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2004 Utility Act Summary

The 2004 legislative session was, once again, active and provided significant legislation for the utility and regulated industries. Among other things, the session extended the moratorium on electric and gas transmission line construction across Long Island Sound and made numerous changes to the statutes governing the Siting Council ("Siting Council" or "Council"). The following is a summary of several significant bills that will have an impact upon consumers as well as utilities and regulated industries.

Pub. Act 04-43: An Act Concerning The Call-Before-You-Dig Program

This Act, effective October 1, 2004, amends Conn. Gen. Stat. § 16-356, which sets forth penalties for failure to comply with Call-Before-You-Dig requirements by increasing the civil penalties from \$10,000 to \$40,000 while limiting to \$1,000 the civil penalty for violations involving the failure of a public utility to mark the approximate location of underground facilities correctly or within the timeframes prescribed by regulation, as long as the violation does not result in any property damage or personal injury and is not the result of an act of gross negligence on the part of the public utility. The Act further requires the Department of Public Utility Control ("DPUC" or "Department") to revise its regulations regarding a graduated schedule of civil penalties assessed pursuant to section 16-356, as amended by this

Act, and the criteria by which the Department determines the amount of such civil penalties.

Pub. Act 04-85: An Act Concerning Energy Efficiency Standards

This Act, effective July 1, 2004, amends Conn. Gen. Stat. § 16a-48, as amended by section 146 of Public Act 03-6 of the June 30, 2003 Special Session, and gives the DPUC, rather than the Commissioner of Agriculture and Consumer Protection, the responsibility for adopting regulations to implement the statute's provisions and establish minimum energy efficiency standards for various products, which it must do by July 1, 2005. The Act also broadens the statute's applicability to different types of products by making numerous changes and additions to the definitions used in the section by:

- replacing the definition of "Commissioner," which had been defined as "Commissioner of Agriculture and Consumer Protection," with a definition of "Department," defined as the DPUC;
- replacing the definition of "new appliance" with a definition of "new product"; and
- adding definitions for "torchier lighting fixture," "unit heater," "transformer," "low voltage dry-type transformer," "pass-through cabinet," "reach-in cabinet," "roll-in" or "roll-through cabinet," "commercial

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refrigerators and freezers," "traffic signal module," "illuminated exit sign," "packaged air-conditioning equipment," "large packaged air-conditioning equipment," "commercial clothes washer" and "energy efficiency ratio."

The Act also requires that by July 1, 2007 and biennially thereafter, the Department, in consultation with the Secretary of the Office of Policy and Management (the "Secretary"), review and increase the level of efficiency standards by adopting regulations. It also requires the Department, in consultation with the Secretary, to adopt regulations to designate additional products to be subject to the statute and establish efficiency standards for those products upon a determination that such standards would promote energy conservation and be cost-effective for consumers, and that multiple products are available to meet the standards. However, no such standards may become effective until one year following their adoption.

The Act further provides that on and after July 1, 2006 (except for commercial clothes washers, for which the date shall be July 1, 2007, commercial refrigerators and freezers, for which the date shall be July 1, 2008, and large packaged air-conditioning equipment, for which the date shall be July 1, 2009) certain new products cannot be sold, offered for sale or installed in the state unless they meet the required energy efficiency standards.

The Act also deletes a provision providing for periodic inspections of dis-

tributors and retailers of new appliances by the Commissioner of Agriculture and Consumer Protection.

Pub. Act 04-86: An Act Concerning Direct Billing by Electric Suppliers

Section One of this Act, effective October 1, 2004, amends Conn. Gen. Stat. § 16-244i(c) and provides that each electric distribution company shall continue to provide metering, billing and collection services. However, on and after the effective date of regulations adopted pursuant to Conn. Gen. Stat. § 16-245d, as amended by the Act, which allow an electric supplier to provide direct billing and collection services for electric generation services and related federally mandated congestion costs that such supplier provides to its customers that use a demand meter or have a maximum demand of not less than five hundred kilowatts and that choose to receive a bill directly from their electric supplier, an electric distribution company shall not provide such billing and collection services for such customers. It further provides that, notwithstanding an electric supplier's right to terminate its contract with a customer for the provision of generation services by reason of the customer's nonpayment of the charges directly billed by the supplier to the customer, an electric supplier shall not disconnect electric service to the customer or otherwise terminate the physical delivery of electricity to customers directly billed by the electric supplier.

Section Two of this Act, effective October 1, 2004, requires the DPUC, not later than January 1, 2005, to adopt regulations to provide that an electric supplier may provide direct billing and collection services for electric generation services and related federally mandated congestion costs that such supplier provides to its customers that use a demand meter or have a maximum demand of not less than five hundred kilowatts and that choose to receive a bill directly from such supplier. It also requires that electric suppliers providing direct billing of the electric generation service component and related federally mandated congestion costs include certain information on customers' bills. It further provides that an electric distribution company providing billing services for an electric supplier is entitled to recover from the electric supplier all reasonable transaction costs to provide such billing services as well as a reasonable rate of return.

