

**BEFORE THE
STATE OF CONNECTICUT
JOINT ENERGY AND TECHNOLOGY COMMITTEE**

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Testimony of Daniel Allegretti

For

Constellation Energy

On

Committee Bill No. 1 (LCO 4531)

Senator Fonfara, Representative Nardello, members of the Committee, good afternoon and thank you for the opportunity to be here today and to testify. My name is Daniel Allegretti and I am a Vice President for energy policy with Constellation Energy. I have had the privilege and honor to appear before this Committee on numerous occasions in the past and am pleased to be here again today. For the benefit of those who are new to the Committee, let me mention that Constellation Energy is a Fortune 500 energy company based in Baltimore, Maryland. Here in Connecticut, we are one of the leading providers of electricity as both a supplier of standard service to Connecticut's distribution companies and as a direct retail seller of electricity to Connecticut businesses. Our businesses also include the provision of energy efficiency, demand response services and a growing business developing and operating solar generation facilities.

Department of Energy and Environmental Protection

At the outset, this bill creates a new executive Department of Energy and Environmental Protection ("DEEP") to oversee and coordinate energy and environmental policy. This governmental framework is familiar to us from neighboring Massachusetts, where Governor Deval Patrick and the Massachusetts Legislature have undertaken similar reforms. Better coordination of energy and environmental policy are positive steps forward and we laud Governor Malloy and the Committee for seeing the value in this.

A word of caution, however, is also in order with regard to Section 32, which enumerates a number of duties placed upon the new DEEP Commissioner. These duties include an obligation to:

whenever practicable, replace energy resources vulnerable to interruption due to circumstances beyond the state's control with energy sources that are less vulnerable to such interruption.

This provision is troublesome in that it appears to compel the eventual replacement of private ownership and control of energy resources with public ownership and control. Nowhere, however, does the bill indicate how such an undertaking would be analyzed at the outset and ultimately undertaken and financed by the State. In a budget environment that is already strained, it would appear preferable to attract more private investment capital to Connecticut rather than to replace private investments with an expanded State financial commitment. Moreover, Connecticut cannot make itself into an economic or security island simply by taking ownership of power plants. The same global economic forces that may affect the price and availability of power from other

plants in the Northeast will also affect Connecticut generation, regardless of whether public or private capital is invested in the plants and regardless of whether they are located in Connecticut or in a neighboring state. In short, the goal of energy independence is an elusive one whose pursuit is likely to strain state financial resources. Finally, to the extent that broad public ownership and control of energy resources is not what was envisioned by the drafters of the bill, removal of Section 32(16) is appropriate.

Standard Service Procurement

Standard Service Procurement is addressed in Section 66 of the bill. The provisions of Section 66 offer a flexible approach that will allow the DEEP wide latitude, especially with respect to the term of future commitments. Of critical importance to Section 66 is Section 66(d) which provides:

The costs of procurement for standard service shall be borne solely by the standard service customers.

This provision will avoid the situation in Connecticut which has occurred in New Hampshire, where a flawed portfolio approach has resulted in an overcommitment by Public Service Company of New Hampshire to power purchases that are in excess of its default service customer needs. By limiting the recovery of the costs of procurement to the standard service customers, the utility will have the proper incentives to avoid any overcommitments and customers who have left standard service will not be asked to pay twice for energy, once to their competitive supplier for the energy they use and again to the utility for standard service they did not use. On a note of caution, however, it may be appropriate to clarify the drafting in Section 66(d) to make plain that it applies to the full underlying cost of standard service purchases, not just procurement-related administrative expenses.

Long Term Planning and Procurement

Section 49 perpetuates the use of integrated resource planning in Connecticut. Today, nearly three quarters of the electricity consumed in Connecticut is provided by third party retail providers. Nearly all large businesses and roughly 40% of residential customers have left utility supply and chosen to buy their power from a licensed competitive retailer. Polling conducted last year by the New England Energy Alliance shows overwhelming support for retail competition among the public, with 88% in favor of retail choice.

