

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

LETICIA COLON DE MEJIAS, THE
CONNECTICUT FUND FOR THE
ENVIRONMENT, INC., FIGHT THE HIKE,
ENERGY EFFICIENCIES SOLUTIONS, LLC,
BEST HOME PERFORMANCE OF
CONNECTICUT, CONNECTICUT CITIZEN
ACTION GROUP, NEW ENGLAND SMART
ENERGY GROUP, LLC, CT WEATHERPROOF
INSULATION, LLC, STEVEN C. OSUCH,
ENERGY ESC, LLC, JONATHAN CASIANO,
and BRIGHT SOLUTIONS, LLC,

Plaintiffs,

v.

DANNEL P. MALLOY, in his official capacity as
Governor of the State of Connecticut, DENISE L.
NAPPIER, in her official capacity as the Treasurer
of the State of Connecticut, and KEVIN LEMBO,
in his official capacity as the Comptroller of the
State of Connecticut,

Defendants.

CIVIL ACTION NO.

MAY 15, 2018

COMPLAINT

For their Complaint, Plaintiffs, Leticia Colon de Mejias, The Connecticut Fund for the Environment, Inc., Fight the Hike, Energy Efficiencies Solutions, LLC, Best Home Performance of CT, LLC, Connecticut Citizen Action Group, New England Smart Energy Group, LLC, CT Weatherproof Insulation, LLC, Steven C. Osuch, Energy ESC, LLC, Jonathan Casiano, and Bright Solutions, LLC (“Plaintiffs”), allege as follows:

NATURE OF ACTION

This action challenges the constitutionality and other legal defects of the Connecticut General Assembly's sweep of \$155 million from the bank accounts of Connecticut's electric utilities into the State's General Fund. By this action, the Plaintiffs, who are invested in improving the State's energy efficiency and clean energy economy, seek to stop this extraordinary overreach by the General Assembly and restore the funds to their legally-protected purpose. By June these funds may well be irrevocably transferred and the job losses and massive reductions in efficiency and clean energy improvements irreversible. It is ironic that, in the name of plugging a budget deficit, the General Assembly is squandering opportunities for the State's green economy, hobbling the award-winning Connecticut Green Bank, and defaulting on the State's commitments to deliver energy savings to the regional power grid, which ultimately will cost electric ratepayers millions in penalties and lost energy savings.

Connecticut collected many millions more than was expected during the spring tax collection season and Plaintiffs hoped that the General Assembly would restore the sweeps and this litigation could be avoided but, instead, the General Assembly only restored \$10 million in the 2019 sweep, leaving \$145 million still being wrongfully converted for general revenue purposes.

Plaintiffs are suing to block the Governor, Treasurer and Comptroller, from unlawfully seizing these ratepayer funds being held and managed by Connecticut's electric distribution utilities.

Connecticut's electric ratepayers have paid or will pay these funds trusting that they would be used for their stated purpose, which includes helping minorities and low and moderate

income families save thousands of dollars annually on their energy bills and creating good-paying local jobs at a time when Connecticut is working hard to retain corporations and jobs.

Electric customers pay these funds to reduce the State's peak demand for electricity, lower energy costs, lower carbon emissions through the implementation of the State's Conservation and Load Management Plan ("C&LM")¹ energy demand reduction and the State's Comprehensive Energy Strategy ("CES"),² stabilize the energy grid, support low cost implementation of cost effective energy efficiency improvements in homes and residences and low cost financing of clean energy programs, such as solar photovoltaic installations, and projects backed by the Connecticut Green Bank. These funds support thousands of local energy efficiency and renewable energy jobs and millions of dollars invested annually in Connecticut's energy efficiency and clean energy economy.

The General Assembly's frantic effort in the fall of 2017 to plug an apparent budget gap resulted in the enactment of an emergency budget that instructs the State to "sweep" and divert the energy efficiency and clean energy funds for general fund balance purposes. But seizing these funds amounts to an unconstitutional impairment of the vested contractual rights of the Plaintiffs, among all other electric ratepayers in Connecticut. Furthermore, sweeping these funds causes the unintended consequence of converting many tax exempt charitable organizations into taxpayers in violation of state law.

During the 2018 Legislative Session, which ended at midnight on May 9, 2018, in light of a significant budget surplus discovered recently, the General Assembly adopted a bill that, if

¹ See 2017 Annual Update of the 2016-2017 Conservation & Load Management Plan, per Section 16-245m(d) of the Connecticut General Statutes, at:

http://www.ct.gov/deep/lib/deep/energy/conserloadmgmt/2017_Plan_Update.pdf

² See Comprehensive Energy Strategy of Connecticut, updated as of February 8, 2018, per Section 16a-3d of the Connecticut General Statutes, at:

http://www.ct.gov/deep/lib/deep/energy/ces/2018_comprehensive_energy_strategy.pdf

signed into law by the Governor, would restore \$10 million for fiscal year 2019 only to one of the three funds impacted by the sweeps. Accordingly, Plaintiffs have no further reason to believe the General Assembly will undo the unlawful invasion of their constitutionally protected interests in the ratepayer funds before the sweeps commence in June, 2018.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367. Based upon the allegations set forth herein, a present case and controversy exists as to the constitutionality of Public Act 17-2, *An Act Concerning the State Budget for the Biennium Ending June 30, 2019, Making Appropriations Therefor, Authorizing and Adjusting Bonds of the State and Implementing Provisions of the Budget* (the “Act”).

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) and (b).

