

General Assembly

January Session, 2019

Raised Bill No. 888

LCO No. **4619**

Referred to Committee on ENERGY AND TECHNOLOGY

Introduced by: (ET)

AN ACT CONCERNING CALL BEFORE YOU DIG PROGRAM VIOLATIONS AND FINES AND THE PUBLIC UTILITIES REGULATORY POLICIES ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 16-356 of the general statutes is repealed and the
 following is substituted in lieu thereof (*Effective from passage*):

3 Any person, public agency or public utility which the Public Regulatory Authority determines, after notice 4 Utilities and opportunity for a hearing as provided in section 16-41, to have failed to 5 6 comply with any provision of this chapter or any regulation adopted 7 under section 16-357 shall forfeit and pay to the state a civil penalty of 8 not more than forty thousand dollars, provided any violation 9 involving the failure of a public utility to mark any approximate 10 location of an underground utility facility correctly or within the time 11 frames prescribed by regulation, which violation did not result in any 12 property damage or personal injury and was not the result of an act of 13 gross negligence on the part of the public utility, shall not result in a 14 civil penalty of more than one thousand dollars. Any civil penalty

15 assessed for any violation involving the failure of a public utility to 16 properly or timely mark any approximate location of an underground 17 facility shall be paid by the person, public agency or public utility to 18 whom the notice is addressed. If any such person, public agency or 19 public utility recovers any portion of the penalty from any person, the 20 authority may direct such person, public agency or public utility to 21 forfeit such recovered penalty, as provided in such notice. Notwithstanding the provisions contained in subsection (d) of section 22 23 16-41, the person, public agency or public utility receiving a notice of 24 violation pursuant to subsection (c) of section 16-41 shall have thirty 25 days from the date of receipt of the notice in which to deliver to the 26 authority a written application for a hearing.

27 Sec. 2. Section 16-243a of the general statutes is repealed and the 28 following is substituted in lieu thereof (*Effective from passage*):

[(a) As used in this section, "avoided costs" means the incremental costs to an electric public service company, municipal electric energy cooperative organized under chapter 101a or municipal electric utility organized under chapter 101, of electric energy or capacity or both which, but for the purchase from a private power producer, as defined in section 16-243b, such company, cooperative or utility would generate itself or purchase from another source.

36 (b) Each electric public service company, municipal electric energy 37 cooperative and municipal electric utility shall: (1) Purchase any 38 electrical energy and capacity made available, directly by a private 39 power producer or indirectly under subdivision (4) of this subsection; 40 (2) sell backup electricity to any private power producer in its service 41 territory; (3) make such interconnections in accordance with the 42 regulations adopted pursuant to subsection (h) of this section 43 necessary to accomplish such purchases and sales; (4) upon approval 44 by the Public Utilities Regulatory Authority of an application filed by a 45 willing private power producer, transmit energy or capacity from the 46 private power producer to any other such company, cooperative or

47 utility or to another facility operated by the private power producer; 48 and (5) offer to operate in parallel with a private power producer. In 49 making a decision on an application filed under subdivision (4) of this 50 subsection, the authority shall consider whether such transmission 51 would (A) adversely impact the customers of the company, 52 cooperative or utility which would transmit energy or capacity to the 53 private power producer, (B) result in an uncompensated loss for, or 54 unduly burden, such company, cooperative, utility or private power 55 producer, (C) impair the reliability of service of such company, 56 cooperative or utility, or (D) impair the ability of the company, 57 cooperative or utility to provide adequate service to its customers. The 58 authority shall issue a decision on such an application not later than 59 one hundred twenty days after the application is filed, provided, the 60 authority may, before the end of such period and upon notifying all 61 parties and intervenors to the proceeding, extend the period by thirty 62 days. If the authority does not issue a decision within one hundred 63 twenty days after receiving such an application, or within one hundred 64 fifty days if the authority extends the period in accordance with the 65 provisions of this subsection, the application shall be deemed to have been approved. The requirements under subdivisions (3), (4) and (5) of 66 67 this subsection shall be subject to reasonable standards for operating 68 safety and reliability and the nondiscriminatory assessment of costs 69 against private power producers, approved by the Public Utilities 70 Regulatory Authority with respect to electric public service companies 71 or determined by municipal electric energy cooperatives and 72 municipal electric utilities.

