



House of Representatives

General Assembly

File No. 326

February Session, 2008

Substitute House Bill No. 5817

House of Representatives, March 31, 2008

The Committee on Energy and Technology reported through REP. FONTANA, S. of the 87th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING RESOURCE RECOVERY FACILITIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) On or after December 31,
2 2008, no owner or operator of a resources recovery facility, as defined
3 in section 22a-207 of the general statutes, or a facility for disposal or
4 recycling of ash residue from a resources recovery facility, shall charge
5 a tipping fee or other fee for disposal of such municipal solid waste or
6 ash residue at such facility in excess of the rate approved by the
7 Department of Public Utility Control. The provisions of this subsection
8 shall not apply: (1) To any owner or operator of a resources recovery
9 facility or facility for the disposal or recycling of ash residue from a
10 resources recovery facility that is (A) a quasi-public authority, political
11 subdivision of the state, operating committee established pursuant to
12 subsection (c) of section 22a-221 of the general statutes or regional or
13 municipal authority, or (B) not an entity in subparagraph (A) but that,
14 on the effective date of this section, has a written contract with an

15 operating committee for disposing municipal solid waste or ash
16 residue at such facility and the operating committee establishes the
17 tipping fee for disposal of solid waste or ash, provided this exception
18 shall only apply during the term of such contract, any extension of
19 such contract or a new written contract that does not expressly require
20 a rate approved by the Department of Public Utility control, or (2) to
21 any tipping fee or other fee for disposal of municipal solid waste or ash
22 residue at such a facility set in accordance with the terms, and
23 applicable during the term or any extension, of a written contract with
24 a regional resources recovery authority for disposing municipal solid
25 waste or ash residue in existence on the effective date of this section or
26 any amendment thereof.

27 (b) Any rate approved by the Department of Public Utility Control
28 pursuant to this section shall be just and reasonable and consistent
29 with the following principles: (1) That the level and structure of rates
30 be sufficient, but no more than sufficient, to allow the owner or
31 operator to cover its operating and capital costs, to attract needed
32 capital and to maintain its financial integrity, and yet provide
33 appropriate protection to the relevant public interests, both existing
34 and foreseeable; and (2) that the level and structure of rates charged
35 customers shall reflect prudent and efficient management of the
36 facility operation.

37 (c) Notwithstanding the provisions of subsections (a) and (b) of this
38 section, the department may approve an interim increase in any rate if
39 the department determines that such increase is necessary to prevent
40 substantial and material deterioration of the financial condition of the
41 owner or operator or to prevent substantial deterioration of the
42 adequacy and reliability of the facility's operations.

43 Sec. 2. Section 16-1 of the 2008 supplement to the general statutes is
44 amended by adding subsection (c) as follows (*Effective from passage*):

45 (NEW) (c) Notwithstanding any provision of the general statutes to
46 the contrary, as used in the general statutes, the terms "utility", "public
47 utility" and "public service company" shall include an owner or

48 operator of a resources recovery facility, as defined in section 22a-207,
49 or a facility for disposal or recycling of ash residue from a resources
50 recovery facility unless such owner or operator is a quasi-public
51 authority or regional or municipal authority.

52 Sec. 3. (NEW) (*Effective from passage*) For the purposes of sections 3
53 to 8, inclusive, of this act, an "eligible facility" means any resources
54 recovery facility, as defined in section 22a-260 of the general statutes,
55 for which a facility's annual revenues from electricity sales will be
56 credited to reducing waste disposal fees paid by the participating
57 municipalities; and a "participating municipality" means a
58 municipality of this state that has a contract obligating it to dispose of
59 some or all of the solid waste generated within the municipality at the
60 eligible facility.

