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File No. 887

General Assembly

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Substitute House Bill No. 6636
As Amended by House Amendment
Schedules "A" and "B"

Approved by the Legislative Commissioner
May 1, 2009

**AN ACT CONCERNING THE CLEAN ENERGY FUND AND REDUCING
AND STABILIZING ELECTRIC RATES FOR RESIDENTIAL AND
BUSINESS CUSTOMERS.**

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

1 Section 1. Subdivision (2) of subsection (j) of section 16-244c of the
2 general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective from passage*):

4 (2) Notwithstanding the provisions of subsection (d) of this section
5 regarding an alternative transitional standard offer option or an
6 alternative standard service option, an electric distribution company
7 providing transitional standard offer service, standard service,
8 supplier of last resort service or back-up electric generation service in
9 accordance with this section shall, not later than July 1, [2008] 2011, file
10 with the Department of Public Utility Control for its approval one or
11 more long-term power purchase contracts from Class I renewable
12 energy source projects that receive funding from the Renewable
13 Energy Investment Fund and that are not less than one megawatt in
14 size. [, at a price that is either, at the determination of the project

15 owner, (A) not more than the total of the comparable wholesale market
16 price for generation plus five and one-half cents per kilowatt hour, or
17 (B) fifty per cent of the wholesale market electricity cost at the point at
18 which transmission lines intersect with each other or interface with the
19 distribution system, plus the project cost of fuel indexed to natural gas
20 futures contracts on the New York Mercantile Exchange at the natural
21 gas pipeline interchange located in Vermillion Parish, Louisiana that
22 serves as the delivery point for such futures contracts, plus the fuel
23 delivery charge for transporting fuel to the project, plus five and one-
24 half cents per kilowatt hour.] Contracts entered into on or after August
25 1, 2009, shall include a requirement that the owner of the Class I
26 renewable energy source project be compensated at a cost-based rate,
27 in cents per kilowatt-hour, that provides the opportunity for the
28 project to earn a reasonable rate of return if the project operates at a
29 reasonable capacity factor. The department shall determine the rates,
30 the capacity factor and other factors prior to the commencement of any
31 contract and the department may adjust such rates, capacity factor and
32 other factors not more than once every five years. The department may
33 establish a five-year review proceeding at its discretion or at the
34 request of the owner of the Class I renewable energy source project. In
35 its approval of such contracts, the department shall give preference to
36 purchase contracts from those projects that would provide a financial
37 benefit to ratepayers or would enhance the reliability of the electric
38 transmission system of the state and the department may approve or
39 disapprove any proposed contract as public interest requires. Such
40 projects shall be located in this state. [The owner of a fuel cell project
41 principally manufactured in this state shall be allocated all available air
42 emissions credits and tax credits attributable to the project and no less
43 than fifty per cent of the energy credits in the Class I renewable energy
44 credits program established in section 16-245a attributable to the
45 project. On and after October 1, 2007, and until September 30, 2008,
46 such contracts shall be comprised of not less than a total, apportioned
47 among each electric distribution company, of one hundred twenty-five
48 megawatts; and on] On and after October 1, [2008] 2010, such contracts
49 shall be comprised of not less than a total, apportioned among each

50 electrical distribution company, of one hundred fifty megawatts, plus
51 not less than an additional forty-five megawatts to address project
52 attrition after contract execution with the intent that not less than a
53 total of one hundred fifty megawatts reach commercial operation
54 pursuant to this section. The cost of such contracts and the
55 administrative costs for the procurement of such contracts directly
56 incurred shall be [eligible for inclusion in the adjustment to the
57 transitional standard offer as provided in this section and any
58 subsequent rates for standard service, provided such contracts are] at
59 the department's discretion from time to time, either included in
60 nonbypassable federally mandated congestion charges or in the rates
61 for standard service and any benefits, including, but not limited to, the
62 value of renewable energy credits received through a contract, shall be
63 distributed in the same manner as the costs. A project owner who has
64 signed a contract on or before April 1, 2009, and whose contractual
65 compensation is not indexed to the cost of natural gas fuel may make a
66 single request to the department to adjust its contract due to issues of
67 financeability, provided such a request is made before September 1,
68 2009, and may include a request that the existing contract be expanded
69 to include the full output of the project, in megawatts, based on the
70 design that existed at the time of contract approval. Any such
71 expansion of the portion of the project under contract shall result in a
72 reduction of the cost of electricity under the original contract on a per
73 kilowatt-hour basis. The department, upon receipt of such a request,
74 may open a proceeding to consider whether to adopt any adjustments
75 to such a contract, including, but not limited to, converting it to a cost-
76 based contract that may include a fuel cost adjustment clause, based on
77 the project's reasonable and prudent cost of fuel, as the department
78 determines is in the public interest. A proceeding opened by the
79 department pursuant to this subdivision shall be conducted as an
80 uncontested proceeding, but the project developer shall present
81 evidence and testimony of a financial expert to the department, at the
82 project developer's expense, as to the necessity of adjusting the
83 contract. The contracts shall be for a period of time sufficient to
84 provide financing for such projects, but not less than ten years, and are

85 for projects which began or will begin operation on or after July 1,
86 2003. [Except as provided in this subdivision, the amount from Class I
87 renewable energy sources contracted under such contracts shall be
88 applied to reduce the applicable Class I renewable energy source
89 portfolio standards. For purposes of this subdivision, the department's
90 determination of the comparable wholesale market price for
91 generation shall be based upon a reasonable estimate.] On or before
92 September 1, [2007] 2011, the department, in consultation with the
93 Office of Consumer Counsel and the Renewable Energy Investments
94 [Advisory Council] Board, shall study the operation of such renewable
95 energy contracts and report its findings and recommendations to the
96 joint standing committee of the General Assembly having cognizance
97 of matters relating to energy.