Pub. Act 04-103: An Act Concerning Gas Pipeline Safety

Section One of this Act, effective October 1, 2004, amends Conn. Gen. Stat. § 16-280d to provide that if the DPUC investigates an accident involving a pipeline facility, the operator of the facility must make available to the Department all records and information that pertain to the accident, including but not limited to integrity management plans or test results, and must afford all reasonable assistance to the Department in the

investigation of the accident.

Section Two of this Act, effective October 1, 2004, amends Conn. Gen. Stat. § 16-280e by deleting the provision specifying civil penalties for violation of any provisions of its chapter or any regulation adopted pursuant to subsection (b) or (c) of section 16-280b or 49 U.S.C. Chapter 601, or regulations issued thereunder, and providing for civil penalties not to exceed the maximum civil penalty provided under 49 U.S.C. § 60122(a), as amended. It also provides that nothing in the section shall be construed to limit the penalties available under Conn. Gen. Stat. § 16-33 for providing false information to the DPUC under certain circumstances.

Section Three of this Act, effective October 1, 2004, repeals Conn. Gen. Stat. § 16-280g, which provides that Conn. Gen. Stat. §§ 16-280a to 16-280g, inclusive, do not apply to pipeline facilities and transportation of gas subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act.

Pub. Act 04-172: An Act Concerning Revisions to the Underground Storage Tank Account Provisions and a Stay of Certain Administrative Costs and Accrual of Interest

Section One of this Act, effective from passage, amends Conn. Gen. Stat. § 22a-449d(d) and provides, notwith-

standing the provisions of the statute, that if the Underground Storage Tank Petroleum Clean-Up Account Review Board determines that the owner of a residential underground heating oil storage tank system may not receive reimbursement payment from the contractor for remediation, the board may, if reimbursement has not been sent to the contractor, directly reimburse the owner of such system for eligible costs incurred by the owner and paid to the registered contractor for services associated with remediation of a system before July 1, 2001.

Section Two of this Act, effective from passage, amends Conn. Gen. Stat. § 22a-449l(c)(1) to refer to amendments to Conn. Gen. Stat. § 22a-449d and provides for contractor submission of eligible costs pursuant to a contract with the state or an owner of a residential underground heating oil storage tank system.

Section Three of this Act, effective from passage, amends Conn. Gen. Stat. § 22a-449l(d) to provide, notwithstanding Conn. Gen. Stat. § 22a-449l(c), that before July 1, 2004, the Underground Storage Tank Petroleum Clean-Up Account Review Board may accept applications for reimbursement from and make payments to any owner who demonstrates that the owner paid for eligible costs for services provided to the owner before July 1, 2001, and that either: (1) the registered contractor filed an application for reimbursement between December

1, 2001 and January 1, 2003, or (2) the owner, before May 1, 2003, filed a complaint with the Board or the Commissioner of Environmental Protection regarding the failure of the registered contractor to file a timely application.

Section Four of this Act, effective from passage, provides that the assessment of administrative costs and the accrual of interest on the actual cost pursuant to Conn. Gen. Stat. § 22a-451 shall be stayed for any person who owns property on which a residential dwelling is located from which lead paint residue was removed with funds from the emergency spill response account established during 2002, during the pendency of a federal or state criminal investigation or prosecution of a licensed home improvement contractor for causing such property to be contaminated with lead paint residue.

Pub. Act 04-180: An Act Concerning Use of Electric Rate Reduction Bonds for General Fund Purposes and the Gross Earnings Tax on the Sale of Natural Gas

Section One of this Act, effective from passage, amends Conn. Gen. Stat. § 16-245f, as amended by section 46 of Public Act 03-6 of the June 30, 2003 Special Session, and section 3 of Public Act 03-1 of the September 8, 2003 Special Session, to refer to amendments to Conn. Gen. Stat. §§ 16-245e, 16-245m and 16-245n and deletes a reference to the authorization of continuation of disbursements pur-

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suant to section 20 of Public Act 03-2.

Section Two of this Act, effective from passage, amends Conn. Gen. Stat. § 16-245h(a), as amended by section 5 of Public Act 03-1 of the September 8, 2003 Special Session, to refer to amendments to Conn. Gen. Stat. §§ 16-245e to 16-245k, inclusive, and provides that transition property, other than transition property in respect to disbursements to the General Fund to sustain funding of conservation and load management and renewable energy investment programs, shall be a vested contract right of the electric company or electric distribution company, notwithstanding any contrary treatment thereof for accounting, tax or other purpose. It also makes other non-substantive wording changes.