(c) The Public Utilities Regulatory Authority, with respect to electric public service companies, and each municipal electric energy cooperative and municipal electric utility shall establish rates and conditions of service for: (1) The purchase of electrical energy and capacity made available by a private power producer; and (2) the sale of backup electricity to a private power producer. The rates for electricity purchased from a private power producer shall be based on

80 the full avoided costs of the electric public service company, municipal 81 electric energy cooperative or municipal electric utility, regardless of 82 whether the purchaser is simultaneously making sales to the private 83 power producer. Payment for energy and capacity purchased from a 84 private power producer by any such company, cooperative or utility 85 shall be pursuant to such rates and conditions or the terms of a 86 contract between the parties. The rates and conditions of service for the 87 purchase of energy and capacity established by the authority pursuant 88 to this subsection shall include specific schedules for pricing in long-89 term contracts for the sale of electricity from small renewable power 90 projects to electric public service companies by private power 91 producers. Such schedules shall not exceed the present worth of the 92 projected avoided costs of the electric public service company over the 93 term of the contract. The authority shall apply to a proposed contract 94 filed with the authority after January 1, 1992, by a private power producer for a small renewable power project the rates and conditions 95 of service, including the pricing schedule, in effect on the date the 96 97 private power producer submits its proposed contract to the authority, 98 regardless of the subsequent creation of differing schedules or the 99 subsequent amendment of existing schedules.

100 (d) When any person, firm or corporation proposes to enter into a 101 contract to sell energy and capacity as a private power producer, an 102 electric public service company, municipal electric energy cooperative 103 or municipal electric utility shall respond promptly to all requests and 104 offers and negotiate in good faith to arrive at a contract which fairly 105 reflects the provisions of this section and the anticipated avoided costs 106 over the life of the contract. Upon application by a private power 107 producer, the authority may approve a contract which provides for 108 payment of less than the anticipated avoided costs if, considering all of 109 the provisions, the contract is at least as favorable to the private power 110 producer as a contract providing for the full avoided costs. The 111 contract may extend for a period of not more than thirty years at the 112 option of the private power producer if it has a generating facility with

113 a capacity of at least one hundred kilowatts.

(e) The authority shall consider generating capacity available from
cogeneration technology and renewable energy resources in its
periodic reviews of electric public service companies and shall require
the companies to include the availability of such capacity in
applications for rate relief filed in accordance with section 16-19a.

119 (f) If a private power producer believes that an electric distribution 120 company has violated any provision of this section it may submit a 121 written petition alleging such violation to the authority. Upon receipt 122 of the petition, the authority shall fix a time and place for a hearing 123 and mail notice of the hearing to the parties in interest at least one 124 week in advance. Upon the hearing, the authority may, if it finds the 125 company has violated any such provision, prescribe the manner in 126 which it shall comply.

127 (g) After January 1, 1992, the authority shall approve each proposed 128 contract submitted by a private power producer for a small renewable 129 power project, with any modifications agreed to by the parties to the 130 contract, if the filing meets the standards for exemption from the 131 proposal process and for an approvable contract established pursuant 132 to section 16-6b, and is consistent with the pricing schedules adopted 133 pursuant to subsection (c) of this section. Nothing in this section shall 134 preclude a modification of such a contract if the parties to the contract 135 agree to the modification. Any such modification shall be approved by 136 the authority. The authority shall reconsider each decision issued 137 pursuant to this section between January 1, 1992, and June 29, 1993, 138 regarding such contracts and shall make any modifications to each 139 such decision necessary to ensure that each such decision conforms 140 with the provisions of this section.

(h) Not later than January 1, 2008, the Public Utilities Regulatory
Authority shall issue a final decision approving interconnection
standards that meet or exceed national standards of interconnectivity.