98 Sec. 2. Subsection (e) of section 16-245n of the general statutes is
99 repealed and the following is substituted in lieu thereof (*Effective from*
100 *passage*):

101 (e) The Renewable Energy Investments Board shall include not
102 more than fifteen individuals with knowledge and experience in
103 matters related to the purpose and activities of the Renewable Energy
104 Investment Fund. The board shall consist of the following members:
105 (1) One person with expertise regarding renewable energy resources
106 appointed by the speaker of the House of Representatives; (2) one
107 person representing a state or regional organization primarily
108 concerned with environmental protection appointed by the president
109 pro tempore of the Senate; (3) one person with experience in business
110 or commercial investments appointed by the majority leader of the
111 House of Representatives; (4) one person representing a state or
112 regional organization primarily concerned with environmental
113 protection appointed by the majority leader of the Senate; (5) one
114 person with experience in business or commercial investments
115 appointed by the minority leader of the House of Representatives; (6)
116 the Commissioner of Emergency Management and Homeland Security
117 or the commissioner's designee; (7) one person with expertise
118 regarding renewable energy resources appointed by the Governor; (8)

119 two persons with experience in business or commercial investments
120 appointed by the board of directors of Connecticut Innovations,
121 Incorporated; (9) a representative of a state-wide business association,
122 manufacturing association or chamber of commerce appointed by the
123 minority leader of the Senate; (10) the Consumer Counsel or the
124 Consumer Counsel's designee; (11) the Secretary of the Office of Policy
125 and Management or the secretary's designee; (12) the Commissioner of
126 Environmental Protection or the commissioner's designee; (13) a
127 representative of organized labor appointed by the Governor; and (14)
128 a representative of residential customers or low-income customers
129 appointed by Governor. On a biennial basis, the board shall elect a
130 chairperson and vice-chairperson from among its members and shall
131 adopt such bylaws and procedures it deems necessary to carry out its
132 functions. The board may establish committees and subcommittees as
133 necessary to conduct its business.

134 Sec. 3. Section 16-244b of the general statutes is repealed and the
135 following is substituted in lieu thereof (*Effective from passage*):

136 (a) All customers of electric distribution companies, as defined in
137 section 16-1, as amended by this act, shall have the opportunity to
138 purchase electric generation services from their choice of electric
139 suppliers, as defined in said section 16-1, in a competitive generation
140 market in accordance with the schedule provided in this section. On
141 and after January 1, 2000, up to thirty-five per cent of the peak load of
142 each rate class of an electric company or electric distribution company,
143 as the case may be, may choose an electric supplier to provide their
144 electric generation services, provided such customers shall be located
145 in distressed municipalities, as defined in section 32-9p. In the event
146 that the number of customers exceeds thirty-five per cent of such load,
147 preference shall be given to customers located in distressed
148 municipalities with a population greater than one hundred thousand
149 persons. Participation shall be determined on a first-come, first-served
150 basis. As of July 1, 2000, all customers shall have the opportunity to
151 choose an electric supplier. On and after January 1, 2000, electric
152 generation services shall be provided in accordance with section 16-

153 244c, as amended by this act, to any customer who has not chosen an
154 electric supplier or has declined, failed or been unable to enter into or
155 maintain a contract for electric generation services with an electric
156 supplier. The Department of Public Utility Control may adopt
157 regulations in accordance with chapter 54 to implement the phase-in
158 schedule provided in this subsection.

159 (b) Notwithstanding subsection (a) of this section, on and after
160 January 1, 2010, customers with a maximum demand of less than one
161 hundred kilowatts shall receive and pay for electric generation
162 services, designated as standard service, from the electric distribution
163 company in which service territory such customer takes electric
164 service; provided (1) nothing in this section shall be interpreted as
165 abrogating a customer's contract with an electric supplier that was
166 executed and effective on or before the effective date of this section,
167 and (2) any customer who is receiving electric generation services on
168 or before the effective date of this section from an electric supplier and
169 not from an electric distribution company may continue to receive
170 electric generation services from such supplier or another electric
171 supplier, provided, if such customers at any time elect to receive
172 standard service from the electric distribution company, such
173 customers shall remain on such standard service, and (3) nothing in
174 this section shall preclude a customer from receiving standard service
175 from the electric distribution company for electric generation services
176 while also contracting for renewable energy credits from an electric
177 supplier to support renewable energy, pursuant to a program
178 approved by the department under subsection (e) of section 16-244c, as
179 amended by this act. No customers who have a maximum demand of
180 less than one hundred kilowatts may enter into contracts with an
181 electric supplier other than the electric distribution company for
182 electric generation services on or after the effective date of this section
183 except as provided in this subsection.

184 Sec. 4. Section 16-244c of the general statutes is repealed and the
185 following is substituted in lieu thereof (*Effective from passage*):

186 (a) (1) On and after January 1, 2000, each electric distribution
187 company shall make available to all customers in its service area, the
188 provision of electric generation and distribution services through a
189 standard offer. Under the standard offer, a customer shall receive
190 electric services at a rate established by the Department of Public
191 Utility Control pursuant to subdivision (2) of this subsection. Each
192 electric distribution company shall provide electric generation services
193 in accordance with such option to any customer who affirmatively
194 chooses to receive electric generation services pursuant to the standard
195 offer or does not or is unable to arrange for or maintain electric
196 generation services with an electric supplier. The standard offer shall
197 automatically terminate on January 1, 2004. While providing electric
198 generation services under the standard offer, an electric distribution
199 company may provide electric generation services through any of its
200 generation entities or affiliates, provided such entities or affiliates are
201 licensed pursuant to section 16-245.

202 (2) Not later than October 1, 1999, the Department of Public Utility
203 Control shall establish the standard offer for each electric distribution
204 company, effective January 1, 2000, which shall allocate the costs of
205 such company among electric transmission and distribution services,
206 electric generation services, the competitive transition assessment and
207 the systems benefits charge. The department shall hold a hearing that
208 shall be conducted as a contested case in accordance with chapter 54 to
209 establish the standard offer. The standard offer shall provide that the
210 total rate charged under the standard offer, including electric
211 transmission and distribution services, the conservation and load
212 management program charge described in section 16-245m, the
213 renewable energy investment charge described in section 16-245n,
214 electric generation services, the competitive transition assessment and
215 the systems benefits charge shall be at least ten per cent less than the
216 base rates, as defined in section 16-244a, in effect on December 31,
217 1996. The standard offer shall be adjusted to the extent of any increase
218 or decrease in state taxes attributable to sections 12-264 and 12-265 and
219 any other increase or decrease in state or federal taxes resulting from a

220 change in state or federal law and shall continue to be adjusted during
221 such period pursuant to section 16-19b. Notwithstanding the
222 provisions of section 16-19b, the provisions of said section 16-19b shall
223 apply to electric distribution companies. The standard offer may be
224 adjusted, by an increase or decrease, to the extent approved by the
225 department, in the event that (A) the revenue requirements of the
226 company are affected as the result of changes in (i) legislative
227 enactments other than public act 98-28*, (ii) administrative
228 requirements, or (iii) accounting standards occurring after July 1, 1998,
229 provided such accounting standards are adopted by entities
230 independent of the company that have authority to issue such
231 standards, or (B) an electric distribution company incurs extraordinary
232 and unanticipated expenses required for the provision of safe and
233 reliable electric service to the extent necessary to provide such service.
234 Savings attributable to a reduction in taxes shall not be shifted between
235 customer classes.