Section Three of this Act, effective from passage, amends Conn. Gen. Stat. § 16-245j(e), as amended by section 6 of Public Act 03-1 of the September 8, 2003 Special Session, to refer to amendments to Conn. Gen. Stat. §§ 16-245e to 16-245k, inclusive, and make other non-substantive wording changes.

Section Four of this Act, effective from passage, amends Conn. Gen. Stat. § 16-245k(b), as amended by section 19 of Public Act 03-62 and section 7 of Public Act 03-1 of the September 8, 2003 Special Session, to provide that the DPUC may require a financing

entity, in addition to an electric company or electric distribution company, to make filings with respect to a security interest.

Section Five of this Act, effective from passage, amends Conn. Gen. Stat. § 12-264 to refer to amendments to Conn. Gen. Stat. §§ 16-245g, 16-245h, 16-245l, 16-245m and 16-245n and provides that gross earnings shall not include any component of the competitive transition assessment collected that constitutes transition property as to which an electric distribution company has no right, title or interest pursuant to subsection (a) of section 16-245h, as amended.

Section Six of this Act, effective May 1, 2003, amends Conn. Gen. Stat. § 12-264(a) to refer to amendments to Conn. Gen. Stat. §§ 12-265 and 16-258a and provides that gross income for purposes of quarterly taxes paid by municipal utilities, companies with the principal business of manufacturing, selling or distributing gas or steam to be used for light, heat or power, and companies required to register pursuant to Conn. Gen. Stat. § 16-258a, shall not include income from the sale of natural gas to an existing combined cycle facility comprised of three gas turbines providing generation with a total capacity of 775 megawatts.

Section Seven of this Act, effective from passage, amends Conn. Gen. Stat. § 12-265(c) to refer to amendments to

Conn. Gen. Stat. § 16-1 and provides that for purposes of the statute, the sale, furnishing or distribution of natural gas as fuel in the operation of a cogeneration facility providing electricity or steam to a company engaged in a manufacturing production process shall be deemed a sale, furnishing or distribution of natural gas for use directly by such company in such process, where such cogeneration facility is located entirely on the premises owned or controlled by such company, whether or not the cogeneration facility is owned or operated by such company.

Pub. Act 04-200: An Act Concerning Water Company Lands

Section One of this Act, effective from passage, amends Conn. Gen. Stat. § 16-43(d) and (e) to reflect amendments to Conn. Gen. Stat. §§ 16-1 and 25-32d and expands the permissible use of net proceeds from the sale of water company land. It also provides that the DPUC, for rate making purposes, shall equitably allocate all of the economic benefits of any such sale between the ratepayers and the shareholders of the company. However, for any sale of land where the property is not more than ten acres and has not been taxed under the provisions of Conn. Gen. Stat. §§ 12-107c to 12-107e during the previous ten years, any such allocation shall be based on the facts of each application for sale, and the Department may allocate all of the economic benefits of any such sale to either the ratepayers or the

shareholders.

Section One of this Act further repeals the previous allocation rules and provides additional allocation rules for particular classes of land for specified uses. It also provides for the filing with the Department of certified copies of conservation easements under certain circumstances and specifies the requirements of such easements.

Section Two of this Act, effective from passage, amends Conn. Gen. Stat. § 12-217dd to expand the definition of "donation of open space land" to include the value of any interest in land and the value of any discount of the sale price in the sale of land or interest in land to a water company or for use by a nonprofit land conservation organization for use as a public water supply source. It also expands taxpayer credits for the donation of land as a public water supply source and alters the means of calculating the appropriate credit amount and extends the carry-forward period for credits from ten to fifteen years.

Section Three of this Act, effective from passage, amends Conn. Gen. Stat. § 16-43b to reflect amendments to Conn. Gen. Stat. § 16-43 and defines "educational use" as the use by any town, city or borough, whether consolidated or unconsolidated, and any school district or regional school district for the purposes of schools and related facilities.

Section Four of this Act, effective from passage, is new and provides a tax credit for the donation of land for educational use.

Section Five of this Act, effective from passage, amends Conn. Gen. Stat. § 16-50d(f) and expands it to apply to notice of the desire to acquire a water company source in addition to water company land. It also amends the priority list of right to acquisition to include acquisitions for educational use.

Pub. Act 04-222: An Act Concerning The Preservation of the Family Farm and Long Island Sound.

Sections One through Four of this Act do not concern the utility industry.

