Committee Bill No. 1
An Act Concerning Connecticut's Energy Future

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TransCanada appreciates the opportunity to provide comments on Committee Bill No. 1, *An Act Concerning Connecticut's Energy Future*. By way of background, TransCanada is an active retail marketer within Connecticut, presently providing retail electric service to more than two hundred Connecticut municipalities, hospitals, colleges, and other large commercial and industrial customers. Additionally, TransCanada supplies electric generation for New England from its 13 hydroelectric stations on the Connecticut and Deerfield Rivers, from the 600 megawatt gas-fired Ocean State power plant in Rhode Island, and from New England's largest wind power facility, the 132 megawatt Kibby Mountain facility, located in the Boundary Mountains in Maine.

TransCanada's primary concerns with Committee Bill No. 1 are the following:

- The bill will severely restrict competition among solar photovoltaic projects and other renewable projects, limiting them to projects located within Connecticut. This will drive up costs to customers. And it will do so in a manner that results in a probable violation of the Commerce Clause of the U.S. Constitution;

- The bill will place heavy burdens on Connecticut electric consumers by requiring the installation of the least economic generating source among many alternatives, solar photovoltaic, at a total cost of about $1.5 Billion, at a time when New England has no need for new generation sources;

- The bill fails to provide incentives for environmentally-sensitive hydroelectric facility operation, and in the process of revising Renewable Class I eligibility for hydroelectric projects, will have the effect of rendering meaningless the Connecticut RPS Class 1 Renewable classification; and

- The bill unnecessarily extends detailed consumer protection provisions to larger commercial and industrial customers, increases the cost to serve them, and in one instance runs the risk of ending competitive options for these customers. Replacing the bill's detailed provisions with higher level objectives and directing the Department of Energy and Environment Protection to undertake a rulemaking process to develop the detail has a much better chance of developing workable regulations.

Restriction of Competition

Sections 52 and 58 of the bill will require utilities to make purchases from renewable energy source projects and solar photovoltaic generation projects, respectively, and further will require these projects to be located within the state of Connecticut. Each of these sections discriminates on its face against out-of-state producers. This discrimination is forbidden by the Commerce Clause.

In legislation similar to Committee Bill No. 1, the Massachusetts Green Communities Act required power suppliers to purchase solar credits, and required utilities to conduct a solicitation for renewable power. In both instances the legislation provided that eligible projects must be located within Massachusetts. TransCanada filed suit against the state's implementation of this legislation, explaining that the Commerce Clause prohibits such an in-state requirement. In our complaint, we stated:

"The First Circuit Court of Appeals recently summarized the governing standard of law under the Commerce Clause of the U.S. Constitution:

> The Commerce Clause prevents states from creating protectionist barriers to interstate trade…Discrimination under the Commerce Clause means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter, as opposed to state laws that regulate evenhandedly with only incidental effects on interstate commerce…[A] discriminatory law is virtually per se invalid…"

Following the filing of the TransCanada lawsuit, the Massachusetts Department of Public Utilities ("MDPU") adopted and issued emergency regulations which struck down the in-state limitation, directing utilities to solicit for renewable power "that is not limited to Massachusetts".

The geographic limitation of eligible facilities increases cost to the electric consumer. This contention is not based on theory or speculation, but rather on hard fact. One of the Massachusetts utilities required to solicit for renewable power, NSTAR, initially conducted a full solicitation for renewable power limited to Massachusetts facilities prior to TransCanada filing its lawsuit. After the MDPU's emergency order to eliminate the Massachusetts restriction, NSTAR conducted a fresh new solicitation that invited bids from other states as well as from Massachusetts. The result was dramatic. In testimony filed in Docket D.P.U. 11-07, NSTAR witness James Daly stated: "The weighted average price of these projects [Massachusetts restriction eliminated] is approximately 40 percent lower than the weighted average under the Massachusetts-only RFP contracts representing $139 Million in savings to Massachusetts consumers over the life of these projects for an equivalent amount of energy."

High Cost of Solar Photovoltaic

Section 58 of the bill requires electric distribution utilities to procure 4.35 million "solar renewable energy credits" at a cost cap of $350 per megawatt-hour. Multiplying these two values yields a total cost of ***$1.5 Billion!***

Solar photovoltaic is generally recognized as one of the most expensive technologies available today to generate electricity, particularly in the northeast U.S. The Department of Energy's Energy Information Agency has identified photovoltaics as producing electricity at nearly five times the cost of gas-fired generation, and more than twice the cost of inland wind generation – and that's based on regions with far better solar insolation than is available in the Northeast. Further, these economics apply assuming new generation is actually needed. In fact, results of the fourth forward capacity auction conducted by ISO-New England reveal that, for the power year from June 1, 2014 – May 31, 2015, New England has no need for new generating capacity since it is more than 5000 megawatts excess.

