's draft and final decisions in the Cost Allocation Docket were issued in violation of the UAPA and are legally invalid.*

In written exceptions to the draft decision, competitive suppliers raised the issue that PURA had not conducted the proceeding in accordance with law, as required by the UAPA and other provisions for a contested proceeding.[11] Without this adjudicatory process, PURA could not issue a valid decision in the docket. However, PURA simply dismissed these claims in a footnote to the final decision, finding that the proceeding was **not** a contested (appealable) proceeding, even though three things had occurred: (1) the 2018 Decision stated that the reopened proceeding would be contested; (2) PURA's Notice of Proceeding stated affirmatively (three times) that it was a contested proceeding; and (3) certain statutory provisions that PURA cited to open the Cost Allocation Docket pertained exclusively to a contested case.[12] Instead, PURA said in its (invalid) final decision that the "2021 document," i.e., PURA's own Notice of Proceeding, "is erroneous" and that PURA did not need to adhere to its original notice for the proceeding, nor the statutory provision applicable to a hearing.[13]

The effect of this erroneous ruling was that **no party could appeal the final decision** that was issued on July 26, 2023, although the decision invalidly assigned cost allocations to numerous competitive suppliers, including Wattifi.

As a consequence of these legal flaws and violating the UAPA, this final decision is void as a matter of law.

4. PURA illegally refused to allow Wattifi to relinquish its license in September 2023.

Under Connecticut law and PURA practice, electric suppliers are allowed to "relinquish" their licenses in Connecticut, so long as they have fulfilled their obligations to the State of Connecticut, including the payment of obligations to comply with renewable portfolio standards

[10] See, e.g., Conn Gen Stat. § 4-166 *et seq*., §§ 16-1 through 16-50f, Reg. of Conn. State Agencies, §§ 16-1-1 through 16-1-137.

[11] Cost Allocation Docket, Docket No. 14-07-19RE07, Final Decision at 2, fn.4.

[12] PURA's Notice of Proceeding cited the UAPA § 4-176e through §4-184, which are rules for contested cases.

[13] Cost Allocation Docket, Docket No. 14-07-19RE07, Final Decision at 2, fn.4.

("RPS"). Beginning February 2023 – well before PURA had issued either its draft or final decision in the Cost Allocation Docket -- Wattifi took all the right steps to relinquish its electric supplier license:

- On March 27, 2023, Wattifi notified EOE that it planned to relinquish its electric supplier license after fulfilling its RPS obligations, as it was no longer serving any customers in Connecticut.

- On March 28, 2023, EOE notified Wattifi of its remaining obligations, which *did not* include any cost responsibility for billing system changes.[14]

- On July 7, 2023, prior to PURA's issuance of its final decision in the Cost Allocation Docket, Wattifi notified EOE that it had fulfilled its outstanding obligations and requested relinquishment.

- On July 13, 2023, EOE recommended to PURA in Motion No. 15, that PURA should allow Wattifi to relinquish its license, stating that "EOE believes that Wattifi has taken ***all of the necessary measures*** to relinquish its electric supplier license."[15] All of these steps occurred before PURA issued its (invalid) final decision on July 26, 2023.

Notwithstanding EOE's recommendation to allow Wattifi to relinquish its license, PURA stalled until September 13, 2023, to issue a motion ruling signed by Executive Secretary Jeffrey Gaudiosi, not by any commissioner. *There is no record of a vote by the commissioners deciding to deny Wattifi's request for relinquishment.*

This Executive Secretary ruling is, therefore, void as a matter of law.

Had PURA properly recognized Wattifi's cessation of operations and fulfillment of obligations to relinquish its license, as recommended by EOE *the party* that conducted the review pursuant to PURA's alleged delegation of authority, PURA could not have allocated a single dollar of cost responsibility to Wattifi – let alone more than $1 million dollars in penalties for failing to pay a wholly unwarranted cost allocation.

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[14] This is significant because EOE had already made its recommendation to PURA as to the proper allocation of cost responsibility to suppliers in its 8/19/22 motion filed with PURA, which PURA failed to take any action on until issuing its own proposed final decision on 6/22/23, notwithstanding the **complete absence of an evidentiary record** to support its decision.