236 (3) The price reduction provided in subdivision (2) of this
237 subsection shall not apply to customers who, on or after July 1, 1998,
238 are purchasing electric services from an electric company or electric
239 distribution company, as the case may be, under a special contract or
240 flexible rate tariff, and the company's filed standard offer tariffs shall
241 reflect that such customers shall not receive the standard offer price
242 reduction.

243 (b) (1) (A) On and after January 1, 2004, each electric distribution
244 company shall make available to all customers in its service area, the
245 provision of electric generation and distribution services through a
246 transitional standard offer. Under the transitional standard offer, a
247 customer shall receive electric services at a rate established by the
248 Department of Public Utility Control pursuant to subdivision (2) of
249 this subsection. Each electric distribution company shall provide
250 electric generation services in accordance with such option to any
251 customer who affirmatively chooses to receive electric generation
252 services pursuant to the transitional standard offer or does not or is
253 unable to arrange for or maintain electric generation services with an

254 electric supplier. The transitional standard offer shall terminate on
255 December 31, 2006. While providing electric generation services under
256 the transitional standard offer, an electric distribution company may
257 provide electric generation services through any of its generation
258 entities or affiliates, provided such entities or affiliates are licensed
259 pursuant to section 16-245.

260 (B) The department shall conduct a proceeding to determine
261 whether a practical, effective, and cost-effective process exists under
262 which an electric customer, when initiating electric service, may
263 receive information regarding selecting electric generating services
264 from a qualified entity. The department shall complete such
265 proceeding on or before December 1, 2005, and shall implement the
266 resulting decision on or before March 1, 2006, or on such later date that
267 the department considers appropriate. An electric distribution
268 company's costs of participating in the proceeding and implementing
269 the results of the department's decision shall be recoverable by the
270 company as generation services costs through an adjustment
271 mechanism as approved by the department.

272 (2) (A) Not later than December 15, 2003, the Department of Public
273 Utility Control shall establish the transitional standard offer for each
274 electric distribution company, effective January 1, 2004.

275 (B) The department shall hold a hearing that shall be conducted as a
276 contested case in accordance with chapter 54 to establish the
277 transitional standard offer. The transitional standard offer shall
278 provide that the total rate charged under the transitional standard
279 offer, including electric transmission and distribution services, the
280 conservation and load management program charge described in
281 section 16-245m, the renewable energy investment charge described in
282 section 16-245n, electric generation services, the competitive transition
283 assessment and the systems benefits charge, and excluding federally
284 mandated congestion costs, shall not exceed the base rates, as defined
285 in section 16-244a, in effect on December 31, 1996, excluding any rate
286 reduction ordered by the department on September 26, 2002.

287 (C) (i) Each electric distribution company shall, on or before January
288 1, 2004, file with the department an application for an amendment of
289 rates pursuant to section 16-19, which application shall include a four-
290 year plan for the provision of electric transmission and distribution
291 services. The department shall conduct a contested case proceeding
292 pursuant to sections 16-19 and 16-19e to approve, reject or modify the
293 application and plan. Upon the approval of such plan, as filed or as
294 modified by the department, the department shall order that such plan
295 shall establish the electric transmission and distribution services
296 component of the transitional standard offer.

297 (ii) Notwithstanding the provisions of this subparagraph, an electric
298 distribution company that, on or after September 1, 2002, completed a
299 proceeding pursuant to sections 16-19 and 16-19e, shall not be required
300 to file an application for an amendment of rates as required by this
301 subparagraph. The department shall establish the electric transmission
302 and distribution services component of the transitional standard offer
303 for any such company equal to the electric transmission and
304 distribution services component of the standard offer established
305 pursuant to subsection (a) of this section in effect on July 1, 2003, for
306 such company. If such electric distribution company applies to the
307 department, pursuant to section 16-19, for an amendment of its rates
308 on or before December 31, 2006, the application of the electric
309 distribution company shall include a four-year plan.

310 (D) The transitional standard offer (i) shall be adjusted to the extent
311 of any increase or decrease in state taxes attributable to sections 12-264
312 and 12-265 and any other increase or decrease in state or federal taxes
313 resulting from a change in state or federal law, (ii) shall be adjusted to
314 provide for the cost of contracts under subdivision (2) of subsection (j)
315 of this section and the administrative costs for the procurement of such
316 contracts, and (iii) shall continue to be adjusted during such period
317 pursuant to section 16-19b. Savings attributable to a reduction in taxes
318 shall not be shifted between customer classes. Notwithstanding the
319 provisions of section 16-19b, the provisions of section 16-19b shall
320 apply to electric distribution companies.

321 (E) The transitional standard offer may be adjusted, by an increase
322 or decrease, to the extent approved by the department, in the event
323 that (i) the revenue requirements of the company are affected as the
324 result of changes in (I) legislative enactments other than public act 03-
325 135 or public act 98-28, (II) administrative requirements, or (III)
326 accounting standards adopted after July 1, 2003, provided such
327 accounting standards are adopted by entities that are independent of
328 the company and have authority to issue such standards, or (ii) an
329 electric distribution company incurs extraordinary and unanticipated
330 expenses required for the provision of safe and reliable electric service
331 to the extent necessary to provide such service.

332 (3) The price provided in subdivision (2) of this subsection shall not
333 apply to customers who, on or after July 1, 2003, purchase electric
334 services from an electric company or electric distribution company, as
335 the case may be, under a special contract or flexible rate tariff,
336 provided the company's filed transitional standard offer tariffs shall
337 reflect that such customers shall not receive the transitional standard
338 offer price during the term of said contract or tariff.

339 (4) (A) In addition to its costs received pursuant to subsection (h) of
340 this section, as compensation for providing transitional standard offer
341 service, each electric distribution company shall receive an amount
342 equal to five-tenths of one mill per kilowatt hour. Revenues from such
343 compensation shall not be included in calculating the electric
344 distribution company's earnings for purposes of, or in determining
345 whether its rates are just and reasonable under, sections 16-19, 16-19a
346 and 16-19e, including an earnings sharing mechanism. In addition,
347 each electric distribution company may earn compensation for
348 mitigating the prices of the contracts for the provision of electric
349 generation services, as provided in subdivision (2) of this subsection.

350 (B) The department shall conduct a contested case proceeding
351 pursuant to the provisions of chapter 54 to establish an incentive plan
352 for the procurement of long-term contracts for transitional standard
353 offer service by an electric distribution company. The incentive plan

354 shall be based upon a comparison of the actual average firm full
355 requirements service contract price for electricity obtained by the
356 electric distribution company compared to the regional average firm
357 full requirements service contract price for electricity, adjusted for such
358 variables as the department deems appropriate, including, but not
359 limited to, differences in locational marginal pricing. If the actual
360 average firm full requirements service contract price obtained by the
361 electric distribution company is less than the actual regional average
362 firm full requirements service contract price for the previous year, the
363 department shall split five-tenths of one mill per kilowatt hour equally
364 between ratepayers and the company. Revenues from such incentive
365 plan shall not be included in calculating the electric distribution
366 company's earnings for purposes of, or in determining whether its
367 rates are just and reasonable under sections 16-19, 16-19a and 16-19e.
368 The department may, as it deems necessary, retain a third party entity
369 with expertise in energy procurement to assist with the development
370 of such incentive plan.