Section Five of this Act, effective from passage, amends Conn. Gen. Stat. § 25-157, as amended by section 6 of Public Act 03-123 and section 1 of Public Act 03-148, to take into account amendments to Conn. Gen. Stat. §§ 25-157a to 25-157c, inclusive, and to extend for another year (for a total of three years) the moratorium on the consideration or decision by state agencies on certain applications relating to electric power line crossings, gas pipeline crossings or telecommunications crossings of Long Island Sound. It also adds a provision by which applicants for such crossings may seek a waiver of the moratorium by submitting a petition to the chairpersons and ranking members of the joint standing committees of the

General Assembly having cognizance of matters relating to energy and the environment, the chairman of the Siting Council, the chairperson of the Public Utilities Control Authority, the Commissioner of Environmental Protection, and any other state agency head with jurisdiction over the subject of the petition. Such persons may grant a petition for a waiver by unanimous consent.

Section Six of this Act, effective July 1, 2004, amends Conn. Gen. Stat. § 29-194, as amended by section 2 of Public Act 03-236 and section 146 of Public Act 03-6 of the June 30 Special Session, to reflect amendments to Conn. Gen. Stat. §§ 26-212, 26-215 and 26-232. It also provides that the Commissioner of Agriculture and Consumer Protection shall assess the owner of any facility that requires a certificate issued pursuant to Conn. Gen. Stat. § 16-50k, as amended, or that requires approval by the Federal Energy Regulatory Commission and that crosses any grounds of Long Island Sound within the jurisdiction of the state, an annual host payment fee of forty cents per linear foot for the length of such facility within the jurisdiction of the state. The Commissioner of Agriculture and Consumer Protection must deposit seventy-five percent of the fee's proceeds into the "expand and grow Connecticut agriculture account" established pursuant to section 8 of this Act and must transfer the remaining twenty-five percent to the

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Commissioner of Environmental Protection for deposit into the Environmental Quality Fund established pursuant to Conn. Gen. Stat. § 22a-27g, as amended by this Act.

Section Seven of this Act, effective July 1, 2004, amends Conn. Gen. Stat. §§ 22a-27g(b) to reflect amendments to Conn. Gen. Stat. §§ 22a-6, 22a-134e, 22a-135, 22a-148, 22a-150, 22a-174, 22a-174a, 22a-342, 22a-363c, 22a-372, 22a-379, 22a-409, 22a-430, 22a-449, 22a-454 to 22a-454c, inclusive, 22a-361 and 26-194.

Section Eight of this Act, effective July 1, 2004, is new and establishes an "expand and grow Connecticut agriculture account," which is a separate, nonlapsing account within the General Fund for the deposit of funds received pursuant to Conn. Gen. Stat. § 26-194, as amended by this Act. The Commissioner of Agriculture and Consumer Protection is authorized to make payments from the account to fund certain programs.

Pub. Act 04-223: An Act Concerning State Shellfisheries, Standards for Shellfish Testing, Leasing of Shellfish Grounds, Shellfishing Violations, the Use of Power Dredges to Restore Shellfish Beds and the Agricultural Technology Development Advisory Board.

Section One of this Act, effective July 1, 2004, amends Conn. Gen. Stat. § 26-192a, as amended by section 146 of Public Act 03-6 of the June 30, 2003 Special Session, to require the

Department of Agriculture and Consumer Protection to take steps to ensure compliance with the National Shellfish Sanitation Program Model Ordinance, as amended from time to time.

Section Two of this Act, effective July 1, 2004, amends Conn. Gen. Stat. § 26-192b, as amended by section 146 of Public Act 03-6 of the June 30, 2003 Special Session, to provide that, notwithstanding the provisions of Conn. Gen. Stat. § 19a-29a(a), the Department of Agriculture and Consumer Protection must promulgate health standards for shellfish testing, which must incorporate by reference the provisions of the National Shellfish Sanitation Program Model Ordinance, as amended from time to time.

Section Three of this Act, effective July 1, 2004, amends Conn. Gen. Stat. § 26-192c(a), as amended by section 146 of Public Act 03-6 of the June 30, 2003 Special Session, to reflect amendments to Conn. Gen. Stat. §§ 26-192e, 26-192f and 26-192h and to require the Department of Agriculture and Consumer Protection's regulations to incorporate by reference the provisions of the National Shellfish Sanitation Program Model Ordinance, as amended from time to time.

Section Four of this Act, effective June 1, 2004, amends Conn. Gen. Stat. § 26-194, as amended by section 2 of Public Act 03-263, to reflect amend-

ments to Conn. Gen. Stat. §§ 26-212, 26-215 and 26-232 and to increase the minimum shellfish bed lease fee from two to four dollars per acre while expanding its provisions to shellfish grounds, rather than only oyster grounds. It also provides that, upon request of a lessee, the Commissioner of Agriculture may divide or consolidate shellfish grounds after determining that such division or consolidation is in the best interests of the state.