If the authority does not issue a final decision by October 1, 2008, each
electric distribution company, municipal electric energy cooperative
and municipal electric utility shall meet the standards set forth in Title
4, Chapter 4, Subchapter 9, "Net Metering and Interconnection
Standards for Class I Renewable Energy Systems" of the New Jersey
Administrative Code.]

(a) As used in this title, "PURPA" means the Public Utilities
Regulatory Policies Act of 1978, codified at 18 USC 824a-3, and its
implementing regulations, 18 CFR Part 292, as amended from time to
time, and "Qualifying Facilities" or "QF" has the same meaning as
provided in 18 CFR 292.101(b)(1).

155 (b) As used in section 16-243b, as amended by this act, "avoided costs" means the costs avoided by an electric distribution company as a 156 157 result of purchasing power or capacity from a qualifying facility, as 158 approved by the Public Utilities Regulatory Authority in accordance 159 with section 16-243b, as amended by this act, and shall not result in 160 costs greater than those which the purchasing electric distribution company would incur if such electric distribution company did not 161 162 make such purchases and instead purchased electricity or capacity 163 from the regional wholesale electricity markets.

164 Sec. 3. Section 16-243b of the general statutes is repealed and the 165 following is substituted in lieu thereof (*Effective from passage*):

166 [(a) As used in this title:

167 (1) "Private power production facility" means a facility which 168 generates electricity in the state (A) solely through the use of 169 cogeneration technology, provided the average useful thermal energy 170 output of the facility is at least twenty per cent of the total energy 171 output of the facility, (B) solely through the use of renewable energy 172 sources, or (C) through both only;

173 (2) "Useful thermal energy output" means the thermal energy made

available for use in any industrial or commercial process, or used inany heating or cooling application;

176 (3) "Private power producer" means (A) a subsidiary of a gas public 177 service company which is not affiliated with an electric public service 178 company, or a subsidiary of a holding company controlling, directly or 179 indirectly, a gas public service company but not an electric public 180 service company, which generates electricity solely through ownership 181 of fifty per cent or less of a private power production facility or, with 182 the approval of the Public Utilities Regulatory Authority, through 183 ownership of one hundred per cent of a private power production 184 facility which (i) uses a source of energy other than gas as the primary 185 energy source of the facility, or (ii) uses gas as the primary energy 186 source of the facility and uses an improved and innovative technology 187 which furthers the state energy policy as set forth in section 16a-35k, (B) a subsidiary of any other public service company or a subsidiary of 188 189 a holding company controlling, directly or indirectly, such a public 190 service company, which generates electricity solely through ownership 191 of fifty per cent or less of a private power production facility, (C) the 192 state, a political subdivision of the state or any other person, firm or 193 corporation other than a public service company or any corporation which was a public service company, prior to July 1, 1981, and which 194 195 consents to be regulated as a public service company or a holding 196 company for a public service company, which generates electricity 197 solely through ownership of one hundred per cent or less of a private 198 power production facility, or (D) any combination thereof;

199 (4) "Private power provider" means any person, firm, corporation, nonprofit corporation, limited liability company, governmental entity, 200 201 or other entity, including any public service company, holding company, or subsidiary, which provides energy conservation or 202 203 demand management measures pursuant to section 16-243f and 204 regulations and orders issued hereunder, which replace the need for 205electricity generating capacity that electric public service companies 206 would otherwise require;

(5) "Electricity conservation or demand management measures"
means the provision pursuant to this section and section 16-243f and
regulations and orders adopted hereunder by a private power
provider to an electric public service company or its customers of
equipment or services or both designed to conserve electricity or to
manage electricity load; and

(6) "Small renewable power project" means any private power
production facility which has a capacity of five megawatts or less and
is fueled by a renewable resource, as defined in section 16a-2, other
than wood.

(b) No provision of this section shall limit the jurisdiction of the
Public Utilities Regulatory Authority with regard to the effects on a
public service company of a private power producer which is an
affiliate or a subsidiary of the public service company.]