371 (c) (1) On and after January 1, 2007, each electric distribution
372 company shall provide electric generation services through standard
373 service to any customer who (A) does not arrange for or is not
374 receiving electric generation services from an electric supplier, and (B)
375 does not use a demand meter or has a maximum demand of less than
376 five hundred kilowatts and on or after January 1, 2010, has a maximum
377 demand of less than five hundred kilowatts but more than one
378 hundred kilowatts.

379 (2) Not later than October 1, 2006, and periodically as required by
380 subdivision (3) of this subsection, but not more often than every
381 calendar quarter, the Department of Public Utility Control shall
382 establish the standard service price for such customers pursuant to
383 subdivision (3) of this subsection. Each electric distribution company
384 shall recover the actual net costs of procuring and providing electric
385 generation services pursuant to this subsection, provided such
386 company mitigates the costs it incurs for the procurement of electric
387 generation services for customers who are no longer receiving service

388 pursuant to this subsection.

389 (3) An electric distribution company providing electric generation
390 services pursuant to this subsection shall mitigate the variation of the
391 price of the service offered to its customers by procuring electric
392 generation services contracts in the manner prescribed in a plan
393 approved by the department. Such plan shall require the procurement
394 of a portfolio of service contracts sufficient to meet the projected load
395 of the electric distribution company, which may be separated into two
396 supply segments based on customers with maximum demands of less
397 than one hundred kilowatts and one hundred kilowatts or more. Such
398 plan shall require that the portfolio of service contracts be procured in
399 an overlapping pattern of fixed periods at such times and in such
400 manner and duration as the department determines to be most likely
401 to produce just, reasonable and reasonably stable retail rates while
402 reflecting underlying wholesale market prices over time. The portfolio
403 of contracts shall be assembled in such manner as to invite
404 competition; guard against favoritism, improvidence, extravagance,
405 fraud and corruption; and secure a reliable electricity supply while
406 avoiding unusual, anomalous or excessive pricing. The portfolio of
407 contracts procured under such plan shall be for terms of not less than
408 six months, provided contracts for shorter periods may be procured
409 under such conditions as the department shall prescribe to (A) ensure
410 the lowest rates possible for end-use customers; (B) ensure reliable
411 service under extraordinary circumstances; and (C) ensure the prudent
412 management of the contract portfolio. An electric distribution
413 company may receive a bid for an electric generation services contract
414 from any of its generation entities or affiliates, provided such
415 generation entity or affiliate submits its bid the business day preceding
416 the first day on which an unaffiliated electric supplier may submit its
417 bid and further provided the electric distribution company and the
418 generation entity or affiliate are in compliance with the code of
419 conduct established in section 16-244h.

420 (4) The department, in consultation with the Office of Consumer
421 Counsel, shall retain the services of a third-party entity with expertise

422 in the area of energy procurement to oversee the initial development of
423 the request for proposals and the procurement of contracts by an
424 electric distribution company for the provision of electric generation
425 services offered pursuant to this subsection. Costs associated with the
426 retention of such third-party entity shall be included in the cost of
427 electric generation services that is included in such price.

428 (5) Each bidder for a standard service contract shall submit its bid to
429 the electric distribution company and the third-party entity who shall
430 jointly review the bids and submit an overview of all bids together
431 with a joint recommendation to the department as to the preferred
432 bidders. The department may, within ten business days of submission
433 of the overview, reject the recommendation regarding preferred
434 bidders. In the event that the department rejects the preferred bids, the
435 electric distribution company and the third-party entity shall rebid the
436 service pursuant to this subdivision.

437 (d) On and after January 1, 2010, each electric distribution company
438 shall make available electric generation services through standard
439 service to any customer who has a maximum demand of less than one
440 hundred kilowatts pursuant to subsection (b) of section 16-244b, as
441 amended by this act.

442 [(d)] (e) (1) Notwithstanding the provisions of this section regarding
443 the electric generation services component of the transitional standard
444 offer or the procurement of electric generation services under standard
445 service, section 16-244h or 16-245o, the Department of Public Utility
446 Control may, from time to time, direct an electric distribution company
447 to offer, through an electric supplier or electric suppliers, before
448 January 1, 2007, one or more alternative transitional standard offer
449 options, [or,] on or after January 1, 2007, one or more alternative
450 standard service options or, on or after January 1, 2010, one or more
451 alternative standard service options. Such alternative options shall
452 include, but not be limited to, an option that consists of the provision
453 of electric generation services that exceed the renewable portfolio
454 standards established in section 16-245a and may include an option

455 that utilizes strategies or technologies that reduce the overall
456 consumption of electricity of the customer. On or after January 1, 2010,
457 such alternative options shall involve the provision of electric
458 generation services through standard service coupled with an option
459 that consists of the provision of electric generation services that exceed
460 the renewable portfolio standards established pursuant to section 16-
461 245a and may include an option that involves the provision of electric
462 generation services through standard service while also using
463 strategies or technologies that reduce the overall consumption of
464 electricity by the customer.

465 (2) (A) The department shall develop such alternative option or
466 options in a contested case conducted in accordance with the
467 provisions of chapter 54. The department shall determine the terms
468 and conditions of such alternative option or options, including, but not
469 limited to, (i) the minimum contract terms, including pricing, length
470 and termination of the contract, and (ii) the minimum percentage of
471 electricity derived from Class I or Class II renewable energy sources, if
472 applicable. The electric distribution company shall, under the
473 supervision of the department, subsequently conduct a bidding
474 process in order to solicit electric suppliers to provide such alternative
475 option or options.

476 (B) The department may reject some or all of the bids received
477 pursuant to the bidding process.

478 (3) The department may require an electric supplier to provide
479 forms of assurance to satisfy the department that the contracts
480 resulting from the bidding process will be fulfilled.

481 (4) An electric supplier who fails to fulfill its contractual obligations
482 resulting from this subdivision shall be subject to civil penalties, in
483 accordance with the provisions of section 16-41, or the suspension or
484 revocation of such supplier's license or a prohibition on the acceptance
485 of new customers, following a hearing that is conducted as a contested
486 case, in accordance with the provisions of chapter 54.

487 [(e)] (f) (1) On and after January 1, 2007, an electric distribution
488 company shall serve customers that are not eligible to receive standard
489 service pursuant to subsection (c) of this section as the supplier of last
490 resort. This subsection shall not apply to customers purchasing power
491 under contracts entered into pursuant to section 16-19hh.

