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UTILITIES AND REGULATED INDUSTRIES ADVISORY

Wiggin & Dana LLP
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A Summary of 2003 Public Acts Concerning Public Utilities

The 2003 legislative session was active, and resulted in significant legislation applicable to utilities and regulated industries.

The session included an update to Connecticut's 1998 electric deregulation legislation and addressed infrastructure improvements, to extend the moratorium on electric and gas transmission line construction across Long Island Sound and numerous changes to the Siting Council's governing statutes. The following is a summary of several significant 2003 public acts that will have an impact upon consumers as well as utilities and regulated industries.

P.A. 03-135 (As Amended by P.A. 03-221): An Act Concerning Revisions to the Electric Restructuring Legislation

Section 1 of the Act, effective July 1, 2003, amends Conn. Gen. Stat. § 16-1 to clarify the definitions of Class I and Class II renewable energy sources and add several technologies to

Class I renewable energy sources, including energy derived from ocean thermal power, wave or tidal power, certain run-of-river hydro power and electrical generation, including distributed generation, from a Class I renewable source.

Section 2 of the Act, effective July 1, 2003, amends Conn. Gen. Stat. § 16-1 to include definitions of "distributed generation" and "federal mandated congestion costs."

Section 3 of the Act, effective July 1, 2003, amends Conn. Gen. Stat. § 16-243h to require an electric distribution company to credit residential customers for any electricity generated from a Class I renewable energy source and to require residential customers who generate electricity from a generating unit with a name plate capacity of more than ten kilowatts to pay the competitive transition assessment and systems benefits charge.

Section 4 of the Act, effective July 1, 2003, amends Conn. Gen. Stat. § 16-244c.

- Section 4(a) contains no substantive changes and conforms language to reflect other amendments.
- Section 4(b) creates a transitional standard offer to be effective January 1, 2004 through December 31, 2006 and provides that the Department of Public Utility Control

("DPUC") will hold a contested proceeding to establish the transitional standard offer. Section 4(b) further provides that the total rate charged under the transitional standard offer must not exceed base rates in effect on December 31, 1996, excluding any rate reduction ordered on September 26, 2002. Section 4(b) also requires the inclusion of certain information in rate cases filed until December 31, 2006 and provides that electric distribution companies that did not complete a rate proceeding on or after September 1, 2002 are required to file an application for amendment of rates on or before January 1, 2004, which must include certain specified information. Section 4(b) also creates an incentive for procurement of long-term contracts for transitional standard offer service.

- Section 4(c) creates standard service on or after January 1, 2007 for customers who do not arrange for or are not receiving electric generation services from an electric supplier and do not use a demand meter or have a maximum demand of less than five hundred kilowatts and allows each electric distribution company to recover actual net costs provided the company mitigates cost. Section 4(c) further provides that an electric distribution company providing electric generation services must mitigate the variation of the price of service by procuring electric generation services according to a plan approved by the DPUC and that the DPUC, Office of Consumer Counsel and a third-party with expertise in energy procurement will oversee the development of request-for-proposals and the bidding process.

- Section 4(d) creates one or more alternative transitional standard offer options which the DPUC may direct an electric distribution company to offer, through electric supplier or suppliers, before January 1, 2007 or one or more alternative standard service options on or after January 1, 2007. The DPUC will supervise the electric distribution company's bidding process to solicit an electrical supplier to provide the alternative option or options.

- Section 4(e) provides that on or after January 1, 2007, the electric distribution company must be the supplier of last resort to customers not eligible to receive standard service. Section 4(e) does not apply to special contract customers and provides that a customer previously receiving electric generation

services from an electric supplier is not eligible for supplier of last resort service unless the customer agrees to receive the service for a period of not less than a year. Section 4(e) further provides that the DPUC must determine the price for customers reflecting the full costs of providing service on a monthly basis and that the electric distribution company recovers the actual net costs of procuring and providing electric generation services.

- Section 4(f) extends back-up service to December 31, 2006 and contains additional provisions concerning the competitive bidding process for back-up electric generation.

- Section 4(g) provides that an electric distribution company is not required to be licensed to provide standard offer, transitional standard offer, standard, supplier of last resort or back-up services.

- Section 4(h) provides that an electric distribution company is entitled to recover reasonable costs incurred for the provision of standard offer, transitional standard offer, standard service or back-up service. Section 4(h) further provides that the requirement of an operational and financial review every four years (if there has been no rate case) is deemed met until January 1, 2007.

- Section 4(i) provides that the DPUC must establish procedures for notifying customers that their electric supplier has defaulted.