Section Five of this Act, effective from passage, is new and requires the Director of the Bureau of Aquaculture to study the effects of disease, pollution, siltation and storm damage on oyster populations and report the results to the joint standing committee of the General Assembly having cognizance of matters relating to the environment, not later than January 1, 2006.

Section Six of this Act, effective July 1, 2004, amends Conn. Gen. Stat. § 26-192f, as amended by section 146 of Public Act 03-6 of the June 30, 2003 Special Session, and expands penalties to apply to the harvesting of shellfish and provides for the revocation of licenses issued by the Commissioner of Agriculture and Consumer Protection under certain circumstances.

Section Seven of this Act, effective July 1, 2004, amends Conn. Gen. Stat. § 26-235, as amended by section 146 of

Public Act 03-6 of the June 30, 2003 Special Session, to make minor non-substantive wording changes and to provide for imprisonment and fines based on market value for the taking of clams from closed areas and for the defacement or removal of signs posted by the Department of Agriculture and Consumer Protection.

Section Eight of this Act, effective June 1, 2004, amends Conn. Gen. Stat. § 26-215 to provide that local shellfish commissions may allow limited and supervised use of a power dredge, or other contrivance of not more than three bushels, for the purpose of cultivation, enhancement or restoration of natural shellfish beds located within the commissions' jurisdiction. However, the use of a power dredge or other contrivance cannot be extended to the harvesting or removal of oysters.

Section Nine of this Act, effective from passage, repeals Conn. Gen. Stat. § 22-26h (Agricultural Technology Development. Advisory Board. Responsibility of Commissioner).

Pub. Act 04-226: An Act Concerning Telecommunications Coverage Plans

Section One of this Act, effective from passage, is new and provides that on or before October 1, 2004, and annually thereafter, the chief elected official of each municipality shall file, annually, with the Siting Council, a report containing the location, type and height of each existing telecommuni-

cations tower and each existing and proposed antenna subject to local jurisdiction.

Section Two of this Act, effective from passage, is new and requires the Siting Council, on or before January 1, 2006, to develop, maintain and update quarterly a state-wide telecommunications coverage database, which shall be made available to the public through various specified means. Upon request of a municipality, the Siting Council must supply any information in the database for preparation of a plan under section 3 of this Act, discussed below.

Section Three of this Act, effective from passage, is new and provides that on or after January 1, 2007, each municipality may develop a municipal telecommunications coverage plan to consider certain information and comply with specified requirements. At the request of a municipality, the Siting Council must provide technical assistance in preparing a plan.

Section Four of this Act, effective from passage, is new and provides that on or before September 1, 2006, the Siting Council must develop a plan for state-wide telecommunications coverage and annually shall review and revise the plan as necessary. The plan must include certain information and comply with certain specified requirements.

Section Five of this Act, effective from

passage, amends Conn. Gen. Stat. § 16-50v to provide for the financing of administering sections 2 and 4 of this Act as provided in this section of the Act. The section also reflects amendment to Conn. Gen. Stat. § 16-50i.

P.A. 04-236: An Act Implementing the Legislative Commissioners' Recommendations for Technical Revisions to the Utility Laws

Section One of this Act, effective from passage, amends Conn. Gen. Stat. § 16-50g, as amended by section 1 of Public Act 03-140, to make a non-substantive wording change.

Section Two of this Act, effective from passage, amends Conn. Gen. Stat. § 16-50j(h), as amended by section 1 of Public Act 03-263, to reflect amendments to Conn. Gen. Stat. §§ 16-50m, 16-50o and 16-50p and to delete references to commissions.

Section Three of this Act, effective from passage, amends Conn. Gen. Stat. § 16-50l(a)(2), as amended by section 4 of Public Act 03-140, to reflect amendment to Conn. Gen. Stat. § 16-50i and to make other non-substantive wording changes.

Section Four of this Act, effective December 1, 2004, amends Conn. Gen. Stat. § 16-50l(a)(1)(B), as amended by section 4 of Public Act 03-140, to reflect amendment to Conn. Gen. Stat. § 16-50i and to make other non-substantive wording changes.

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Section Five of this Act, effective December 1, 2004, amends Conn. Gen. Stat. § 16-50l(a)(1)(A), as amended by section 5 of Public Act 03-140, to reflect amendment to Conn. Gen. Stat. § 16-50i and to make other non-substantive wording changes.

Section Six of this Act, effective from passage, amends Conn. Gen. Stat. § 16-50p, as amended by section 10 of Public Act 03-140, to reflect amendment to Conn. Gen. Stat. §§ 16-50i and 22-26cc and to reflect that feasible and prudent alternatives may be provided by a party or intervenor in Siting Council proceedings.