In an environment where customers are exercising choice and are managing their own energy needs through a combination of energy purchases, conservation, demand management, and self-generation it is important to tread cautiously in making major commitments on their behalf to support the long-term procurement of power from new sources. California is a case study in what can happen. Rates in California will exceed the national average for many years to come because long term contracts entered into in the last decade mean California customers will not reap the full benefits of the very low natural gas prices that we enjoy today thanks to new technology.

Section 49(a)(1) directs that the development of a new resource plan shall:

indicate specific options to reduce the price of electricity and maintain such reductions for another five years. Such options may include the procurement of new sources of generation. In reviewing new sources of generation, the plan shall determine whether the private wholesale market can supply such additional sources or whether state financial assistance, long-term purchasing of electricity contracts or other interventions are needed to achieve the goal.

Section 71 similarly adds to this approach by directing DEEP to issue a request for proposals to consider long term power purchase contracts for electricity priced on a cost of service basis.

The problem lies in not knowing the future. History is littered with long term investments that looked cost-effective at the time those commitments were made, but in hindsight left consumers paying above-market costs. In Connecticut, the recovery of "stranded costs" represents the bill for such mistakes, and that bill has been in the hundreds of millions of dollars. The restructuring of the electric power industry in this State was intended to make investors bear investment risks going forward and not allow those risks to be placed on the backs of captive electric customers. Section 49(a)(1) and Section 71 are borne of the good intention of lowering costs for ratepayers. The effect, however, based on history, may very well be the opposite. Customers are making choices and taking control of their energy supply. Placing new charges on their electric bills to fund these types of long term commitments undermines the value of those choices and discourages customers from participating in the process of meeting their own energy needs. For these reasons, the planning process and the making of long term commitments for which all Connecticut customers will pay should be limited to averting serious reliability problems and should not expose customers to liability for new stranded costs for investments that are intended to be for their economic benefit.

Solar Power

Sections 56 through 63 contain various provisions to foster and support the development of solar energy within Connecticut. As a leading developer of customer-sited solar generation systems, Constellation Energy has considerable experience with solar programs in other states and offers below some suggested modifications to these sections of the bill based upon that business experience.

- First and foremost, the Committee should consider an RPS-based approach for customer-sited facilities rather than the long-term contracts and feed-in-tariffs described in sections 59 and 61. As both an electricity retailer and a solar developer, Constellation Energy works closely with our customers to identify opportunities to install solar generation at their business facilities and to assist those customers in taking advantage of state policies that promote solar power. In our experience, customer engagement is critical to a successful solar development and that engagement depends upon the ability of the customer to use the solar facility to meet its own energy needs rather than to merely be a seller of electricity to the local distribution company. In other words, customer interest in having solar panels installed at their place of business is much greater when the panels are a means for that business to manage their own energy needs. Otherwise, businesses see the installation of panels and the sale of energy and certificates to the utility as a separate business, not related to their core business, and are consequently reluctant to embrace the project. A solar renewable portfolio approach combined with available net metering programs allows for active customer engagement while long term contracts and solar feed in tariffs do not.
- Section 58(c) imposes a \$350 price cap (for the first contracting year) on solar renewable energy credits sold under long-term contracts to utilities. This contract price cap is problematic for developers and is unnecessary, given the overall retail rate impact cap set forth under Section 56. As with the successful solar programs in other states, market forces in Connecticut should be allowed to set the price for solar renewable energy certificates. This ensures fulfillment of the solar output targets that the bill seeks to achieve within the overall cost tolerance that the bill allows. Given the comprehensive rate impact cap, the redundant contract price cap is not needed to protect consumers and should be removed.
- Avoid tariff-based programs. The use of utility tariffs set forth in Section 61 is less likely to be successful than more market-based approaches. The problem with these so called "feed-in-tariffs" is getting the tariff price correct. Set the price too low and nobody signs up. Set the price too high and the program overpays the developer. Programs that set a solar RPS obligation and allow for interaction between buyers and sellers to establish the correct price will maximize the "bang

for the buck" in getting solar facilities developed, as opposed to guessing the right payment to be made under a tariff.

