GEORGE JEPSEN
ATTORNEY GENERAL

10 Franklin Square
New Britain, CT 06051

Office of The Attorney General
State of Connecticut

December 3, 2012

Mrs. Kimberley J. Santopietro
Executive Secretary
Department of Energy and Environmental Protection
Public Utilities Regulatory Authority
Ten Franklin Square
New Britain, Connecticut 06051

Re: Docket No. 12-01-07, Application for Approval of Holding Company Transaction Involving Northeast Utilities and NSTAR

Dear Mrs. Santopietro:

George Jepsen, Attorney General of the State of Connecticut ("Attorney General"), and Elin Swanson Katz, Consumer Counsel, on behalf of the State of Connecticut, Office of Consumer Counsel ("OCC") hereby object to Northeast Utilities' ("NU") November 16, 2012 filing with the Public Utilities Regulatory Authority ("Authority") in the above-referenced proceeding. In that filing, NU responded to four questions posed by PURA on October 25, 2012 concerning staffing levels at NU following the NU-NSTAR merger. NU's filing is completely inconsistent with the plain language of the March 13, 2012 Settlement Agreement in this matter among NU, the Attorney General and the OCC, as approved by the Authority on April 2, 2012 ("Settlement Agreement").The Authority must not permit NU's direct attempt to abrogate its settlement obligations. Instead, the Authority should order the Company to respond fully and properly to the questions posed within ten days, and to provide notice that any future failures to comply with its notice obligations may result in sanctions.

By way of background, on March 13, 2012, NU, NSTAR, the Attorney General and the OCC submitted the Settlement Agreement to PURA for its review and approval. Section 3.1.7 of the Settlement Agreement states that:

> In the event of a facility closing *or layoff of employees* in Connecticut, NU shall provide 30 days' notice of such action to the Attorney General, OCC and the Authority, including a demonstration of how any such closing or layoffs are consistent with the standards of equity, fairness and proportionality set out in § 3.1.6 [emphasis added].

Section 3.1.6 of the Settlement Agreement states that:

> Reductions in the Connecticut employee work force in connection with the achievement of merger synergies shall be made on a fair and equitable basis and will not be disproportionate to other jurisdictions in which the merged entity conducts operations, either with respect to the number of reductions or with respect to the relative number of high-compensation versus low-compensation positions. The determination of what is "disproportionate" among jurisdictions shall take into account the relative size of the Companies' pre-merger operations in each of the jurisdictions.

These two provisions of the Settlement Agreement represent the full extent of the agreement between the parties to the Settlement Agreement concerning merger-related staff reductions.

In its November 15, 2012 filing, NU acknowledges that 319 employees have left NU since the NU-NSTAR merger and that some of these separations have been involuntary, but claims it "has not conducted any lay off of employees as contemplated in paragraph 3.1.7 of the Settlement Agreement." NU Letter, 2. NU asserts that the application of paragraph 3.1.7 of the Settlement Agreement is limited to "unanticipated" layoffs or "broad-based workforce reductions, mass layoffs or the closing of 'facility' such as a call center or other work site." NU Letter, 3. NU further claims that these reductions were "explicitly contemplated during the merger proceeding" and therefore would not "trigger the notice requirement of the Settlement Agreement." In footnote 3 of its letter, NU appears to rely on a provision of federal law called the Worker Adjustment and Retraining Notification ("WARN") Act, 29 U.S.C. §§ 2101 to 2109. According to NU, the WARN Act uses the term "mass layoff" to describe a reduction in workforce that: (1) does not result from a plant closing; and (2) results in an employment loss at a single site of employment during any 30-day period of at least 50 employees or 33% of the workforce, whichever is greater. NU further states that the staff reductions that have occurred here do not trigger the WARN Act requirements.

In fact, by its plain language, the Settlement Agreement requires notice of *all* layoffs in Connecticut occurring as a result of the merger. Nothing in the language of paragraph 3.1.7 limits its reach to "unanticipated" or "broad-based" workforce reductions. Moreover, Section 3.1.7 of the Settlement Agreement references Section 3.1.6, which explicitly requires NU to make a demonstration of proportionality as to "[r]eductions in the Connecticut employee work force in connection with the achievement of merger synergies." (Emphasis added.) In light of the Settlement

Agreement's explicit anticipation of workforce reductions in connection with the merger, and the requirement that NU demonstrate proportionality *in connection with those reductions,* it is untenable for NU to claim that the proportionality requirement applies only to "unanticipated terminations."

Moreover, NU's references to the WARN Act are irrelevant and misleading. In the absence of a WARN Act reference, the WARN Act provisions have no impact on interpretation of the Settlement Agreement.

Finally, NU's claim that the *involuntary* layoffs were "explicitly contemplated during the merger proceeding" and therefore would not "trigger the notice requirement of the Settlement Agreement" is also untenable. The plain language of 3.1.7 requires notice of reductions without qualification. Moreover, NU's claim that *involuntary* layoffs were contemplated is simply untrue. NU repeatedly testified throughout this proceeding that it anticipated few if any involuntary layoffs as a result of the merger. February 15, 2012 Transcript, 267, 324-27. The Settlement Agreement notice provisions provided a mechanism to inform the state entities in the event NU was in fact required to impose involuntary layoffs despite its pre-merger representations, and to ensure that such layoffs would be done in a fair and equitable manner. Settlement Agreement, paragraph 3.1.6.

For all of the above reasons, the Attorney General and OCC respectfully request that the Authority order NU to file a response to PURA's letter of October 25, 2012 applying the plain language definition of layoff as required by the Settlement Agreement. Under a plain and fair interpretation of the Settlement Agreement, every termination related to the merger is a layoff that requires notice to the Attorney General and OCC as well as a full detailed demonstration of proportionality. NU should be ordered to comply with the plain terms of its settlement now and in the future.

Very truly yours,

GEORGE JEPSEN
ATTORNEY GENERAL

By: 

Michael C. Wertheimer
John S. Wright
Assistant Attorneys General
10 Franklin Square
New Britain, CT 06051

ELIN SWANSON KATZ
CONSUMER COUNSEL

Elin Swanson Katz
Joseph A. Rosenthal
Office of Consumer Counsel
10 Franklin Square
New Britain, CT 06051

cc: Service List