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2008 CT Legislation Affecting Energy, Water, Gas, Electric, Cable and Telecommunications

October 2008

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INTRODUCTION

In 2008, the Connecticut General Assembly enacted several pieces of legislation affecting the energy, water, gas, cable and telecommunications industries. The new laws address a variety of topics, including energy scarcity and security, renewable energy, global warming, environmental health, telephone and cable installation, taxation of telecommunications company property and community access providers. The following is a summary of public acts that we believe are likely to have an impact on utilities, regulated industries and customers who purchase their services.

SUMMARY OF PUBLIC ACTS

An Act Concerning Continuation of Water Liens

Public Act No. 08-43

This Act, effective October 1, 2008, extends, from one to two years, the time that a lien for delinquent municipal water rates and charges runs before it must be continued by filing a certificate with the town clerk in the same way as a tax lien.

An Act Concerning Thermal Energy Transportation

Public Act No. 08-77

This Act, effective from its passage (April 30, 2008) through May 7, 2008, barred the company that operates the thermal energy system in Hartford from terminating or interrupting service to its customers under certain circumstances that endangered public health or disrupted government or nongovernment services by amending one of the sections of the Hartford Steam Company's charter. This act also requires the DPUC to regulate any thermal energy company in the same way that it regulates other utilities, subject to the approval of the Energy and Technology Committee.

An Act Concerning Environmental Justice Communities and the Storage of Asbestos Containing Material

Public Act No. 08-94

Section 1 of this Act, effective January 1, 2009, defines a number of terms to be used in subsequent sections of this Act. Under this section, applicants seeking a certificate

under CGS Chapter 227a, a new or expanded permit, or siting approval involving an "affecting facility" in an "environmental justice community" are required to file a "public participation plan" and get DEP or Connecticut Siting Council ("CSC") approval of such plan prior to filing their application. An "affecting facility" includes, among other things:

- any electric generating facility with a capacity of more than 10 megawatts ("MWs");
- sludge, solid waste or medical waste incinerator or combustor;
- sewage treatment plant with a capacity of more than 50 million gallons per day;
- intermediate processing center, volume reduction facility or multitown recycling facility with a combined monthly volume in excess of 25 tons;
- new or expanded landfill, including, but not limited to, a landfill that contains ash, construction and demolition debris or solid waste; or
- a major source of air pollution as defined by the federal Clean Air Act.

An "environmental justice community" means a United States census block group for which thiry percent or more of the population consists of low income persons who are not institutionalized and have an income below 200% of the federal poverty level, or a distressed municipality.

The applicant must also consult with the chief elected official in the town where the facility is located (or going to be located) to discuss a possible community environmental benefit agreement, which is a written agreement entered into by a municipality and an owner or developer of real property whereby the owner or developer agrees to develop real property that is to be used for any new or expanded affecting facility and to provide financial resources for the purpose of the mitigation of impacts reasonably related to the facility (e.g., impacts on the environment, traffic, parking and noise).

The Public Participation Plan MUST include an informal public hearing to be held at a convenient time for the public. Notice of the hearing must be given no more than 30 days and no less than 10 days before the hearing is to take place. The DEP and the CSC must wait at least 60 days after the public meeting to act on the applicant's request. This Act specifies that any municipality, owner, or developer may enter into a community environmental benefit agreement in connection with an affecting facility.

Section 2 of this Act, effective October 1, 2008, restricts where persons or government agencies may place, store, dispose of, or deposit certain asbestos-containing materials. No more than 1000 cubic yards of asbestos containing soil may be moved from one site to another that abuts a residential property. Contaminated soil must also be piled no higher than four (4) feet above the existing grade of the land unless approved by a two-thirds vote of the municipality's legislative body.

An Act Concerning Connecticut Global Warming Solutions

Public Act No. 08-98

Section 1 of this Act, effective October 1, 2008, repeals and replaces CGS § 22a-220 and defines a number of terms to be used in subsequent sections of this Act.