- Eliminate utility-built facilities. Solar installations have to be connected to the distribution grid, even where the output is measured and used behind the customer meter. This requires an interconnection process that must be administered by the distribution company. When that distribution company is also developing its own solar facilities, this sets up a conflict of interest. Since electric distribution companies are not uniquely qualified to expand into the field of solar generation, it makes sense to focus within the cost caps of Section 56 on a customer-based, rather than utility-based program.
- Include municipal utility customers. Solar generation development will benefit all Connecticut citizens. Limiting the burden of funding solar programs to regulated distribution customers without including customers of municipal electric departments creates an unfair cross-subsidy.
- Consider a single cap on project size. Section 59 caps the size of eligible facilities at 2 megawatts while section 61 caps eligible facilities at 7.5 MW. In the initial implementation of its program, Massachusetts adopted a 2 MW per project cap. Many Massachusetts businesses found the cap to be too restrictive in capturing the full economies of scale available for solar installations at their business facilities. Last year the Legislature provided relief and adopted an amendment to the law increasing the cap to 6 MW. Adoption of a single cap for programs in Connecticut at 6 or at 7.5 MW will be more welcome by customers and will capture additional economies of scale based on the experience in Massachusetts.

Renewable Portfolio Standard

Section 8 modifies the definition of Class I renewable resources to remove limitations currently in place on the qualification of hydroelectric generation. The effect of this change will be significant and should be well understood. Class I renewable energy certificate requirements today provide support for the development and the continued operation of a many renewable facilities within Connecticut and throughout New England. The revised definition will almost certainly drive buyers of renewable energy certificates to Eastern Canada where the abundance of existing large-scale hydroelectric resources can provide a very cheap source of Class I certificates. In Massachusetts, the question of qualifying large scale hydroelectric generation under their portfolio requirements was recently addressed by the outgoing Secretary of Energy

and Environmental Affairs, who spoke in no uncertain terms on behalf of the Patrick Administration.

What we don't need is to overturn 13 years of consensus that large-scale hydropower ought not to qualify for RPS and receive subsidies in the form of Renewable Energy Certificates. Large hydro is a mature technology that is already competitive in the marketplace - to give it subsidies would amount to a windfall of billions of dollars to a Canadian state owned enterprise at the expense of Massachusetts ratepayers. This was a ridiculous idea when it was trotted out for political purposes during the election campaign, and it is ridiculous now. Indeed, the idea is so fringe that it was not even brought up, let alone debated, in the context of the Green Communities Act in 2008. Now, Hydro Quebec has publicly announced that it will pay to build a new transmission line to bring its power to the New England market, and that is proof that this low-emissions renewable energy will get here, without a giveaway of excess profit.

- *A Second Restructuring, Comments of Massachusetts Secretary of Energy and Environmental Affairs, Ian Bowles, Before the Restructuring Roundtable, December 17, 2010.*

Market Rule 1

Section 73 provides for a review of ISO-NE Market Rule 1. While a mere review of whether continued participation in the ISO-NE wholesale market seems benign, it is not. It creates an unnecessary degree of uncertainty that impedes commercial contracts and capital investments by both energy companies and by large consumers of energy. This sort of examination was conducted just a few years ago in Maine. In the end, the conclusion was clear that continued participation in the ISO-NE wholesale market is far better for consumers than any available alternatives. The proceedings took approximately two years, consumed considerable resources on the part of the agency and those who participated and caused just the sort of commercial uncertainty that impedes new investments and the jobs and taxes such investments produce.