Connecticut electric rates have typically been among the highest in the nation. In 2009, Connecticut rates, on average, were second highest, exceeded only by Hawaii. Connecticut ratepayers should not be forced to subsidize uneconomic and unnecessary technologies.

Hydroelectric Generation and the Environment

Section 8 of the bill redefines the definition of "Class I renewable energy source" and eliminates language that previously limited eligible hydropower facilities to run-of-river facilities under five megawatts that began operation after July 1, 2003.

As an owner and operator of hydropower facilities, TransCanada agrees that hydropower should be placed on similar footing with other renewable resources. However, given the potential for significant environmental impacts that can result from the construction and operation of hydropower facilities, TransCanada urges the committee to consider imposition of a requirement that hydropower facilities must receive certification by the Low Impact Hydropower Institute ("LIHI") to achieve Class I status (http://www.lowimpacthydro.org/).

LIHI is a non-profit 501(c)(3) organization dedicated to reducing the impacts of hydropower generation through the certification of hydropower projects that have avoided or reduced their environmental impacts pursuant to the Low Impact Hydropower Institute's criteria.

In order to be certified by the Institute, a hydropower facility must meet criteria in the following eight areas:

1. river flows,
2. water quality,
3. fish passage and protection,
4. watershed protection
5. threatened and endangered species protection,
6. cultural resource protection,
7. recreation, and
8. facilities recommended for removal.

The criteria standards are typically based on the most recent, and most stringent, mitigation measures recommended for the dam by expert state and federal resource agencies, even if those measures aren't a requirement for operating. A hydropower facility meeting all eight certification criteria will be certified by LIHI.

Detailed Comments

Sec 53 – Sec 16-245d(a) – the last sentence needs to be clarified that a credit only applies in the event when the customer switches from utility billing to direct billing during the term of a contract. If a customer chooses direct billing at the onset of a contract, any avoided utility billing costs will be reflected in the supplier's contract price.

Sec 54 – Sec 16-245o(e) – final sentence should be clarified to say, ". . .. or the day on which the customer first receives the written contract . . . ";

Sec 54 – Sec 16-245o(f)(1) – third party agents. The language needs to be clarified so that a broker operating as an independent contractor on behalf of a customer is not included in this definition of a third party agent. Suppliers have no control over the actions of the customers' agent.

Sec 54 – Sec 16-245o(f)(2)(B) – first sentence needs to be corrected to say, ". . . customers with a maximum demand of one hundred kilowatts or less, …";

Sec 54 – Sec 16-245o(f)(3) – the last sentence should be stricken. This sentence obligates suppliers to disclose the electric distribution company's current charges. Connecticut utility tariffs and charges tend to be complicated and frequently change. Errors made by well-intentioned suppliers will only cause customer confusion.

Sec 54 – Sec 16-245o(f)(7) – this section should be limited only to customers with maximum demand of 100 kW or less. This section would prevent suppliers from offering contract renewals more than 60 days before the end of the contract. Most commercial customers proactively manage their electricity contracts and take advantage of favorable forward prices well in advance of the end of any existing contracts. Also, commercial customers should not be prevented from being able to enter into a renewal contract within 30 days of the end of their contract. Often, they are waiting for the ideal time to lock-in a new price, which may be with only days left on their contract.

*** Sec 54 – Sec 16-245o(f)(7) – the free termination allowance granted customers with 7 business days after receiving a first bill should be removed entirely for customers who gave express written consent to a renewal contract. Otherwise, a customer has a free option to walk away from a contract that they may have signed months prior for which the retail supplier has likely made substantial financial commitments. These commitments can be in the multi-million dollar range for large customers. ***This provision of the bill could make Connecticut's large customers too risky to serve competitively.***

*** Sec 55 – Sec 16-245(g) – new subsection 12 should be removed. Subsection 12 requires suppliers to offer time of use pricing under very prescriptive terms:

- Product choices should be determined by customer need and demand. If customers want such products, suppliers will offer them. Our experience over the last decade has been that commercial customers reject on and off peak price differentials and much prefer fixed prices over all hours.
- Suppliers are only able to offer products that are supportable by usage information provided by the utilities, and offerings can only be consistent with cost settlement with ISO-NE. UI, for example, settles suppliers load obligations solely using class average load profiles. Customer shifts in usage patterns from on to off peak periods therefore will have no direct impact on the cost incurred by the supplier. Before suppliers could begin to meet such a requirement, utilities first would have to overhaul their load settlement systems and provide electronically to suppliers customer usage information on an hourly basis. This is a tremendous investment in time and money, with limited benefit to consumers.
- Any price differential between on and off peak prices must be cost based. An administratively determined and legislatively fixed differential is unlikely to meet objectives over long term.