Section Seven of this Act, effective from passage, amends Conn. Gen. Stat. § 16-50p(c)(2)(B), as amended by section 12 of Public Act 03-140, to reflect that feasible and prudent alternatives may be provided by a party or intervenor in Siting Council proceedings.

Section Eight of this Act, effective from passage, amends subsection (a) of section 15 of Public Act 03-140 to reflect amendment to Conn. Gen. Stat. § 16-50l(a) and to provide for the crediting of interest to an "account" rather than to a "fund."

Section Nine of this Act, effective from passage, amends Conn. Gen. Stat. § 16-244c(b)(2)(E), as amended by section 4 of Public Act 03-135, to reflect a non-substantive wording change.

Section Ten of this Act, effective from passage, amends Conn. Gen. Stat. § 16-245(g), as amended by section 6 of Public Act 03-135, to reflect amendment to Conn. Gen. Stat. § 16-245a and to make other non-substantive wording changes.

Section Eleven of this Act, effective from passage, amends Conn. Gen. Stat. § 16-245(l)(6), as amended by section 6 of Public Act 03-135, to reflect a non-substantive wording change.

Section Twelve of this Act, effective from passage, amends Conn. Gen. Stat. § 16-245m(d)(2), as amended by section 9 of Public Act 03-135, to make a non-substantive wording change.

Section Thirteen of this Act, effective from passage, amends Conn. Gen. Stat. § 16-245m(a), as amended by section 49 of Public Act 03-6 of the June 30, 2003 Special Session, to reflect amendments to Conn. Gen. Stat. §§ 16-245e to 16-245k, inclusive, and 16-245n.

Section Fourteen of this Act, effective from passage, amends Conn. Gen. Stat. § 16-258a(c), as amended by section 1 of Public Act 03-27, to make a non-substantive wording change.

Section Fifteen of this Act, effective from passage, amends section 17 of Public Act 03-140 to reflect amend-

ment to Conn. Gen. Stat. § 16-1 and to make a non-substantive wording change.

Section Sixteen of this Act, effective from passage, amends Conn. Gen. Stat. § 16-37u(d), as amended by section 51 of Public Act 03-132, to make a non-substantive wording change.

Section Seventeen of this Act, effective from passage, amends Conn. Gen. Stat. § 16-245l(a), as amended by section 3 of Public Act 02-64 and section 8 of Public Act 03-135, to provide that the systems benefit charge shall also be used to fund operating expenses for the Connecticut Energy Advisory Board.

Section Eighteen of this Act, effective from passage, repeals section 14 of Public Act 03-140, which amended Conn. Gen. Stat. § 16-245l(a) by providing that systems benefit charges would be used to fund the operating expenses of the Connecticut Energy Advisory Board.

Pub. Act 04-246: An Act Concerning Electric Transmission Line Siting Criteria

Section One of this Act, effective from passage and applicable to applications for a certificate of environmental compatibility and public need originally filed on or after October 1, 2003, for which the Siting Council has not rendered a decision upon the record before the effective date of this

section, amends Conn. Gen. Stat. § 16-50l(a), as amended by section 4 of Public Act 03-140, to reflect amendment to Conn. Gen. Stat. § 16-50i and to require that a Siting Council application include, a map showing residential areas, private or public schools, licensed child day care facilities, licensed youth camps and public playgrounds, and an assessment of the impact of any electromagnetic fields to be produced by the proposed transmission line.

Section Two of this Act, effective October 1, 2004 and applicable to applications for a certificate of environmental compatibility and public need originally filed on or after October 1, 2003, for which the Siting Council has not rendered a decision upon the record before the effective date of this section, amends Conn. Gen. Stat. § 16-50l(a), as amended by section 5 of Public Act 03-140 and sections 1 and 11 of this Act, by adding two provisions: (i) that on or after December 1, 2004, the filing of an application pursuant to subdivision (1) of this subsection shall initiate the request-for-proposal process, except for an application for a facility described in subdivision (5) or (6) of subsection (a) of section 16-50i; and (ii) an entity that has submitted a proposal pursuant to the request-for-proposal process may, within a certain period of time, initiate a certification proceeding by filing an application and paying a filing fee and municipal fee. This Section also requires an

assessment of electromagnetic field impacts that will be produced by the proposed line.

Section Three of this Act, effective from passage and applicable to applications for a certificate of environmental compatibility and public need originally filed on or after October 1, 2003, for which the Siting Council has not rendered a decision upon the record before the effective date of this section, amends Conn. Gen. Stat. § 16-50p(a), as amended by section 10 of Public Act 03-140, section 6 of Public Act 03-221 and section 120 of Public Act 03-278, to reflect amendments to Conn. Gen. Stat. §§ 16-50i and 22-26cc and to require the Siting Council to include electromagnetic fields in its consideration of significant adverse effects, to reflect that feasible and prudent alternatives may be provided by intervenors as well as parties and to require that overhead portions of transmission lines are consistent with the Siting Council's standards, including, but not limited to, the Siting Council's best management practices for electric and magnetic fields for electric transmission lines and are contained within an area that provides a buffer zone that protects the public health and safety, as determined by the Siting Council, taking into consideration, among other things, residential areas, private or public schools, licensed child day care facilities, licensed youth camps or public playgrounds adjacent to the proposed route of the overhead portions of the

proposed line and the level of the voltage of the overhead portions and any existing overhead transmission lines on the proposed route. At a minimum, the existing right-of-way shall serve as the buffer zone.