Retail Sales

Sections 54 and 55, which are reproduced from sections 17 and 18 of last year's bill, impose a number of new requirements on retail electric suppliers in connection with electric sales in Connecticut. Although designed to protect consumers, the unintended consequences of some of these provisions will in fact raise costs, frustrate customers and reverse the advancements of retail energy competition in Connecticut that were achieved as a result of the initiatives enacted in the 2007 energy bill. Moreover, nearly

all of the underlying concerns behind these provisions can and are being dealt with at the DPUC through an ongoing rulemaking process that is nearly complete. Specific concerns with these sections include the following:

- Section 54(e), three day cancellation for customers with demand up to 500 kW. Because energy markets fluctuate daily, the ability to rescind a contract within three days comes at a price. Customers will benefit from lower prices if they enter into a firm contract to purchase energy rather than an option agreement to contract for energy within three days. The right to rescind is especially costly for businesses above 100 kW that are sophisticated energy buyers looking to maximize their energy savings. Forcing customers to pay for a three day option on prices raises costs for customers who do not want to pay for such a right, limits their choices and harms the ability of suppliers to offer a lower price in exchange for the certainty of an immediate contract.
- Section 54(f)(2)(B), door-to-door sales to customers up to 100 kW. This provision is overly-restrictive for the business-to-business transaction and will frustrate customers in the situation where a retail electric supplier has a pre-scheduled appointment with a commercial customer at the customer's place of business to market or close on the sale of a product offering. Specifically, this provision would limit such meetings between the hours of 10 am and 6 pm where many business customers desire early-morning or late-afternoon/early-evening meetings, would require suppliers to submit materials in English and Spanish when most businesses solely require materials in English, and subject business-to-business marketing to local "peddler" ordinances designed to limit unsolicited door-to-door marketing.
- Section 54(f)(5), disclosure of renewable energy credits that will be purchased beyond those required. This is burdensome and unnecessary and will simply lead suppliers to forego green product offerings in Connecticut. The DPUC already has the ability to audit licensed suppliers and verify their marketing claims. Requiring all of this information from every supplier for every sale will encourage suppliers to simply avoid additional REC purchases in CT altogether. Whatever the intent, the effect of this provision is harmful to competition and harmful to the development of renewable energy.
- Section 54(f)(6), a \$100 limit on customer breach of contract damages. Retail electric suppliers should be treated no different than any other type of vendor when a customer breaches its contract. Without the ability to hold customers to their contracts, suppliers will have to charge higher prices in Connecticut to cover their increased risk. This provision raises prices for customers who live by the agreements they sign and do not commit a breach of contract.

- Section 54(h), unfair and deceptive trade practices. This section would automatically deem a contract void and unenforceable if a marketer has engaged in unfair and deceptive trade practices. This means even if the contract turns out to be favorable to the customer it will be voided. The Department should have the ability to review the circumstances and craft an appropriate remedy for each violation in light of its severity and in light of how the remedy will impact the customer.
- Section 55, mandatory peak pricing offers. Imposing a mandate on competitive retail suppliers is not a solution to getting time of use prices to customers. Suppliers can and will innovate and offer various products to customers, but cannot do so for every customer unless and until distribution companies achieve full deployment of smart meters and upgrade their billing systems to support such products. Imposing a mandate on suppliers ahead of this supporting infrastructure is premature and impractical.

Constellation Energy takes consumer protection very seriously. In this area, however, unintended consequences abound. Protecting customers without frustrating them, limiting their choices or increasing their costs is a delicate balance. That balance is not achieved through Sections 54 and 55.

Conclusion

In many respects, Senate Bill 1 represents a significant improvement over last year's bill. By releasing the bill in March and holding a public hearing, the Committee can benefit from additional input by all affected interests. We hope that the comments and suggestions in this testimony are helpful to the Committee and stand ready to assist the Committee in any way we can to develop improvements to SB1 that will benefit all concerned. Thank you for your attention and consideration.