PARTIES

Plaintiffs

3. Plaintiff Leticia Colon de Mejias is an individual with a business address of 77 Pierson Lane, Windsor, Connecticut. Ms. Colon is the founder and chief executive officer of Plaintiff Energy Efficiencies Solutions, LLC (“EES”), a Windsor, Connecticut based full service energy conservation company. EES offers comprehensive solutions to reduce costs of operating buildings, electric demand reduction, and energy efficiency services and products with services including home energy assessments, baseline energy usage reports, building envelope improvements, critical air sealing through building science based techniques, evaluation of insulation, installation of insulation, installation of efficient windows, solar upgrades, heating and cooling system upgrades, and educating consumers and communities on renewable energy options and return on investment coaching for retrofits and energy upgrades. Both Ms. Colon

and EES are electricity ratepayers and consumers of The Connecticut Light and Power Company d/b/a Eversource Energy (“Eversource”).

4. Plaintiff The Connecticut Fund for the Environment, Inc. (“CFE”) is a private, non-profit organization with a principal place of business at 900 Chapel Street, Suite 2202, New Haven, Connecticut 06510. CFE is an organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code and a public charity registered with the State of Connecticut. CFE is an electricity ratepayer of The United Illuminating Company (“UI”). CFE pays a separate charge to its landlord monthly for its electricity usage. The mission of CFE is to protect and improve the land, air, and water of Connecticut and Long Island Sound. CFE works on behalf of its members to promote policies and protections that will protect and improve the land, air, and water of Connecticut. CFE represents more than 3,500 member households, many of whom are gas and/or electricity ratepayers who have paid the energy efficiency and clean energy fees with the reliance and expectation that such funds would be available to them and others to reduce their electricity bills and provide them and others access to renewable energy while reducing pollution in the region, the State, and their neighborhoods.

5. Plaintiff Fight the Hike is an unincorporated association of ratepayers acting by and through its organizers and facilitators, Frank Panzarella and Paula Panzarella, from their home address of 344 Norton Street, New Haven, Connecticut 06511. Fight the Hike was created in 2006 to help ratepayers fight for lower electric bills particularly among low-income inner city residents and for true energy reform in the General Assembly. Fight the Hike has worked for greater access for communities to have renewable, clean energy and effective efficiency programs that actually benefit all ratepayers. Frank and Paula Panzarella are electricity ratepayers of UI.

6. Plaintiff Energy Efficiencies Solutions, LLC is a business with an address of 77 Pierson Lane, Windsor, Connecticut. EES is a Windsor, Connecticut based full service energy conservation company and home improvement contractor.

7. Plaintiff Best Home Performance of CT, LLC (“Best Home Performance”) is a business with an address of 18 Scarborough Road, Windsor, Connecticut 06095. Best Home Performance is a full service energy efficiency and conservation company.

8. Plaintiff Connecticut Citizen Action Group, Inc. (“CCAG”) is non-profit organization designated a 501(c)(4) organization by the Internal Revenue Service and public advocacy group prominent in Connecticut politics (although not affiliated with any political party) seeking to promote social, economic, and environmental justice. Led by Tom Swan, its executive director, CCAG’s offices are located at 30 Arbor Street, Hartford, Connecticut 06106. Plaintiff CCAG is an electric utility consumer.

9. Plaintiff New England Smart Energy Group, LLC, is an energy services company with a business address at 34 Sherman Court, Fairfield, Connecticut 06824-5826.

10. Plaintiff CT Weatherproof Insulation, LLC (“CT Weatherproof”) is an energy services company that participates in the Home Energy Solutions program based at 115 Bruce Avenue, Stratford, Connecticut 06615.

11. Plaintiff New England Smart Energy Group, LLC is an energy services company with a business address at 34 Sherman Court, Fairfield, Connecticut 068524.

12. Plaintiff CT Weatherproof is an energy services company owned and operated by Plaintiff Weiner that participates in the Home Energy Solutions program based at 115 Bruce Avenue, Stratford, Connecticut 06615. CT Weatherproof is an electricity ratepayer and customer of UI.

13. Plaintiff Steven C. Osuch is an individual with a business address of 2 North Road, East Windsor, Connecticut 06088. Mr. Osuch is an electricity ratepayer of Eversource.

14. Plaintiff Energy ESC, LLP (“Energy ESC”) is an engineering firm with a business address of 2 North Road, East Windsor, Connecticut 06088, that designs commercial solar for developers and provides home and business energy solutions. Energy ESC is an electricity ratepayer of Eversource.

15. Plaintiff Jonathan Casiano is an individual with a business address of 23 Pioneer Drive, Windsor, Connecticut 06095. Mr. Casiano is the principal of Plaintiff Bright Solutions, LLC, a full service energy conservation and insulation company that brings energy solutions to residential and commercial customers. Mr. Casiano and his business are electricity ratepayers of Eversource.

16. Plaintiff Bright Solutions, LLC of 23 Pioneer Drive, Windsor, Connecticut 06095 is a full service energy conservation and insulation company that brings energy solutions to residential and commercial customers. Bright Solutions is an Eversource ratepayer.

Defendants

17. Defendant, Dannel P. Malloy, is named in his official capacity as the Governor of the State of Connecticut with an office at Office of the Governor, State Capitol, 210 Capitol Avenue, Hartford, Connecticut 06106. The Governor signed the Act into law on October 31, 2017 despite conceding that “these sweeps all require the state to take and deplete ratepayer funds intended to lower energy costs overall through investments in efficiency and conservation, and instead, use them to fill the General Fund coffers.” See EXHIBIT A attached.

