

TESTIMONY OF
JERROLD OPPENHEIM

IN SUPPORT OF
JANUARY SESSION 2009

RAISED BILL HB 6514

BEFORE THE
CONNECTICUT GENERAL ASSEMBLY

JOINT COMMITTEE ON ENERGY AND TECHNOLOGY

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Jerrold Oppenheim, Esq.
Principal
Democracy And Regulation
57 Middle Street
Gloucester, Mass. 01930
Tel. 978-283-0897
Fax 978-283-0957
JerroldOpp@DemocracyAndRegulation.com
www.DemocracyAndRegulation.com

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My name is Jerrold Oppenheim. I am co-author of the book *Democracy And Regulation* and the monographs *The Economics of Poverty* and *Energy Efficiency Equals Economic Development*, have been an Assistant Attorney General in New York and Massachusetts, and have been an advocate for public utility consumers (especially low-income consumers) for more than 35 years. Among my clients are the community action program networks in Massachusetts and Arkansas and others have been as varied as the Edison Electric Institute, the Entergy Corp., and the District of Columbia Department of the Environment Energy Office. I have appeared before you in the past on behalf of the National Consumer Law Center and AARP, but today I appear on my own behalf.¹

HB 6514

When the provision of electricity was by fully integrated and comprehensively regulated utilities, all power was provided at cost of service and each plant was dispatched when it was the least costly to operate. Under deregulation, these wholesale power decisions were transferred to the Federal Energy Regulatory Commission (FERC), which approved market rules that entirely changed this least-cost system. Under FERC rules, the price each hour is set at the highest price bid during that hour. Thus power that was formerly sold at the averaged costs of all plants running is now sold at the highest single price bid by one plant in that hour. (The bid does not have to be based on cost, and is particularly unlikely to be cost-based when demand is close to capacity.) The result has been a very steep increase in wholesale generation prices.

One result of this change is that the benefits of power plants with low running costs, such as coal and nuclear plants, are no longer enjoyed by customers. Instead the owners of these plants reap the difference between low running costs and the higher bids that set prices.

This increase in prices was not caused by an increase in costs, but rather simply by a change in the rules. While the rules cannot be changed back by the State of Connecticut for existing generators – Connecticut has ceded that authority to the FERC – it is not without remedy.

¹ Additional background information is contained on the last page of this statement.

HB 6514 would identify the exceptionally large profits created by the rule change and tax a large fraction of those excess profits. The resulting fund would be returned to ratepayers, thus partially mitigating the increased prices paid by ratepayers.

There is no merit to the objection that other states might tax similarly high-priced but low-cost power coming into Connecticut. Were that to happen, the tax would not raise the price of that power to Connecticut consumers, since the price has already been set by the FERC market rule at the highest price in the marketplace in each hour. Rather, the tax would reduce the post-tax profit of the out-of-state power plant in question.

HB 6514 dovetails with HB 6507, which provides that electric utilities will once again become the sole supplier of electricity to residential customers. HB 6514 also supports HB 6512, which returns the portfolio purchasing function to utilities. Both bills address purchases that will be made less expensive to consumers by the provisions of HB 6514. Finally HB 6514 coordinates with HB 6510, which provides additional long-term financing for new, lower-cost, cleaner generation.

For all these reasons, I urge your support of HB 6514.

BACKGROUND

The idea that government should protect its people by regulating prices of essential services is a very old one. As early as the 17th Century and before, English law recognized the need to regulate the price and availability of public services, a need which has been firmly established in American law from the beginning. Despite this ancient wisdom, there came to be a belief over the last 30 years that markets were never in need of supervision by regulation. Industry by industry, decades of protections were removed. Airlines were deregulated and many went bankrupt, oversight of savings and loan institutions was lightened and many collapsed, electricity regulation was weakened and prices skyrocketed, financial regulation almost disappeared and even the staunchest free-marketeers concede that deregulation brought us to the edge of catastrophe.

Just as renewed regulation and government intervention is required to restore our financial system, so too are renewed regulation and government intervention required to restore just and reasonable prices to the electricity industry. Connecticut residential electricity bills have risen approximately 80% in this decade and Connecticut prices are reliably the highest or second highest in the country.

As in so many other corners of the economy, weakening the regulation of electricity in Connecticut has been unaffordably expensive.

In recognition of these truths are four important raised bills before you:

- HB 6507 would end the illusory retail competition for residential electricity sales and thus return a measure of market power to customers.
- HB 6512 would assign to regulated electric utilities the task of purchasing optimal portfolios of electricity generation on behalf of residential customers.
- HB 6514 would restore some of the value of low-cost power lost under deregulation by taxing windfall profits and returning them to ratepayers.
- HB 6510 would ultimately restore public control over generation prices by financing long-term purchases from new lower-cost generators.

This package of reforms would work together to bring residential electricity prices back under public control, while providing a reasonable – but no more than reasonable – return to utilities and generators. The bills work together and should be enacted together.

Jerrold Oppenheim has represented low-income and consumer advocacy groups on public utility and energy issues across the country and world for more than 35 years and is co-author of the book Democracy And Regulation.

A graduate of Harvard College and Boston College Law School, Mr. Oppenheim has held prominent positions in the Attorneys General offices in New York and Massachusetts. Earlier, he directed consumer and utility legal assistance programs in New York and Chicago, was the founding Director of Renewable Energy Technology Analysis at Pace University Law School, and directed the energy and telecommunications program at the National Consumer Law Center in Boston. He is a member of the Center for Public Utilities Advisory Council, New Mexico State University.

Mr. Oppenheim has worked with legislatures and public utility commissions in Massachusetts, Connecticut, New York, the District of Columbia, Illinois, Kentucky, Arkansas, New Mexico, Texas, and Utah to develop – in both restructured and traditional regulatory settings – consumer and low-income protections, service quality, and funding for low-income efficiency and affordability programs. Mr. Oppenheim led pioneering negotiations of efficiency agreements with the electric and gas utilities in Massachusetts. Mr. Oppenheim's work contributed to enactment by the Texas Legislature of the first statutory low-income electricity discount in the South, adoption by the Utah Public Service Commission of that state's first low-income electricity discount, and adoption by the New York Public Service Commission of that state's first broad-based low-income electricity discount..