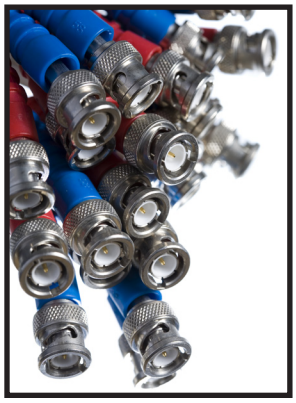
Section 2 of this Act, effective October 1, 2008, repeals and replaces CGS § 22a-200a. Greenhouse Gas ("GHG") reduction targets are set for 2020 at 10% below 1990 levels and set for 2050 at least 80% below 2001 levels, as determined by the Commissioner of Environmental Protection ("CEP"). The CEP is also required to give periodic reports on emissions reduction achievements to the General Assembly and inform the proper General Assembly committees of any federally mandated cap and trade programs at least one year prior to those programs becoming effective. The reports must also compare and contrast any programs that have been implemented by the federal government and other states.

Section 3 of this Act, effective October 1, 2008, repeals and replaces CGS § 22a- 200b. This section lays out a timeline for the CEP to measure current GHG emissions, and submit a report by 2012 (and every three years thereafter), proposing regulations aimed at achieving the limits of GHG emissions set by this Act.

Section 4 of this Act, effective October 1, 2008, repeals and replaces CGS § 22a-200c. This section gives the CEP authority to adopt regulations aimed at implementing Regional Greenhouse Gas Initiative ("RGGI"). The Department of Public Utility Control ("DPUC") and Department of Environmental Protection ("DEP") are authorized to auction all emission allowances and invest the proceeds on behalf of electric ratepayers in energy conservation, load management and Class I renewable energy programs.

Section 5 of this Act, effective October 1, 2008, requires the DEP to monitor the development of alternative fuels and the Department of Transportation ("DOT") to investigate more efficient transportation measures including, but not limited to, high speed rail, light-rail passenger service and freight rail service within the northeast region. The DEP is also authorized to work with other states and/or Canadian provinces to meet these GHG emission goals.

Section 6 of this Act, effective October 1, 2008, repeals and replaces CGS § 22a-200c, but continues to impose a $5 fee on motor vehicle registrations to be deposited into the federal Clean Air Act account.



Section 7 of this Act, effective October 1, 2008, requires the establishment of a new subcommittee, under the Governor's Steering Committee on Climate Change, that will study and make recommendations regarding the reduction of GHGs and to assess the impact of climate change and ways the state can adapt to, and mitigate, the harmful impacts of such change.

Section 8 of this Act, effective from passage (June 2, 2008), repeals and replaces CGS § 22a-174, changing and defining in more detail the CEP's ability to make contracts with consultants.

An Act Concerning Telephone and Cable Installation Fees for Nursing Home Residents

Public Act No. 08-115

Section 1 of this act, effective October 1, 2008, prohibits telephone companies, telecommunications companies, certified telecommunications providers, community antenna television companies, certified competitive video service providers, and cable franchise authority certificate holders from charging a fee for connecting residents in residential care facilities, nursing homes, or rest homes. However, a violation of this provision does not constitute an unfair or deceptive trade practice under the Connecticut Unfair Trade Practices Act ("CUTPA").

Section 2 of this Act, effective October 1, 2008, prohibits the owner of a residential care facility, nursing home, or rest home from charging a fee to residents for connecting these services when the resident changes rooms.

An Act Concerning the Legislative Commissioners' Recommendations for Technical Revisions to the Environmental Statutes and the Open Space and Watershed Grant Program

Public Act No. 08-124

This Act, effective from passage (June 5, 2008), allows applicants for the open space and watershed grant program to use other state funds as matching grants. It specifies that they may use other state and federal funds to fund up to 70% of their projects. Prior law required these recipients to match the grant with their own funds.

The Open Space and Watershed Grant Program referenced above provides grants to:

1. municipalities and nonprofit land organizations to acquire land or permanent real property interests (e.g., easements);
2. water companies (including municipal utilities) to

acquire land for the purpose of protecting drinking water supplies; and
3. distressed municipalities and targeted investment communities to restore or protect open space land they already own.

If the state acquires a partial interest in a property (e.g., an easement), the easement must provide:

1. permanent preservation;
2. public access; and
3. any DPH restrictions necessary to protect a public drinking water source.

An Act Concerning the Municipal Utilities

Public Act No. 08-128

This Act gives energy cooperatives more options in procuring supplies, materials, and equipment. The Connecticut Municipal Electric Energy Cooperative ("CMEEC") is currently the only such cooperative in Connecticut.

