General Assembly

Proposed Substitute Bill No. 368

February Session, 2008

LCO No. **3240**

AN ACT CONCERNING THERMAL ENERGY TRANSPORTATION.

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

Section 1. Section 16-1 of the 2008 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Terms used in this title and in chapters 244, 244a, 244b, 245, 245a and 245b* shall be construed as follows, unless another meaning is expressed or is clearly apparent from the language or context:

(1) "Authority" means the Public Utilities Control Authority and "department" means the Department of Public Utility Control;

(2) "Commissioner" means a member of said authority;

(3) "Commissioner of Transportation" means the Commissioner of Transportation appointed under section 13b-3;

12 (4) "Public service company" includes electric, electric distribution,
13 gas, telephone, telegraph, pipeline, sewage, water, steam
14 transportation and community antenna television companies and
15 holders of a certificate of cable franchise authority, owning, leasing,
16 maintaining, operating, managing or controlling plants or parts of
17 plants or equipment, and all express companies having special
18 privileges on railroads within this state, but shall not include telegraph
19 company functions concerning intrastate money order service, towns,
20 cities, boroughs, any municipal corporation or department thereof,
21 whether separately incorporated or not, a private power producer, as
22 defined in section 16-243b, or an exempt wholesale generator, as
23 defined in 15 USC 79z-5a;

24 (5) "Plant" includes all real estate, buildings, tracks, pipes, mains,
25 poles, wires and other fixed or stationary construction and equipment,
26 wherever located, used in the conduct of the business of the company;

27 (6) "Railroad company" includes every person owning, leasing,
28 maintaining, operating, managing or controlling any railroad, or any
29 cars or other equipment employed thereon or in connection therewith,
30 for public or general use within this state;

31 (7) "Street railway company" includes every person owning, leasing,
32 maintaining, operating, managing or controlling any street railway, or
33 any cars or other equipment employed thereon or in connection
34 therewith, for public or general use within this state;

35 (8) "Electric company" includes, until an electric company has been
36 unbundled in accordance with the provisions of section 16-244e of the
37 2008 supplement to the general statutes, every person owning, leasing,
38 maintaining, operating, managing or controlling poles, wires, conduits
39 or other fixtures, along public highways or streets, for the transmission
40 or distribution of electric current for sale for light, heat or power
41 within this state, or, engaged in generating electricity to be so
42 transmitted or distributed for such purpose, but shall not include (A) a
43 private power producer, as defined in section 16-243b, (B) an exempt

44 wholesale generator, as defined in 15 USC 79z-5a, (C) a municipal
45 electric utility established under chapter 101, (D) a municipal electric
46 energy cooperative established under chapter 101a, (E) an electric
47 cooperative established under chapter 597, or (F) any other electric
48 utility owned, leased, maintained, operated, managed or controlled by
49 any unit of local government under any general statute or any public
50 or special act;

51 (9) "Gas company" includes every person owning, leasing,
52 maintaining, operating, managing or controlling mains, pipes or other
53 fixtures, in public highways or streets, for the transmission or
54 distribution of gas for sale for heat or power within this state, or
55 engaged in the manufacture of gas to be so transmitted or distributed
56 for such purpose, but shall not include a person manufacturing gas
57 through the use of a biomass gasification plant provided such person
58 does not own, lease, maintain, operate, manage or control mains, pipes
59 or other fixtures in public highways or streets, a municipal gas utility
60 established under chapter 101 or any other gas utility owned, leased,
61 maintained, operated, managed or controlled by any unit of local
62 government under any general statute or any public or special act;

63 (10) "Water company" includes every person owning, leasing,
64 maintaining, operating, managing or controlling any pond, lake,
65 reservoir, stream, well or distributing plant or system employed for
66 the purpose of supplying water to fifty or more consumers. A water
67 company does not include homeowners, condominium associations
68 providing water only to their members, homeowners associations
69 providing water to customers at least eighty per cent of whom are
70 members of such associations, a municipal waterworks system
71 established under chapter 102, a district, metropolitan district,
72 municipal district or special services district established under chapter
73 105, chapter 105a or any other general statute or any public or special
74 act which is authorized to supply water, or any other waterworks
75 system owned, leased, maintained, operated, managed or controlled
76 by any unit of local government under any general statute or any

77 public or special act;

78 (11) "Consumer" means any private dwelling, boardinghouse,
79 apartment, store, office building, institution, mechanical or
80 manufacturing establishment or other place of business or industry to
81 which water is supplied by a water company;

