

Advisory

ENERGY AND UTILITIES PRACTICE GROUP | SEPTEMBER 2008

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2008 Energy and Utility Act Summary

In 2008, the Connecticut General Assembly enacted a variety of measures affecting the utility industry and energy sector. During its regular session, the legislature enacted new siting requirements for facilities in “environmental justice communities,” a significant climate change act that includes mandatory limits for greenhouse gas emissions and other measures to confront global warming, and an act to address energy scarcity and security, renewable energy, and a state solar energy strategy. In August, the General Assembly convened in special session, enacting two bills that utilize funds from the state budget surplus to provide energy assistance and home heating relief. The following is a summary of the 2008 public acts we believe are likely to be of interest to those involved in public utilities, energy and other regulated industries, and to the customers who purchase their services.

Public Acts

AN ACT CONCERNING RADIATION RELEASES

PUBLIC ACT NO. 08-20

Section 1 of this Act, effective October 1, 2008, amends Connecticut General Statutes (“CGS”) § 22a-135 to require licensees of the United States Nuclear Regulatory Commission that operate nuclear power generators in the state to post certain information on their websites. Licensees are required to post plans for radiation releases, including dates, times and types of materials. Posts are to be made as soon as releases are scheduled.

AN ACT CONCERNING THERMAL ENERGY TRANSPORTATION

PUBLIC ACT NO. 08-77

This Act temporarily subjected any “thermal energy transportation company” to the jurisdiction of the Department of Public Utility Control (“DPUC”) for the period from April 30, 2008 to May 7, 2008. The Act also amended the charter of the Hartford Steam Company to place restrictions on its termination of service to customers.

AN ACT CONCERNING ENVIRONMENTAL JUSTICE COMMUNITIES AND THE STORAGE OF ASBESTOS-CONTAINING MATERIAL

PUBLIC ACT NO. 08-94

Section 1 of this Act, effective January 1, 2009, defines several terms for purposes of this Act, including an “environmental justice community,” which is “a United States census block group, as determined in accordance with the most recent United States census, for which thirty per cent or more of the population consists of low income persons who are not institutionalized and have an income below two hundred per cent of the federal poverty level,” or a distressed municipality as defined in CGS § 32-9p(b). This section also defines an “affecting facility” as including the following: an electric generating facility of more than 10 megawatts; certain incinerators or combustors; sewage treatment plants; processing centers, volume reduction

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facilities and multi-town recycling plants; new or expanded landfills; medical waste incinerators; and any major source of air pollution as defined by the federal Clear Air Act. The section also defines the terms “meaningful public participation” and “community environmental benefit agreement.”

On or after January 1, 2009, applicants who seek to obtain a certificate under the Public Utility Environmental Standards Act or who seek “new or expanded permit or siting approval” from the Department of Environmental Protection (“DEP”) or the Connecticut Siting Council (“Siting Council”) for an affecting facility in an environmental justice community must (a) obtain approval of a meaningful public participation plan from the DEP or Siting Council, and (b) consult with local officials to evaluate the need for a community environmental benefit agreement. The Act establishes the parameters for a meaningful public participation plan, including detailed notice requirements and provisions for an “informal public meeting” with local residents. Neither the DEP nor the Siting Council “shall take any action on the applicant’s permit, certificate or approval earlier than sixty days after the informal public meeting.” If the Siting Council has approved a public participation plan and an informal public meeting has already occurred, the DEP may waive the requirement for an additional informal public meeting.

Section 2 of this Act, effective October 1, 2008, prohibits the disposal or storage of more than one thousand cubic yards of soil consisting of asbestos-containing material to a site that abuts residential property (subject to certain height restrictions) without approval from two-thirds of the municipality’s legislative body.

**AN ACT CONCERNING
CONNECTICUT GLOBAL WARMING
SOLUTIONS**

PUBLIC ACT NO. 08-98

Section 1 of this Act, effective October 1, 2008, amends CGS § 22a-200 to incorporate provisions of this Act into the definitions in §§ 22a-200 through 200b.