18. Defendant, Denise L. Nappier, is named in her official capacity as the Treasurer of the State of Connecticut with an office at 55 Elm Street, Hartford, Connecticut 06106. The

Treasurer and those subject to her supervision, direction and control (collectively and/or individually, the “Treasurer”) are responsible for implementing the Act.

19. Defendant, Kevin Lembo, is named in his official capacity as the Comptroller of the State of Connecticut, with an office at 55 Elm Street, Hartford, Connecticut 06106. The Comptroller and those subject to his supervision, direction and control (collectively and/or individually, the “Comptroller”) are responsible for budget management, financial reporting and the adjustment and settling of accounts of the State of Connecticut, including administering the implementation of the Act.

OTHER RELEVANT ENTITIES

20. By statute, Connecticut has established numerous public and quasi-public agencies and funds with a mandate to promote energy efficiency and clean energy in the state, and through partnership with other states, throughout the region.

The Connecticut Energy Efficiency Fund

21. In 1998, the Connecticut General Assembly passed electric restructuring legislation, Public Act 98-28, An Act Concerning Electric Restructuring, which created the Conservation & Load Management Fund (renamed in 2015 to the “Connecticut Energy Efficiency Fund”; hereafter, “CEEF”), which was initially funded solely by Connecticut’s electric residential and commercial customers (“Funding Ratepayers”). The primary objectives of the CEEF were to: (1) advance energy efficiency, (2) mitigate the negative environmental impacts of energy generation, and (3) promote economic development through increased energy reliability, lower energy bills, and enhanced energy security.

22. Public Act 98-28 also established the Energy Conservation Management Board (renamed in 2015 to the “Energy Efficiency Board”; hereafter, “EEB”) to advise Connecticut’s

Eversource and UI (together, the “Electric Utilities”) in the development of comprehensive annual plans to implement cost effective energy efficiency and load management programs. In 2005, An Act Concerning Energy Independence, Public Act 05-01, established energy efficiency programs and funding mechanisms for the Connecticut Natural Gas Corporation, Eversource and The Southern Connecticut Gas Company (together, the “Natural Gas Utilities”). The role of the EEB expanded to provide advice to both the Electric Utilities and Natural Gas Utilities in developing comprehensive energy efficiency programs for electricity customers (the “Funding Ratepayers”) and natural gas customers, although the Sweeps do not impact natural gas customers. In 2007, An Act Concerning Electricity and Energy Efficiency, Public Act 07-242, was passed and called for the Electric Utilities and Natural Gas Utilities to pursue “all cost-effective energy efficiency,” and envisioned efficiency as the centerpiece of statewide energy policy.

23. The current statutory authority for the CEEF is set forth in Section 16-245m of the Connecticut General Statutes.

24. CEEF supports a variety of programs which provide financial incentives to help Connecticut consumers reduce the amount of energy used in their homes and businesses. The CEEF works to advance the efficient use of energy, reduce air pollution, reduce negative environmental impacts of greenhouse gas emissions, and promotes economic development and energy security across the State. The CEEF offers Connecticut businesses and residents access to energy efficiency, renewable energy programs and investments that save money, promote electric reliability and reduce peak power usage, create jobs, help businesses compete, and reduce harmful emissions.

25. The CEEF programs are reviewed by the EEB, a group of advisors who utilize their experience and expertise with energy issues to evaluate and consult with Connecticut’s Electric Utilities and Natural Gas Utilities on how energy efficiency programs should best be structured for, and delivered to, Connecticut consumers.

Funding Ratepayers and Other Energy Consumers

26. Many but not all of Connecticut ratepayers are Funding Ratepayers—those customers who fund the CEEF by payment of a surcharge, the system benefits charge (“SBC”), on their electricity bills from the Electric Utilities. These surcharges on Funding Ratepayers collect approximately \$240 million per year from Funding Ratepayers.

27. Customers of municipal electric distribution companies (collectively, the “Municipal Utilities”), however, do not pay an SBC or a Conservation Charge. Those companies are:

- a. Bozrah Light & Power;
- b. Groton Utilities;
- c. Jewett City Department of Public Utilities;
- d. Norwich Public Utilities;
- e. South Norwalk Electric and Water;
- f. Third Taxing District Electric Department of the City of Norwalk; and
- g. Wallingford Department of Public Utilities (Elec. Div.).

Accordingly, those customers are not negatively affected by the Sweeps in any monetary sense.

In fact, insofar as the funds at issue are being swept into the State’s general fund, these

customers are benefitting from the sweeps by enjoying State services paid for out of the general fund without contributing themselves.³

The Connecticut Green Bank

28. The Connecticut Green Bank (the “Green Bank”) was established on July 1, 2011 pursuant to Public Act 11-80, as a quasi-public agency that supersedes the former Connecticut Clean Energy Finance and Investment Authority (“CEFIA”) and under Conn. Gen. Stat. § 16-245n (“Section 16-245n”). As the nation’s first state “Green Bank,”⁴ the Connecticut Green Bank leverages public and private funds to accelerate the growth of green energy in Connecticut.

29. Section 16-245n(h) provides that the State will protect persons who enter into contracts with the Green Bank by not taking any action to impair the Green Bank’s ability to perform its obligations under those contracts:

The state of Connecticut does hereby pledge to and agree with any person with whom the Connecticut Green Bank may enter into contracts pursuant to the provisions of this section that the state will not limit or alter the rights hereby vested in said bank until such contracts and the obligations vested thereunder are fully met and performed on the part of said bank, provided nothing herein shall preclude such limitation or alteration if adequate provision shall be made by law for the protection of such persons entering into contracts with said bank.