[15] Tellingly, although EOE was the entity that conducted the "review" of the cost-allocation matter, as directed by PURA in its Notice of Proceeding, EOE *did not* recommend that Wattifi had any responsibility for an allocation of system costs. In fact, EOE noted that it was PURA's modified proposed final decision that had included Wattifi in the list of suppliers. See, *Application of Optik Energy, LLC [Wattifi] for a Connecticut Electric Supplier License*, Docket No. 17-11-25, EOE Motion No. 15 for Wattifi Relinquishment, July 13, 2023.

5. PURA's notice of violation imposing penalties was illegally issued.

Section 16-41 of the General Statutes allows PURA to impose civil penalties after the issuance of a Notice of Violation. To impose such a penalty, "**the authority**" – that is, PURA and not any individual Commissioner – must find that an entity subject to PURA's jurisdiction has "failed to obey or comply with any such provision of [Title 16], order or regulation." In addition, under § 16-41(c), a "notice of violation" or "NOV" can be issued only in circumstances where "**the authority** has reason to believe that a violation has occurred." If a hearing is not requested on the NOV, the NOV becomes a "final order of the authority" under § 16-41(d). Under law, a "final order" of "the authority" is an agency determination that requires a decision by the panel of commissioners."[16]

On December 7, 2023, almost three months *after* Wattifi had lawfully dissolved by filing with the Connecticut Secretary of the State (9/13/2023), PURA issued a Notice of Violation against a company it knew was "extinct."[17] The NOV, signed by Executive Secretary Jeffrey Gaudiosi, asserted that "the Authority" had prescribed a civil penalty of five thousand dollars ($5,000) per day to Wattifi, allegedly for missing the October 2023 deadline for contributing $57,000 to pay for the EDC billing systems, although Wattifi was dissolved as of 9/13/23 and was no longer in existence.

No commissioner signed the NOV and there is no record of a vote by the panel of commissioners finding that "there is reason to believe" that Wattifi "failed to obey or comply" with any law, order or regulation, nor finding that a $5,000/day penalty was appropriate, as required by Section 16-41(c). Without the signatures of the panel of commissioners or a record of the vote, the NOV cannot become a "final order" of the commission. Importantly, this false and invalid Notice of Violation is the singular source of the much discussed $1 million in penalties.

In reality, the NOV was an unlawful ruling of a single commissioner – Chair Gillett – without the votes of other commissioners. As has been extensively detailed in legal filings and elsewhere, PURA must act through the votes of a panel of commissioners but, instead, Chair Gillett has issued thousands of unilateral rulings over the Executive Secretary's signature without recorded votes *and without disclosing the true authorship of these rulings*.

Chair Gillett and others have – wrongly – defended the practice of using the Executive Secretary's signature by asserting that only final decisions require the votes of all commissioners.[18] Even if that were true, which it is not, the NOV resulting in over $1 million in penalties is clearly

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[16] See, e.g., Conn. Gen. Stat. § 16-2(c).

[17] By incredible coincidence, the Executive Secretary ruling denying Wattifi's relinquishment was issued on 9/13/2023, which was the very same day that Wattifi obtained its Certificate of Dissolution from the Connecticut Secretary of the State.

[18] For example, Chairman Gillett recently testified under oath that "We do not vote on motion rulings. So a vote as defined by statute, is required on a final decision of the agency." Transcript of the Executive and Legislative Nominations Committee, dated February 20, 2025, at page 53.

intended to be a final decision by operation of law under § 16-41(d), requiring the recorded votes of a panel of commissioners to exist in relation to the NOV.

Accordingly, the NOV – a unilateral ruling of a single commissioner signed by PURA's Executive Secretary – is void as a matter of law.

6. The timing of PURA's imposition of penalties suggest an intent to retaliate against Senator Fonfara for opposing Chair Gillett's power grab.