Section 2 of the Act, effective October 1, 2008, amends CGS § 22a-200a by repealing the State’s “goals” for reductions of greenhouse gas emissions and instituting a mandate that “the state shall reduce the level of emissions of greenhouse gas.” The Act requires reductions to a level of at least 10 percent below 1990 levels by 2020 and 80 percent below the 2001 level by 2050. This section also implements three reporting obligations, as follows: (1) by January 1, 2010, and biannually thereafter, the state agencies that are members of the Governor’s Steering Committee on Climate Change (“Steering Committee”) shall submit a report to the Office of Policy and Management (“OPM”) and the DEP to identify measures to meet state agency energy savings goals, and to identify near-term policies and regulations that could reduce greenhouse gas emissions; (2) by January 1, 2012, and every three years thereafter, the DEP, in consultation with OPM and the Steering Committee, must report to the legislative committees for the environment, energy and transportation on the quantifiable reductions achieved pursuant to such state agency actions, including a schedule of proposed regulations, policies and strategies, an assessment of the latest scientific information and relevant climate change data, and emission reduction efforts in other states and countries; and (3) at least one year prior to the effective date of any federal cap-and-trade program, the DEP and OPM shall report

to the legislative committees for the environment, energy and technology and transportation to explain differences between such federal and state requirements, and any regulatory or legislative actions needed to achieve consistency.

Section 3 of the Act, effective October 1, 2008, amends CGS § 22a-200b to repeal prior rules with respect to a greenhouse gas registry and reporting system, and to require the DEP, “with the advice and assistance of a nonprofit association organized to provide scientific, technical and analytical and policy support to the air quality and climate programs of the northeastern states” to do the following: (1) by December 1, 2009, publish a baseline inventory of state greenhouse gas emissions and publish a summary of reduction strategies; (2) by July 1, 2010, publish results of greenhouse gas modeling scenarios including economic and environmental benefits and growth opportunities; (3) by July 1, 2011, analyze reduction strategies and make recommendations as to which strategies will achieve emission levels specified in CGS § 22a-200a, as amended by this Act; and (4) by July 1, 2012, and every three years thereafter, develop a schedule of recommended regulatory, policy and other actions necessary to show “reasonable further progress towards achieving” the emission levels set forth in CGS § 22a-200a, as amended by this Act.

Section 4 of the Act, effective October 1, 2008, amends CGS § 22a-200c to allow the DEP to adopt regulations to cover the administrative costs of state agencies associated with the adoption of regulations, plans and policies in accordance with CGS § 22a-200a, as amended by this Act.

Section 5 of the Act, effective October 1, 2008, (1) requires the DEP to monitor

the development of low-carbon fuel standards and modeling tools in other states, evaluate their potential to achieve net carbon reductions, and to assess the analytical framework used to determine carbon benefits; (2) requires the Department of Transportation, within available appropriations, to continue to investigate ways to improve the state’s transportation system to reduce greenhouse gas emissions and to coordinate with other northeastern states to incorporate emission reductions into regional transportation planning; and (3) permits the DEP to work with other states and Canadian provinces to develop and implement “market-based compliance mechanisms” to achieve the emission levels set forth in CGS § 22a-200a, as amended by this Act, including cap and trade programs.

Section 6 of the Act, effective October 1, 2008, amends CGS § 22a-201c to allow the DEP to use the motor vehicle “greenhouse gas reduction fee” in part to fund certain initiatives required by this Act.

Section 7 of the Act, effective October 1, 2008, requires the Steering Committee to establish by January 1, 2009 a subcommittee to (1) assess the impact of climate change on state and local infrastructure, public health and state natural resources and habitats; (2) develop recommendations to enable state and local government to adapt to such impacts; and (3) provide technical assistance to implement such recommendations. The subcommittee is required to report to the Steering Committee by December 31, 2009, and to the Governor and General Assembly by July 1, 2010.