30. The plain language of Section 16-245n(h) clearly indicates the intent of the Connecticut General Assembly (the “General Assembly”) to induce private parties to establish and operate clean energy businesses in the State and enter into financial relationships with the

³ Customers of municipal electric distribution companies, since they do not pay the SBC or the Conservation Charge, are not otherwise entitled to take advantage of CEEF programs.

⁴ A green bank (sometimes referred to as a green investment bank, clean energy finance authority, or clean energy finance corporation) is a financial institution, typically public or quasi-public, which uses innovative financing techniques and market development tools in partnership with the private sector to accelerate deployment of clean energy technologies.

Green Bank in reliance upon the General Assembly's promise that the Green Bank will not be eliminated by subsequent legislative action.

31. Many clean energy businesses have been established in Connecticut or invested in their businesses in reliance upon the General Assembly's pledge that the State will not limit or alter the rights vested in the Green Bank until such contracts and the obligations vested thereunder are fully met and performed on the part of the Green Bank.

Connecticut Public Utilities Regulatory Authority

32. The Connecticut Public Utilities Regulatory Authority ("PURA") is established pursuant to Section 16-2 of the Connecticut General Statutes and statutorily charged with regulating the rates and services of Connecticut's Electric Utilities and Natural Gas Utilities, along with water and telecommunication companies and is the franchising authority for the State's cable television companies.

33. In the industries which are still wholly regulated, including the natural monopoly Electric Utilities and Natural Gas Utilities, PURA balances the public's right to safe, adequate and reliable utility service at reasonable rates with the utility's right to a reasonable return on its investment. PURA also keeps watch over competitive utility services to promote equity among the competitors while customers reap the price and quality benefits of competition and are protected from unfair business practices.

34. Pursuant to Public Act 11-80, PURA replaced the former Department of Public Utility Control ("DPUC") and, along with the Bureau of Energy and Technology Policy, PURA became part of the Energy Branch of the Department of Energy and Environmental Protection ("DEEP"). DEEP was also created by the same act in July 2011 and brings together

the State's Department of Environmental Protection ("DEP"), PURA, and an energy policy group that had been based within the Office of Policy and Management.

35. PURA has approved tariffs of the Electric Utilities that implement the CEEF, which tariffs require contractually that each electric customer pay three mills per kilowatt hour of electricity used. Customers, or Funding Ratepayers, pay this charge when they pay their electricity bills.

36. Pursuant to Con. Gen. Stat. Section 16-19(a), Connecticut has codified the court-created rule called the filed rate doctrine, which provides that the Electric Utilities may not charge rates in excess of those previously approved by PURA, except that any rate approved by PURA shall be permitted until amended by PURA.

The Clean Energy Fund

37. Pursuant to Section 16-245n(b) of the Connecticut General Statutes, PURA is required "to assess a charge of not less than one mill per kilowatt hour charged to each end use customer of electric services in the state, *which shall be deposited into the Clean Energy Fund.*"

38. PURA has approved tariffs of the Electric Utilities that implement the funding mechanism for the Clean Energy Fund, which tariffs require contractually that each electric customer pay one mill per kilowatt hour of electricity used. Customers pay this charge when they pay their electric bills. The Clean Energy Fund generates approximately \$10 per year from the average Connecticut household and, prior to the Sweeps, provided approximately \$26 million a year for investments in clean energy projects.

39. The Funding Ratepayers support the Clean Energy Fund and the CEEF pursuant to tariffs approved by PURA and charged by Electric Utilities and accordingly, the payments

made by Funding Ratepayers are pursuant to the filed rates—the contracts each customer enters into when agreeing to accept electric service.

40. Pursuant to the filed rate doctrine and Section 16-19(a) of the Connecticut General Statutes, the charges required by tariffs approved by PURA constitute contracts between the Electric Utilities and their consumers.

41. Filed tariffs are the law, not ‘mere contracts,’ and they conclusively and exclusively enumerate the rights and responsibilities of the contracting parties, in this case the Funding Ratepayers and the Electric Utilities. The filed rate tariff applies to any services, or privileges, or practices affecting such charges. The filed rate doctrine bars attempts to alter the terms and conditions provided for in a tariff because a tariff is the law.

42. The Electric Utilities’ current approved tariffs, which fund the CEEF and the Clean Energy Fund, create vested rights with the Funding Ratepayers--ratepayers fund these charges for the purposes enumerated in the CEEF and Clean Energy Fund authorizations and, in exchange, have a vested right in the expectation that the CEEF and Clean Energy Fund will be used for the purposes established by the filed tariffs.

43. Pursuant to the filed rate doctrine and Section 16-19(a) of the Connecticut General Statutes, Connecticut is also bound by law by the prohibition against retroactive ratemaking which occurs when a utility is permitted to recover an additional charge for past losses or when a utility is required to refund or remit to third parties revenues collected pursuant to its lawfully established rates.

44. As a result of the prohibition against retroactive ratemaking, the Funding Ratepayers know, prior to purchasing services from the Electric Utility, what services will be performed and therefore make economic or business adjustments in response.