- Section 4(j)(1) provides that an electric distribution company will include in its contract(s) with its wholesale supplier(s) a requirement that the supplier(s) will meet the applicable renewable portfolio standards and will pay a penalty to the distribution company if those standards are not met for the generation provided by the wholesale supplier to the distribution company. Any penalty paid by the supplier(s) to the distribution company is transferred to the Renewable Energy Investment Fund.

- Section 4(j)(2) provides that no later than July 1, 2007 each electric distribution company must support the development of Class I renewable energy sources by entering into long-term contracts to purchase the electricity from such projects. Prices cannot exceed certain amounts and costs are recoverable.

P.A. 03-263: An Act Concerning the Protection of Long Island Sound

Section 1 of the Act took effect upon passage and amends Conn. Gen. Stat. § 16-50j(h) by providing that the Connecticut Siting Council must consult with and solicit written comments from the Department of Agriculture in addition to previously listed agencies. It also provides that the agencies shall not enter any contract or agreement with any party to the proceedings or hearings that requires the agency to withhold or retract comments, refrain from participating in or withdraw from the proceedings or hearings.

Section 2 of the Act took effect upon passage and amends Conn. Gen. Stat. § 26-194 concerning the obligations of those leasing shellfish grounds from the state. The Section further requires the owner of a utility line or public use structure that impacts a leased area to pay the lessee the costs of removing or relocating any shellfish without limiting the right of the state or lessee from recovering damages caused by the installation, construction or presence of a utility line or public use structure.

Sections 3 and 4 of the Act took effect upon passage and amend Conn. Gen. Stat. §§ 26-240 and 26-266 concerning the obligations of those with municipal authorization to plant or cultivate shellfish in waters within town jurisdiction. The Section further requires the owner of a utility line or public use structure that impacts the area to

pay the costs of removing or relocating any shellfish without limiting the right of the municipal authority or designee from recovering damages caused by the installation, construction or presence of a utility line or public use structure.

Section 5 of the Act took effect upon passage and amends Conn. Gen. Stat. § 22a-361(b) by adding the requirement that a permit applicant notify the Attorney General and the Commissioner of Agriculture in addition to the other parties to whom notice is already required to be given. The Section further provides that the Commissioner of the Department of Environmental Protection may hold a public hearing on the application if, in the Commissioner's discretion, the public interest will best be served by holding a hearing. The Section also provides that a hearing must be held if the Commissioner receives a petition requesting a hearing signed by twenty-five or more persons if the application will significantly impact any shellfish area, have interstate ramifications or involve any project requiring a certificate issued pursuant to Conn. Gen. Stat. § 16-50k or approval by the Federal Energy Regulatory Commission.

Section 6 of the Act took effect upon passage and amends Conn. Gen. Stat. § 16-50p by adding a new subsection, subsection (h), which provides that a public need exists for an energy facility if the facility is necessary for the reliability of the electric power supply of the state.

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Section 16 of the Act, effective July 1, 2003, amends Conn. Gen. Stat. § 16a-3 by reducing the number of members of the Connecticut Energy Advisory Board and changing the composition of membership of the Board. The Section further revises the duties of the Board.

Sections 17, 18 and 19 of the Act are new. Sections 17 and 18 take effect July 1, 2003. Section 19 takes effect October 1, 2004. These Sections set forth certain duties of the Connecticut Energy Advisory Board.

Section 20 of Act, effective July 1, 2003, amends Conn. Gen. Stat. § 16a-4 by revising the duties of the Secretary of the Office of Policy and Management.

Section 21 of the Act, effective July 1, 2003, amends Conn. Gen. Stat. § 16a-8 concerning the duties of the Connecticut Energy Advisory Board and deletes a provision addressing certain information that may be included in its report pursuant to Conn. Gen. Stat. § 16a-7, which statute was repealed by Section 25 of this Act.

Section 22, 23 and 24 of the Act, effective July 1, 2003, amend Conn. Gen. Stat. §§ 25-204, 25-231 and 25-234 to take into account the addition of Section 17, above.

Section 25, effective July 1, 2003, and repeals Conn. Gen. Stat. §§ 16a-7 (concerning the submission of an annual report by the Connecticut Energy Advisory Board) and 16a-35m (concerning the annual preparation of a comprehensive energy plan by the Secretary of the Office of Policy and Management).