492 (2) An electric distribution company shall procure electricity at least
493 every calendar quarter to provide electric generation services to
494 customers pursuant to this subsection. The Department of Public
495 Utility Control shall determine a price for such customers that reflects
496 the full cost of providing the electricity on a monthly basis. Each
497 electric distribution company shall recover the actual net costs of
498 procuring and providing electric generation services pursuant to this
499 subsection, provided such company mitigates the costs it incurs for the
500 procurement of electric generation services for customers that are no
501 longer receiving service pursuant to this subsection.

502 (3) On and after January 1, 2010, an electric distribution company
503 may elect to provide alternative electricity supply offerings to
504 customers receiving supplier of last resort service pursuant to
505 subsection (f) of this section. The department shall approve such
506 offerings which may include, but not be limited to: (A) Providing
507 electric generation services to such customers pursuant to one or more
508 specific power supply contracts for predetermined periods with fixed
509 prices; (B) providing electric generation services to such customers by
510 including such customers within the supply portfolio procured for
511 standard service pursuant to subsection (c) of this section and allowing
512 such portfolio to be used to provide electric generation services to such
513 customers; or (C) providing other alternatives that may result in lower
514 priced options for such customers, provided such offerings may
515 require customers who elect such offerings to continue to take such
516 service for prespecified periods. Such offerings shall be made to
517 customers no more often than two times per year and shall not be for
518 periods that exceed two years. The department shall determine a price
519 for such customers that reflects the full cost of procuring and
520 providing electric generation service to such customers. Each electric

521 distribution company shall recover the actual costs of procuring and
522 providing electric generation services pursuant to this subdivision. The
523 alternative supply offered by an electric distribution company to such
524 customers pursuant to this subdivision shall be in addition to, and
525 shall not result in the elimination of, the electricity procured at least
526 every calendar quarter pursuant to subdivision (2) of this subsection.

527 [(f)] (g) On and after January 1, 2000, and until such time the
528 regional independent system operator implements procedures for the
529 provision of back-up power to the satisfaction of the Department of
530 Public Utility Control, each electric distribution company shall provide
531 electric generation services to any customer who has entered into a
532 service contract with an electric supplier that fails to provide electric
533 generation services for reasons other than the customer's failure to pay
534 for such services. Between January 1, 2000, and December 31, 2006, an
535 electric distribution company may procure electric generation services
536 through a competitive bidding process or through any of its generation
537 entities or affiliates. On and after January 1, 2007, such company shall
538 procure electric generation services through a competitive bidding
539 process pursuant to a plan submitted by the electric distribution
540 company and approved by the department. Such company may
541 procure electric generation services through any of its generation
542 entities or affiliates, provided such entity or affiliate is the lowest
543 qualified bidder and provided further any such entity or affiliate is
544 licensed pursuant to section 16-245.

545 [(g)] (h) An electric distribution company is not required to be
546 licensed pursuant to section 16-245 to provide standard offer electric
547 generation services in accordance with subsection (a) of this section,
548 transitional standard offer service pursuant to subsection (b) of this
549 section, standard service pursuant to subsection (c) of this section,
550 supplier of last resort service pursuant to subsection [(e)] (f) of this
551 section or back-up electric generation service pursuant to subsection
552 [(f)] (g) of this section.

553 [(h)] (i) The electric distribution company shall be entitled to recover

554 reasonable costs incurred as a result of providing standard offer
555 electric generation services pursuant to the provisions of subsection (a)
556 of this section, transitional standard offer service pursuant to
557 subsection (b) of this section, standard service pursuant to subsection
558 (c) of this section or back-up electric generation service pursuant to
559 subsection [(f)] (g) of this section. The provisions of this section and
560 section 16-244a shall satisfy the requirements of section 16-19a until
561 January 1, 2007.

562 [(i)] (j) The Department of Public Utility Control shall establish, by
563 regulations adopted pursuant to chapter 54, procedures for when and
564 how a customer is notified that his electric supplier has defaulted and
565 of the need for the customer to choose a new electric supplier within a
566 reasonable period of time.

567 [(j)] (k) (1) Notwithstanding the provisions of subsection [(d)] (e) of
568 this section regarding an alternative transitional standard offer option
569 or an alternative standard service option, an electric distribution
570 company providing transitional standard offer service, standard
571 service, supplier of last resort service or back-up electric generation
572 service in accordance with this section shall contract with its wholesale
573 suppliers to comply with the renewable portfolio standards. The
574 Department of Public Utility Control shall annually conduct a
575 contested case, in accordance with the provisions of chapter 54, in
576 order to determine whether the electric distribution company's
577 wholesale suppliers met the renewable portfolio standards during the
578 preceding year. An electric distribution company shall include a
579 provision in its contract with each wholesale supplier that requires the
580 wholesale supplier to pay the electric distribution company an amount
581 of five and one-half cents per kilowatt hour if the wholesale supplier
582 fails to comply with the renewable portfolio standards during the
583 subject annual period. The electric distribution company shall
584 promptly transfer any payment received from the wholesale supplier
585 for the failure to meet the renewable portfolio standards to the
586 Renewable Energy Investment Fund for the development of Class I
587 renewable energy sources. Any payment made pursuant to this section

588 shall not be considered revenue or income to the electric distribution
589 company.

590 (2) Notwithstanding the provisions of subsection [(d)] (e) of this
591 section regarding an alternative transitional standard offer option or
592 an alternative standard service option, an electric distribution
593 company providing transitional standard offer service, standard
594 service, supplier of last resort service or back-up electric generation
595 service in accordance with this section shall, not later than July 1, 2008,
596 file with the Department of Public Utility Control for its approval one
597 or more long-term power purchase contracts from Class I renewable
598 energy source projects that receive funding from the Renewable
599 Energy Investment Fund and that are not less than one megawatt in
600 size, at a price that is either, at the determination of the project owner,
601 (A) not more than the total of the comparable wholesale market price
602 for generation plus five and one-half cents per kilowatt hour, or (B)
603 fifty per cent of the wholesale market electricity cost at the point at
604 which transmission lines intersect with each other or interface with the
605 distribution system, plus the project cost of fuel indexed to natural gas
606 futures contracts on the New York Mercantile Exchange at the natural
607 gas pipeline interchange located in Vermillion Parish, Louisiana that
608 serves as the delivery point for such futures contracts, plus the fuel
609 delivery charge for transporting fuel to the project, plus five and one-
610 half cents per kilowatt hour. In its approval of such contracts, the
611 department shall give preference to purchase contracts from those
612 projects that would provide a financial benefit to ratepayers or would
613 enhance the reliability of the electric transmission system of the state.
614 Such projects shall be located in this state. The owner of a fuel cell
615 project principally manufactured in this state shall be allocated all
616 available air emissions credits and tax credits attributable to the project
617 and no less than fifty per cent of the energy credits in the Class I
618 renewable energy credits program established in section 16-245a
619 attributable to the project. On and after October 1, 2007, and until
620 September 30, 2008, such contracts shall be comprised of not less than a
621 total, apportioned among each electric distribution company, of one