Section 1 of this Act, effective from passage (June 5, 2008), repeals and replaces CGS § 7-233q, but continues to exempt municipal electrical energy cooperatives from the general requirement that all purchases for supplies or services over $25,000 be competitively bid, provided that there is only a single possible provider or the cooperative is an owner of a portion of the project seeking such supplies or services and that project is otherwise not subject to competitive bidding requirements. Otherwise, they may enter into agreements as they see fit, but the process by which they do so will be made available to the public for review. This Act additionally exempts from competitive bidding:

1. contracts for projects in which a cooperative has an interest or is involved in as a partner or joint venturer; and
2. contracts entered into under the laws and rules governing the cooperative and the written policies adopted by its governing body.

Section 2 of this Act, effective from passage (June 5, 2008), repeals and replaces subsection (b) of CGS § 7-233e, adding a provision allowing a cooperative to make agreements with any entity to receive or procure the supply, or prepay for the supply of, natural gas for the sole benefit of the cooperative's members, the city of Norwich Department of Public Utilities, or a municipal gas utility. The gas must be used or consumed by the utility or by its retail consumers entirely within the city of Norwich or the town of Preston. The gas *cannot* be consumed, use in, or transported to:

1. any other municipality or utility;
2. land held in trust by the United States on behalf of a Native American tribe; or
3. land located in a Native American reservation or other jurisdiction.

The cooperative cannot exercise these powers in a way that harms the rights, powers, and privileges of gas companies.

An Act Concerning the Taxation of Telecommunications Company Property and the Timely Filing of Declarations:

Public Act No. 08-130

Section 1 of this Act, effective July 1, 2008, repeals and replaces CGS § 12-80a of the 2008 supplement to the general statutes. By November 30 of each year, telecommunication service providers and community antenna television service providers are required to submit to the Commissioner of Revenue Services and the Secretary of the Office of Policy Management ("OPM") a town-by-town list of all taxable personal property that they owned as of October 1 of that year, including the location and fair market value of the property (recognizing depreciation of such property to the maximum extent allowed). The service providers must also disclose this information to

each town where the property is located. This property will be valued at 70% of the personal property value set forth on the list of taxable personal property and taxed at a rate of forty-seven mills. This law also applies to providers of community antenna television services. Any municipality may examine the OPM's or the Department of Revenue Service's audit of a taxpayer's submission pursuant to subsection (a) of this section.

Section 2 of this Act, effective from its passage (June 5, 2008) and applicable to declarations due on November 1, 2008, excludes motor vehicles registered in the office of the state Commissioner of Motor Vehicles from the list of personal property that needs to be disclosed by any person required by law to file an annual declaration of personal property. This section describes which property shall be included in the disclosure (e.g., cables, wires, poles, underground mains, conduits, pipes, and any other property used solely and exclusively for rendering telecommunications service). Commercial or financial information in any declaration filed under this section shall not be open for public inspection.

An Act Concerning Environmental Health

Public Act No. 08-137

Section 1 of this Act, effective October 1, 2008, repeals and replaces subsection (b) of CGS § 25-33 modifying the Department of Public Health's ("DPH") review and approval process concerning proposals for new water supplies.

Section 2 of this Act, effective October 1, 2008, repeals and replaces CGS § 19a-206 of the 2008 supplement. This section specifies which town is responsible for paying relocation assistance to persons who have been displaced due to enforcement actions by district departments of health.

Section 3 of this Act, effective October 1, 2008, repeals and replaces subsection (a) of CGS § 19a-17of the 2008 supplement, expanding the potential disciplinary actions DPH can take against department-licensed or -certified persons or entities who engage in actions harmful to property owners.

Section 4 of this Act, effective October 1, 2008, repeals and replaces CGS § 19a-37a requiring DPH to adopt regulations on irrigation systems and other physical connections between the distribution system of a public water system and any other water system in any building served by a public water system. This section also provides specific guidance as to what regulations concerning automatic fire extinguishing systems shall entail.

Section 5 of this Act, effective October 1, 2008, requires installers of irrigation systems or other physical connections between public water supply distribution systems and other water systems to notify the water company of the installation and authorizes local health directors to order mitigation measures if such connections create an unreasonable risk of injury to health and safety.

Section 6 of this Act, effective October 1, 2008, repeals and replaces subsection CGS § 25-43 and establishes a penalty for prohibited aircraft-related activities on reservoirs and amends the penalties for other violations concerning improper activities (swimming, polluting, etc.) in or on public water supplies.