82 (12) "Sewage company" includes every person owning, leasing,
83 maintaining, operating, managing or controlling, for general use in any
84 town, city or borough, or portion thereof, in this state, sewage disposal
85 facilities which discharge treated effluent into any waterway of this
86 state;

87 (13) "Pipeline company" includes every person owning, leasing,
88 maintaining, operating, managing or controlling mains, pipes or other
89 fixtures through, over, across or under any public land, water,
90 parkways, highways, parks or public grounds for the transportation,
91 transmission or distribution of petroleum products for hire within this
92 state;

93 (14) "Community antenna television company" includes every
94 person owning, leasing, maintaining, operating, managing or
95 controlling a community antenna television system, in, under or over
96 any public street or highway, for the purpose of providing community
97 antenna television service for hire and shall include any municipality
98 which owns or operates one or more plants for the manufacture or
99 distribution of electricity pursuant to section 7-213 or any special act
100 and seeks to obtain or obtains a certificate of public convenience and
101 necessity to construct or operate a community antenna television
102 system pursuant to section 16-331 <u>of the 2008 supplement to the</u>
103 <u>general statutes</u> or a certificate of cable franchise authority pursuant to
104 section 16-331q <u>of the 2008 supplement to the general statutes</u>.
105 "Community antenna television company" does not include a certified
106 competitive video service provider;

107 (15) "Community antenna television service" means (A) the one-way

108 transmission to subscribers of video programming or information that
109 a community antenna television company makes available to all
110 subscribers generally, and subscriber interaction, if any, which is
111 required for the selection of such video programming or information,
112 and (B) noncable communications service. "Community antenna
113 television service" does not include video service provided by a
114 certified competitive video service provider;

115 (16) "Community antenna television system" means a facility,
116 consisting of a set of closed transmission paths and associated signal
117 generation, reception and control equipment that is designed to
118 provide community antenna television service which includes video
119 programming and which is provided in, under or over any public
120 street or highway, for hire, to multiple subscribers within a franchise,
121 but such term does not include (A) a facility that serves only to
122 retransmit the television signals of one or more television broadcast
123 stations; (B) a facility that serves only subscribers in one or more
124 multiple unit dwellings under common ownership, control or
125 management, unless such facility is located in, under or over a public
126 street or highway; (C) a facility of a common carrier which is subject, in
127 whole or in part, to the provisions of Subchapter II of Chapter 5 of the
128 Communications Act of 1934, 47 USC 201 et seq., as amended, except
129 that such facility shall be considered a community antenna television
130 system and the carrier shall be considered a public service company to
131 the extent such facility is used in the transmission of video
132 programming directly to subscribers; or (D) a facility of an electric
133 company which is used solely for operating its electric company
134 systems. "Community antenna television system" does not include a
135 facility used by a certified competitive video service provider to
136 provide video service;

137 (17) "Video programming" means programming provided by, or
138 generally considered comparable to programming provided by, a
139 television broadcast station;

140 (18) "Noncable communications service" means any
141 telecommunications service, as defined in section 16-247a, and which is
142 not included in the definition of "cable service" in the Communications
143 Act of 1934, 47 USC 522, as amended. Nothing in this definition shall
144 be construed to affect service which is both authorized and preempted
145 pursuant to federal law;

146 (19) "Public service motor vehicle" includes all motor vehicles used
147 for the transportation of passengers for hire;

148 (20) "Motor bus" includes any public service motor vehicle operated
149 in whole or in part upon any street or highway, by indiscriminately
150 receiving or discharging passengers, or operated on a regular route or
151 over any portion thereof, or operated between fixed termini, and any
152 public service motor vehicle operated over highways within this state
153 between points outside this state or between points within this state
154 and points outside this state;

155 (21) "Cogeneration technology" means the use for the generation of
156 electricity of exhaust steam, waste steam, heat or resultant energy from
157 an industrial, commercial or manufacturing plant or process, or the use
158 of exhaust steam, waste steam or heat from a thermal power plant for
159 an industrial, commercial or manufacturing plant or process, but shall
160 not include steam or heat developed solely for electrical power
161 generation;

162 (22) "Renewable fuel resources" means energy sources described in
163 subdivisions (26) and (27) of this subsection;

164 (23) "Telephone company" means a telecommunications company
165 that provides one or more noncompetitive or emerging competitive
166 services, as defined in section 16-247a;

167 (24) "Domestic telephone company" includes any telephone
168 company which has been chartered by or organized or constituted
169 within or under the laws of this state;