622 hundred twenty-five megawatts; and on and after October 1, 2008,
623 such contracts shall be comprised of not less than a total, apportioned
624 among each electrical distribution company, of one hundred fifty
625 megawatts. The cost of such contracts and the administrative costs for
626 the procurement of such contracts directly incurred shall be eligible for
627 inclusion in the adjustment to the transitional standard offer as
628 provided in this section and any subsequent rates for standard service,
629 provided such contracts are for a period of time sufficient to provide
630 financing for such projects, but not less than ten years, and are for
631 projects which began operation on or after July 1, 2003. Except as
632 provided in this subdivision, the amount from Class I renewable
633 energy sources contracted under such contracts shall be applied to
634 reduce the applicable Class I renewable energy source portfolio
635 standards. For purposes of this subdivision, the department's
636 determination of the comparable wholesale market price for
637 generation shall be based upon a reasonable estimate. On or before
638 September 1, 2007, the department, in consultation with the Office of
639 Consumer Counsel and the Renewable Energy Investments Advisory
640 Council, shall study the operation of such renewable energy contracts
641 and report its findings and recommendations to the joint standing
642 committee of the General Assembly having cognizance of matters
643 relating to energy.

644 [(k)] (l) (1) As used in this section:

645 (A) "Participating electric supplier" means an electric supplier that is
646 licensed by the department to provide electric service, pursuant to this
647 subsection, to residential or small commercial customers.

648 (B) "Residential customer" means a customer who is eligible for
649 standard service and who takes electric distribution-related service
650 from an electric distribution company pursuant to a residential tariff.

651 (C) "Small commercial customer" means a customer who is eligible
652 for standard service and who takes electric distribution-related service
653 from an electric distribution company pursuant to a small commercial

654 tariff.

655 (D) "Qualifying electric offer" means an offer to provide full
656 requirements commodity electric service and all other generation-
657 related service to a residential or small commercial customer at a fixed
658 price per kilowatt hour for a term of no less than one year.

659 (2) In the manner determined by the department, residential or
660 small commercial service customers (A) initiating new utility service,
661 (B) reinitiating service following a change of residence or business
662 location, (C) making an inquiry regarding their utility rates, or (D)
663 seeking information regarding energy efficiency shall be offered the
664 option to learn about their ability to enroll with a participating electric
665 supplier. Customers expressing an interest to learn about their electric
666 supply options shall be informed of the qualifying electric offers then
667 available from participating electric suppliers. The electric distribution
668 companies shall describe then available qualifying electric offers
669 through a method reviewed and approved by the department. The
670 information conveyed to customers expressing an interest to learn
671 about their electric supply options shall include, at a minimum, the
672 price and term of the available electric supply option. Customers
673 expressing an interest in a particular qualifying electric offer shall be
674 immediately transferred to a call center operated by that participating
675 electric supplier.

676 (3) Not later than September 1, 2007, the department shall establish
677 terms and conditions under which a participating electric supplier can
678 be included in the referral program described in subdivision (2) of this
679 subsection. Such terms shall include, but not be limited to, requiring
680 participating electrical suppliers to offer time-of-use and real-time use
681 rates to residential customers.

682 (4) Each calendar quarter, participating electric suppliers shall be
683 allowed to list qualifying offers to provide electric generation service
684 to residential and small commercial customers with each customer's
685 utility bill. The department shall determine the manner such

686 information is presented in customers' utility bills.

687 (5) Any customer that receives electric generation service from a
688 participating electric supplier may return to standard service or may
689 choose another participating electric supplier at any time, including
690 during the qualifying electric offer, without the imposition of any
691 additional charges. Any customer that is receiving electric generation
692 service from an electric distribution company pursuant to standard
693 service can switch to another participating electric supplier at any time
694 without the imposition of additional charges.

695 [(l)] (m) Each electric distribution company shall offer to bill
696 customers on behalf of participating electric suppliers and to pay such
697 suppliers in a timely manner the amounts due such suppliers from
698 customers for generation services, less a percentage of such amounts
699 that reflects uncollectible bills and overdue payments as approved by
700 the Department of Public Utility Control.

701 [(m)] (n) On or before July 1, 2007, the Department of Public Utility
702 Control shall initiate a proceeding to examine whether electric supplier
703 bills rendered pursuant to section 16-245d and any regulations
704 adopted thereunder sufficiently enable customers to compare pricing
705 policies and charges among electric suppliers.

706 [(n)] (o) Nothing in the provisions of this section shall preclude an
707 electric distribution company from entering into standard service
708 supply contracts or standard service supply components with electric
709 generating facilities.

710 Sec. 5. Subdivision (45) of subsection (a) of section 16-1 of the
711 general statutes is repealed and the following is substituted in lieu
712 thereof (*Effective from passage*):

713 (45) "Sustainable biomass" means biomass that is cultivated and
714 harvested in a sustainable manner. "Sustainable biomass" does not
715 mean construction and demolition waste, as defined in section 22a-
716 208x, finished biomass products from sawmills, paper mills or stud

717 mills, organic refuse fuel derived separately from municipal solid
718 waste, or biomass from old growth timber stands, except where (A)
719 such biomass is used in a biomass gasification plant that received
720 funding prior to May 1, 2006, from the Renewable Energy Investment
721 Fund established pursuant to section 16-245n, [or] (B) the energy
722 derived from such biomass is subject to a long-term power purchase
723 contract pursuant to subdivision (2) of subsection [(j)] (k) of section 16-
724 244c, as amended by this act, entered into prior to May 1, 2006, (C)
725 such biomass is used in a renewable energy facility that is certified as a
726 Class I renewable energy source by the department until such time as
727 the department certifies that any biomass gasification plant, as defined
728 in subparagraph (A) of this subdivision, is operational and accepting
729 such biomass, in an amount not to exceed one hundred forty thousand
730 tons annually, is used in a renewable energy facility that was certified
731 as a Class I renewable energy source by the department prior to
732 December 31, 2007, and uses biomass, including construction and
733 demolition waste, as defined in section 22a-208x, from a Connecticut-
734 sited transfer station and volume-reduction facility that generated
735 biomass during calendar year 2007 that was used during calendar year
736 2007 to generate Class I renewable energy certificates, or (D) in the
737 event there is no facility as described in subparagraph (A) or (C) of this
738 subdivision accepting such biomass, in an amount not to exceed one
739 hundred forty thousand tons annually, is used in one or more other
740 renewable energy facilities certified either as a Class I or Class II
741 renewable energy source by the department, provided such facilities
742 use biomass, including construction and demolition waste, as defined
743 in [said] section 22a-208x, from a Connecticut-sited transfer station and
744 volume-reduction facility that generated biomass during calendar year
745 2007 that was used during calendar year 2007 to generate Class I
746 renewable energy certificates. Notwithstanding the provisions of
747 subparagraphs (C) and (D) of this subdivision, the amount of biomass
748 specified in said subparagraphs shall not apply to a biomass
749 gasification plant, as defined in subparagraph (A) of this subdivision.