61 Sec. 4. (NEW) (*Effective from passage*) The seller of electrical output
62 from an eligible facility shall be entitled to a long-term power purchase
63 agreement, as described in sections 3 to 8, inclusive, of this act,
64 pursuant to which the electrical output from such eligible facility shall
65 be purchased by any political subdivision of the state serving as
66 supplier to governmental facilities for designated low-income or senior
67 citizen customers. Such agreement shall have a term of not less than
68 ten and not more than fifteen years and a price that is negotiated at
69 arm's length between the seller and buyer of the electrical output. The
70 terms and conditions of such agreement shall be filed with the
71 Department of Public Utility Control.

72 Sec. 5. (NEW) (*Effective from passage*) An eligible purchaser of the
73 electrical output of an eligible facility, including a political subdivision
74 of the state, as set forth in section 3 of this act, may negotiate in good
75 faith with a seller of electrical output from an eligible facility to arrive
76 at a power purchase agreement that meets the criteria of said section 3
77 where the parties shall submit the power purchase agreement to the
78 department as recoverable cost from retail customers to whom the
79 electrical output is sold.

80 Sec. 6. (NEW) (*Effective from passage*) The Department of Public

81 Utility Control shall approve a power purchase agreement between an
82 eligible facility and a political subdivision of the state if the department
83 concludes, after conducting a contested case proceeding, that the
84 power purchase agreement is likely to deliver net benefits to electricity
85 consumers over the full term of the agreement. In making its
86 determination, the department shall take into account each of the
87 following factors and benefits: The value of the eligible facility's
88 capacity, energy and other ancillary electrical products compared to
89 the market value of comparable offerings; the benefits associated with
90 generation that consumes a renewable fuel; the benefits of fuel
91 diversity; the benefits of consuming a fuel that is indigenous to the
92 state and therefore less vulnerable to supply interruptions than
93 nonindigenous fuels; the presence of contract provisions that provide
94 an incentive for the resources recovery facility to operate efficiently;
95 the price stability conferred by securing long-term capacity and energy
96 pursuant to contract rather than allowing the eligible facility to
97 participate in wholesale markets; the use of tax-exempt financing or
98 prepayments as applicable; the benefits of supporting generation
99 facilities that are located close to load centers; the long-term public and
100 environmental benefits of such generation facilities, including the
101 reduction of the amount of waste that is disposed of in landfills and
102 securing a long-term option for disposing of municipal solid waste
103 relatively close to its source.

104 Sec. 7. (NEW) (*Effective from passage*) The Department of Public
105 Utility Control shall render a final decision concerning any proposed
106 power purchase agreement with regard to a political subdivision of the
107 state submitted pursuant to section 5 of this act within one hundred
108 fifty days after its submission or the proposed agreement shall be
109 deemed approved. The department's decision shall either approve or
110 disapprove the proposed agreement. A political subdivision of the
111 state shall execute an approved power purchase agreement within
112 thirty days after approval.

113 Sec. 8. (NEW) (*Effective from passage*) (a) Nothing in sections 3 to 8,
114 inclusive, of this act shall be construed to deprive the Federal Energy

115 Regulatory Commission of any jurisdiction pursuant to applicable
116 provisions of federal law.

117 (b) In order to reduce the costs of electricity for specially designated
118 senior citizen and low-income residential customers or governmental
119 entities, establish a leadership role for the state with respect to
120 managing and controlling costs and expand the use of conservation
121 and load management and energy efficiency measures for the state and
122 the use of electricity consumed by specially designated senior citizen
123 and low-income residential customers or governmental entities,
124 specially designated residential customers or governmental entities
125 shall have the option to participate in an integrated energy purchasing
126 and efficiency pilot program. The integrated energy purchasing and
127 efficiency program manager shall be the Connecticut Municipal
128 Electric Energy Cooperative, or a wholly owned subsidiary shall be
129 eligible to serve as the integrated energy purchasing and efficiency
130 program manager, with the oversight of the Department of Public
131 Utility Control and the Energy Conservation Management Board, as
132 provided in this section, which shall provide for the consolidated
133 purchasing of electricity, the coordinated deployment of innovative
134 conservation and load management and energy efficiencies to achieve
135 the lowest reasonable total costs of energy for specially designated
136 senior citizens and low-income residential customers or governmental
137 entities.