BACKGROUND

45. In October 2017, the General Assembly passed and Defendant Malloy signed into law Public Act 17-2, *An Act Concerning the State Budget for the Biennium Ending June 30, 2019, Making Appropriations Therefor, Authorizing and Adjusting Bonds of the State and Implementing Provisions of the Budget* (the “Act”). The Act authorizes the State to sweep substantial funds from the CEEF (\$127 million) and the Green Bank (\$28 million) (the “Sweeps). These Sweeps require the Defendants to take and deplete the Funding Ratepayers’ funds held by third parties – the Electric Utilities – and instead use them to fill the General Fund coffers, although the funds were paid and will be paid pursuant to filed rates for investment in efficiency and clean energy programs through the CEEF and Clean Energy Fund.

46. The Act implementing the budget states:

Sec. 683. (*Effective from passage*) Notwithstanding the provisions of section 16-245m of the general statutes, for the fiscal years ending June 30, 2018, and June 30, 2019, the sum of \$63,500,000 shall be transferred from the Energy Conservation and Loan[d] Management Fund and credited to the resources of the General Fund for each said fiscal year.

47. The Act implementing the budget also states:

Sec. 685. (*Effective from passage*) Notwithstanding the provisions of section 16-245n of the general statutes, for the fiscal years ending June 30, 2018, and June 30, 2019, the sum of \$14,000,000 shall be transferred from the Clean Energy Fund and credited to the resources of the General Fund for each said fiscal year.

47. The aforementioned legislation applies retroactively in part, because the June 30, 2018 fiscal year began on July 1, 2017.

48. In addition to the Sweeps described in the foregoing paragraphs, the Act implementing the budget also states:

Sec. 682. (*Effective from passage*) Notwithstanding the provisions of section 22a-200c of the general statutes, for the fiscal years ending June

30, 2018, and June 30, 2019, the sum of \$10,000,000 shall be transferred from the Regional Greenhouse Gas account and credited to the resources of the General Fund for each said fiscal year. (hereafter, the “RGGI sweep”).

49. The RGGI sweep does not involve revenue from Funding Ratepayers in the possession of the Electric Utilities but involves a different source of revenue in the possession of the State Department of Energy and Environmental Protection, specifically, the State’s share of payments certain power plant operators in Connecticut make to procure greenhouse gas emission reduction credits. But, like the Sweeps, the RGGI sweep impacts the Green Bank and certain other programs and services that receive these funds.

50. As for the Sweeps, the Electric Utilities’ currently-approved and filed tariffs have collected funds from Funding Ratepayers during the time periods to which the budget applies. The application of legislation retroactively amounts to a conversion of funds and constitutes an unconstitutional impairment with contractual rights. The PURA-approved tariffs with the Electric Utilities, which are contracts with ratepayers and do not allow for the funds at issue to be converted and sent to the General Fund as though they were taxes.

51. The Act requires the Defendants to take, convert and deplete funds which were paid by Funding Ratepayers to their respective Electric Utilities, which funds Funding Ratepayers reasonably expected would be used in the manner required by the filed tariffs to fund energy efficiency and clean energy programs and to lower their energy costs through investment into efficiency and conservation.

52. The Act requires the Defendants to violate the law against retroactive ratemaking and Section 16-19(a) of the Connecticut General Statutes by reallocating funds marked for the purpose in the filed tariffs to be used as if such funds were tax revenues paid to the General Fund.

53. By letter dated December 15, 2017, Ben Barnes, Secretary of the Office of Policy & Management, wrote to Rob Klee, Commissioner of DEEP concerning the Sweeps, indicating that “I understand the difficulty of these fund transfers, especially given the nature of operations for these energy programs to make future commitments against revenues, fund existing contracts, and given that efficiency achievements are factored into the ISO New England Forward Capacity Market. Recognizing that existing contracts and commitments will need to be curtailed, it is the Connecticut Office of Policy & Management’s intention to delay the fund transfers until the last month of each fiscal year.” See EXHIBIT B attached.

54. The Connecticut fiscal year ends on June 30 of each calendar year.

55. Upon information and belief, the Sweeps have not yet occurred, but will occur for the 2018 fiscal year in June, 2018 and for the 2019 fiscal year in June, 2019.

56. Defendant Lembo reported in a press release on May 1, 2018 that while the State’s current fiscal year is operating at a deficit, recent revenue collections through the State’s income tax revenue have far exceeded the Comptroller’s expectations, and added more than \$1.7 billion to the Budget Reserve Fund (“BRF”), essentially the State’s savings account, because of a new State revenue volatility law that requires that most of the new revenue be captured and transferred to the BRF if the General Assembly chooses not to use it for deficit mitigation. Defendant Lembo stated that the State’s revenue volatility law now requires that any collections of this income above \$3.15 billion be transferred to the Budget Reserve Fund, even in the face of a General Fund deficit. See EXHIBIT C attached.

57. During the General Assembly’s recently-concluded 2018 Session, the General Assembly chose to restore only \$10 million of the Act’s Sweeps, specifically from the 2019

invasion of the CEEF, but did not address the planned 2018 Sweeps or the 2019 Sweep of the Clean Energy Fund.

Regional Wholesale Power Market – ISO New England, Inc.

58. The power grid that creates a network of transmission wires across the six New England States are operated by a non-profit corporation called ISO New England, Inc. (“ISO-NE”), which is the regional transmission organization serving New England. Pursuant to a tariff approved by the Federal Energy Regulatory Commission (“FERC”), ISO-NE operates forward capacity markets in which wholesale power plant operators can bid periodically to supply electricity capacity and energy to meet the region’s needs for power.

