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Connecticut Passes Comprehensive Energy Legislation

In the final days of the 2011 legislative session, and with broad bipartisan support, the General Assembly passed Senate Bill 1243, *An Act Concerning the Establishment of the Department of Energy and Environmental Protection and Planning for Connecticut's Energy Future*. The bill effects a comprehensive overhaul in the state's energy policy, its method of energy procurement, and the way that its utilities are regulated. As of this writing, the bill is still awaiting the governor's signature, but it is expected in the coming days.

The bill merges the Department of Environmental Protection (DEP) and the Department of Public Utility Control (DPUC) into a new agency known as the Department of Energy and Environmental Protection (DEEP). While DEEP inherits DPUC's authority to regulate telecommunications, water, natural gas, and cable television, the bill overwhelmingly focuses on energy. It requires the merged department to develop a variety of studies examining the state's electric market. In addition, it provides for the creation of additional renewable energy incentives and restructures the Clean Energy Fund.

CREATION OF DEEP

The new agency has been endowed with the powers of both predecessor agencies. The bill does not make organizational changes to the former DEP but restructures the former DPUC. The current five-commissioner Public Utility Control Authority is replaced by a three-director panel known as the Public Utilities Regulatory Authority (PURA). The position of DPUC executive director is eliminated by the bill and replaced by the chairperson of PURA. It also changes the composition of the Connecticut Energy Advisory Board, removing representatives from various state agencies and reducing the membership from 15 to 9.

The bill also gives DEEP several energy-related duties that had previously been the responsibility of the Office of Policy and Management (OPM). These include the regulation of fuel oil, the regulation of plumbing fixtures in cooperation with the Department of Consumer Protection, the development of energy efficiency standards for consumer electronics and other products, and the responsibility for planning and managing energy use in state-owned and leased buildings.

REDUCTION OF RATES THROUGH STUDIES AND REGULATIONS

The bill requires DEEP to undertake a variety of studies concerning energy prices and electricity markets, including the impact of ISO New England's policies, and Market Rule 1 in particular, on the New England wholesale electric market and Connecticut ratepayers. The study must begin by August 1, 2011, and be presented to the General Assembly's Energy and Technology Committee by the end of the year. DEEP is also required to prepare a Comprehensive Energy Plan by July 1, 2012, and every three years thereafter. The plan must assess the state's energy needs and supplies, provide long-term strategies for achieving the least-cost mix of energy sources, and set forth measures that reduce the demand for energy.

The bill requires that DEEP, rather than electric companies, prepare the biennial Integrated Resources Plan (IRP). The IRP must project generation and capacity demand for the next three, five, and ten years; assess measures for preventing the growth of electricity demand; and assess how demand can be met. The bill also specifies that the IRP must include specific options for reducing the price of electricity and examine the market in other states to determine why electricity prices are lower elsewhere.

DEEP must conduct a generator evaluation process to identify generators that contribute to a reduction in rates while maintaining reliability and environmental factors. Once such generators are identified, DEEP must consider bilateral purchasing contracts with eligible generators, using a cost-of-service pricing structure or other structure that tends to benefit ratepayers.

The bill contains a variety of additional provisions intended to reduce costs to ratepayers. For instance, suppliers are required to offer a time-of-use pricing option to encourage customers to minimize energy use during peak hours and lower their total bill. The bill also establishes a new position within DEEP, the procurement manager, who shall have experience in energy markets and procuring energy on a commercial scale. The procurement manager is required each year to develop an electric generation procurement plan with the goal of reducing the price of standard service while minimizing standard service cost volatility. The bill also aims to provide consumer protection to ratepayers by establishing a retail electric supplier "code of conduct."

RENEWABLE ENERGY INCENTIVES

The Renewable Energy Fund is now officially known as the Clean Energy Fund (Fund), administered by a quasi-public entity called the Clean Energy Finance and Investment Authority (Authority). While the membership of the Authority is similar to that of the Renewable Energy Investment Board which it replaces, it is authorized to draw from a wider range of funding sources. The Authority now has the ability to receive charitable donations and loans from individuals and institutions, from federal funds, and from the proceeds it currently receives from the ratepayer assessment. The Fund will be audited annually, and entities that receive financing from it must provide the Authority with an annual financial statement for the project.

The bill directs the Authority to develop the following incentive programs:

- A three-year pilot program to support the installation of combined heat and power (CHP) systems of up to 2MW in generating capacity
- A pilot program to support the use of agricultural waste to generate heat and power in on-site anaerobic digesters
- Financial incentives for residential solar photovoltaic systems, with the aim of encouraging the construction of 30 MW of new systems by the end of 2022

- Grants to residential condominium associations and unit owners to encourage the installation of renewable energy systems

To encourage the development of renewable energy technology and to lower the price of such technology, the bill requires that electric distribution companies engage in long-term contracts with owners and operators of customer-side renewable energy resources. In particular, it requires electric distribution companies to solicit long-term contracts with owners or developers of customer-side Class I generation resources that "emit no pollutants" and are less than one thousand kilowatts in size (i.e., zero-emission technology). Similarly, electric distribution companies are required to solicit long-term contracts with owners or developers of customer-side Class I generation resources that meet specified emissions levels and are less than two megawatts in size (i.e., low-emission technology). In either case, the electric distribution companies are required to obtain approval from PURA, which "may give a preference to contracts for technologies manufactured, researched, or developed in the state."

Both types of resources generate one renewable energy credit (REC) per megawatt hour of electricity. In 2012, the companies are required to spend \$8 million in the aggregate on zero-emissions RECs and \$4 million in the aggregate on low-emission RECs. The requirements increase and then decrease in a specified fashion over the following years, depending upon whether the price of such systems has actually declined.

FOR MORE INFORMATION

Robinson & Cole LLP's Utilities Group combines in-depth legal experience in regulatory, tax, employment, corporate finance, municipal finance, environmental, land use, and trial and appellate matters. In addition, our government relations lobbyists provide assistance in the regulatory and legislative environments. For questions, please contact one of the following attorneys:

[David W. Bogan](mailto:dbogan@rc.com) [Joey Lee Miranda](mailto:jmiranda@rc.com)
(860) 275-8262 (860) 275-8227
dbogan@rc.com jmiranda@rc.com

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