



**The Finance, Revenue, and Bonding Committee**

**Public Hearing, March 4, 2013**

**Testimony of**

**Attorney General George Jepsen**

**and**

**Consumer Counsel Elin Swanson Katz**

**Governor's S.B. No. 843, *An Act Concerning Revenue Items to Implement the Governor's Budget***

Attorney General George Jepsen and Consumer Counsel Elin Swanson Katz are recommending that significant consumer protections be added to Section 19 of this bill, which would auction off standard service electric customers to the highest bidder(s). These consumer protections are essential to protect Connecticut residential consumers from potential predatory marketing practices and to preserve the "standard offer" as a viable option for residential consumers and a price benchmark to protect against an unwarranted rise in electric rates.

At present, approximately half of the residential customers of this State are continuing to receive, or have opted to return to, the standard service product offered by their electric distribution company, either The Connecticut Light & Power Company (CL&P) or The United Illuminating Company (UI). The other 50% of such customers receive their electricity generation services from a competitive electric supplier, such as Direct Energy, Dominion Retail, North American Power, etc.

In recent years, the standard service price had been much higher than some of the prices offered by competitive suppliers. This was entirely the result of the then-framework for purchasing electricity. CL&P and UI, with the oversight of the Department of Public Utility Control (DPUC) (now known as the Public Utilities

Regulatory Authority (PURA)), purchased wholesale contracts for electricity on a long-term basis, with contracts as long as three years. It was thought that this pricing approach might provide stability for standard service customers. Competitive suppliers, in contrast, tend to purchase for their customers on a shorter term basis. When natural gas prices suddenly dropped late in the last decade and electricity market prices went down precipitously as well, the long-term contracts in standard service turned out to be priced well above the market. This led to a great deal of customer switching to competitive suppliers.

Today, the utilities purchase for standard service on a shorter-term basis, with the assistance of a new Procurement Manager in the Department of Energy and Environmental Protection. Less than two years ago, this legislature in Public Act 11-80, in a section now codified at 16-244m, established the position of Procurement Manager to “reduce the average cost of standard service” and achieve other goals. The first Procurement Plan prepared under the auspices of the Procurement Manager was just approved by PURA in October 2012. Notwithstanding the short-time frame, we are already seeing positive results. By purchasing on a shorter-term basis, the Procurement Manager, with considerable assistance from CL&P and UI, has made purchases that have again established standard service as a viable, attractively-priced option for customers. Moreover, the standard service price is again providing a benchmark that competitive suppliers must seek to beat. Customers benefit mightily from the existence of the standard service benchmark, especially when the standard service price is itself attractive.

Remaining or returning to standard service is not a sign that a customer is necessarily misinformed, unsophisticated, or “doesn’t get it.” Quite to the contrary, PURA and the DPUC before it have had many investigations of complaints (and several fines) against competitive suppliers regarding slamming, false claims, improper and high pressure sales tactics, etc. Even when advertising claims are accurate, we are aware that several competitive suppliers are beating the standard service price during an introductory phase with a “teaser” rate, and then charging customers much higher rates in the subsequent, “variable pricing” phase. A customer today may rationally desire to stay with standard service to avoid the risks and hassles of closely monitoring

their electric bill and analyzing dueling sales pitches in order to achieve at best small savings in the short run (which savings might be reversed in the longer run during the “variable” phase).

The above background is intended to show that true and effective customer choice requires that customers continue to be allowed to choose standard service from CL&P and UI, notwithstanding the auction. Moreover, true customer choice requires that customers must be allowed to choose a competitive supplier other than the winning auction bidder. And, of great importance, customers must be able to opt out of a contract or proposed contract with the winning bidder without paying fees or penalties. The State should not be forcing customers to contract for electric generation service with any particular entity. In order to have an effective and meaningful opportunity to opt out of a contract, customers also must be given not only price information for the first year but also details about the supplier’s pricing range or manner of calculation of pricing for the second and third years.

As presently drafted, the auction proposal seems to allow customers a choice to leave the winning auction bidder and go to another supplier (see subsection (e)). However, subsection (e) does not prevent the winning auction bidder from putting a penalty provision in the contract which would effectively nullify that choice. It is not consistent with customer choice for customers to have to pay sizable fees to avoid doing business with a winning bidder.

We note that although the present proposal requires that bidders maintain pricing at least five percent below standard service for one year (see subsection (b)), the accompanying contracts would be for three years or more (see subsection (c)(2)). The proposal does not put any parameter on what the winning bidder may charge customers in the second and third years of the contract. Coupled with the possibility of a penalty provision to leave the contract, as just discussed, this proposal may force customers into a Hobson’s Choice of either accepting the risk of a high electric price for the second and third years or paying a large one-time penalty. Obviously, the fact that this proposal would allow this presumably unintended result warrants some adjustment to the language.