221 (a) Each electric distribution company shall file with the Public 222 Utilities Regulatory Authority for review and approval three pro 223 forma tariffs for the purchase of energy and capacity from eligible 224 qualifying facilities from which the electric distribution company is 225 obligated to purchase energy or capacity pursuant to 18 CFR 292.303. 226 Tariffs required pursuant to this section shall address each of the 227 following types of PURPA transactions: (1) Energy-only qualifying 228 facility sales; (2) capacity-only qualifying facility sales; and (3) energy 229 and capacity qualifying facility sales.

(b) The Public Utilities Regulatory Authority shall conduct an
 uncontested proceeding to review tariffs submitted pursuant to
 subsection (a) of this section. The authority shall approve tariffs that it
 determines satisfy the requirements of PURPA and any other
 requirements the authority deems appropriate.

(c) Each tariff submitted pursuant to subsection (a) of this section
 shall establish a process by which qualifying facilities may elect to be
 compensated either: (1) Based on avoided costs calculated at the time

of delivery; or (2) based on avoided costs forecasted at the time an
obligation to purchase arises pursuant to 18 CFR 292.303.

Sec. 4. Subdivision (24) of subsection (b) of section 7-233e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

243 (24) To contract for the purchase or exchange of electricity produced 244 by a [person using cogeneration technology or renewable fuel 245 resources] Qualifying Facility, as defined in [section 16-1] 18 CFR 246 292.101(b)(1), or for the sale or exchange of electricity produced by the 247 municipal cooperative to such person, provided such purchase, sale or 248 exchange [is subject to the rates and conditions of service established 249 in accordance with section 16-243a] complies with the rates and 250 conditions of service established in 18 CFR Part 292;

251 Sec. 5. Section 12-408b of the general statutes is repealed and the 252 following is substituted in lieu thereof (*Effective from passage*):

253 On and after July 1, 1991, any person, firm or corporation who pays 254 a sales and use tax, which tax would not have been due prior to July 1, 255 1991, pursuant to subdivision (39) of section 12-412 of the general 256 statutes, revision of 1958, revised to January 1991, shall recover the tax 257 paid by (1) adding such tax to any amounts otherwise payable [under 258 a sales contract] pursuant to a tariff approved by the Public Utilities 259 Regulatory Authority pursuant to [subsection (d) of] section 16-243a, 260 as amended by this act, and (2) amortizing such tax, together with 261 interest at the rate paid on front-loaded payments, over the life of a 262 sales contract approved by the department pursuant to said subsection 263 (d).

Sec. 6. Subdivision (3) of subsection (a) of section 16-1 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

267 (3) "Public service company" includes electric distribution, gas,

268 telephone, pipeline, sewage, water and community antenna television 269 companies and holders of a certificate of cable franchise authority, 270 owning, leasing, maintaining, operating, managing or controlling 271 plants or parts of plants or equipment, but shall not include towns, 272 cities, boroughs, any municipal corporation or department thereof, 273 whether separately incorporated or not, [a private power producer] producer Qualifying Facility, as defined in [section 16-243b] 18 CFR 274275<u>292.101(b)(1)</u>, or an exempt wholesale generator, as defined in 15 USC 276 79z-5a;

277 Sec. 7. Subdivision (23) of subsection (a) of section 16-1 of the 278 general statutes is repealed and the following is substituted in lieu 279 thereof (*Effective from passage*):

280 (23) "Electric distribution company" or "distribution company" 281 means any person providing electric transmission or distribution 282 services within the state, but does not include: (A) A [private power 283 producer] Qualifying Facility, as defined in [section 16-243b] 18 CFR 284292.101(b)(1); (B) a municipal electric utility established under chapter 285 101, other than a participating municipal electric utility; (C) a 286 municipal electric energy cooperative established under chapter 101a; 287 (D) an electric cooperative established under chapter 597; (E) any other 288 electric utility owned, leased, maintained, operated, managed or 289 controlled by any unit of local government under any general statute 290 or special act; (F) an electric supplier; (G) an entity approved to 291 submeter pursuant to section 16-19ff; or (H) a municipality, state or 292 federal governmental entity authorized to distribute electricity across a 293 public highway or street pursuant to section 16-243aa;

Sec. 8. Subsection (a) of section 16-50i of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

