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## OLR Bill Analysis

sSB 960 (File 374, as amended by Senate "A")\*

***AN ACT CONCERNING THE PUBLIC UTILITIES REGULATORY AUTHORITY'S REVIEW OF CLAIMS ARISING FROM CONTRACTS PREVIOUSLY APPROVED BY THE AUTHORITY, PERSONS INVOLVED IN THE TRANSPORTATION OF NATURAL GAS AND REQUIREMENTS FOR OPERATOR QUALIFICATION OF INDIVIDUALS PERFORMING COVERED TASKS ON A PIPELINE FACILITY, CALL BEFORE YOU DIG PROGRAM VIOLATIONS AND FINES AND THE PUBLIC UTILITIES REGULATORY POLICIES ACT.***

### SUMMARY

This bill makes various changes to the statutes regarding the Public Utilities Regulatory Authority (PURA). Among other things, the bill:

1. requires the parties to certain PURA-approved contracts to bring their first dispute arising from the contract before PURA instead of Superior Court;
2. expands PURA's authority over certain gas transportation entities (e.g., propane systems and municipal gas distribution systems) to (a) give PURA access to their facilities, (b) provide whistleblower protections to their employees, (c) allow PURA to order them to make certain reasonable improvements or repairs, (d) require them to notify PURA about certain accidents, and (e) allow PURA to impose certain penalties on them;
3. increases the maximum penalty imposed for certain natural gas pipeline safety violations;
4. establishes certain evaluation and training requirements for individuals who perform work on a pipeline facility that affects the pipeline's safety or integrity;
5. requires natural gas distribution companies to (a) use geographic information systems to map their pipeline facilities and (b) if

PURA determines that it will be beneficial, provide PURA with remote real-time read-only access to their electronic systems;

6. requires propane companies to provide PURA with certain information about their propane distribution systems; and
7. requires the penalties for certain violations of the “Call Before You Dig” law’s marking requirements to be directly paid by the entity being penalized by PURA, without recovering the penalty from a third party (e.g., a contractor working for the penalized entity).

The bill (1) repeals a generally obsolete requirement for electric companies to purchase power from non-utility cogeneration and renewable energy producers at a rate equal to the company’s avoided cost (i.e., the amount that the company would have had to spend to generate the power itself or buy from another source) and (2) replaces it with similar requirements under the federal Public Utilities Regulatory Policies Act of 1978 (PURPA) with rates set under PURA-approved pro forma tariffs. It also makes related conforming and technical changes.

Lastly, the bill allows the Connecticut Green Bank and its subsidiaries to seek qualification as eligible borrowers of federal funding, including under the Rural Electrification Act of 1936, which authorizes the United States Department of Agriculture to make loans to various public and private entities to furnish or improve electric and telephone service in rural areas. It also explicitly allows the Green Bank to form subsidiaries for this purpose. The bill also makes a technical change regarding the bank’s board of directors (§§ 21-22).

\*Senate Amendment “A” makes a technical and conforming change in the underlying bill (File 374) and adds the provisions about the Green Bank.

EFFECTIVE DATE: Upon passage, except the provision making a technical change to the Green Bank’s board of directors is effective October 1, 2019.

## § 1 — PURA REVIEW OF CONTRACTS

The bill requires the parties to certain PURA-approved contracts to bring their first dispute arising from the contract to PURA, instead of Superior Court as required under current law. A party may subsequently appeal PURA's ruling on the first dispute or decision to Superior Court.

The bill's requirement applies to contracts that meet the following criteria:

1. PURA approved the contract after the bill is enacted and under certain statutory authority (see Table 1 below),
2. a public service company is a party to the contract,
3. the contract price is funded by ratepayers, and
4. the contract's purpose is for the public service company to purchase products and services for ratepayers' benefit.

Table 1 shows the statutory authority for the PURA-approved contracts covered by the bill.