170 (25) "Telecommunications company" means a person that provides
171 telecommunications service, as defined in section 16-247a, within the
172 state, but shall not mean a person that provides only (A) private
173 telecommunications service, as defined in section 16-247a, (B) the
174 one-way transmission of video programming or other programming
175 services to subscribers, (C) subscriber interaction, if any, which is
176 required for the selection of such video programming or other
177 programming services, (D) the two-way transmission of educational or
178 instructional programming to a public or private elementary or
179 secondary school, or a public or independent institution of higher
180 education, as required by the department pursuant to a community
181 antenna television company franchise agreement, or provided
182 pursuant to a contract with such a school or institution which contract
183 has been filed with the department, or (E) a combination of the services
184 set forth in subparagraphs (B) to (D), inclusive, of this subdivision;

185 (26) "Class I renewable energy source" means (A) energy derived
186 from solar power, wind power, a fuel cell, methane gas from landfills,
187 ocean thermal power, wave or tidal power, low emission advanced
188 renewable energy conversion technologies, a run-of-the-river
189 hydropower facility provided such facility has a generating capacity of
190 not more than five megawatts, does not cause an appreciable change in
191 the river flow, and began operation after July 1, 2003, or a sustainable
192 biomass facility with an average emission rate of equal to or less than
193 .075 pounds of nitrogen oxides per million BTU of heat input for the
194 previous calendar quarter, except that energy derived from a
195 sustainable biomass facility with a capacity of less than five hundred
196 kilowatts that began construction before July 1, 2003, may be
197 considered a Class I renewable energy source, or (B) any electrical
198 generation, including distributed generation, generated from a Class I
199 renewable energy source;

200 (27) "Class II renewable energy source" means energy derived from
201 a trash-to-energy facility, a biomass facility that began operation before
202 July 1, 1998, provided the average emission rate for such facility is

203 equal to or less than .2 pounds of nitrogen oxides per million BTU of
204 heat input for the previous calendar quarter, or a run-of-the-river
205 hydropower facility provided such facility has a generating capacity of
206 not more than five megawatts, does not cause an appreciable change in
207 the riverflow, and began operation prior to July 1, 2003;

208 (28) "Electric distribution services" means the owning, leasing,
209 maintaining, operating, managing or controlling of poles, wires,
210 conduits or other fixtures along public highways or streets for the
211 distribution of electricity, or electric distribution-related services;

212 (29) "Electric distribution company" or "distribution company"
213 means any person providing electric transmission or distribution
214 services within the state, including an electric company, subject to
215 subparagraph (F) of this subdivision, but does not include: (A) A
216 private power producer, as defined in section 16-243b; (B) a municipal
217 electric utility established under chapter 101, other than a participating
218 municipal electric utility; (C) a municipal electric energy cooperative
219 established under chapter 101a; (D) an electric cooperative established
220 under chapter 597; (E) any other electric utility owned, leased,
221 maintained, operated, managed or controlled by any unit of local
222 government under any general statute or special act; (F) after an
223 electric company has been unbundled in accordance with the
224 provisions of section 16-244e <u>of the 2008 supplement to the general</u>
225 <u>statutes</u>, a generation entity or affiliate of the former electric company;
226 or (G) an electric supplier;

227 (30) "Electric supplier" means any person, including an electric
228 aggregator or participating municipal electric utility that is licensed by
229 the Department of Public Utility Control in accordance with section
230 16-245, that provides electric generation services to end use customers
231 in the state using the transmission or distribution facilities of an
232 electric distribution company, regardless of whether or not such
233 person takes title to such generation services, but does not include: (A)
234 A municipal electric utility established under chapter 101, other than a

235 participating municipal electric utility; (B) a municipal electric energy
236 cooperative established under chapter 101a; (C) an electric cooperative
237 established under chapter 597; (D) any other electric utility owned,
238 leased, maintained, operated, managed or controlled by any unit of
239 local government under any general statute or special act; or (E) an
240 electric distribution company in its provision of electric generation
241 services in accordance with subsection (a) or, prior to January 1, 2004,
242 subsection (c) of section 16-244c of the 2008 supplement to the general
243 statutes;

244 (31) "Electric aggregator" means (A) a person, municipality or
245 regional water authority that gathers together electric customers for
246 the purpose of negotiating the purchase of electric generation services
247 from an electric supplier, or (B) the Connecticut Resources Recovery
248 Authority, if it gathers together electric customers for the purpose of
249 negotiating the purchase of electric generation services from an electric
250 supplier, provided such person, municipality or authority is not
251 engaged in the purchase or resale of electric generation services, and
252 provided further such customers contract for electric generation
253 services directly with an electric supplier, and may include an electric
254 cooperative established pursuant to chapter 597;