To ameliorate some of the issues with the language as proposed, we have prepared a mark-up of the provision which would put into place what we believe would be appropriate consumer protections, without which the auction should not go forward. This mark-up is attached.

Sec. 19. (NEW) (*Effective from passage*) (a) Residential customers and small commercial customers, as each is defined in subsection (k) of section 16-244c of the general statutes, who, as of ~~January 1, 2014~~ <sup>June 1, 2014</sup>, are receiving the standard offer and have not contracted with a participating electric supplier, shall be aggregated by the state for the purpose of auctioning the right to provide competitively-priced electric generation service to such customers by electric suppliers licensed in the state pursuant to section 16-245 of the general statutes, subject to the right of any such customer to opt out of a contract with an electric supplier pursuant to subsection (e).

(b) The procurement manager of the Public Utilities Regulatory Authority shall issue a request for proposals to all electric suppliers licensed in the state for a bid to provide a full service contract to blocks of residential customers and small commercial customers on the standard offer at a price that is not less than five per cent below the standard offer rate for such customer class as of April 1, 2013, for a period of not less than one year from the date such service commences. The procurement manager shall establish the criteria for selection of the successful proposals, including a demonstration of financial viability or other necessary qualifications. A supplier must submit a detailed record of any fines or settlements paid in this state or other states arising from the supplier's electric or gas supply transactions as part of its bid package. The procurement manager shall publish the notice of request for proposals to each electric supplier licensed in this state as of the date of the issuance of the request for proposals, and shall decide on the means of dividing standard service customers into blocks. ~~proposers for competitive electric supplier and shall publish the notice of the request for proposals to each electric supplier licensed in this state as of the date of the issuance of the request for proposals.~~

(c) (1) The responses to the request for proposals shall include the price per customer such electric supplier will offer for the right to supply electricity to customer blocks of not less than one hundred thousand and the price per customer for each additional increment of not less than ten thousand additional customers;

(2) The proposed term offered by such electric supplier shall be for a term of not less than three years and shall lock in the rate set forth in subsection (b) of this section for a period of not less than twelve months from the commencement of service and shall include a schedule for price determination for the subsequent two-year period; and

(3) The price per customer shall be expressed in cost per kilowatt hour and may include different rates for different customer classes and levels of usage.

(d) The electric distribution companies supplying residential customers and small commercial customers on the standard offer shall provide to the procurement manager such relevant data as requested by the procurement manager for purposes of developing the request for proposals, including, but not limited to, the average per

customer usage in each such customer class for the previous twelve-month period, the number of such customers who are delinquent, have defaulted or are in collections, and the net average number of such customers who moved off of the standard offer in the preceding twelve-month period.

(e) Upon receipt of price terms from a successful bidder by a customer, the customer will be given sixty days to provide notice to the successful bidder by electronic mail or by return mail, postage prepaid, that it is opting out of the contract and either remaining on standard service or choosing an alternative supplier. The materials sent to a customer by a successful bidder shall be pre-approved by the Public Utilities Regulatory Authority, and shall include a clear and conspicuous description of the customer's right to opt out of the contract within sixty days and a cost-free method to exercise that option. Nothing in this section or any contract authorized herein shall prohibit a residential customer or small business customer who has been aggregated and auctioned to an electric supplier from choosing to obtain service from any other licensed electric supplier or returning to standard service at any time without penalty.

(f) The procurement manager shall issue a request for proposals on or before ~~January 1, 2014~~<sup>July 1, 2014</sup>, and at subsequent intervals of not less than three years. ~~or when the number of new residential customers and small commercial customers on the standard offer and not served by a competitive electric supplier reaches a threshold of ten thousand customers.~~

(g) The electric supplier or suppliers awarded a competitive supply contract as a result of the request for proposals issued pursuant to this section shall remit the amount accepted as its per customer bid to the state for deposit into the General Fund not later than thirty days after the date of the award.

(h) In accordance with the provisions of section 16-244m of the general statutes, an electric distribution company shall continue to provide standard service to (1) any residential customer or small commercial customer not receiving service from a transferred to a competitive electric supplier as a result of the auction process provided for in this section and ~~or (2) or~~ any new residential customer or small commercial customer that does not select a competitive electric supplier.

(i) The procurement manager may require an electric supplier to provide forms of assurance that the contracts resulting from the auction process will be fulfilled. An electric supplier that fails to fulfill its contractual obligations pursuant to an award in accordance with this section shall be subject to civil penalties, in accordance with the provisions of section 16-41 of the general statutes, or the suspension or revocation of such electric supplier's license, or a prohibition on the acceptance of new customers by such electric supplier, following a hearing that is conducted as a contested case, as provided in chapter 54 of the general statutes.

