



Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

**STATE OF CONNECTICUT
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION**

Public Hearing – March 15, 2012
Energy & Technology Committee

Testimony Submitted by Commissioner Daniel Esty

Senate Bill No. 415 - AN ACT CONCERNING THE OPERATIONS OF THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION, THE ESTABLISHMENT OF A COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY PROGRAM, WATER CONSERVATION AND THE OPERATIONS OF THE CLEAN ENERGY FINANCE AND INVESTMENT AUTHORITY

Thank you for the opportunity to present testimony regarding Senate Bill No. 415 – An Act Concerning the Operations of the Department of Energy And Environmental Protection, the Establishment of a Commercial Property Assessed Clean Energy Program, Water Conservation and the Operations of the Clean Energy Finance and Investment Authority. The Department of Energy and Environmental Protection (DEEP) welcomes the opportunity to offer the following testimony.

DEEP appreciates the Committee’s willingness to raise this bill on our behalf. The Department strongly supports Raised Senate Bill No. 415, which includes important technical revisions of Public Act 11-80, assignments of certain responsibilities to the Public Utilities Regulatory Authority (PURA) rather than DEEP, and needed updates to statutory language governing PURA’s purview. More substantively, the raised bill also includes a provision for property assessed clean energy (PACE) financing for commercial entities, and grants new bonding authority to the Connecticut Clean Energy Finance and Investment Authority (CEFIA) to enable it bring the financing of clean energy and efficiency upgrades to a scale consistent with the goals of the Department. (The bill also proposes changing the name of CEFIA to the Connecticut Clean Energy Authority.)

Section 2 of SB 415 amends section 15 of PA 11-80

This section of the raised bill repeals changes in DEEP’s adjudications language, and streamlines the process by which PURA directors assign hearing officers to dockets.

Section 5 of SB 415 amends section 21 of PA 11-80

This section of the raised bill restricts who may enter the premises, buildings, and other areas owned by regulated utilities when conducting investigations and audits by limiting access to PURA directors and their designees, rather than any employee of DEEP.

Section 7 of SB 415 amends section 27 of PA 11-80

This section of the raised bill moves language in PA 11-80 from section 16a-3d of the 2012 supplement to the General Statutes to a more appropriate location at section 16-19e.

Section 11 of SB 415 amends section 33 of PA 11-80

This section of the raised bill seeks to mitigate the negative impacts of limited duration one year budgets for the Conservation and Load Management Plan that have resulted in on again off again funding scenarios, and have disrupted the delivery of energy efficiency services. Similarly, now that the electric and natural gas distribution companies are essentially one utility, it no longer makes sense to separate conservation program design and implementation between the electric and natural gas entities. The distribution companies can develop combined electric and natural gas efficiency plans on a rolling three year basis, which will help ensure compatibility, avoid stop and starts related program deployment/adoption cycles, and allow the companies to calculate cost effectiveness on the basis of energy savings for all fuels. These improvements are important steps towards achieving the state's goals of maximizing efficiency savings to Connecticut ratepayers. This section of the proposed bill also seeks to amplify components of the public hearing and adoption process for the plan.

Section 15 of SB 415 amends section 37 of PA 11-80

This section of the raised bill would limit the scope of Connecticut Energy Advisory Board's required report to Energy & Technology Committee to the status of DEEP's programs under Title 16 and 16a, instead of requiring the Board to report on all of DEEP's programs.

Section 19 of SB 415 amends section 51 of PA 11-80

This section of the raised bill seeks to establish clearer processes relating to DEEP's development and adoption of the Comprehensive Energy Plan and clarifies that DEEP, not the utilities, recover the costs of its development.

Section 20 of SB 415 amends section 89 of PA 11-80

This section of the raised bill seeks to distinguish between the Integrated Resources Plan (IRP) and Procurement Plan. The proposed language clarifies that the IRP is developed and adopted by DEEP with opportunity for public comment, and the Procurement Plan is developed by the PURA's Procurement Manager and approved by PURA.

Section 22 of SB 415 amends section 91 of PA 11-80

This section of the raised bill extends the completion date deadline for Project 150 projects located in distressed municipalities and targeted investment communities to December 31, 2013.

Section 24 of SB 415 amends section 92 of PA 11-80

This section of the raised bill clarifies that PURA rather than DEEP shall conduct proceedings related to approval of the Procurement Plan.