750 Sec. 6. Subsection (b) of section 16a-47a of the general statutes is

751 repealed and the following is substituted in lieu thereof (*Effective from*
752 *passage*):

753 (b) The goals of the campaign established pursuant to subsection (a)
754 of this section shall include, but not be limited to, educating electric
755 consumers regarding (1) the benefits of pursuing strategies that
756 increase energy efficiency, including information on the Connecticut
757 electric efficiency partner program established pursuant to section 16a-
758 46e and combined heat and power technologies, (2) the real-time
759 energy reports prepared pursuant to section 16a-47d and the real-time
760 energy alert system prepared pursuant to section 61 of public act 07-
761 242, and (3) the option of choosing participating electric suppliers, as
762 defined in subsection [(k)] (l) of section 16-244c, as amended by this
763 act.

764 Sec. 7. Subsection (k) of section 16-245 of the general statutes is
765 repealed and the following is substituted in lieu thereof (*Effective from*
766 *passage*):

767 (k) Any licensee who fails to comply with a license condition or who
768 violates any provision of this section, except for the renewable
769 portfolio standards contained in subsection (g) of this section, shall be
770 subject to civil penalties by the Department of Public Utility Control in
771 accordance with section 16-41, or the suspension or revocation of such
772 license or a prohibition on accepting new customers following a
773 hearing that is conducted as a contested case in accordance with
774 chapter 54. Notwithstanding the provisions of subsection [(d)] (e) of
775 section 16-244c, as amended by this act, regarding an alternative
776 transitional standard offer option or an alternative standard service
777 option, the department shall require a payment by a licensee that fails
778 to comply with the renewable portfolio standards in accordance with
779 subdivision (4) of subsection (g) of this section in the amount of five
780 and one-half cents per kilowatt hour. The department shall allocate
781 such payment to the Renewable Energy Investment Fund for the
782 development of Class I renewable energy sources.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	16-244c(j)(2)
Sec. 2	<i>from passage</i>	16-245n(e)
Sec. 3	<i>from passage</i>	16-244b
Sec. 4	<i>from passage</i>	16-244c
Sec. 5	<i>from passage</i>	16-1(a)(45)
Sec. 6	<i>from passage</i>	16a-47a(b)
Sec. 7	<i>from passage</i>	16-245(k)

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Various State Agencies	Various - See Below	Potential	Potential

Municipal Impact:

Municipalities	Effect	FY 10 \$	FY 11 \$
Various Municipalities	See Below	Potential	Potential

Explanation

This bill allows specified customers with a demand of less than 100 kilowatts to receive electric generation through standard service. Standard service must be priced to reduce volatility with prices changing no more frequently than quarterly, while last resort service must be priced to track changes in wholesale market rates. If the market is more volatile and resulting in higher electric rates, there is a potential for savings for customers who choose standard service. However if the wholesale market is not volatile, there is a potential higher cost for standard service. Therefore there is a potential fiscal impact to the state and municipalities.

This bill also allows electric distribution companies to provide alternative electricity supply offerings to customers who currently receive last resort service. It is anticipated that this provision will result in savings to these customers.

House "A" makes changes that are not anticipated to result in any fiscal impact.

House "B" adds the provisions regarding competition and standard and last resort service and makes technical changes.

The Out Years

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

OLR Bill Analysis**sHB 6636 (as amended by House "A" and "B")******AN ACT CONCERNING THE CONNECTICUT CLEAN ENERGY FUND.*****SUMMARY:**

This bill eliminates, as of January 1, 2010, the ability of small electric customers (those with demand of less than 100 kilowatts) to choose a competitive electric supplier if they have not done so by this date. But, the bill does not affect existing contracts or the ability of such customers who have chosen competitive suppliers to switch suppliers. It also continues to allow small customers to choose "green options," described below.

By law, the electric companies must provide "standard service" for customers with demand of less than 500 kilowatts who do not choose a competitive supplier. They must provide "last resort service" to customers with higher demand who do not choose a competitive supplier. The bill (1) splits standard service into two segments and (2) allows electric companies to offer additional supply options to their last resort customers.

By law, electric companies must file with the Department of Public Utility Control (DPUC), for its approval, long-term power purchase contracts with certain renewable energy generators. The bill delays the deadline companies had to make this filing and expands the requirement to reflect attrition in project development after contracts are signed. The bill modifies how new contracts will be priced and allows DPUC to modify existing contracts under certain circumstances. It is unclear how the latter provision comports with the Contracts Clause of the U.S. Constitution (see COMMENT). The bill also

modifies how the costs of the contracts are recovered in electric rates. The bill requires DPUC to study the operation of the contracts and report its findings and recommendations to the Energy and Technology Committee, by September, 1, 2011. DPUC must do so in consultation with the Office of Consumer Counsel and the Renewable Energy Investment Board, which develops the plan for spending money in the Clean Energy Fund.

Under current law, the consumer counsel is a member of the Renewable Energy Investment Board. The bill allows the consumer counsel's designee, in lieu of the counsel, to serve on the board.

*House Amendment "A" expands the contracting requirement to account for attrition, requires that an expansion of capacity under a modified contract reduce electric prices, extends deadlines, and adds the reporting requirement. It also makes minor and technical changes.

*House Amendment "B" adds the provisions on competition and standard and last resort service and makes technical conforming changes.

EFFECTIVE DATE: Upon passage

STANDARD SERVICE AND COMPETITION

Under current law, the electric companies must provide standard service to customers who do not choose a competitive supplier and who (1) have a demand of less than 500 kilowatts or (2) do not use a demand meter. The bill allows standard service to be split into two segments, one for customers with a maximum demand of less than 100 kilowatts and one for customers with a demand of 100 kilowatts or more.

The bill eliminates, as of January 1, 2010, the ability of customers with demand of less than 100 kilowatts to choose a competitive electric supplier if they have not done so by this date. But, the bill does not affect existing contracts (those in effect in the date the bill passed) or the ability of customers who have chosen competitive suppliers to

switch suppliers.