59. FERC also adopted a rule, called Order 745, pursuant to which regional transmission organizations such as ISO-NE are required to treat energy efficiency reductions just like power plant capacity in the markets.⁵ Given the opportunity presented for energy efficiency to participate in the wholesale electric power markets operated by ISO-NE, upon information and belief, Connecticut’s Electric Utilities have committed 50 megawatts (“MWs”) of energy efficiency annually to the regional electric market based upon energy efficiency investments in Connecticut’s homes and businesses. Such commitments are essentially equivalent to 50 MW a year of capacity from a power plant being promised from Connecticut energy efficiency savings.

60. The 50 MW of capacity bid into the ISO-NE forward capacity market were made in reliance upon the energy savings to be funded with the CEEF and Clean Energy Fund based on the filed tariffs of the Electric Companies and the programs approved by the EEB.

61. Therefore, in addition to lost jobs, increased energy costs and more pollution (which will disproportionately harm at-risk, low-income and moderate income populations, both

⁵ This requirement was upheld by the U.S. Supreme Court in *FERC v. Electric Power Supply Assn.*, 136 S.Ct. 760 (2016).

economically and physically), upon information and belief, the contraction of efficiency programs will cost Connecticut ratepayers millions of dollars due to the Utilities' commitment of energy efficiency as a generation resource in the ISO-NE market if the 50 MW is not delivered. Unless Connecticut can replace the equivalent generation capacity of the 50 MW per year from Connecticut's energy efficiency investments, the Funding Ratepayers are at risk of losing an additional \$30 million over ten (10) years. As a result of the Sweeps impacting the commitments to ISO-NE, Connecticut faces forfeited financial assurances, potential for penalties for failing to deliver capacity and actual costs potentially even higher given the fluctuation of spot market prices.

62. Sweeps on the Energy Efficiency Fund have already produced and will produce negative consequences for Connecticut's economy, including, but not limited to:

- a. A curtailment or elimination of energy efficiency programs which reduce peak demand for electricity and lower residential and commercial energy bills through the reduction of energy waste and the installation of cost effective energy efficiency and energy demand reduction services and productions including: technical energy baseline data collection, building envelope improvements, safety and health assessments, the identification of high carbon monoxide, asbestos like material, mold, and other household and building hazards which are identified at the time of the building science based assessments, the installation of energy code rated attic, wall, and basement insulation, building and residential weatherization, high efficiency heating, ventilation and air conditioning ("HVAC"), lighting and mechanical controls which lower run time, water saving measures, and other measures that reduce energy usage in homes and buildings across Connecticut. A

dollar spent on energy efficiency is estimated to save seven dollars in energy costs. The Connecticut demand reduction plan is cost effective and has proven to lower the costs of energy and stabilize our statewide energy grid. The benefits are far reaching and include economic growth, improved health, lowered operational costs for ratepayers and lowered cost of operation for our statewide energy grid, ratepayer savings, as well as safer buildings. The Connecticut demand reduction plan is intended to lower the burning of fossil fuels and reduce the need to build new power plants. This plan has demonstrated success in every legislated area of the C&LM and CES, however Sweeps on the Energy Efficiency Fund will produce negative consequences to the expected savings identified in this plan and strategy.

- b. 12,900 homes in 2018 alone will not receive energy assessments, weatherization upgrades or associated immediate energy bill savings and qualify or reduced pricing on insulation; 5,600 of these are low income households that often require additional financial assistance to close the energy affordability gap;
- c. \$31 million cut per year in energy efficiency upgrades for Connecticut businesses and industries that generate millions in energy cost savings, which means reduced productivity;
- d. \$2.9 million cut per year in education and training benefits for clean energy workforce development;
- e. Job losses of 6,885 over the next two years. According to a 2017 U.S. Department of Energy report, Connecticut's efficiency programs have created close to 34,000 jobs;

- f. An estimated loss of contract cancellations worth over \$126 million plus the estimated \$252 million in private capital from customer investments leveraged from those contracts;
- g. Reduction or elimination for energy efficiency programs specifically targeted for low income consumers, small businesses, and minority-owned businesses, groups that often pay the highest percentage of their income to energy bills;
- h. Irreparable harm to many energy efficiency businesses in Connecticut that rely on energy efficiency programs, including loss of contracts and good will with customers;
- i. \$21.9 million in lost state tax revenue; and
- j. Potential penalties against the Electric Utilities, which will be passed through to customers, if the State cannot achieve through installed efficiency measures the commitments made on customers' behalf in the New England wholesale power capacity market to reduce electric usage. These commitments are made over three years in advance, and form the underpinnings for decisions made by ISO-NE about how much electric capacity they will need to plan for and procure in coming years.

63. Sweeps on the Clean Energy Funds have already caused a 53% reduction in the Green Bank's budget, layoffs, cancelled Green Bank transactions and have produced or will produce unintended and counterproductive results for Connecticut's economy, including, but not limited to:

- a. Reducing leverage. In fiscal year 2017, across the Green Bank's portfolio of deals, for every one (1) public dollar committed, it averaged six (6) times the

amount in private capital investment. Without a strong balance sheet of unrestricted funds, the Green Bank will be very much limited in new deal activity since funds restricted for capital investment leverage cannot be used twice until contracts run their term. Upon information and belief, a major national bank cancelled a pending transaction memorialized in a term sheet that would have supplied a \$10 million, 10-year, 1% loan that would have helped low-income families save on energy costs.