Section 26 of SB 415 amends section 99 of PA 11-80

This section of the raised bill adds additional technologies to the list of technologies that may be supported by CEFIA, renames CEFIA the "Connecticut Clean Energy Authority," and deletes the very specific skill sets required of CEFIA Board appointees. This section should be read in conjunction with sections 71 to 83 of the bill. In addition to clarifying certain bonding authority for CEFIA (or the Connecticut Clean Energy Authority) these provision authorize the issuance Special Capital Reserve Fund (SCRF) bonds not to exceed 100 million dollars in aggregate. SCRF bonds are an additional and important tool for leveraging private capital to support investments in clean energy and energy efficiency at a scale consistent with the goals of the Department. CEFIA's written testimony provides an

additional description of these provisions. DEEP, CEFIA and the Office of the Treasurer have worked collaboratively on these sections of the bill.

Section 33 of SB 415 amends section 104 of PA 11-80

This section of the raised bill deletes obsolete language referring to tariff payments.

Sections 36, 38, and 40 of SB 415 amend sections 108 and 110 of PA 11-80

This section of the raised bill allows the utilities to recover the costs associated with conducting the ZRec and LRec solicitations.

Section 36 of SB 415 amends section 16-32f of the 2012 supplement to the General Statutes

This section of the raised bill conforms the development and approval of the gas conservation plan with the electric conservation plan, in order to improve the efficiency and coordination of program measures.

Section 39 of SB 415 amends section 107 of PA 11-80

This section of the raised bill deletes certain language in order to ensure that the ZRec solicitation is only available to zero emission technologies.

Section 42 of SB 415 amends section 112 of PA 11-80

This section of the raised bill changes the date for initiating a proceeding regarding a low income rate so that the proceeding precedes the October 1, 2012 reporting date.

Section 45 of SB 415 amends section 116 of PA 11-80

This section of the raised bill adds ductless heat pumps to the list of energy efficient equipment that may be funded by the residential heating financing program, because these heat pumps are often the most cost effective heating solution for certain residential units.

Section 46 of SB 415 amends section 116 (f) of PA 11-80

This section of the raised bill would increase the size of combined heat and power systems that would be eligible to receive financial assistance, but this section does not increase the total megawatt amount of heat and power systems – and therefore the cost – authorized in PA 11-80.

Section 48 of SB 415 amends section 121 of PA 11-80

This section allows the State of Connecticut and any of its subdivisions to qualify as a customer host for virtual net metering purposes, and broadens the definition of “ownership” of the net metering facility to include a lease or long term contract for renewable generation.

Section 50 of SB 415 amends section 127 of PA 11-80

This section deletes the reference to generation projects that emit no pollutants to make it clear that all Class I resources qualify for the 30 MW of renewable generation described in section 127 of PA 11-80.

Section 51 of SB 415 amends section 103 of PA 11-80

DEEP does not support the language as drafted in this section of the proposed bill. Instead, DEEP asks the Committee to change the language (beginning on line 2694) that sets a cap of five hundred thousand dollars per year for oil heat Home Energy Solutions audits so that, at a minimum, this cap is lifted for a year from passage to prevent hardship to oil heat customers while more permanent funding options for these programs are pursued.

Section 52 of SB 415 amends section 133 of PA 11-80

This section extends the time frame for the Department to analyze the potential benefits of allowing utilities a rate of return on investments in energy efficiency to October 1, 2012.

Section 54 of SB 415 amends section 12-217mm of the General Statutes

This section transfers authority for administering the green buildings tax credit from the Office of Policy and Management to DEEP, establishes maximum value for the tax credit for any one project to 8 million dollars to make this incentive available to at least several developers, and deletes the requirement to adopt regulations for the tax credit.

Section 56 of SB 415

This section of the raised bill authorizes CEFIA to develop a property assessed clean energy (PACE) financing program for commercial properties. The PACE program will help meet the growing demand for energy efficiency and clean energy projects at commercial facilities, through a creative municipal financing platform. PACE financing is one of a suite of tools that leverage private investments to help achieve energy efficiency and clean energy deployment at a scale consistent with the goals of the Department. DEEP is working with CEFIA on this section of the proposal and we will be offering substitute language in the near future. We have also been working with the banking community in Connecticut to improve the proposal and make the implementation of a PACE program in Connecticut a successful reality.

Section 58, 59, 61 and 62 of SB 415

These sections of the raised bill direct PURA to establish a docket and to set rates for water companies regulated by Title 16 in order to implement water conservation programs. In addition, these sections of the raised bill direct PURA to include water conservation measures and infrastructure improvements needed to comply with stream flow regulations in the water infrastructure conservation adjustment mechanism (WICA) framework. Specifically, the bill requires PURA to establish rates that would ensure that the revenue needs required for system maintenance are satisfied, regardless of sales volumes, so that companies will not be penalized for promoting water conservation programs that are consistent with the Department's stream flow regulations. The provision also proposes increasing the WICA amount to 10 per cent.

