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**TESTIMONY
OF
SANDI HENNEQUIN
ON BEHALF OF
NEW ENGLAND POWER GENERATORS ASSOCIATION (NEPGA)**

2011- HOUSE BILL 5699

**CONNECTICUT GENERAL ASSEMBLY
COMMITTEE ON ENERGY AND TECHNOLOGY**

MARCH 1, 2011

Good afternoon and thank you for the opportunity to testify. My name is Sandi Hennequin and I am the Vice President of the New England Power Generators Association, Inc. ("NEPGA"). NEPGA is the largest trade association representing competitive electric generating companies in New England. NEPGA's member companies represent approximately 27,000 megawatts (MW) – or nearly 85 percent – of generating capacity throughout New England, and over 6,800 MW of generation in Connecticut, representing the vast majority of the electric generating capacity in the state. Overall, NEPGA's Connecticut companies pay approximately \$35 million annually in state and local taxes. Our member companies provide 1,800 well-paying and skilled Connecticut manufacturing jobs, while contributing nearly one million dollars to charitable endeavors throughout the state. NEPGA's mission is to promote sound energy policies which will further economic development, jobs and balanced environmental policy.

NEPGA's Position

NEPGA strongly opposes HB 5699. This bill would impose a retroactive windfall profits tax on the state's electric generating companies for the years 2009, 2010 and 2011. Specifically, the bill seeks to retroactively impose a 50% tax on all earnings by a generator that exceeds 20% on equity. The legislation further contemplates creating an account within the General Fund for these monies, with the intent to credit electricity consumers with bill refunds. NEPGA opposes this legislation for the following reasons:

- The proposed retroactive windfall profits tax will increase electric rates.
- The proposed retroactive windfall profits tax sends an anti-business message hindering future resource development and associated job creation in the state.
- The proposed retroactive windfall profits tax could adversely impact localities.
- The proposed retroactive windfall profits tax lacks any meaningful details and could have other unforeseen negative consequences.

I would like to walk through each of these points and discuss why adopting this retroactive tax at this time is simply bad public policy.

The Proposed Retroactive Windfall Profits Tax Will Increase Electric Costs

NEPGA has been before this Committee numerous times and understands the concerns this Committee and its Chairs have regarding Connecticut's electric rates. Although rates stayed flat or went down this year due to decreases in the generation component of rates, the transmission component of rates increased by a double-digit percentages. With Connecticut electricity consumers realizing rate relief this year, it is simply bad public policy to now impose a new tax that will cause electric rates to rise.

And this new retroactive tax will cause electric rates to rise. A generator, like any manufacturer of a good or product, must incorporate all the costs of making a product into the market price. As the cost of manufacturing electricity increases, the cost to sell this product will increase. Thus when a nuclear plant, or a hydro plant, or any generation plant sells its product it must factor into the final sales price of potentially paying this retroactive tax. When the utilities solicit bids for Basic Service, or a retail customer signs up with a competitive electric supplier, the cost to buy this supply will be more. This is due not only to the actual cost of the tax, but also to the associated administrative fees to track whether a plant will be subject or not to this tax. These costs, and the impact on the price of electricity, will be paid by all Connecticut electricity consumers.

The Proposed Retroactive Windfall Profits Tax Sends a Strong Anti-Business Message.

The proposed retroactive windfall profits tax sends a strong anti-business message on several levels. The very notion that if a private company does well, it can only do so well or it will be subject to a punitive tax is the definition of anti-business. No other state in the United States assesses such a tax on its manufacturers, such as companies that generate electricity. When the state's policy makers opened Connecticut's markets to competitive generators, our member companies came to Connecticut, invested billions of dollars of private money and created jobs. They now collectively employ 1,800 people and pay approximately \$35 million in state and local taxes. To retroactively change the

rules and impose a punitive tax sends the wrong message. Creating this type of uncertainty and climate that rules can change at any time – even retroactively – jeopardizes future economic and energy resource development in Connecticut, and unfairly penalizes the generator community. This sets a bad precedent by providing a clear indication that the state may not offer the regulatory certainty and business environment necessary to ensure successful long-term investments in electricity or other manufacturing sectors.

The Proposed Retroactive Windfall Profits Tax Could Adversely Impact Localities.

Electric generation plants are critically important members of the communities in which they operate. As noted earlier in this testimony, NEPGA plants contribute approximately \$35 million in state and local taxes, the vast majority of which is contributed to the host community. In addition, NEPGA plant owners recognize the value of being good corporate neighbors and contribute to local charitable and nonprofit organizations in their host towns. Imposing the windfall profits tax will have impacts on both of these actions. As plants go into negotiations with host communities regarding local property tax assessments and payments, they will invariably factor in other taxes which they already pay and will start at a different negotiating place than they would without these other taxes. If a plant is paying millions of dollars in state generation taxes, these are millions of dollars they will not have available for the discussions with the towns. Moreover, the imposition of this tax impacts the profitability of the plant and forces the owners to take a harder look at any “discretionary” spending such as the type of spending plants allocate to community and charitable activities. Any legislation that puts more pressure on financially challenged localities is not good public policy.

The Proposed Retroactive Windfall Profits Tax Lacks Any Meaningful Details and Could Have Other Unforeseen Negative Consequences.

The implementation of HB 5699 lacks necessary details regarding implementation, and could lead to negative unforeseen impacts. This legislation contemplates the creation of an account within the General Fund to provide a credit to electric utility consumers, using proceeds from as far back as two business years that have already occurred. This

raises a host of implementation questions – how will the Fund be created? How will the state propose to go back for two years to retroactively impose this tax? Are there any legal or constitutional challenges to retroactively applying this tax? Once collected, how will the monies be distributed in an equitable fashion? How will the state account for the fact that there is a no direct link between the power produced by a specific generator and consumed by a specific utility customer? While in theory the creation of a Fund may seem to be a vehicle to redistribute these funds, it is clearly administratively infeasible to implement. In fact the way the market functions, power flows freely across the region, making it difficult to track electrons produced by one generator to specific electricity consumers.

There are also key implementation details lacking in the bill, with potential negative impacts. Financial books have already been closed for 2009 and will be largely closed for 2010 once this tax would be implemented. This would not only require companies to go back and retroactively calculate this tax bill, but also to re-state earnings which carries a host of legal and financial challenges. There are many other implementation questions as well – would the tax be assessed on a monthly, quarterly or annual basis? If a generator had an extremely profitable month or quarter, but was unprofitable for the year, would the generator be subject to the tax? Again, there are a host of details and questions left unanswered, and as proposed, there are not sufficient details to implement this retroactive windfall profits tax.

Conclusion

NEPGA strongly encourages legislators to not pass HB 5699. Imposing a retroactive, administratively infeasible, windfall profits tax is simply not good for Connecticut consumers. It will increase consumer electric costs, send a message that Connecticut is not a business-friendly state, and adversely impact localities. There are no meaningful details regarding the implementation of the tax and unforeseen negative impacts can already be anticipated. No other state imposes such a tax on its generators and no other business in Connecticut is burdened by such a tax. Sending this type of anti-business message to existing, and potentially new or relocating manufacturing

businesses, particular those which often times provide the largest tax base to the towns and cities in which they operate, is simply bad public policy that may ultimately prevent future energy resource development and job creation in the state.

Thank you for the opportunity to testify before you today. I would be happy to answer any questions from the Committee.