297 (a) "Facility" means: (1) An electric transmission line of a design 298 capacity of sixty-nine kilovolts or more, including associated

299 equipment but not including a transmission line tap, as defined in 300 subsection (e) of this section; (2) a fuel transmission facility, except a 301 gas transmission line having a design capability of less than two 302 hundred pounds per square inch gauge pressure or having a design 303 capacity of less than twenty per cent of its specified minimum yield 304 strength; (3) any electric generating or storage facility using any fuel, 305 including nuclear materials, including associated equipment for 306 furnishing electricity but not including an emergency generating 307 device, as defined in subsection (f) of this section or a facility (A) 308 [owned and operated by a private power producer, as defined in 309 section 16-243b, (B) which is a qualifying small power production 310 facility or a qualifying cogeneration facility under the Public Utility 311 Regulatory Policies Act of 1978, as amended] which is a Qualifying 312 Facility, as defined in 18 CFR 292.101(b)(1), or a facility determined by 313 the council to be primarily for a producer's own use, and [(C)] (B) which has, in the case of a [facility] Qualifying Facility utilizing 314 renewable energy sources, a generating capacity of one megawatt of 315 316 electricity or less and, in the case of a [facility] Qualifying Facility 317 utilizing cogeneration technology, a generating capacity of twenty-five 318 megawatts of electricity or less; (4) any electric substation or 319 switchyard designed to change or regulate the voltage of electricity at 320 sixty-nine kilovolts or more or to connect two or more electric circuits 321 at such voltage, which substation or switchyard may have a substantial 322 adverse environmental effect, as determined by the council established 323 under section 16-50j, and other facilities which may have a substantial 324 adverse environmental effect as the council may, by regulation, 325 prescribe; (5) such community antenna television towers and head-end 326 structures, including associated equipment, which may have a 327 substantial adverse environmental effect, as said council shall, by 328 regulation, prescribe; and (6) such telecommunication towers, 329 including associated telecommunications equipment, owned or 330 operated by the state, a public service company or a certified 331 telecommunications provider or used in a cellular system, as defined 332 in [the Code of Federal Regulations Title 47, Part 22] 47 CFR 22, as amended, which may have a substantial adverse environmental effect,as said council shall, by regulation, prescribe;

Sec. 9. Section 16a-49 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

337 [(a)] The Public Utilities Regulatory Authority shall require each gas 338 and electric public service company to implement a cost effective 339 conservation and load management program consistent with 340 integrated resource planning principles. As part of each conservation 341 and load management program, the authority shall require specific 342 programs to target the needs of manufacturers. The authority shall 343 allow the gas or electric public service company either: (1) To earn a 344 return on prudently incurred multiyear conservation and load 345 management expenditures on programs and measures approved by 346 the authority included in the company's rate base and successfully 347 implemented by the company at a rate at least one percentage point 348 but no more than five percentage points higher than such company's 349 rate of return otherwise found to be reasonable; or (2) authorize a 350 return of at least one percentage point but no more than five 351 percentage points on the company's prudently incurred conservation 352 and load management expenditures treated as operating costs on 353 programs and measures approved by the authority and successfully 354 implemented by the company. For the purposes of this section, 355 "conservation and load management expenditures" shall include all 356 prudent expenditures, approved by the authority by gas or electric 357 public service companies designed to conserve energy or manage gas 358 or energy load.

[(b) The authority may authorize an electric public service company a return on such company's expenditures in acquiring energy conservation or load management measures, approved by the authority, from private power providers, as defined in section 16-243b.] Sec. 10. Section 49-4c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