P.A. 03-163: An Act Concerning Minor Revisions to Utility Statutes

Section 1 of the Act takes effect on October 1, 2003 and amends Conn. Gen. Stat. § 16-43 to increase the value of certain property that a public service company, other than a water company, may sell, lease, assign, mortgage or otherwise dispose of without DPUC approval and clarifies the procedures for the Department of Environmental Protection to follow for transactions involving unimproved land.

Section 2 of the Act, effective upon passage, amends Conn. Gen. Stat. § 16-1(a) by revising the definition of "gas company" to exclude a person manufacturing gas through use of a biomass gasification plant under certain circumstances.

P.A. 03-175: An Act Concerning Water Service Connections, Automatic Sprinklers, and Water Service to a School Administration Building

This Act amends existing law contained in section 16-11-62 of the Regulations of Connecticut State Agencies.

Section 1 of the Act requires that, as of October 1, 2003, a water company with annual revenues of \$20,000 or more perform all replacements and repairs to service connections at the company's expense.

Section 2 of the Act requires any state agency or business that begins automatic lawn sprinkler installation on or after October 1, 2003 to equip the sprinkler with a rain sensor device that will automatically override the irrigation cycle when adequate rainfall has occurred. It also allows municipalities to require by ordinance that any automatic lawn sprinkler for which installation begins on or after October 1, 2003 to be so equipped.

Section 3 of the Act, effective upon passage, provides that municipalities with populations between 38,000 and 43,000 with wells that provide water to school administration buildings with less than 75 employees shall not be considered water companies for purposes of titles 16 and 25 of the General Statutes. This Section does not relieve the municipality from performing any testing as required by law.

P.A. 03-221: An Act Concerning Technical Revisions to the Utility Statutes and Telecommunications Towers on Agricultural Land

Sections 1 through 5 of the Act, effective July 1, 2003, amend P.A. 03-135. Those amendments are incorporated into the discussion of P.A. 03-135, above.

Section 6 of the Act takes effect October 1, 2003 and amends Conn. Gen. Stat. § 16-50p(a) to require the Connecticut Siting Council, before issuing a certificate, to find that certain facilities proposed to be installed on land under agricultural restriction not result in a material decrease of acreage and productivity of the arable land.

Section 5 of the Act, effective July 1, 2003, amends Conn. Gen. Stat. § 16-244d by adding new subsections (f) and (g). Subsection (f) provides that the DPUC, in consultation with the Office of Consumer Counsel, will develop a program for dissemination of information regarding electric suppliers and requires electric distribution companies to distribute informational summaries on electric suppliers to new and existing customers starting on January 1, 2004 and semiannually thereafter. Subsection (g) requires the DPUC, in consultation with the Office of Consumer Counsel and the Consumer Education Advisory Council, to develop a plan by October 1, 2003 to restart the education outreach program by October 1, 2004.

Section 6, effective July 1, 2003, amends Conn. Gen. Stat. § 16-245 relating to the licensing of electrical suppliers. The section outlines the application procedures and provides that license application hearings will be held only upon request and requires a person executing any contract relating to the sale of electric generation services to end use customers to be licensed. The Section further adds certain criteria for obtaining a license, including an agreement to comply with renewable portfolio standards and provides that a licensee that fails to comply with a license condition, except for the renewable portfolio standards, is subject to civil penalties by the DPUC or license suspension or revocation. It also provides for payment to be allocated to the Renewable Energy Investment Fund in the event of a licensee's failure to comply with renewable portfolio standards. Finally, the Section provides that electric aggregators are not subject to the licensing provisions and are barred from negotiating a contract for the purchase of electric generation services without a certificate of registration.

Section 7, effective January 1, 2004, amends Conn. Gen. Stat. § 16-245a by revising the percentages of total output or services of an electric supplier or electric distribution company providing bundled service that must be generated from Class I or Class II renewable energy sources. The percentage of total output or services increases annually starting January 1, 2004. The Section further provides that the renewable portfolio standards may be satisfied by purchasing energy from particular sources and that a supplier who provides electric generation services solely from a Class II source is not required to comply with the renewable portfolio standards. Finally, the Section contains additional provisions concerning the determination and deficiency in renewable energy portfolios and requires the DPUC to adopt regulations to implement the provisions of the Section.

Section 8 takes effect January 1, 2004 and amends Conn. Gen. Stat. § 16-245l by adding new items to be recovered through the systems benefits charge and amending other provisions relating to that charge.

Section 9, effective July 1, 2003, amends Conn. Gen. Stat. § 16-245m(d) to provide that each program contained in the conservation and load management plan ("CLM") be reviewed by the electric distribution company and either accepted or rejected by the Energy Conservation Management Board before submission to the DPUC. The Section further provides that cost-effective testing is to use information from real-time monitoring systems and adds "real-time monitoring systems" to the list of programs that may be included in the CLM.