An Act Concerning Third Party Non-Profit Community Access Providers and Community Antenna Television Companies

Public Act No. 08-159

Section 1 of this Act, effective from passage (June 12, 2008), requires any third party non-profit community access provider serving six municipalities, one of which has a population of more than one hundred thirty thousand (i.e. the Bridgeport franchise area) to provide access to the municipalities (or other groups) being served in order to disseminate community-related programming and information. If the third-party provider fails

to provide authorization to the municipality within three days of the request, the DPUC may revoke the third-party provider's service agreement and seek another provider.

Section 2 of this Act, effective from passage (June 12, 2008), requires the cable television company serving the Bridgeport area to provide $100,000 in funding per year to the community antenna television advisory council for developing town-specific education and government community-access programming. This Act requires the advisory council, in turn, to distribute all of this money to a town organization, authority, body, or official in the service territory to support the development of production and programming capabilities for town-specific education and government access programming. The council must establish grant procedures and processes governing the use of this money. The community antenna television advisory council that receives funds shall report annually to the DPUC regarding how the funds were expended. This requirement also applies if the

Renewable Energy Legislation

An Act Concerning Energy Scarcity and Security, Renewable and Clean Energy and State Solar Strategy

Public Act No. 08-168

This Act, effective from passage (June 12, 2008), requires that a task force be formed to conduct three studies on the state's energy future and prepare a plan regarding the state's solar energy industry.

Section 1 of this Act requires the establishment of a task force to study energy scarcity and sustainability. The task force will be comprised of appointees of certain members of the House and Senate, and the Secretary of the Office of Policy Management ("OPM"), the Commissioner of Environmental Protection ("CEP"), and the Executive Director of Connecticut Innovations, Inc. ("CII"), or their respective designees. The task force must submit its report with findings and recommendations regarding long-term and short-term responses to address potential scarcity, disruptions and cost increases in energy supplies to the Energy and Technology Committee by January 1, 2009. This task force will terminate on the date it submits the report or January 1, 2009, whichever is later.

Section 2 of this Act requires the OPM to conduct a petroleum sensitivity study of state agencies. The study must include a state-wide assessment and inventory of state departments and agencies and their activities and corollary need to consume. OPM must consult with the state's Renewable Energy Investment Fund in conducting the study, which may be funded by up to $250,000 from said fund. In addition, OPM may contract with a consultant to perform the study. OPM must report the study findings to the Energy and Technology Committee by December 1, 2008.

Section 3 of this Act requires the Renewable Energy Investment Board (the "Board") to conduct a study that includes an examination of the funding of renewable energy and clean energy funds in other states, and the mission of the departments that administer those funds. The Board must analyze the extent to which creating a department of renewable energy or clean energy would:

1. ensure that future oil shortages and price increases do not jeopardize the living standards and food security of state residents and farms;
2. maximize economic opportunities for state workers in emerging clean energy industries;
3. reduce carbon emissions through greater reliance on renewable energy and clean energy sources; and
4. promote energy independence, local energy production, and distributed generation.

The Board must report its findings to the Energy and Technology Committee by January 1, 2009

Section 4 of this Act requires the Board, in consultation with the Department of Public Utility Control ("DPUC"), to convene a working group to develop a plan to maximize the use of solar power and create a self-sustaining solar industry in the state that will help meet Renewable Portfolio Standard ("RPS") requirements and the greenhouse gas ("GHG") emissions limits of the Regional Greenhouse Gas Initiative ("RGGI"). The working group will consist of various stakeholders, including representatives from the electric distribution companies, environmental nonprofit organizations, the solar industry, renewable finance, and Commissioners from the Department of Environmental Protection ("DEP") and Economic Community Development ("ECD") and the executive Director of CII, or their respective designees. The plan must describe the benefits of and the costs associated with achieving a self-sustaining solar industry and maximizing the use of solar power, including:

1. types and amounts of incentives to maximize in-state solar installations;
2. methods of residential solar financing;
3. estimated energy production; and
4. solar benefits, including avoided fossil-fuel combustion, reduced congestion on the electric transmission system and peak power production, job creation, air quality, and reduced global warming emissions.

The plan must: (1) identify a target for the amount of generation from solar technologies and a timeline for achieving this target; and (2) set forth recommendations with respect to workforce development and job training needed to build an in-state solar workforce and coordination with other programs where appropriate. The Board must approve the plan and submit it to the Connecticut Energy Advisory Board ("CEAB"), the Energy and Technology Committee, and the Commerce Committee October 15, 2008.