366 Any mortgage entered into subsequent to July 1, 1986, between [a 367 private power producer, as defined in section 16-243b, or the owner or 368 operator of a qualifying facility] a Qualifying Facility, as defined in 369 [Part 292 of Title 18 of the Code of Federal Regulations] <u>18 CFR 292</u>, or 370 a guarantor of any of their respective obligations, as mortgagor, and an 371 electric distribution company, as defined in section 16-1, as amended 372 by this act, as mortgagee, shall be valid to secure all obligations then 373 existing or thereafter arising of the mortgagor to the mortgagee under 374 an electricity purchase [agreement] tariff, including, without 375 limitation, recovery of amounts paid to [the private power producer 376 or] the owner or operator of a [qualifying facility] <u>Qualifying Facility</u> by the mortgagee in excess of the mortgagee's avoided costs, as 377 378 defined in <u>accordance with tariffs approved by the Public Utilities</u> 379 Regulatory Authority pursuant to section 16-243a, as amended by this 380 act, and all other damages for failure to deliver electric energy or 381 capacity or other breach of an electricity purchase agreement, 382 including, without limitation, the net replacement cost of the capacity being secured by such mortgage, together with accrued interest, if any, 383 384 as computed in accordance with the terms of the electricity purchase 385 agreement or the mortgage, and under a guarantee of such obligations 386 or obligations created by the mortgage, and shall have priority over the 387 rights of others who shall acquire any rights in the property covered 388 by such mortgage subsequent to the recording of the mortgage in the 389 land records of the town in which the mortgaged property is situated 390 provided: (1) The electricity purchase [agreement] tariff is substantially 391 in the form approved by the Public Utilities Regulatory Authority 392 pursuant to section 16-243a, as amended by this act, and shall have 393 been entered into by the mortgagor and mortgagee prior to or 394 simultaneously with or subsequent to the execution and delivery of the 395 mortgage, (2) the caption to the mortgage shall contain the words 396 "Open-End Mortgage" and ["Electricity Purchase Agreement"]

397 "Electricity Purchase Tariff", (3) the mortgage shall state that it is 398 entered into to secure the mortgagor's obligations to the mortgagee 399 under an electricity purchase [agreement] tariff or under a guarantee 400 of any electricity purchase [agreement] tariff obligations and shall 401 recite either the address of an office of the mortgagee or its assignee in 402 the state at which a copy of the electricity purchase [agreement] tariff 403 is on file and may be inspected by the public during normal business 404 hours or that the electricity purchase [agreement] tariff has been 405 recorded, as an exhibit to the mortgage or otherwise, on or before the 406 date the mortgage is recorded, in the land records of the town in which 407 the mortgaged property is situated, provided the electricity purchase 408 [agreement] <u>tariff</u> shall be so recorded, (4) the amount of the obligation 409 from time to time secured by the mortgage may be determined or 410 reasonably approximated on the basis of records maintained by the 411 mortgagee or its assignee in the state, which records and an estimate of 412 the amount claimed by the mortgagee to be secured are made available 413 to the public with reasonable promptness upon written request, and 414 (5) the mortgage states the maximum amount which it shall secure. 415 Nothing in this section shall invalidate any mortgage which would be 416 valid without this section. For purposes of this section, ["electricity 417 purchase agreement"] "electricity purchase tariff" means [a contract or] 418 an agreement to purchase and sell electric energy or capacity by and 419 between [a private power producer, as defined in section 16-243b, or] 420 the owner or operator of a [qualifying facility] Qualifying Facility, as 421 defined in [Part 292 of Title 18 of the Code of Federal Regulations] 18 422 CFR 292.101(b)(1), and an electric distribution company, as defined in 423 section 16-1, as amended by this act.

Sec. 11. Sections 16-243d, 16-243f and 16-243g of the general statutes
are repealed. (*Effective from passage*)

This act shall take effect as follows and shall amend the following sections:

Section 1 from passage 16-356

Sec. 2	from passage	16-243a
Sec. 3	from passage	16-243b
Sec. 4	from passage	7-233e(b)(24)
Sec. 5	from passage	12-408b
Sec. 6	from passage	16-1(a)(3)
Sec. 7	from passage	16-1(a)(23)
Sec. 8	from passage	16-50i(a)
Sec. 9	from passage	16a-49
Sec. 10	from passage	49-4c
Sec. 11	from passage	Repealer section

Statement of Purpose:

To require that civil penalties for the failure of a public utility to properly or timely mark the approximate location of an underground facility be paid by the person, public agency or public utility to whom the notice of failure to comply is addressed and to make changes regarding the Public Utilities Regulatory Policies Act of 1978.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]