Sections 10 and 11, effective July 1, 2003, amend Conn. Gen. Stat. § 16-245n to add "hydrogen production and hydrogen conversion technologies" to the definition of "renewable energy" and to provide that the annual report of the Renewable Energy Investments Advisory Committee go to the DPUC and Office of Consumer Counsel.

Section 12, effective July 1, 2003, amends Conn. Gen. Stat. § 16-245o to add electronic and other methods for obtaining consumer consent for release of customer information.

Section 13, effective July 1, 2003, amends Conn. Gen. Stat. § 16-245o(e) to add methods for an electric supplier to obtain customer consent for the provision of electric generation services and limits the three-business day cooling off period (cancellation rights) to customers with a demand of 500kw or less.

Section 14, effective July 1, 2003, amends Conn. Gen. Stat. § 16-245p to provide that an electric distribution company providing standard service or back-up generation service must provide certain information to the DPUC to assist customers in making decisions about electric suppliers, that the DPUC will maintain and make available information about each electric distribution company providing standard service or back-up electric generation service, and adds to the information maintained by the DPUC as to the type of generation and emissions from output provided to the electric distribution company for standard or back-up service.

Section 15, effective July 1, 2003, amends Conn. Gen. Stat. § 16-245s by adding a new subsection, subsection (d), to require the DPUC to adopt regulations to address abusive switching practices by suppliers.

Section 16, effective from passage, requires each municipal

electric utility to set a rate for interconnection of generation facilities into its transmission and distribution system not later than October 1, 2004.

Section 17, effective from passage, provides that from July 1, 2003 to January 1, 2008, the DPUC by a vote of four commissioners can determine in writing that: (1) safe, adequate and reasonably priced wholesale electricity is unavailable; (2) adding temporary electric generation facilities will reduce congestion costs; and (3) the reduction in congestion costs is greater than the investment costs from the temporary generation. The Section further provides that a request-for-proposal to solicit the provision of temporary electric generation facilities be developed in a contested proceeding and that the DPUC can negotiate the terms and conditions necessary to conclude a transaction in response to a request-for-proposal in the best interest of the public and ratepayers. The Section also provides that an electric distribution company cannot own, operate, lease or control any generation facility and cannot retain any interest in a facility constructed in response to the DPUC's request-for-proposal.

Section 18, effective July 1, 2003, amends Conn. Gen. Stat. § 16-244(e) to provide that an electric distribution company cannot own or operate generation assets.

Section 19, effective from passage, provides that the DPUC is required to open a docket no later than July 1, 2003 to review and adopt generation interconnection protocols.

Section 20, effective from passage, requires the DPUC to initiate a contested proceeding to address the state of retail competition by July 1, 2005.

Section 21, effective from passage, requires the DPUC to utilize what has been included in the retail adder to mitigate costs associated with the ½ mill compensation. The DPUC can use any remaining proceeds of a retail adder for the mitigation of costs associated with the difference between the total rate charged under the standard offer and the total rate charged under the transitional standard offer and then for the accelerated payment of stranded costs.

Section 22, effective from passage, amends Conn. Gen. Stat. § 16-245d to require a line item to be included in customers' bills for "federally-mandated congestion costs."

Section 23 takes effect October 1, 2003 and amends Conn. Gen. Stat. § 16-331 concerning cable television franchise renewal.

Section 24, effective July 1, 2003, repeals Conn. Gen. Stat. § 16-6c, which had allowed the DPUC to delay renewable portfolio standards.

P.A. 03-27: An Act Concerning Registration of Natural Gas Sellers

This Act, effective July 1, 2003, amends Conn. Gen. Stat. § 16-258a, which requires certain persons selling natural gas to end users to register with the DPUC, by making minor modifications to the annual registration requirements.

P.A. 03-47: An Act Concerning the Filing of Information Regarding Amortization Agreements

This Act takes effect October 1, 2003 and amends Conn. Gen. Stat. § 16-262c(b)(4) and (b)(5) by making those subsections, which govern the deduction of monies due and owing from a low income customer's delinquent account and require the submission of an annual implementation plan, applicable to electric distribution companies in addition to gas companies.

P.A. 03-72: An Act Concerning Mercury Emissions From Coal-Fired Electricity Generators

This Act requires, by July 1, 2008, each generating unit that combusts coal in an amount greater than 10% of total heat input to meet an emissions rate no greater than .6 pounds mercury per Btu or reduce mercury emissions by 90%. This Act details the way testing is to be done. It also gives the Commissioner of the Department of Environmental Protection the authority to adopt regulations imposing more stringent requirements on or after July 1, 2012.