255 (32) "Electric generation services" means electric energy, electric
256 capacity or generation-related services;

257 (33) "Electric transmission services" means electric transmission or
258 transmission-related services;

259 (34) "Generation entity or affiliate" means a corporate affiliate or, as
260 provided in subdivision (3) of subsection (a) of section 16-244e of the
261 2008 supplement to the general statutes, a separate division of an
262 electric company after unbundling has occurred pursuant to section
263 16-244e of the 2008 supplement to the general statutes, that provides
264 electric generation services;

265 (35) "Participating municipal electric utility" means a municipal

266 electric utility established under chapter 101 or any other electric
267 utility owned, leased, maintained, operated, managed or controlled by
268 any unit of local government under any general statute or any public
269 or special act, that is authorized by the department in accordance with
270 section 16-245c to provide electric generation services to end use
271 customers outside its service area, as defined in section 16-245c;

272 (36) "Person" means an individual, business, firm, corporation,
273 association, joint stock association, trust, partnership or limited
274 liability company;

275 (37) "Regional independent system operator" means the "ISO - New
276 England, Inc.", or its successor organization as approved by the
277 Federal Energy Regulatory Commission;

278 (38) "Certified telecommunications provider" means a person
279 certified by the department to provide intrastate telecommunications
280 services, as defined in section 16-247a, pursuant to sections 16-247f to
281 16-247h, inclusive;

282 (39) "Gas registrant" means a person registered to sell natural gas
283 pursuant to section 16-258a;

284 (40) "Customer-side distributed resources" means (A) the generation
285 of electricity from a unit with a rating of not more than sixty-five
286 megawatts on the premises of a retail end user within the transmission
287 and distribution system including, but not limited to, fuel cells,
288 photovoltaic systems or small wind turbines, or (B) a reduction in the
289 demand for electricity on the premises of a retail end user in the
290 distribution system through methods of conservation and load
291 management, including, but not limited to, peak reduction systems
292 and demand response systems;

293 (41) "Federally mandated congestion charges" means any cost
294 approved by the Federal Energy Regulatory Commission as part of
295 New England Standard Market Design including, but not limited to,

296 locational marginal pricing, locational installed capacity payments, any
297 cost approved by the Department of Public Utility Control to reduce
298 federally mandated congestion charges in accordance with section 7-
299 233y, this section, sections 16-19ss of the 2008 supplement to the
300 general statutes, 16-32f of the 2008 supplement to the general statutes,
301 16-50i, 16-50k of the 2008 supplement to the general statutes, 16-50x of
302 the 2008 supplement to the general statutes, 16-243i to 16-243q,
303 inclusive, 16-244c of the 2008 supplement to the general statutes, 16-
304 244e of the 2008 supplement to the general statutes, 16-245m of the
305 2008 supplement to the general statutes, 16-245n of the 2008
306 supplement to the general statutes and 16-245z, and section 21 of
307 public act 05-1 of the June special session** and reliability must run
308 contracts;

309 (42) "Combined heat and power system" means a system that
310 produces, from a single source, both electric power and thermal energy
311 used in any process that results in an aggregate reduction in electricity
312 use;

313 (43) "Grid-side distributed resources" means the generation of
314 electricity from a unit with a rating of not more than sixty-five
315 megawatts that is connected to the transmission or distribution system,
316 which units may include, but are not limited to, units used primarily to
317 generate electricity to meet peak demand;

318 (44) "Class III source" means the electricity output from combined
319 heat and power systems with an operating efficiency level of no less
320 than fifty per cent that are part of customer-side distributed resources
321 developed at commercial and industrial facilities in this state on or
322 after January 1, 2006, a waste heat recovery system installed on or after
323 April 1, 2007, that produces electrical or thermal energy by capturing
324 preexisting waste heat or pressure from industrial or commercial
325 processes, or the electricity savings created in this state from
326 conservation and load management programs begun on or after
327 January 1, 2006;