Section 8 of the Act, effective from passage, amends CGS § 22a-174 to empower the DEP to enter into contracts with consultants, including “nonprofit

corporations created for the purpose of facilitating the state’s implementation of multistate air pollution control programs,” and to permit the Commissioner of DEP to sit on the board of such nonprofit corporations.

AN ACT CONCERNING TELEPHONE AND CABLE INSTALLATION FEES FOR NURSING HOME RESIDENTS

PUBLIC ACT NO. 08-115

Section 1 of this Act, effective October 1, 2008, prohibits a telephone company, telecommunications company, certified telecommunications provider, community antenna television company, certified competitive video service provider, or holder of a certificate of cable franchise authority from charging an installation fee to a resident of a residential care home, nursing home or rest home when such resident moves from one room to another. A violation of this section will not constitute an unfair or deceptive trade practice under CGS § 42-110b.

Section 2 of this Act, effective October 1, 2008, prohibits an owner or operator of a residential care home, nursing home or rest home from charging an installation fee for telecommunication or community antenna television service when a resident moves from one room to another.

AN ACT CONCERNING MUNICIPAL UTILITIES

PUBLIC ACT NO. 08-128

Section 1 of this Act, effective upon passage, amends CGS § 7-233q to permit municipal electric cooperatives to enter into contracts as the result of either negotiation, request for proposals, or open-bid or sealed-bid methods. The cooperative is permitted to consider the

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scope of work, management complexities, technological development requirements and the best interests of the cooperative and its members in determining the most appropriate method of procurement. This section includes additional requirements for contracts resulting from negotiation or request for proposals.

Section 2 of this Act, effective upon passage, amends CGS § 7-233e to allow cooperatives to enter into agreements to receive or procure natural gas for the “sole benefit” of the City of Norwich Department of Public Utilities, provided that the supply be used only in Norwich or Preston, and that no part of the supply may be transported to or used in another municipality, utility, territory, or Indian tribal land. This section also states that no powers granted in this section shall be exercised so as to impair any existing powers, rights, or privileges of any gas company.

AN ACT CONCERNING THE TAXATION OF TELECOMMUNICATIONS COMPANY PROPERTY AND THE TIMELY FILING OF DECLARATIONS

PUBLIC ACT NO. 08-130

Section 1 of this Act, effective July 1, 2008, amends CGS § 12-80a (2008 supplement) to require that the list of taxable personal property owned by a telecommunications company that is submitted to the Commissioner of Revenue Services and the Secretary of OPM shall list such property on a town-by-town basis. Each taxpayer shall also provide to each municipality the portion of the list that includes the property located within or allocated to each such municipality. This section also enables municipalities to examine the OPM or the Department of Revenue Services audit of these submissions.

Section 2 of this Act, effective upon passage and applicable to annual declarations due on or after November 1, 2008, amends CGS § 12-41 to state specifically that personal property declarations received by a municipality will not be deemed delinquent so long as the postmark shows a date within the allowed filing period.

AN ACT CONCERNING THIRD-PARTY NONPROFIT COMMUNITY ACCESS PROVIDERS AND COMMUNITY ANTENNA TELEVISION COMPANIES

PUBLIC ACT NO. 08-159

Section 1 of this Act, effective upon passage, requires “any third-party nonprofit community access provider serving six municipalities, one of which has a population of more than one hundred thirty thousand” (i.e., the Bridgeport franchise area), to give written consent upon request to any town organization, authority, body or official to operate educational and government public access channels in that town and to engage freely and directly the community antenna television company that provides services in that town to use their headend equipment to broadcast town-specific community access programming. If written consent is not provided within three days, the requesting party can petition the DPUC, in which case the DPUC shall terminate the nonprofit provider’s service agreement within 180 days, and reopen the application process to secure a community access provider for each of the towns within the affected service territory.

Section 2 of this Act, effective upon passage, requires any cable television provider that operates within the service territory of a third-party nonprofit community access provider that serves six

municipalities, one of which with population of at least 130,000 (i.e., the Bridgeport franchise area) to direct \$100,000 from funds collected from subscribers to the service territory's community antenna television advisory council ("Advisory Council") for developing town-specific education and government community access programming. The funding is to be distributed in its entirety by the Advisory Council to the town organization, authority, official or body designated pursuant to Section 1 of this Act. This section also requires the Advisory Council to report annually to the DPUC on the disbursement of such funds.