Section Four of this Act, effective October 1, 2004, supersedes Section Three of this Act, which amended Conn. Gen. Stat. § 16-50p(a), and is applicable to applications for a certificate of environmental compatibility and public need originally filed on or after October 1, 2003, for which the Siting Council has not rendered a decision upon the record before the effective date of this section. This Section changes the provisions governing the time by which the Council must render certain decisions. It also deletes references to "reasonable and prudent alternatives," instead adding the requirement that, in the case of an application that was heard under a consolidated hearing process with other applications that were common to a request-for-proposal, the facility proposed in the subject application represent the most appropriate alternative among such applications. In addition, this Section deletes the requirement that agreements entered into between the applicant and others be part of the record of the proceedings and available for public inspection and that the full text of any such agreement be filed with the Council prior to its decision, which requirement has been moved to Conn. Gen. Stat. § 16-50o.

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Section Five of this Act, effective from passage and applicable to applications for a certificate of environmental compatibility and public need originally filed on or after October 1, 2003, for which the Siting Council has not rendered a decision upon the record before the effective date of this section, amends Conn. Gen. Stat. § 16-50p(c), as amended by section 12 of Public Act 03-140 and section 1 of Public Act 03-248, to reflect amendments to Conn. Gen. Stat. § 16-50i and deletes certain requirements for the granting of a certificate for a facility described in subdivision (3) of subsection (a) of section 16-50i, as amended. These requirements are now found in Conn. Gen. Stat. § 16-50p(a), as amended.

Section Six of this Act, effective October 1, 2004, supersedes Section Five of this Act on that date and is applicable to applications for a certificate of environmental compatibility and public need originally filed on or after October 1, 2003, for which the Siting Council has not rendered a decision upon the record before the effective date of this section. It amends Conn. Gen. Stat. § 16-50p(c) (1) and (2), as amended by section 13 of Public Act 03-140, to reflect amendments to Conn. Gen. Stat. § 16-50i. It is essentially identical to subdivisions (c) (1) and (2) of Section Five of the Act except that it deletes references to feasible and prudent alternatives. It also provides that a public need exists if a facility is necessary for the reliability of the electric

power supply of the state.

Section Seven of this Act, effective from passage and applicable to applications for a certificate of environmental compatibility and public need originally filed on or after October 1, 2003, for which the Siting Council has not rendered a decision upon the record before the effective date of this section, amends Conn. Gen. Stat. § 16-50p, as amended by section 10 of Public Act 03-140, section 6 of Public Act 03-221 and section 120 of Public Act 03-278, by adding a new subsection (h) that provides that for a facility described in subdivision (1) of subsection (a) of Conn. Gen. Stat. § 16-50i, as amended, with a capacity of 345 kilovolts or greater, there shall be a presumption that a proposal to place the overhead portions, if any, of such facility adjacent to residential areas, private or public schools, licensed child day care facilities, licensed youth camps or public playgrounds is inconsistent with the purposes of this chapter. An applicant may rebut this presumption by demonstrating to the Council that it will be technologically infeasible to bury the facility. In determining such infeasibility, the Council shall consider the effect of burying the facility on the reliability of the electric transmission system of the state.

Section Eight of this Act, effective from passage and applicable to applications for a certificate of environmental compatibility and public need origi-

nally filed on or after October 1, 2003, for which the Siting Council has not rendered a decision upon the record before the effective date of this section, amends Conn. Gen. Stat. § 16-50o to provide that for an application for a facility described in subdivision (1) of subsection (a) of section 16-50i [an electric transmission line], as amended, the Council shall administratively notice completed and ongoing scientific and medical research on electromagnetic fields.

Section Nine of this Act, effective October 1, 2004 and applicable to applications for a certificate of environmental compatibility and public need originally filed on or after October 1, 2003, supercedes Section Eight of this Act and adds the requirement that an applicant must submit into the record the full text of the terms of any agreement, and a statement of any consideration therefore, if not contained in such agreement, entered into by the applicant and any party to the certification proceeding, or any third party, in connection with the construction or operation of the facility, which requirement was moved from Conn. Gen. Stat. § 16-50p.