The specific rate design mechanisms used to promote water conservation could include, among others, inclining block rates, seasonal rates, peak period rates, and/or drought rates. While regulated water companies currently have the option of proposing such rate structures to PURA during rate case proceedings, prior state policy goals have not prioritized water conservation in a way that resulted in rate decisions supporting such proposals. While the specifics outlined in these sections of the raised bill frame the parameters within which the Department believes such rate structures should be established, discussions are ongoing with stakeholders, internal DEEP energy and environmental quality staff, and PURA. Given both the environmental impacts and significant energy use related to water purification, pumping, and distribution, the Department believes that it is important to better align state rate making regulations with our water and energy conservation goals.

Section 60 of SB 415 amends section 7-239 of the General Statutes

In order to encourage a similar alignment of water rates with conservation goals, this provision of the raised bill would require the unregulated, non-investor-owned water utilities to consider rate designs and other measures that would promote conservation in a manner similar to the rate design

mechanisms the Department proposes for investor owned companies in the preceding sections of the proposed bill.

Section 63 of SB 415 amends section 16-262w of the General Statutes

This section of the raised bill, which is not new to the Committee, modifies the provisions of Title 16 regarding the purchased gas adjustment clause (PGA) statute by: 1) requiring the PURA to hold a public hearing no less than annually on the PGA in lieu of the current 6-month public hearing requirement, and 2) specifying that the PURA is required to hold a public hearing on the PGA at anytime if the Office of Consumer Counsel files an application requesting such a hearing.

In general, natural gas customers pay for their fuel through two primary components on their utility bills: a base rate and the purchase gas adjustment clause (PGA). The base rate includes an estimate of fuel prices for the 12 month period following a general rate decision. The PGA adjusts the fuel portion of base rates to reflect the actual fuel costs incurred by the local distribution company (LDC). The PGA can appear on customer bills as a credit if fuel prices have decreased or charge, if the fuel costs have increased since the setting of base rates. Every month, the state's three gas distribution companies (Connecticut Natural Gas, Southern Connecticut Gas and Yankee Gas) file with PURA their proposed PGA for the following month. The PURA reviews these proposed monthly PGA figures and, if necessary or requested to do so by the Office of Consumer Counsel, holds an administrative proceeding on these filings. Following PURA approval, the LDCs charge natural gas customers at the newly adjusted monthly PGA level.

The existing provisions for the PGA require semi-annual proceedings. These semi-annual periods covered do not reflect actual natural gas industry practices. Rather, natural gas industry fuel planning is annual, normally November 1 through October 31. Fuel used in the winter is more expensive, and includes fuel "saved up" from the previous summer. Summer fuel is less expensive and is "put aside" for use the following winter. Therefore, no six-month period can accurately reconcile the planning and purchase of fuel and the period in which it is consumed or recovered. Only an annual PGA review can accurately match the gas industry's operating practices and the manner in which fuel is bought, consumed and costs recovered from ratepayers. Under the current six-month investigation, parts of the review are redundant because much of the earlier period's information must be reviewed again. As a result, PURA staff, LDCs, and other participants must dedicate significant resources twice a year to review fuel costs and the recovery of these costs. The DPUC believes that by allowing an annual review great administrative efficiency can be attained while improving accuracy and minimizing the mismatch of data review and cost recovery. It is also important to note, that by issuing a formal decision in the first semi-annual investigation, the PURA is prevented from revisiting approved PGAs from an earlier period even if a review of the full annual gas industry operating cycle would suggest an adjustment should have been made.

As a result of the proposed change, the PURA recognizes that circumstances will arise that will justify a hearing on the PGA prior to the annual review proceeding. To address this issue, this proposal modifies the current statute to specify that the PURA is required to hold a public hearing on the PGA at anytime if the Office of Consumer Counsel files an application requesting that we do so.

Section 64 of SB 415 amends section 16-18a of the General Statutes

Allows the PURA to retain non-legal consultants to assist PURA staff in proceedings before various federal agencies, who will provide expertise in areas where its staff lacks expertise, or will supplement PURA staff expertise.

As has previously been brought to the Committee's attention, under current provisions of Title 16, PURA is permitted to retain outside expert services to assist it in performing a variety of its statutory duties. Most notably, section 16-18a of the General Statutes allows PURA to retain the services of consultants to assist it in its own proceedings, and the provisions of § 16-6a of the General Statutes allow PURA, through the Attorney General's office, to obtain the services of outside legal counsel to appear in matters before certain specified federal agencies.