P.A. 03-140: An Act Concerning Long-Term Planning for Energy Facilities

Section 1 of the Act, effective July 1, 2003, amends Conn. Gen. Stat. § 16-50g by adding "to promote energy security" to the statement of the chapter's purpose.

Sections 2 and 3 of the Act take effect October 1, 2004 and amend Conn. Gen. Stat. § 16-50i to revise the definition of

"facility" under Connecticut Siting Council jurisdiction to include any component of a proposal submitted pursuant to the request-for-proposal process and to add a definition for "request-for-proposal process" or "request-for-proposal."

Section 4 of the Act, effective July 1, 2003, amends Conn. Gen. Stat. § 16-50l(a) by adding a municipal participation fee requirement for initiating a certification proceeding at the Connecticut Siting Council under certain circumstances.

Section 5 of the Act takes effect December 1, 2004 and amends Conn. Gen. Stat. § 16-50l(a) by providing that a certification proceeding requires the initiation of the request-for-proposal process under certain circumstances. This Section also provides that an entity submitting a proposal pursuant to the request-for-proposal process may, within a certain period of time, initiate a certification proceeding by filing an application including certain information and paying a filing fee and a municipal participation fee.

Section 6 of the Act, effective on passage, amends Conn. Gen. Stat. § 16-50k(a) by providing that the Connecticut Siting Council shall approve by declaratory ruling the siting of temporary generation solicited by the DPUC.

Section 7 of the Act takes effect on October 1, 2004 and amends Conn. Gen. Stat. § 16-50l(e) to require a Connecticut Siting Council applicant under certain circumstances to submit to the Connecticut Energy Advisory Board the same information provided to a municipality on the same day as the consultation with the municipality.

Section 8 of the Act takes effect on October 1, 2004 and amends Conn. Gen. Stat. § 16-50m(a) concerning the Connecticut Siting Council's scheduling of public hearings on applications for certificates complying with Conn. Gen. Stat. § 16-50l.

Section 9 of the Act takes effect on October 1, 2004 and amends Conn. Gen. Stat. § 16-50o by adding a requirement that an applicant submit the terms of any agreement entered into by an applicant and any party to the certification proceeding, or any third party, in connection with the construction or operation of the facility. This Section does not require the public disclosure of proprietary information or trade secrets. This Section further provides that the results of the Connecticut Energy Advisory Board evaluation process shall become part of

the Connecticut Siting Council record, where applicable.

Section 10 of the Act amends Conn. Gen. Stat. § 16-50p(a) and applies to all applications for a certificate of environmental compatibility and public need filed after July 1, 2003, and essentially requires the Connecticut Siting Council to take into account feasible and prudent alternatives submitted by a party or intervenor.

Section 11 of the Act takes effect October 1, 2004 and amends Conn. Gen. Stat. § 16-50p(a) by taking into account the newly established request-for-proposal requirement in connection with certification proceedings, removing the references to feasible and prudent alternatives provided by a party or intervenor that were added in Section 10, above, and providing that, in the case of an application heard under a consolidated hearing process with other applications that were common to a request-for-proposal, that the facility proposed represents the most appropriate alternative among such applications based on the findings and determinations. The Section further deletes certain requirements now incorporated into Section 9, above.

Section 12 of the Act amends Conn. Gen. Stat. § 16-50p(c) and applies to all applications for a certificate of environmental compatibility and public need filed after July 1, 2003 by requiring the Connecticut Siting Council, before granting a certificate, to find a public benefit for facilities that are substantially underground and a public need for facilities that are substantially underwater. The Section further requires additional consideration of feasible and prudent alternatives submitted by a party or intervenor.

Section 13 of the Act takes effect October 1, 2004 and amends Conn. Gen. Stat. § 16-50p(c), as amended by Section 12 above, to take into consideration statutory changes taking effect October 1, 2004.

Section 14 of the Act takes effect July 1, 2003 and amends Conn. Gen. Stat. § 16-245l(a) by providing that systems benefit charges shall be used to fund the operating expenses of the Connecticut Energy Advisory Board.

Section 15 of the Act is new and applies to applications for a certificate of environmental compatibility and public need filed after July 1, 2003. The Section provides for the establishment of a "municipal participation account" within the General Fund for the deposit of municipal participation fees and governs the disbursement and administration of the monies in that account.