**Table 1: Statutory Authority for PURA-Approved Contracts**

<b>Statute (CGS §)</b>	<b>Description</b>
16-19hh	Implementation of flexible pricing and rates; special contracts for electric service; gas rates for certain manufacturers
16-243m	Measures to reduce federally mandated congestion charges
16-243u	Plan to build peaking generation
16-244r	Long-term contracts regarding zero emission generation projects; solicitation of Class I generation projects; renewable energy credits
16-244s	Zero emission generation projects solicitation plan; procurement plan; noncompliance fee
16-244t	Power purchase contracts regarding low-emission generation projects; renewable energy credits
16-244y	Fuel cell electricity generation; proposals to acquire, enter into power purchase agreements or provide financial incentives
16a-3b	Implementation of the Integrated Resources Plan
16a-3f	Solicitation of Class I renewable energy sources
16a-3g	Solicitation of Class I renewable energy sources or large-scale hydropower

<b>Statute (CGS §)</b>	<b>Description</b>
16a-3h	Solicitation regarding run-of-the-river hydropower, landfill methane gas, biomass, fuel cell, offshore wind, anaerobic digestion, or energy storage systems
16a-3i	Determination of adequacy of Class I renewable energy sources; solicitation regarding Class I renewable energy sources; use of large-scale hydropower in renewable portfolio standards
16a-3j	Regional and independent solicitation regarding passive demand response, Class I renewable energy sources, Class III sources, large-scale hydropower, or natural gas storage and transportation capacity
16a-3k	Definitions
16a-3l	Solicitations regarding Class I renewable energy sources; consideration of environmental impacts; impacts to prime farmland and core forests; reuse of brownfields and landfills
16a-3m	Appraisal regarding nuclear power generating facilities; solicitation regarding zero-carbon electricity generating resources

The bill allows a party to petition PURA for a declaratory ruling or apply for review under the bill or a statute that governs the contract. Regardless of the Uniform Administrative Procedure Act's provision on declaratory rulings, PURA may not initiate a proceeding to review one of these contracts on its own motion.

The bill requires PURA to review any of these contract claims and decide them by issuing a declaratory ruling or final decision in a contested case proceeding, including ordering legal and equitable contract remedies. A party to the contracts may appeal PURA's ruling or decision to Superior Court.

## **§§ 2-6 — PURA JURISDICTION OVER GAS TRANSPORTATION**

Current law gives PURA jurisdiction over public services companies, which includes investor-owned natural gas distribution companies (e.g., Eversource). The bill extends certain elements of this jurisdiction to "persons involved in the transportation of gas," which, under the bill's definitions, include a wider array of gas transporting entities, such as municipal gas distribution systems and propane systems.

Under the bill:

1. “persons” are any individual, firm, joint venture, partnership, corporation, limited liability company, association, municipality, or cooperative association, including any of their trustees, receivers, assignees, or personal representatives;
2. “gas” is natural gas, flammable gas, or toxic or corrosive gas; and
3. “transportation of gas” is the gathering, transmission, or distribution of gas by pipeline or its storage.

***PURA Access to Facilities (§ 2)***

Current law allows PURA, or its designees, to access a public utility company’s or retail electric supplier’s premises, buildings, or other places that they own or control. The bill expands this access to also include their “plants” and persons involved in the transportation of gas. By law a company’s “plants” include all real estate, buildings, tracks, pipes, mains, poles, wires and other fixed or stationary construction and equipment, wherever located, used in the conduct of the business of the company (CGS § 16-1).

***Whistleblower Protections (§ 3)***

The bill extends PURA’s whistleblower protections to employees of (1) persons involved in the transportation of gas and (2) entities that directly or indirectly provide goods to them. Among other things, this:

1. prohibits these employers from taking any retaliatory actions against their employees for disclosing the substantial malfeasance of a person involved in the transportation of gas;
2. allows their employees to inform PURA about any prohibited retaliatory actions or malfeasance in management;
3. allows PURA to investigate and issue orders, impose civil penalties, award attorney’s fees and order payment for back pay;
4. voids any agreement between the employees and employers if it discourages the employee from presenting a written complaint or testifying about the malfeasance; and

5. requires a notice to be posted in these employees' workplaces, in accordance with PURA's regulations, which informs them about the whistleblower protections.