- b. transactions that would have developed:
 - i. anaerobic digesters (supporting recycling food waste-to-energy plants);
 - ii. combined heat and power for commercial/industrial properties;
 - iii. microgrids making communities resilient;
 - iv. electric urban bus fleets;
 - v. energy services agreements for commercial/institutional properties;
 - vi. battery storage pilot; and
 - vii. community shared solar;
- c. Forgoing infrastructure investment. By transferring \$30 million in revenues, the Green Bank predicts the State would lose over \$185 million of private investment and over 800 direct jobs. The Green Bank estimates that one job is created for a year with only \$9,843 of Funding Ratepayers' revenue.
- d. Forgone revenue. The combined investments of the Green Bank and its private capital partners leads to greater State income tax receipts through job creation and in certain circumstances sales tax revenue.

e. Eliminating public-private partnerships. De-funding the Green Bank and forcing it to back out of co-investments undermines trust with other banks, investors and developers who trusted the Green Bank to live up to its end of the bargain. Businesses and investors who get burned do not return – they will take their investment dollars elsewhere. The Green Bank’s Board of Directors approves future commitments against SBC fund revenues. This sets in motion an entire sequence of actions in the private sector involving millions of dollars of commitment for design, engineering and legal work as well as orders for major equipment which have long lead times from an array of global suppliers. These are more than mere pledges – they are signals to the investment community that would be materially impaired if the Green Bank does not honor its commitments.

f. The Sweeps will cause the Green Bank to renege on offers with contractors or financiers that have each already made significant expenditures to get to the present state of their projects, which is precisely what the General Assembly pledged it could not do in the Green Bank enabling statute. The Sweeps are forcing the Green Bank to encounter cash flow issues over the next two years and cause concern that the Green Bank could default on contractual commitments.

COUNT I
Declaratory Judgment
(Contracts Clause, U.S. Const. Art. 1, § 10)

64. The Plaintiffs repeat and re-allege Paragraphs 1 through 63 as if fully and completely set forth herein.

65. The Plaintiffs seek a declaratory judgment under 28 U.S. Code § 2201, declaring that the Act is unconstitutional under the Contracts Clause of the United States Constitution at Article 1, § 10, and the Connecticut State Constitution.

66. The filed tariffs approved by PURA and imposed by the Electric Utilities on its Funding Ratepayers constitute contracts, pursuant to which the ratepayers agreed to pay a charge for deposit into the CEEF and Clean Energy Fund, in exchange for services rendered which includes efficiency and clean energy investments.

67. The Sweep of the funds from the CEEF and Clean Energy Fund so disrupts the reasonable expectations of ratepayers that it substantially impairs the ratepayers' contracts with the Electric Utilities. The core expectation interest of Funding Ratepayers was that the charges paid shall be deposited into the CEEF and the Clean Energy Fund to be used for the purposes enumerated in the statutes authorizing the CEEF and the Clean Energy Fund.

68. The Sweeps violate the filed tariffs and the prohibition against retroactive ratemaking.

69. The means chosen to serve a legitimate public purpose were not reasonable and necessary.

70. The State did not consider impairing the contracts on par with other policy alternatives, or impose a drastic impairment when an evident and more moderate course would serve its purpose reasonably well, or act reasonably in light of surrounding circumstances.

71. Accordingly, the Plaintiffs seek a declaratory judgment pursuant to 28 U.S. Code § 2201, declaring that the Sweeps required by the Act are unconstitutional under the Contracts Clause of the United States Constitution at Article 1, § 10, and under the Connecticut State Constitution.

COUNT II
(Violation of the Equal Protection Clause, U.S. Const., Am. 14, § 1)

72. The Plaintiffs repeat and re-allege Paragraph Nos. 1 through 71 as if fully and completely set forth herein.

73. By sweeping funds paid by citizens of the State from a fund earmarked for clean energy as a surcharge on each Funding Ratepayer's public utility bill for general revenue purposes in the State's General Fund, the State is taxing each of the Funding Ratepayers.

74. In so doing, the State is and will be effectively making Funding Ratepayers contribute to the General Fund in a manner it does not otherwise require of those citizens who are customers of the Municipal Utilities identified in Paragraph 25 above.

75. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

76. Here, to raise funds for general revenue purposes, including any state service from which any resident (and, in many cases, non-resident) may benefit, the State has taxed and will tax the Funding Ratepayers but has not taxed customers of Municipal Utilities.

77. Accordingly, through passage of the Act and the direction for Defendants to implement the Sweeps, the Defendants have assessed a tax upon the Plaintiffs and on other Funding Ratepayers that it has not assessed upon customers of Municipal Utilities.

78. Funding Ratepayers are not different from Municipal Ratepayers in any relevant respect.

79. The *de facto* classification of Funding Ratepayers and Municipal Ratepayers does not rationally further any legitimate State interest.

80. Accordingly, the Plaintiffs seek a declaratory judgment pursuant to 28 U.S. Code § 2201, declaring that the Sweeps required by the Act are unconstitutional under the Equal Protection Clause of § 1 of the Fourteenth Amendment to the United States Constitution.

COUNT III
Declaratory Judgment
(Violation of Conn. Gen. Stat. § 16-245n(h))

81. The Plaintiffs repeat and re-allege Paragraph Nos. 1 through 80 as if fully and completely set forth herein.

82. Section 16-245n(h) states, in pertinent part, that the State of Connecticut “does hereby pledge to and agree with any person with whom the Connecticut Green Bank may enter contracts pursuant to the provisions of this section that the State will not limit or alter the rights hereby vested in said bank until such contracts and the obligations vested thereunder are fully met and performed by the bank . . .”