AN ACT CONCERNING ENERGY SCARCITY AND SECURITY, RENEWABLE AND CLEAN ENERGY AND A STATE SOLAR STRATEGY

PUBLIC ACT NO. 08-168

Section 1 of this Act, effective upon passage, establishes a task force to study energy scarcity and sustainability (the "Task Force"). The Task Force is required to conduct scenario planning for long-term petroleum and natural gas scarcity, steep price increases and supply disruptions, and shall consider impacts on the economy, food supply, transportation, education, health, and emergency response. The Task Force shall consist of eight members designated by legislative leaders, the commissioner of the DEP, the secretary of OPM, and the executive director of Connecticut Innovations, Incorporated ("CI") (or their designees). Legislators may serve as Task Force members. The Task Force must submit a report to the legislature's energy committee by January 1, 2009, at which time the Task Force shall terminate.

Section 2 of this Act, effective upon passage, requires OPM to conduct a

petroleum sensitivity study of state agencies. The study will be funded by up to \$250,000 from the Renewable Energy Investment Fund. OPM may contract with a third-party consultant to perform the study. OPM must provide a report to the legislature's energy committee by December 1, 2008.

Section 3 of this Act, effective upon passage, requires the Renewable Energy Investment Board ("REIB") to contract with the Connecticut Academy of Science and Engineering to study how other states promote and increase the use of renewable energy and clean energy. The study must analyze the extent to which creating a department of renewable energy or clean energy would (1) ensure that future oil shortages and price increases do not jeopardize living standards and food security; (2) maximize economic opportunities for state workers in emerging clean energy industries; (3) reduce carbon emissions through greater reliance on renewable energy and clean energy; and (4) promote energy independence, local energy production and distributed generation. The findings are to be reported to the legislature's energy committee by January 1, 2009.

Section 4 of this Act, effective upon passage, requires the REIB, in consultation with the DPUC, to establish a working group to develop a plan to maximize the use of solar power and to create a self-sustaining solar industry in Connecticut, in furtherance of renewable portfolio standards and the Regional Greenhouse Gas Initiative. The plan is required to establish a megawatt goal and a timetable to achieve that goal, and must make recommendations for workforce development, job training necessary to build a solar workforce, and ideas for coordination with other programs. The working group shall consist of twelve members, including representatives of the

electric distribution companies, environmental nonprofits, solar industry, solar trade association, renewable finance, a community college offering solar training, the commissioner of DEP, the Executive Director of CI, and the Commissioner of Economic and Community Development (or their designees). The plan must describe the costs and benefits of "achieving a self-sustaining solar industry and maximizing the use of solar power." The REIB is required to approve and submit the plan to the Connecticut Energy Advisory Board ("CEAB") and the legislature's energy and commerce committees on or before October 15, 2008.

AN ACT CONCERNING ENERGY ASSISTANCE

PUBLIC ACT NO. 08-01 AUGUST SPECIAL SESSION

Section 1 of this Act, effective upon passage, credits the unappropriated fiscal year 2008 surplus in the General Fund to fiscal year 2009, forestalling the automatic transfer of this surplus to the "Rainy Day" budget reserve. It appropriates these funds to support the initiatives described in Sections 5 to 10. Through this Act and its companion, Public Act No. 08-02, August Special Session, budget surplus funds will be allocated to energy and home heating assistance programs.

Section 2 of this Act, effective September 1, 2008, amends CGS § 16a-22a by reducing the minimum delivery that a retail dealer of fuel oil or propane can impose on its customers from 150 gallons to 100 gallons.