However, with the passage of the new Federal Energy Act and as a result of our ongoing experience in several recent federal proceedings, it is apparent that a problematic gap in the current Connecticut law prevents PURA from directly retaining outside non-legal experts to assist the agency with its participation before federal proceedings. Absent this proposed change, if outside consulting services are required, PURA can only acquire such services through outside legal counsel retained pursuant to section 16-6a of the General Statutes. The proposed change will give PURA much needed administrative flexibility to directly retain outside technical expertise more efficiently and cost-effectively.

Section 65 of SB 415 amends section 16-35 of the General Statutes

The Authority again seeks language that would clarify that all PURA procurements are uncontested proceedings thereby avoiding appeals of proceedings undertaken by disappointed bidders that not only cause delay but which can also derail implementation of selected projects – as recently experienced by one of the procurement auctions conducted in furtherance of the Energy Independence Act.

Making all procurements uncontested would strengthen the application of the common law rule that argues that disappointed bidders have no standing to appeal unless they can prove that a procurement was tainted by fraud, corruption or other intentional misconduct. The rationale for the rule is that public procurements are conducted for the public good, not for the benefit of the bidder seeking to sell its goods or services and that disappointed bidders should not be able to frustrate the public good by taking appeals which could delay or even prevent implementation of the results of the procurement.

Section 66 of SB 415 amends section 16-35 of the General Statutes

The Authority again seeks language that clarifies current law and practices by adding references to the Department of Banking at places in the statute that state the basis upon which interest on utility customer security deposits is to be calculated.

Current provisions of § 16-262(c) & (d) of the General Statutes specify the standard by which interest on utility customer security deposits is calculated. In several locations, the statutory provisions make alternative references to the Federal Reserve Bulletin and the Connecticut Banking Commissioner as the basis for determining the appropriate interest rate. As a result of this fragmented statutory drafting, utility customers and companies are frequently confused. PURA regularly receives utility customer and utility company inquiries concerning the amount of interest that utilities pay on customer deposits. In accordance with current law, PURA relies on the Connecticut Banking Department's deposit index (information posted on Banking Department website) when questions arise about interest rate levels, but in the interest of eliminating this confusion PURA seeks to clarify the law and current practice by adding appropriate references to the Department of Banking.

Section 67 of SB 415 amends section 16-8a (1)(c) of the General Statutes

This proposal would allow PURA 90 rather than 30 business days to make a preliminary finding on the validity of an employee's complaint that an employer has retaliated against for reporting an employer's misconduct. Based upon its actual experience, PURA has found the current 30 day statutory window to be grossly inadequate. In short, no meaningful or credible investigation into a complaint can be reasonably performed within the existing time period. During that 30 day time frame the employer has a 20 day window to rebut the presumption that its action was retaliatory thus making it almost impossible to seek additional input from the employee and actually issue a preliminary determination in the last 5 days before the 30 day deadline. Extending this time frame will better protect both employee and ratepayer interests.

Sections 68, 69 and 70 of SB 415

These are technical changes to the PURA statutes.

Sections 71, 72, and 73 of SB 415 are new sections that clarify and expand the bonding authority of CEFIA

Referred to in the bill as the Connecticut Clean Energy Authority, these sections clarify certain provisions of current law as they relate to the bonding authority of the existing CEFIA. DEEP, CEFIA and the Office of the Treasurer have worked together on these sections of the bill that also expands bonding authority to what is known as Special Capital Reserve Fund or SCRF financing. Please refer to CEFIA's written testimony on these sections (and section 26 of this testimony) for a more detailed description of these provisions.

Sections 74 to 83 SB 415 amend sections 32-41, 1-79, 1-120, 1-124, 1-125, and certain sections of PA 11-80

These provisions change the name of CEFIA to the Connecticut Clean Energy Authority and amend other sections of the general statutes, notably the chapter on quasi-public agencies, to properly include the Connecticut Clean Energy Authority into that chapter. This is an important clarification that is explained in greater detail in CEFIA's written testimony

Section 84 repeals sections 16-2c and 16a-41i of the 2012 supplement to the general statutes.

In sum, we appreciate the opportunity to raise these issues before the Committee and look forward to working with you to make changes to the framing legislation for DEEP that we believe will better enable the Department to achieve the goals set forth in Public Act 11-80.

Thank you for the opportunity to present testimony on this proposal. If you should require any additional information, please contact DEEP's legislative liaison, Robert LaFrance at 424-3401 or Robert.LaFrance@ct.gov.