138 (c) For purposes of this section:

139 (1) "Integrated energy purchasing and efficiency pilot program"
140 means, for an initial period of five years, the provision of electric
141 generation services to only specially designated residential customers
142 or governmental entities in the state using the transmission or
143 distribution facilities of an electric distribution company, regardless of
144 whether or not such person takes title to such generation services, but
145 does not include: (A) A municipal electric utility, established under
146 chapter 101 of the general statutes, other than a participating
147 municipal electric utility; (B) a municipal electric energy cooperative,

148 established under chapter 101a of the general statutes, providing
149 electric generation services to customers that are not specially
150 designated residential customers or governmental entities; (C) an
151 electric cooperative established under chapter 597 of the general
152 statutes; (D) any other electric utility owned, leased, maintained,
153 operated, managed or controlled by any unit of local government
154 under any general statute or special act; or (E) an electric distribution
155 company in its provision of electric generation services in accordance
156 with subsection (b) of this section or, prior to January 1, 2004,
157 subsection (c) of section 16-244c of the 2008 supplement to the general
158 statutes; and

159 (2) "Specially designated senior citizens and low-income residential
160 customers" means customers who are (A) (i) senior citizens, sixty-two
161 years of age or older, or (ii) physically disabled or blind, as defined in
162 section 1-1f of the general statutes, and (B) recipients of benefits under
163 the Connecticut Energy Assistance Program or the Contingency
164 Heating Assistance Program.

165 (d) To fulfill the purposes of this section, the department may
166 perform all acts necessary for the negotiation, execution and
167 administration of a contract with the Connecticut Municipal Electric
168 Energy Cooperative under the terms as set forth in subsection (e) of
169 this section and which are reasonably incidental to and further the
170 needs of the state and the purposes of this section. The integrated
171 energy purchasing and efficiency pilot program manager shall
172 determine, in consultation with the Energy Conservation Management
173 Board, the demand reduction and enhanced reliability initiative
174 opportunities to reduce federally mandated congestion costs by
175 maximizing the value of existing and new load curtailment capability
176 in combination or coordination with existing or new distributed
177 resources owned or operated by any state agency, and to determine
178 feasible options to establish the most desirable mechanism to monitor
179 electric load levels and hourly energy market prices and initiate
180 curtailment requests to achieve the objectives contemplated pursuant
181 to this section.

182 (e) The contract with the integrated energy purchasing and
183 efficiency pilot program manager entered into pursuant to subsection
184 (d) of this section shall allow for the consolidation of accounts for the
185 purchase of electric generation services, and the deployment of
186 innovative and advanced metering at governmental entities for the
187 optimal utilization of state facility electric services in combination or
188 coordination with existing or new distributed resources owned or
189 operated by any state agency.

190 (f) The costs associated with complying with the provisions of this
191 section shall be recoverable through federally mandated congestion
192 charges from electric distribution companies.

193 (g) The department shall authorize the total number of qualified
194 participants for the integrated energy purchasing and efficiency pilot
195 program and shall provide financial assurance for bad debt and
196 nonpayment of bills of the specially designated senior citizens and
197 low-income residential customers.

198 (h) A municipal electric energy cooperative, organized under
199 chapter 101a of the general statutes or a legal entity comprising a
200 project, as defined in subdivision (12) of section 7-233b of the general
201 statutes, owned or controlled by said municipal electric energy
202 cooperative is authorized to act as the integrated energy purchasing
203 and efficiency program manager, pursuant to the provisions of this
204 section, and perform the obligations authorized by this section and
205 shall provide said municipal electric energy cooperative the authority
206 to act consistent and not in conflict with the provisions of chapter 101a
207 of the general statutes.