83. The plain language of Section 16-245n(h) is a clear effort by the Connecticut General Assembly to induce private parties to build clean energy businesses in this State, and enter into financial relationships with the Green Bank, in reliance upon the General Assembly’s promise that the Green Bank will fully satisfy all of its obligations.

84. However, the General Assembly’s Sweep of Plaintiffs’ and other ratepayers’ funds originally destined for the Green Bank constitutes a limitation or alteration of the rights vested in the Bank, in violation of Section 16-245n(h) of the Connecticut General Statutes.

85. Accordingly, the Plaintiffs seek a declaratory judgment pursuant to 28 U.S. Code § 2201, declaring that the Act and the General Assembly’s Sweep of funds originally destined for the Green Bank constitutes a limitation or alteration of the rights vested in the Bank, in violation of Section 16-245n(h).

COUNT IV
Declaratory Judgment
(Sales and Use Tax Statute)

86. The Plaintiffs repeat and re-allege Paragraph Nos. 1 through 85 as if fully and completely set forth herein.

87. Section 12-412(8) of the Connecticut General Statutes, as amended, provides an exemption from sales and use taxes for purchases made by any organization that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code and that the United States Treasury Department has expressly determined, by a determination letter, to be an organization described in Section 501(c)(3) or (13) of the Internal Revenue Code.

88. The plain language of Section 12-412(8) of the Connecticut General Statutes is a clear statement by the Connecticut General Assembly that organizations recognized as “tax-exempt” under the Internal Revenue Code are not subject to Connecticut Sales and Use Tax.

89. The General Assembly’s Sweep of Plaintiffs’ and other ratepayers’ funds constitutes a violation of those taxpayers’ tax-exempt status.

90. Accordingly, the Plaintiffs seek a declaratory judgment pursuant to 28 U.S. Code § 2201, declaring that the Act and the General Assembly’s Sweeps of funds originally destined for efficiency investments and the Green Bank constitutes a limitation or alteration of the rights vested in Plaintiff CFE, a 501(c)(3) organization, in violation of Section 12-412(8) of the Connecticut General Statutes.

COUNT V
(Promissory Estoppel)

91. The Plaintiffs repeat and re-allege Paragraph Nos. 1 through 90 as if fully and completely set forth herein.

92. Section 16-245n(h) states, in pertinent part, that the State of Connecticut “does hereby pledge to and agree with any person with whom the Connecticut Green Bank may enter contracts pursuant to the provisions of this section that the State will not limit or alter the rights hereby vested in said bank until such contracts and the obligations vested under are fully met and performed by the bank”

93. The plain language of Section 16-245n(h) constitutes a clear and definite promise by the Connecticut General Assembly that “the State will not limit or alter the rights hereby vested in said bank until such contracts and the obligations vested under are fully met and performed by the bank”

94. The promise was made in order to induce private parties to build clean energy businesses in this State, and enter into financial relationships with the Green Bank, in reliance upon the General Assembly’s promise that the Green Bank will fully satisfy all of its obligations.

95. Hundreds of private parties reasonably relied on the promise set forth in Section 16-245n(h), in that they built clean energy businesses in this State, and entered into financial relationships with the Green Bank, in reliance upon the General Assembly’s promise that the Green Bank will fully satisfy all of its obligations.

96. The General Assembly’s promise induced the actions taken by the private parties in reliance thereon.

97. Injustice can be avoided only by enforcement of the State’s promise.

COUNT VI
(Preliminary and Permanent Injunction)

98. The Plaintiffs repeat and re-allege Paragraph Nos. 1 through 97 as if fully set forth herein.

99. Unless and until the Defendants are restrained by order of this Court by means of a temporary injunction, they will Sweep the accounts.

100. In addition, unless and until the Defendants are restrained by order of this Court by means of a preliminary and then permanent injunction, they will have exclusive control over the Funds.

101. The Plaintiffs will suffer significant and irreparable harm for which there is no adequate remedy at law if the Defendants are permitted to retain control over the Funds.

102. The Plaintiffs are likely to succeed on the merits of their claims.

103. The balance of the hardships tips decidedly in favor of the Plaintiffs.

104. By virtue of the foregoing, the Plaintiffs are entitled to preliminary and permanent relief from this Court pursuant to Fed. R. Civ. P. 65, enjoining and restraining the Defendants from sweeping the Funds.

COUNT VII
(42 U.S.C. § 1983)

105. The Plaintiffs repeat and re-allege Paragraph Nos. 1 through 104 as if fully and completely set forth herein.

106. Separately and together, the challenged Act deprives and will deprive the Plaintiffs of rights, privileges, or immunities secured by the United States Constitution and the laws of Connecticut, including the Contracts Clause of the United States Constitution at Article 1, § 10, and the Fourteenth Amendment to the Constitution.

107. The Defendants acted and conspired, and intend to act and conspire, under color of state law and through the actions of official decision-makers, to intentionally deprive the Plaintiffs of their rights, including the rights provided under the Contracts Clause, and to equal

protection of the laws under the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. §1983.

108. As a direct and proximate cause of the Defendants' conduct, as aforesaid, the Plaintiffs have suffered and will suffer injuries.

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WHEREFORE, the Plaintiffs respectfully request that the Court:

A. enter judgment in favor of the Plaintiffs declaring the Act unconstitutional and thus null and void;

B. enter a preliminary and permanent injunction forbidding the Defendants from sweeping the CEEF and Clean Energy Fund;

C. award the Plaintiffs their costs and expenses, including attorney's fees, under 42 U.S.C. § 1988 and to the extent otherwise allowed by law; and

D. enter such other and further relief as the Court deems just and proper.

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