Section Ten of this Act, effective from passage and applicable to applications for a certificate of environmental compatibility and public need originally filed on or after October 1, 2003, for which the Siting Council has not rendered a decision upon the record before the effective date of this

section, amends Conn. Gen. Stat. § 16-50t and provides that the Council shall adopt and may revise, as the Council deems necessary, standards for best management practices for electric and magnetic fields for electric transmission lines. Such standards shall be based on the latest completed and ongoing scientific and medical research on electromagnetic fields and shall require individual, project-specific assessments of electromagnetic fields, taking into consideration design techniques including, but not limited to, compact spacing, optimum phasing of conductors, and applicable and appropriate new field management technologies. Such standards shall not be regulations for purposes of chapter 54.

Section Eleven of this Act, effective from passage and applicable to applications for a certificate of environmental compatibility and public need originally filed on or after October 1, 2003, for which the Siting Council has not rendered a decision upon the record before the effective date of this section, is new. It provides that if legislation adopted on or after January 1, 2004 results in the reconfiguration or burial of a proposed facility described in subdivision (1) of subsection (a) of Conn. Gen. Stat. § 16-50i [an electric transmission line], all prudent costs incurred by an electric distribution company, as defined in Conn. Gen. Stat. § 16-1, as amended, associated with the reconfiguration or burial shall be deemed to be reasonable pur-

suant to Conn. Gen. Stat. §§ 16-19 and 16-19e and shall be recovered by the electric distribution company in its rates.

Section Twelve of this Act, effective from passage and applicable to applications for a certificate of environmental compatibility and public need originally filed on or after October 1, 2003, for which the Siting Council has not rendered a decision upon the record before the effective date of this section, is new. It provides that not later than January 1, 2005, the Siting Council shall, in accordance with Conn. Gen. Stat. § 11-4a, submit a report to the joint standing committee of the General Assembly having cognizance of matters relating to energy and the environment, which report shall contain the Council's most recent version of its standards for best management practices for electric and magnetic fields for electric transmission lines and a description of the methodology used in selecting such standards.

Pub. Act 04-247: An Act Concerning Minor Revisions to the Electric Utility Provisions

Section One of this Act, effective from passage, amends Conn. Gen. Stat. § 16-245l(a), as amended by section 8 of Public Act 03-135 and section 14 of Public Act 03-140, to reflect amendments to Conn. Gen. Stat. §§ 16-244d, 16-262c and 22a-198 while providing that "displaced worker protection costs" include reasonable costs

incurred before January 1, 2008 by an electric distribution company or an exempt wholesale generator, arising from the retraining of a former employee of an unaffiliated exempt wholesale generator, which employee was involuntarily dislocated on or after January 1, 2004 from the wholesale generator, except for cause.

Section Two of this Act, effective October 1, 2004, amends Conn. Gen. Stat. § 16-244c(j)(2) to provide for approval by the DPUC of long-term power purchase contracts from Class I renewable energy source projects that receive funding from the Renewable Energy Investment Fund and that are not less than one megawatt in size, at a price that is not more than the total of the comparable wholesale market price for generation plus five and one-half cents per kilowatt hour. In its approval of such contracts, the Department shall give preference to purchase contracts from those projects that would provide a financial benefit to ratepayers or would enhance the reliability of the electric transmission system of the state.

Section Three of this Act, effective July 1, 2004, amends Conn. Gen. Stat. § 16-245m(d)(2), as amended by section 9 of Public Act 03-135, to repeal and replace the requirement that the Energy Conservation Management Board provide a report to the joint standing committees of the General Assembly having cognizance of matters relating to energy and the environ-

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ment on or before January 31, 2001 and annually thereafter, with a requirement that the board provide a report on or before March 1, 2005 and March 1, 2006.

Spec. Act 04-2: An Act Extending the Borrowing Power of the Southeastern Connecticut Water Authority

This Act, effective July 1, 2004, amends section 31 of number 381 of the Special Acts of 1967, as amended by section 4 of number 206 of the Special Acts of 1969, section 1 of Special Act 73-95, Special Act 76-54, Special Act 81-38 and section 1 of Special Act 90-28 and extends the time period for the Southeastern Connecticut Water Authority to repay sums borrowed under the section from July 1, 2016 to July 1, 2045.

The Wiggin and Dana UTILITIES AND REGULATED INDUSTRIES ADVISORY is a periodic newsletter designed to inform clients and others about recent developments in the field of utilities law. Nothing in the UTILITIES AND REGULATED INDUSTRIES ADVISORY constitutes legal advice, which can only be obtained as a result of personal consultation with an attorney. The information published here is believed to be accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues. If you have any requests for topics or other suggestions, please contact Advisory editor Bethany L. Appleby 203.498.4365, bappleby@wiggin.com.

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