May 14, 2010

Connecticut Legislature Approves Energy Bill; Approval by Governor Rell Uncertain

Recently, the Connecticut legislature sent significant energy legislation to Governor M. Jodi Rell for signature. This legislation seeks to revamp the state's regulatory structure, promote energy efficiency and renewable energy, and lower electricity rates. The Senate passed Senate Bill No. 493, *An Act Reducing Electricity Costs and Promoting Renewable Energy*, on May 4 by a 20-14 vote, and the House passed the bill on May 5, the last day of this year's regular legislative session, by a vote of 81-40.

Proponents of the bill maintain it will benefit consumers by lowering the cost of electricity and by increasing the use of renewable energy. Opponents, concerned that the bill sets rate reduction targets that may not be achievable and may lead to higher electricity costs and additional state bureaucracy, are urging Governor Rell to veto the bill.

Once the bill reaches her desk, the governor has 15 days to sign it, veto it, or take no action, in which case the bill would become law for lack of a veto. Overriding a veto requires the support of two-thirds of the House and Senate. To access the energy bill, please see?http://www.cga.ct.gov/2010/amd/s/pdf/2010SB-00493-R00SA-AMD.pdf.

Summary of Significant Provisions

The 86-page energy bill includes the following provisions:

- **Creation of the Connecticut Energy and Technology Authority (the "Authority").**?This new regulatory body will replace the Connecticut Department of Public Utility Control ("DPUC"). The Authority will have two divisions: a Division of Public Utility Control and a Division of Research, Energy and Technology. The new Authority will take over the DPUC's current responsibilities and will have additional responsibilities, including the promotion of new technologies and renewable energy sources within the state and the minimizing of the costs of electric service to state consumers.
- **Electric Distribution Companies' ("EDC") Energy Procurement.** The Authority will have greater control over the procurement of energy by EDCs than the DPUC. Every two years, the Authority will conduct a public hearing to review the performance of the EDCs with regard to standard service price for customers. By July 1, 2011, each EDC must file with the Authority for approval one or more long-term power purchase agreements ("PPA") from Class I renewable energy source projects.?Each EDC must also submit to the Authority a plan for the procurement of electric generation services and related wholesale electricity market products that will enable the EDC to manage a portfolio of contracts to reduce the average cost of standard service while limiting standard service cost volatility.
- **Efforts to Lower Electric Rates.** Currently, EDCs are required to review the state's energy and capacity resource assessment and develop a comprehensive plan for the procurement of energy resources to meet the projected requirements of their customers. This bill directs EDCs, within that review in 2010, to indicate options to reduce the price of electricity by 15 percent by July 1, 2012. Those options may include the procurement of new sources of generation. The plan must also discuss whether the private wholesale market can supply such additional sources, or whether state financial assistance, long-term purchasing of electricity contracts, or other inventions are needed to achieve the goal of a 15 percent reduction in rates.
- **Initiate a Bilateral Purchasing Contract.** On or before September 1, 2010, the Authority must initiate a request for proposals to award one bilateral purchasing contract for electricity, for more than five years and up to 15 years, to an

existing generator to reduce electricity rates by pricing electricity on a cost-of-service basis. The bilateral purchasing contract must also provide electricity at lower rates for Connecticut consumers or for use in combination with other initiatives to lower or stabilize electric rates.

- **Promote Renewable Energy.** Before the end of this year, each EDC must propose a 10-year solar solicitation plan that will include a timetable and methodology for soliciting proposals for long-term solar renewable energy credits or energy contracts from in-state generators. The Authority will also implement a residential solar investment program providing for a minimum of 30 MW of new residential solar PV installations in the state before the end of 2021. Each EDC is directed to solicit and file with the Authority for approval long-term PPAs with owners or developers of customer-sited PV generation projects located in the state.

  By July 1, 2011, each EDC must file with the Authority for approval a tariff for production-based payments to owners or operators of Class I solar renewable energy source projects located in this state that are 1 MW or greater in size and connected directly to the distribution system of an EDC. Also by July 1, 2011, the Authority must complete a comprehensive solar feasibility survey of facilities owned or operated by the state with a load of 50 kWs or more.

- **Limit on Solar Cost Recovery.** The bill will place the following limits on the aggregate net annual cost recovered from electric ratepayers for the new solar incentives implemented by the bill:
  - January 1, 2011 to June 30, 2013:?the aggregate net annual cost recovered may not exceed ? of 1 percent of the total retail electricity sales revenues of each EDC;
  - July 1, 2013 to June 30, 2015: the aggregate net annual cost recovered may not exceed ? of 1 percent of the total retail electricity sales revenues of each EDC; and
  - On and after July 1, 2015:?the aggregate net annual cost recovered may not exceed 1 percent of the total retail electricity sales revenues of each EDC.

- **Approve Proposed Commercial Transmission Lines.** The Authority must review any proposed commercial transmission line project to determine whether "electricity from that transmission line" will be obtained "at a rate that will lower electricity rates for Connecticut consumers." This applies either to proposed projects where a Connecticut EDC may have a financial interest or to projects that may be constructed in whole or in part in Connecticut.

- **Review Impact of ISO-NE on Markets and Ratepayers.** ISO-NE is New England's regional transmission organization, responsible for operating the New England bulk power system and administering New England's organized wholesale electricity market. Under the energy bill, on or before August 1, 2010, the Authority will initiate a proceeding to identify the impact of ISO-NE and of Market Rule 1 on Connecticut ratepayers and the New England and state wholesale electric power markets. This review will include (1) a review of the accountability of ISO-NE to Connecticut ratepayers and policymakers; (2) consideration of strategies and mechanisms that may mitigate any adverse impacts of Market Rule 1 on wholesale generation prices and that might reduce Connecticut's reliance on wholesale power markets; and (3) consideration of the costs and benefits associated with participating in ISO-NE and any potential benefits associated with joining another ISO or operating outside the existing ISOs.

- **Other Significant Provisions.** The bill adopts California's appliance efficiency standards for consumer electronics, including the establishment of Energy Star standards for televisions and other consumer electronic products. The bill also establishes a property-assessed clean energy program to finance efficiency and renewable energy improvements.

  Under the bill, the newly formed Authority is charged with developing coordinated programs to create a self-sustaining market for solar thermal systems for electricity, natural gas, and fuel oil customers. The Authority is also required to establish an energy saving infrastructure pilot program with financial incentives for the installation of CHP systems, energy efficient heating oil burners, boilers and furnaces, and natural gas boilers and furnaces by eligible entities.

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If this bill becomes law, the changes created could impact your company. For further information about the bill, including its status, please contact any of the attorneys listed in the Energy and Utility Law Practice.