Section 3 of this Act, effective September 1, 2008, amends CGS § 16a-23n regarding the securitization requirements for home heating oil and propane gas dealers who enter into prepaid or capped

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price-per-gallon contracts with consumers. A home heating oil or propane gas dealer may now secure such contracts with a “forwards contract,” in addition to previously authorized forms of security that include a “futures contract” or surety bond. (A “forwards contract” is any contract in which the seller guarantees to deliver a commodity at some point in the future. A “futures contract” is a specific type of forwards contract that contains standardized terms, is traded on a formal exchange, and is subject to regulation.)

This section requires home heating oil or propane gas dealers who utilize futures or forwards contracts as security to cover at least 80 percent of the oil or gas they commit to providing under all of their prepaid contracts, increased from the previous 75 percent. Previously authorized surety bond requirements remain unchanged. This section also imposes new reporting requirements, requiring notice to the Commissioner of Consumer Protection to identify the entities from which the dealer has obtained futures or forwards contracts, and to report any instance when the amount of a dealer’s secured contracts is less than 80 percent of its committed fuel deliveries. This section also requires entities from which dealers have obtained futures or forwards contracts to notify the Commissioner of Consumer Protection within three business days if a contract is cancelled.

Section 4 of the Act, effective from passage, amends CGS 16a-46e by removing the \$5 million annual cap on rebates under the furnace rebate program. This program provides for rebates of up to \$500 for the replacement of residential furnaces or boilers with energy efficient models. A person’s eligibility for the rebate is determined by income level, using a sliding scale based on Connecticut adjusted gross income for the tax year prior to the tax year when the replacement

was purchased. Persons receiving a grant under any program administered by the Connecticut Fuel Oil Conversation Board (“FOCB”), or any other state or federal grant program, are ineligible for the rebate. A person using a state or federal low interest loan program to pay for the furnace or boiler replacement may be eligible for a rebate. Rebates granted under this program are not considered taxable income.

Sections 5, 6 and 9 of the Act, effective from passage, appropriate funds to OPM for the purpose of expanding Operation Fuel, Incorporated, to provide emergency home heating assistance from November 1, 2008 to April 30, 2009. Section 5 appropriates \$8.5 million to assist households with incomes greater than 150 percent but less than 200 percent of the applicable federal poverty level that are unable to make timely payments on their deliverable fuel, electricity or natural gas bills. Section 6 appropriates \$5 million to assist households with incomes greater than or equal to 200 percent of the applicable federal poverty level, but less than or equal to 100 percent of the state median household income level, that are unable to make timely payments on their deliverable fuel, electricity or natural gas bills. Section 9 appropriates \$500,000 for operating expenses incurred by Operation Fuel, Incorporated in administering these two expansions of the program.

Section 7 of the Act, effective from passage, appropriates \$6.5 million to OPM for the purpose of providing heating assistance grants to local and regional school districts to heat school buildings, on a per pupil basis. This section requires legislative review and approval of a grant allocation plan.

Section 8 of the Act, effective from passage, appropriates \$4 million to OPM for the purpose of providing home heating

assistance to state residents aged sixty-five and older, with incomes equal to or less than 100 percent of the applicable state median household income, who are unable to make timely payments on deliverable fuel, electricity, or natural gas bills. OPM is directed to determine the eligibility requirements for this assistance, and can spend up to \$500,000 of the appropriated amount to identify eligible residents and notify them that this assistance is available. This section requires legislative review and approval of an allocation plan.

Section 10 of the Act, effective from passage, appropriates \$3.5 million to OPM for the purpose of providing heating assistance grants to nonprofit organizations that are human service or public health providers, including those that contract with the state to provide services. Such nonprofit organizations include adult day care, residential services to homeless persons, and services to victims of domestic violence. The Secretary of OPM is directed to determine the eligibility requirements for this assistance, and can consult with various state social service agencies to coordinate grant payments. The award of any grant under this section does not affect (1) the calculation of rates or fees paid to the organization receiving the grant, or (2) any contract the organization may have with the state. This section requires legislative review and approval of a grant allocation plan.