208 (i) The integrated energy purchasing and efficiency program
209 manager may enter into long-term electric generation services
210 contracts with an eligible facility and utilize tax exempt financing
211 supported by the state in an amount not to exceed one hundred
212 million dollars to finance the prepayment of energy services or other
213 properly authorized uses to achieve the lowest reasonable total cost of
214 energy for specially designated senior citizens and low-income

215 residential customers participating in the integrated energy purchasing
216 and efficiency program.

217 (j) The state shall identify distributed generation facilities in the
218 aggregate of twenty megawatts where an individual unit is less than
219 one megawatt where such distributed generation facilities are not
220 utilized in any ISO-NE programs, where such generation may be made
221 available to the integrated energy purchasing and efficiency pilot
222 program manager to utilize in ISO-NE programs, as determined
223 appropriate by the program manager with oversight at the
224 Department of Public Utility Control, provided such distributed
225 generation complies with all required environmental permitting and
226 ISO-NE metering and communication requirements.

227 (k) On January 1, 2010, and annually thereafter, the integrated
228 energy purchasing and efficiency pilot program manager shall report
229 to the joint standing committee of the General Assembly having
230 cognizance of matters relating to energy on the status of the program
231 and any recommendations.

232 Sec. 9. Subdivision (30) of subsection (a) of section 16-1 of the 2008
233 supplement to the general statutes is repealed and the following is
234 substituted in lieu thereof (*Effective from passage*):

235 (30) "Electric supplier" means any person, including an electric
236 aggregator or participating municipal electric utility that is licensed by
237 the Department of Public Utility Control in accordance with section
238 16-245, that provides electric generation services to end use customers
239 in the state using the transmission or distribution facilities of an
240 electric distribution company, regardless of whether or not such
241 person takes title to such generation services, but does not include: (A)
242 A municipal electric utility established under chapter 101, other than a
243 participating municipal electric utility; (B) a municipal electric energy
244 cooperative established under chapter 101a providing electric
245 generation services to customers that are not specially designated
246 residential customers or governmental entities; (C) an electric
247 cooperative established under chapter 597; (D) any other electric utility

248 owned, leased, maintained, operated, managed or controlled by any
 249 unit of local government under any general statute or special act; or (E)
 250 an electric distribution company in its provision of electric generation
 251 services in accordance with subsection (a) or, prior to January 1, 2004,
 252 subsection (c) of section 16-244c of the 2008 supplement to the general
 253 statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	16-1
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>from passage</i>	New section
Sec. 6	<i>from passage</i>	New section
Sec. 7	<i>from passage</i>	New section
Sec. 8	<i>from passage</i>	New section
Sec. 9	<i>from passage</i>	16-1(a)(30)

Statement of Legislative Commissioners:

In section 6, "it" was changed to "the department" and "these facilities" was changed to "such generation facilities" for clarity. In section 7, the reference to "sections 3 to 8, inclusive" was changed to "section 5" for accuracy.

ET *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Public Utility Control, Dept.	CC&PUCF - Cost	511,000	526,330

Note: CC&PUCF=Consumer Counsel and Public Utility Control Fund

Municipal Impact: None

Explanation

This bill subjects certain resource recovery facilities to the Department of Public Utility Control (DPUC) regulations. DPUC currently does not regulate this type of utility and would have to establish a unit with subject matter expertise in this area. This would involve hiring a supervising technical analyst (\$81,000), a lead rate specialist (\$80,000), a utilities finance specialist (\$75,000), and a utilities examiner (\$72,000).¹

This bill also establishes an integrated energy purchasing and efficiency program which will be managed by the Connecticut Municipal Electric Energy Cooperative. This program will service a specified population group, including governmental entities. The costs of the program will be recovered through federally mandated congestion charges. There could be a potential savings associated with this bill since the state and municipalities are ratepayers, but that can not be determined at this time.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

¹ The total fiscal impact of \$511,000 for FY 09 includes salary, fringe benefits, and other expenses associate with a new hire.