On May 25, 2023 – before PURA imposed penalties on the company – Senator Fonfara spoke in the Senate to oppose a section in proposed bill SB 7 that would have authorized in law Chair Gillett's unlawful practice of deciding PURA matters unilaterally. Specifically, the proposal he spoke against was the following:

> (c) Any matter coming before the authority may be assigned by the chairperson to [a panel of three] one or more utility commissioners. Except as otherwise provided by statute or regulation, [the panel] any such utility commissioner or commissioners, as applicable, shall determine whether a public hearing shall be held on the matter, and may designate one or more [of its members] utility commissioners, from among such utility commissioner or commissioners, as applicable, assigned to such matter pursuant to this subsection, to conduct such hearing or may assign a hearing officer to ascertain the facts and report thereon to [the panel] such utility commissioner or commissioners, as applicable, assigned to such matter. The decision of [the panel, if unanimous,] such utility commissioner or commissioners, as applicable, shall be the decision of the authority. In any contested proceeding before the authority assigned to one or more utility commissioners, whenever such utility commissioner or commissioners, as applicable, issue a proposed final decision, all utility commissioners shall vote on the decision of the authority in such matter. If the decision of [the panel] such commissioners is not unanimous, the matter shall be approved by a majority vote of all of the utility commissioners.

Senator Fonfara made the following comments in opposition to this legislative change:

> And as I read this language before us, this change that would allow the Chairman of the Commission of the authority to appoint a single person herself or himself or someone else to decide very serious matters, complex matters that this body has decided are too complex for us to decide. And that was the right decision to make. But to allow these kinds of decisions to be taken by a single person as I think is not in the best interest of Connecticut rate payers, not in in the interest of our state. And in that regard I would hope that if this Bill as this Bill travels, that there's recognition of the potential of abuse of that, language and how it could be harmful to our rate payers, harmful to our state, and hoping that there will be some recognition of that as the Bill moves along. I thank you Madam President.

Based on these concerns and those of others, this misguided proposal was exposed and omitted from the final version of SB 7.

Just weeks later, EOE recommended that PURA allow Wattifi to relinquish its supplier license (7/13/23), which Chairman Gillett ignored for two months, ultimately refusing to allow Wattifi to relinquish its license (9/13/23),[19] although Wattifi had met "***all of the necessary measures*** to relinquish its electric supplier license," according to EOE, and was no longer in existence. Three months after Wattifi was lawfully dissolved (12/7/23), Chair Gillett unilaterally issued the Notice of Violation imposing penalties for Wattifi's failure to pay the unlawful cost assessment.

Conclusion

The false and injurious allegations spread in media reports to perpetrate the disparaging smear that Wattifi owes PURA, the State of Connecticut or electric customers the sum of either $57,000 or $1 million has damaged Senator Fonfara's professional and personal reputation.

We do not believe it is a coincidence that PURA refused to let Wattifi relinquish its license in the months immediately following statements that Senator Fonfara made during the floor debate on SB7, in May 2023. In those statements, he warned his colleagues against the "single commissioner rule" because single-commissioner rule is antithetical to the principle of democracy and allows a single person – of either party – to subject parties that come before the commission to arbitrary and unlawful outcomes. Ironically, the abuses Senator Fonfara warned against have, in fact, been committed against him and his company, as well as in many instances in other dockets against other Connecticut businesses.

I urge you to take steps to genuinely and meaningfully examine how PURA is conducting itself and ensure that its conduct is consistent with law and for the benefit of Connecticut residents.

Sincerely,

R. Bartley Halloran
BBB Attorneys

Cc: Senator Looney, Senate President Pro Tempore martin.looney@cga.ct.gov

Representative Ritter, Speaker of the House matthew.ritter@cga.ct.gov

Representative Vincent Candolara, Minority Leader vincent.candelora@cga,ct,gov
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[19] Records show that PURA routinely **granted** EOE's motions for relinquishment of electric supplier licenses within a matter of days. See, e.g., Docket No. 18-12-16 -- MPower, Jan 2022 (13-day approval by PURA); Docket No. 12-09-09 -- Hiko, March 2022 (1-day approval by PURA); Docket No. 12-08-23 -- Perigree Energy, March 2022 (1-day approval by PURA); Docket No. 10-03-10 -- Community Energy, March 2023 (8-day approval by PURA).

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