AN ACT CONCERNING HOME HEATING RELIEF

PUBLIC ACT NO. 08-02 AUGUST SPECIAL SESSION

Section 1 of this Act, effective upon passage, credits the unappropriated fiscal year 2008 surplus in the General Fund to fiscal year 2009, forestalling the automatic

transfer of this surplus to the “Rainy Day” budget reserve. It appropriates these funds to support the initiatives described in Sections 4, 5 and 7 to 10.

Section 2 of this Act, effective September 1, 2008, amends CGS § 16a-22b, which prohibited retail dealers of fuel oil or propane from imposing delivery surcharges on deliveries greater than 125 gallons. This section reduces the threshold from 125 gallons to 100 gallons.

Sections 3, 4 and 5 of this Act, effective upon passage, expand the scope of and increase the funding for the furnace and boiler rebate program. Section 3 expands the furnace rebate program to provide rebates for eligible persons to repair or upgrade (and not just replace) existing furnaces or boilers to make them more efficient. This rebate is capped at \$500 or 50 percent of the cost of the repairs or upgrades. Section 4 appropriates \$3 million to OPM to provide additional funding for the rebate program for residential furnace or boiler replacement pursuant to CGS § 16a-46e. Section 5 appropriates an additional \$2 million to support the rebate program for repairs and upgrades of existing furnaces and boilers. Funds appropriated under Sections 4 and 5 do not lapse on June 30, 2009, but shall be available for expenditure during fiscal year 2010.

Sections 6 and 7 of this Act, effective upon passage, amend CGS § 16a-40b to expand the eligibility requirements and funding for the Energy Conservation Loan Program. Section 6 allows households with gross incomes of up to 200 percent of the median area income (up from 150 percent) to participate in this loan program. This section also sets the interest rate at zero for loans for natural gas furnaces or boilers that meet or exceed federal Energy Star standards, and for oil and propane furnaces and boilers that are

at least 84 percent efficient (including those eligible for the furnace and boiler rebate program). Section 7 appropriates \$2 million to the Department of Economic and Community Development (“DECD”) to provide funding for additional loans for energy efficiency improvements, alternative energy devices, and replacement furnaces and boilers. DECD can spend up to \$250,000 of this amount for administrative expenses and promotion of the program.

Section 8 of this Act, effective upon passage, appropriates to OPM any excess fiscal year 2008 surplus funds, up to \$35 million, that remain after all the appropriations of this Act and its companion Public Act No. 08-01, August Special Session, have been made. These funds are to be deposited in an energy contingency account, to be used (1) to provide emergency home hearing assistance for Connecticut residents (giving preference to households with preexisting all-electric heating), and (2) to supplement federal funding for the Connecticut energy assistance program. Any funds remaining in the energy contingency account at the end of fiscal year 2009 shall carry over to fiscal year 2010. The Secretary of OPM must submit for legislative approval a plan for distributing these funds. The Secretary may submit more than one plan, but no plan can be submitted before November 1, 2008.

Section 9 of this Act, effective upon passage, requires OPM to establish an energy audit subsidy program for qualified oil companies and other entities that conduct energy audits for people who heat their homes with fuels other than natural gas or electricity. The program shall cover the balance of the cost of audits conducted from September 1, 2008 to June 30, 2009 by qualified oil companies and other entities that can demonstrate

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that they (1) provided an energy audit to a residential customer, and (2) collected a \$75 fee from the customer for the audit. This section appropriates \$7 million for this subsidy program, and unexpended funds will be available for expenditure in fiscal year 2010.

Section 10 of this Act, effective upon passage, appropriates \$2 million to the Department of Social Services (“DSS”) to develop a plan for (1) providing funds for weatherization projects for low income households participating in the Connecticut energy assistance program, (2) prioritizing assistance to households with incomes below 200 percent of the federal poverty level, and (3) coordinating this assistance with existing weatherization assistance programs administered by utility companies under programs run by the Energy Conservation Management Board (“ECMB”) and the FOCB. By November 1, 2008, and at least 45 days before implementing the plan, the DSS must submit its plan to the CEAB, ECMB, and the FOCB for input and advice, and to ensure effective prioritization and coordination of weatherization assistance.

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