OLR Bill Analysis

sHB 5817

AN ACT CONCERNING RESOURCE RECOVERY FACILITIES.

SUMMARY:

This bill subjects certain resources recovery facilities to Department of Public Utility Control (DPUC) regulation, including regulation of their tipping rates, and specifies the principles DPUC must follow in regulating these facilities.

The bill authorizes the power produced at resources recovery facilities that meet certain criteria to be sold under long-term agreements to a political subdivision of the state that supplies power to certain governmental facilities. DPUC must approve any power purchase agreement between an eligible facility and the political subdivision, using criteria the bill specifies.

The bill establishes an “integrated energy purchasing and efficiency pilot program” to serve (1) governmental entities and (2) people who receive energy assistance and who are elderly or disabled. The pilot program must be managed by the Connecticut Municipal Electric Energy Cooperative (CMEEC) or certain related parties. The program manager may use up to \$100 million of tax-exempt financing “supported by the state” for the program. DPUC must oversee the program, which must also provide for the consolidated purchasing of electricity, the coordinated deployment of innovative conservation and load management, and energy efficiencies to achieve the lowest reasonable total costs of energy for the participating customers. The program must initially run for five years. The bill allows the program’s costs to be recovered through federally mandated congestion charges. These are charges on electric company customer bills that are

associated with costs attributable to congestion on the electric transmission system. Under the bill, if CMEEC serves end use customers, other than those participating in the program, using electric company transmission and distribution facilities, it must be licensed by DPUC as an electric supplier.

The bill states that its provisions regarding the agreements and the pilot program may not be construed to deprive the Federal Energy Regulatory Commission of its jurisdiction under federal law (see COMMENT). Under federal law, the commission has exclusive jurisdiction over wholesale electric markets such as the one serving New England where resource recovery facilities can sell the power they produce.

EFFECTIVE DATE: Upon passage

DPUC REGULATION OF RESOURCES RECOVERY FACILITIES

Regulation of Tipping Fees

The bill prohibits, starting December 31, 2008, the owner or operator of a resources recovery facility or a facility for disposal or recycling of ash residue from a resources recovery facility from charging a tipping or other fee for disposal of municipal solid waste or ash residue at the facility that exceeds the rate approved by the DPUC. However, a facility is not subject to DPUC rate regulation if it is (1) owned or operated by a quasi-public authority, political subdivision of the state, or a regional or municipal authority, or (2) owned or operated by an entity that has a written contract, as of the bill's effective date, with an operating committee for disposing of municipal solid waste or ash residue at the facility and the operating committee establishes the tipping fee. The latter exception applies only during the term of the contract or its extension, so long as the contract does not expressly require a rate approved by the DPUC. These provisions also do not apply to any tipping fee or other fee for disposing of municipal solid waste or ash residue at such a facility set in accordance with the terms, and applicable during the term or any extension, of a written contract with a regional resources recovery authority for disposing of

municipal solid waste or ash residue in existence on the bill's effective date, or any amendment to such a contract.

The rates approved by DPUC must be just and reasonable. They also must be consistent with the following principles: (1) the level and structure of rates must be just sufficient to allow the owner or operator to cover its operating and capital costs, attract needed capital and maintain its financial integrity, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable; and (2) the level and structure of rates charged customers must reflect prudent and efficient management of the facility operation. These are similar to the principles that DPUC must follow when regulating companies under its jurisdiction (CGS § 16-19e).

The bill has conflicting provisions as to whether a facility owned or operated by an operating committee is subject to DPUC rate regulation (see COMMENT).

The bill allows DPUC to approve an interim increase in any rate if it determines that the increase is needed to prevent substantial and material deterioration of the owner's operator's financial condition, or to prevent substantial deterioration of the adequacy and reliability of the facility's operations.