328 (45) "Sustainable biomass" means biomass that is cultivated and
329 harvested in a sustainable manner. "Sustainable biomass" does not
330 mean construction and demolition waste, as defined in section 22a-
331 208x, finished biomass products from sawmills, paper mills or stud
332 mills, organic refuse fuel derived separately from municipal solid
333 waste, or biomass from old growth timber stands, except where (A)
334 such biomass is used in a biomass gasification plant that received
335 funding prior to May 1, 2006, from the Renewable Energy Investment
336 Fund established pursuant to section 16-245n of the 2008 supplement
337 to the general statutes, or (B) the energy derived from such biomass is
338 subject to a long-term power purchase contract pursuant to
339 subdivision (2) of subsection (j) of section 16-244c of the 2008
340 supplement to the general statutes entered into prior to May 1, 2006, or
341 (C) such biomass is used in a renewable energy facility that is certified
342 as a Class I renewable energy source by the department until such time
343 as the department certifies that any biomass gasification plan, as
344 defined in this subsection, is operational and accepting such biomass;

345 (46) "Video service" means video programming services provided
346 through wireline facilities, a portion of which are located in the public
347 right-of-way, without regard to delivery technology, including Internet
348 protocol technology. "Video service" does not include any video
349 programming provided by a commercial mobile service provider, as
350 defined in 47 USC 332(d), any video programming provided as part of
351 community antenna television service in a franchise area as of October
352 1, 2007, any video programming provided as part of and via a service
353 that enables users to access content, information, electronic mail or
354 other services over the public Internet;

355 (47) "Certified competitive video service provider" means an entity
356 providing video service pursuant to a certificate of video franchise
357 authority issued by the department in accordance with section 16-331e
358 of the 2008 supplement to the general statutes. "Certified competitive
359 video service provider" does not mean an entity issued a certificate of
360 public convenience and necessity in accordance with section 16-331 of

361 the 2008 supplement to the general statutes or the affiliates, successors
362 and assigns of such entity or an entity issued a certificate of cable
363 franchise authority in accordance with section 16-331p of the 2008
364 supplement to the general statutes or the affiliates, successors and
365 assignees of such entity;

366 (48) "Certificate of video franchise authority" means an
367 authorization issued by the Department of Public Utility Control
368 conferring the right to an entity or person to own, lease, maintain,
369 operate, manage or control facilities in, under or over any public
370 highway to offer video service to any subscribers in the state; [and]

371 (49) "Certificate of cable franchise authority" means an authorization
372 issued by the Department of Public Utility Control pursuant to section
373 16-331q of the 2008 supplement to the general statutes conferring the
374 right to a community antenna television company to own, lease,
375 maintain, operate, manage or control a community antenna television
376 system in, under or over any public highway to (A) offer community
377 antenna television service in a community antenna television
378 company's designated franchise area, or (B) use the public rights-of-
379 way to offer video service in a designated franchise area. The
380 certificate of cable franchise authority shall be issued as an alternative
381 to a certificate of public convenience and necessity pursuant to section
382 16-331 of the 2008 supplement to the general statutes and shall only be
383 available to a community antenna television company under the terms
384 specified in sections 16-331q to 16-331aa, inclusive; and

385 (50) "Steam transportation company" means any person authorized
386 under any general statute or special act to furnish heat or air
387 conditioning or both, by means of steam, heated or chilled water or
388 other medium, to lay and maintain mains, pipes or other conduits, and
389 to erect such other fixtures necessary or convenient in and on the
390 streets, highways and public grounds of any municipality to carry
391 steam, heated or chilled water or other medium from such plant to the
392 location to be served and returning the same.

393 (b) Notwithstanding any provision of the general statutes, the terms
394 "utility", "public utility" and "public service company" shall be deemed
395 to include a community antenna television company and a holder of a
396 certificate of cable franchise authority, except (1) as otherwise provided
397 in sections 16-8, 16-27 of the 2008 supplement to the general statutes,
398 16-28 and 16-43 of the 2008 supplement to the general statutes, (2) that
399 no provision of the general statutes, including but not limited to, the
400 provisions of sections 16-6b and 16-19, shall subject a community
401 antenna television company to regulation as a common carrier or
402 utility by reason of providing community antenna television service,
403 other than noncable communications service, as provided in
404 Subchapter V-A of Chapter 5 of the Communications Act of 1934, 47
405 USC 521 et seq., as amended, and (3) that no provision of the general
406 statutes, including but not limited to, sections 16-6b and 16-19, shall
407 apply to community antenna television companies to the extent any
408 such provision is preempted pursuant to any other provision of the
409 Communications Act of 1934, 47 USC 151 et seq., as amended, any
410 other federal act or any regulation adopted thereunder.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage*	16-1