***PURA Authority to Order Improvements (§ 4)***

Current law generally (1) requires PURA to keep fully informed about the conditions of a public service company's plant, equipment and operations, in respect to its adequacy, suitability, and safety, and (2) authorizes PURA to order a company to make reasonable improvements, repairs, or alterations in its plants, equipment, or operations, that may be reasonably necessary for the public interest.

The bill extends this requirement and authority to include persons involved in the transportation of gas.

***Accident Notification Requirement (§ 5)***

As current law requires for public service companies and retail electric suppliers, the bill requires persons involved in the transportations of gas to notify PURA, as soon as reasonably possible, about any accident that (1) was, or may have been, connected with or due to the operation of its property and (2) involved personal injuries or public safety. As under current law, if the notice is given in a non-written form, it must be confirmed in writing within five days after the accident. They must also submit a monthly written report on minor accidents to PURA. A failure to comply with these requirements is subject to up to a \$500 fine per offense.

***Enforcement (§ 6)***

As current law provides for other PURA-regulated entities, the bill requires persons involved with the transportation of gas to obey, observe, and comply with all applicable provisions of the laws for public service companies and PURA's applicable regulations and orders. It requires violators to be fined, by PURA's order, under the applicable statutory penalty or, if no penalty is prescribed, up to \$10,000 for each offense. By law, each distinct violation is a separate offense, and in cases of continued violations, each day is a separate offense.

## **§ 7 — PENALTIES FOR VIOLATIONS OF NATURAL GAS PIPELINE LAWS**

Under current law, entities that violate the federal law or regulations on natural gas pipeline safety (49 U.S.C. Chapter 601) or state law or regulations on natural gas pipelines are subject to a civil penalty up to the maximum allowed under the federal law (\$1,000; \$50,000; or \$200,000 per violation, depending on the violation). The bill instead allows the penalty to be up to the higher of the maximum allowed under (1) the federal law or (2) federal regulations on pipeline safety (currently \$213,268 for each violation and \$2,132,679 for any related series of violations).

Existing law, unchanged by the bill, allows PURA to compromise over a civil penalty after considering the criteria established in federal regulations (e.g., the gravity of the violation or the violator's history of prior violations).

## **§ 8 — OPERATOR EVALUATION AND TRAINING**

The bill requires each operator (a person who engages in the transportation of gas) to do the following:

1. evaluate someone who the operator believes did not correctly perform a covered task (an activity on a pipeline facility that affects the pipeline's safety or integrity);
2. provide training that ensures that those performing covered tasks have the necessary knowledge and skills to perform them in a way that ensures the safe operation of pipeline facilities;
3. document the training requirements in a plan, including each covered task's minimum training time;
4. conduct evaluations more than 48 hours after training;
5. ensure that the evaluation process (a) is performed by operator personnel or independent third-party contractors and (b) evaluates task-specific abnormal operating conditions; and
6. ensure that (a) inspectors are qualified for the covered tasks they

are inspecting, (b) the training and evaluation process is specific to the operator's plans, procedures, and standards, and (c) the written qualification program in the evaluation includes a training and evaluation process for personnel performing engineering tasks.

Under the bill, an "evaluation" is a process, established and documented by the operator, to determine someone's ability to perform a covered task by (1) written or oral examination and (2) observation while performing on the job during simulations.

The above requirements are in addition to federal regulations' minimum requirements for operator qualification of people performing covered tasks on pipeline facilities.

#### **§ 9 — GIS MAPPING OF PIPELINE FACILITIES AND PURA ACCESS TO ELECTRONIC SYSTEMS**

The bill requires anyone involved in the transportation of gas, but not propane, to:

1. use geographic information systems to map all of their pipeline facilities (i.e., new and existing pipeline rights-of-way and any equipment, facility, or building used in the transportation of gas or the treatment of gas during the course of transportation) and
2. provide remote real-time read-only access to all of their electronic systems, if PURA determines that it will be beneficial in keeping PURA fully informed about the person's plant, equipment, and operations.