Other Regulation

Under the bill, the owner or operator of a resources recovery or ash facility is "public service company" (utility) subject to DPUC regulation unless it is a quasi-public authority or regional or municipal authority.

By law, public service companies are subject to DPUC:

1. regulation of their rates, services, accounting practices, safety, and the conduct of operations;
2. audits of their relationships with their holding companies and subsidiaries; and

3. regulation of transfers of their assets and expansions of their facilities.

They must comply with DPUC orders and are subject to civil penalties if they do not. They are assessed for the costs of DPUC and the Office of Consumer Counsel. By law, DPUC can retain consultants when it participates in various federal proceedings, and the affected public service company is assessed for the costs.

LONG-TERM POWER PURCHASE AGREEMENTS

The bill allows the seller of electrical output from eligible resources recovery facilities to enter into a long-term power purchase agreement with a political subdivision of the state for specified purposes. A facility is eligible if its annual revenues from electricity sales will be credited to reducing waste disposal fees paid by municipalities that have contracts obligating them to dispose of some or all of their waste at the facility. To be an eligible purchaser, the political subdivision must serve as a supplier to governmental facilities for designated low-income or senior citizen customers. The bill does not define these facilities but, it appears that they could be housing authorities and senior centers.

The agreement must run for 10 to 15 years and be at a price negotiated at arm's length between the buyer and seller. The bill specifically allows an eligible purchaser of the power from an eligible facility to negotiate in good faith with the seller to arrive at an agreement that meets these criteria. The parties must submit the agreement to DPUC in order for its costs to be recoverable from retail customers to whom the power is sold.

DPUC must approve an agreement between an eligible facility and a political subdivision if it concludes, after conducting a contested case, that the agreement is likely to deliver net benefits to electricity consumers over the full term of the agreement. In making its determination, DPUC must expressly take into account each of the following factors and benefits:

1. the value of the eligible facility's capacity, energy, and other ancillary electrical products compared to the market value of comparable offerings;
2. the benefits associated with generation that consumes a renewable fuel and of fuel diversity;
3. the benefits of consuming a fuel that is indigenous to the state and therefore less vulnerable to supply interruptions than nonindigenous fuels;
4. the presence of contract provisions that provide an incentive for the resource recovery facility to operate efficiently;
5. the price stability conferred by securing long-term capacity and energy pursuant to contract rather than allowing the eligible facility to participate in wholesale markets;
6. the use of tax-exempt financing or prepayments as applicable;
7. the benefits of supporting generation facilities that are located close to load centers (demand); and
8. the long-term public and environmental benefits of these facilities, including the reduction of the amount of waste that is disposed of in landfills and securing a long-term option for disposing of municipal solid waste relatively close to its source.

DPUC must render a final decision approving or disapproving a proposed agreement with an electric company within 150 days of its submission. If it does not, the proposed agreement is considered to be approved. A political subdivision must execute the agreement approved by DPUC within 30 days of its approval.

It is unclear how this provision relates to the pilot program described below. The bill specifies that the manager of the pilot program can enter into long-term contracts with the same facilities covered by this agreement, with the goal of serving the customers

eligible for the pilot program. But the agreement provisions speak about serving customers who are political subdivisions that supply governmental facilities for low-income or senior citizens. The pilot program instead refers to customers who are both low-income (i.e., receiving energy assistance) and either elderly or disabled. In addition, the agreement must be with a political subdivision of the state. While CMEEC, the manager of the pilot program, is a “public body” (CGS § 7-233), it does not appear to be a political subdivision of the state.

PILOT PROGRAM

Eligible Customers

The program must provide electric generation services to governmental entities and eligible residential customers in the state. The eligible customers are those who (1) receive benefits under the Connecticut Energy Assistance Program or the Contingency Heating Assistance Program and (2) are 62 or older or blind or physically disabled. The program must use the transmission or distribution facilities of electric companies. It appears that the power cannot be sold to (1) various types of municipal utilities, unless they are participating in the competitive market and (2) CMEEC, except with regard to customers participating in the program. The bill also appears to exclude electric companies as potential customers, although this provision is unclear.