Under current law, DPUC can direct the electric companies to offer, through one or more suppliers, one or more alternatives to standard service. These “green options” (1) must include one in which the proportion of renewable power exceeds the amount required by the renewable portfolio standard under which electric companies and competitive suppliers must get part of their power from renewable resources and (2) may include one using conservation strategies or technologies. The bill explicitly provides that these options will continue after January 1, 2010.

LAST RESORT SERVICE

By law, electric companies must provide last resort service to customers who have not chosen a competitive supplier and are ineligible for standard service. Current law requires the electric companies to procure power for this service quarterly.

The bill allows electric companies, starting January 1, 2010, to provide alternative supply offerings to these last resort customers. DPUC must approve these offerings, which may at least include (1) providing power to these customers under one or more fixed price, fixed term contracts; (2) providing power by including them in the standard service procurement process; or (3) providing other alternatives that may result in lower price options. Under the last option, the offerings may require customers who choose it to take this service for prespecified periods.

All of the offerings must be offered to customers no more than twice per year and cannot run for more than two years. The electric companies are entitled to recover their actual costs in procuring and providing power under these offerings. These offerings are in addition to, and cannot result in the elimination of, the existing quarterly procurement for last resort service.

LONG-TERM POWER PURCHASE CONTRACTS

Under current law, the electric companies were required to file with DPUC by July 1, 2008, one or more long-term power purchase contracts from Class I renewable energy source (e.g., wind power or fuel cell) projects. To be eligible, the projects had to (1) have received funding from the Clean Energy Fund, (2) be located in Connecticut, and (3) be at least one megawatt (MW) in size. (A megawatt is the amount of power used by 750 to 1,000 homes.) The contracts had to provide for 125 MW of generating capacity prior to October 1, 2008, and 150 MW thereafter. The electric companies have not fully met these requirements and the projects covered by approved contracts have not yet been built.

The bill instead requires the electric companies to file contracts with DPUC by July 1, 2011. The contracts must consist of, starting October 1, 2010, 150 MW of capacity, plus at least an additional 45 MW to address project attrition after contract execution with the intent that at least 150 MW of capacity reach commercial operation. (Although the bill allows the companies to file the contracts as late as July 1, 2011, it appears that they would be required to file substantially earlier to meet this condition.) The bill allows DPUC to approve or disapprove a proposed contract as the public interest requires.

Pricing

Under current law, the generation project owner has two pricing options under the contracts: (1) the wholesale electricity price plus 5.5 cents per kilowatt-hour or (2) the sum of the following: (a) half of the wholesale electricity price; (b) the projected cost of natural gas used to fuel the project, based on the futures price of contracts measured at the Henry Hub, Louisiana; (c) the charge for delivering the fuel to the project; and (d) 5.5 cents per kilowatt-hour.

The bill instead requires that contracts entered into on or after August 1, 2009 include a requirement that the project owner be compensated at a cost-based rate, in cents per kilowatt-hour, that gives the project an opportunity to earn a reasonable rate of return if it operates at a reasonable capacity factor. DPUC must determine the

rates, the capacity factor, and other factors before any contract starts and may adjust them not more than once every five years. DPUC may establish a five-year review proceeding at its discretion or if the project owner asks.

The bill allows a project owner who has signed a contract on or before April 1, 2009, and whose compensation is not indexed to the cost of natural gas, to make a single request to DPUC to adjust its contract due to financial issues. The request must be made before September 1, 2009. The request may ask that the existing contract be expanded to include the project's full output, measured in megawatts, based on the design that existed at the time of contract approval. Any such expansion of the portion of the project under contract must reduce the cost of electricity under the original contract on a per kilowatt-hour basis.

DPUC, upon receiving the request, may open a proceeding to consider whether to adjust a contract, including converting it to a cost-based contract that may include a fuel cost adjustment clause, as it determines is in the public interest. The fuel adjustment clause must be based on a project's reasonable and prudent cost of fuel. If there is a case, it must be conducted as an uncontested proceeding. But the project developer must present evidence and testimony of a financial expert to DPUC, at the developer's expense, as to the need to adjust the contract.

The bill repeals a provision that generally counts the power purchased under these contracts toward meeting the electric company's obligation under the renewable portfolio standard, which requires it to get part of its power from renewable resources. It also eliminates the right of an owner of a fuel cell project principally manufactured in Connecticut to all available air emissions credits and tax credits attributable to the project and at least 50% of the class I renewable energy credits (RECs) attributable to the project. (RECs are bought and sold on the wholesale electric market to meet renewable portfolio standards in Connecticut and other states.) The bill is silent

on whether these provisions apply to existing contracts that are not renegotiated.

Cost Recovery

Under current law, the electric company can recover the cost of the contracts and the direct administrative costs for procuring them in its rates for standard service (the service it provides to small and medium-size customers who have not chosen a competitive supplier). The bill alternatively allows DPUC to include these costs in nonbypassable federally mandated congestion charges (FMCC). These charges apply to all customers, including those served by competitive suppliers. The bill allows DPUC to recover the costs of the contracts in the nonbypassable FMCCs charged to large customers.

Under current law, in order for the contract costs to be recovered in rates, the contracts must run long enough to provide financing for the selected projects, but at least 10 years; and the projects must have begun operation on or after July 1, 2003. The bill requires that these two conditions be met in all cases.

COMMENT

Possible Contracts Clause Violation

The bill permits DPUC to modify, under certain circumstances, existing contracts between developers of renewable generating facilities and electric companies at the request of the facility developer. The bill does not require the electric company's consent to the modification. The bill also appears to modify the compensation provided to developers under existing contracts, whether or not they seek modifications to these contracts. It is possible that these provisions could be challenged as a violation of the Contracts Clause of the U.S. Constitution (Article I, Section 10).

The Contracts Clause of the U.S. Constitution bars states from passing any law that impairs the obligation of contracts. However, the U.S. Supreme Court has held that claims of a contract clause violation must first undergo a three-step analysis. Courts must determine

whether (1) there is a contractual relationship, (2) a change in a law has impaired that relationship, and (3) the impairment is substantial (*General Motors Corp. v. Romein*, 503 U.S. 181 (1992)). If the court determines that the contract has been substantially impaired, it must then determine whether the law at issue has a legitimate and important public purpose and whether the adjustment of the rights of the parties to the contractual relationship was reasonable and appropriate in light of that purpose. A challenged law will not be held to impair the contract clause if the impairment, although substantial, is reasonable and necessary to fulfill an important public purpose (*Energy Reserves Group v. Kansas Power & Light*, 459 U.S. 400, 411-412 (1983)).

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable

Yea 21 Nay 0 (03/19/2009)