#### **§ 10 — PROPANE SYSTEM INFORMATION**

The bill requires anyone involved in the transportation of gas, but not natural gas, to provide PURA with any information it deems relevant about the person's propane distribution systems under PURA's jurisdiction. Starting by October 1, 2019, the information must be submitted annually on a PURA-prescribed form. Any changes to the information must be resubmitted to PURA within 30 days of the change.

## **§ 11 — CALL BEFORE YOU DIG PENALTIES**

Existing law requires companies and individuals engaging in excavation, discharge of explosions, or demolition to comply with certain requirements (i.e., “Call Before You Dig”). Anyone who fails to comply with these requirements must pay the state a civil penalty of up to \$40,000.

The bill requires the penalty for a violation involving a public utility’s failure to properly or timely mark an underground facility’s approximate location to be paid by the person, public agency, or public utility to whom the notice from PURA is addressed. If the person, public agency, or utility recovers any portion of the penalty from a third party (e.g., a contractor that failed to make the markings), the bill allows PURA to direct them to forfeit the recovered amount, as provided in the notice.

## **§§ 12-20 & 23 — PRIVATE POWER PRODUCERS & PURPA**

Current law, enacted before the state’s deregulation of the electricity market, generally requires the state’s electric distribution companies (EDCs, i.e., Eversource and United Illuminating) and municipal electric companies to purchase electricity and generating capacity offered by “private power producers” (certain non-utility generators that use renewable energy or cogeneration to generate their power). The companies must pay these producers a rate equal to the company’s avoided cost (i.e., the amount that the company would have had to spend to generate the power itself or buy from another source).

The bill replaces this generally obsolete law with references to, and requirements under, the federal Public Utilities Regulatory Policies Act of 1978 (PURPA), which similarly requires electric utilities to purchase their power from non-utility cogeneration and renewable energy producers.

To establish the rates for these purchases, the bill requires each EDC to file with PURA three pro forma tariffs for purchasing energy and capacity from the eligible qualifying facilities that the EDCs must

purchase energy or capacity from under PURPA. Under the bill, these facilities are cogeneration facilities or small power production facilities that qualify under PURPA regulations.

The tariffs required by the bill must address three types of PURPA transactions: (1) energy-only qualifying facility sales, (2) capacity-only qualifying facility sales, and (3) energy and capacity qualifying facility sales. Each tariff must establish a process by which qualifying facilities may choose to be compensated based on their avoided costs (1) calculated at the time of delivery or (2) forecasted when an obligation to purchase arises under federal regulations.

Under the bill, “avoided costs” are the costs avoided by an EDC due to purchasing power or capacity from a qualifying facility, as approved by PURA. They cannot result in costs that exceed the EDC’s costs if it had not made such purchases and instead purchased electricity or capacity from regional wholesale electricity markets.

PURA must conduct an uncontested proceeding to review the tariffs and it must approve them if they satisfy PURPA’s requirements and any other requirements PURA deems appropriate.

The bill repeals generally obsolete requirements for (1) the EDCs and municipal electric companies to meet New Jersey's interconnection standards if PURA does not approve its own standards for interconnecting with private power producers and (2) PURA to adopt regulations to determine how private companies can provide conservation and load management services to meet electric utility capacity demands either instead of, or in addition to, generating facilities.

The bill also makes various technical and conforming changes (e.g., replacing references to “private power producers” with “qualifying facilities” under PURPA).

## **BACKGROUND**

### ***Related Bills***

SB 678 (File 158), reported favorably by the Energy and Technology

Committee, requires PURA to adopt regulations that require certain markings made under Call Before Your Dig to begin to fade within three months.

SB 959 (File 169), reported favorably by the Energy and Technology Committee, allows the Green Bank and its subsidiaries to seek qualification as eligible borrowers of federal funding and makes a technical change regarding the bank's board of directors.

**COMMITTEE ACTION**

Energy and Technology Committee

Joint Favorable Substitute

Yea 25 Nay 0 (03/19/2019)