DPUC must authorize the total number or qualified participants for the program and provide financial assurance for bad debt and nonpayment of bills of the participating customers. The programs costs are recoverable through the federally mandated congestion charge on electric company bills.

DPUC Powers and Responsibilities

The bill allows DPUC to perform all acts needed to negotiate, execute, and administer a contract with CMEEC. The contract must allow for the consolidation of accounts for the purchase of electric generation services, and the deployment of innovative and advanced metering at governmental entities. The latter must allow for the

optimal utilization of state facility electric services in combination or coordination with existing or new distributed resources (small-scale generation facilities) owned or operated by any state agency. The bill grants DPUC the powers that are reasonably incidental to and further the needs of the state and the purposes of the program.

Under the bill, DPUC must cooperate with the pilot program manager to determine the demand reduction and enhanced reliability initiative opportunities to reduce federally mandated congestion costs. DPUC must do this by maximizing the value of existing and new measures to enable the curtailment of electric demand in combination or coordination with existing or new distributed resources owned or operated by state agencies. DPUC also must determine feasible options to establish the most desirable mechanism to monitor electric load levels and hourly energy market prices and initiate curtailment requests to achieve the program's objectives.

Program Manager's Powers and Responsibilities

The bill has inconsistent provisions as to who will manage the program. Section 8(b) states that the manager will be CMEEC or one of its wholly owned subsidiaries. Section 8(h) allows the manager to be CMEEC or a generation project that is owned or controlled by CMEEC. Finally, section 8(d) specifies that the services contract is with CMEEC.

The bill allows the program manager to enter into long-term electric generation services contracts with an eligible resources recovery facility, as defined above. The program manager may utilize up to \$100 million of tax-exempt financing "supported by the state" (the bill does not define this term) to finance the prepayment of energy services or other properly authorized uses to achieve the lowest reasonable total cost of energy for senior citizens and low-income residential customers participating in the pilot program. It appears this funding cannot be used to finance the prepayment of energy services for participating governmental entities.

The bill requires the program manager, on January 1, 2010, and

annually thereafter, to report to Energy and Technology Committee on the status of the program and any recommendations.

Other Provisions

The bill requires the state to identify 20 megawatts of distributed generation facilities (small-scale power plants) consisting of individual units of less than one megawatt that (1) comply with all required environmental permitting, (2) are not being used in any program operated by the entity that runs the regional wholesale market, (3) meet that entity's metering and communication requirements, and (4) may be made available to the program manager to use in these programs, as determined appropriate by the program manager with oversight at DPUC and that entity. The bill does not assign these duties to a specific agency.

COMMENT***Possible Conflict with Federal Law***

Section 2 of the bill subjects resources recovery facilities (other than those it excludes) to DPUC regulation of the rates they charge for the electricity they produce. This is because the bill defines the owner or operator of these facilities as a public service company. Under CGS § 16-19, the rates charged by public service companies are subject to DPUC regulation. However, resources recovery facilities have historically sold electricity on the wholesale market, which under the Federal Power Act is subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission. The bill specifies that sections 3 through 8, cannot be construed to deprive the commission of its jurisdiction under federal law, but this provision does not refer to sections 1 and 2.

Conflicting Provisions on Scope of Regulation

Section 1 of the bill specifies that a facility that is owned or operated by an operating committee established under CGS § 22a-221(c) or an entity that has a written contract with such a committee is not subject to DPUC regulation of its tipping fees. (The Bristol resources recovery facility is covered by this provision.) However, section 2 of the bill

expands the definition of public service companies to include the owner or operator of a resources recovery facility, and does not exempt facilities that are owned or operated by such committees from this definition. As noted above, CGS § 16-19 subjects public service companies to DPUC rate regulation.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute

Yea 10 Nay 8 (03/11/2008)