June 9, 2021

Office of Governor Ned Lamont
State Capitol
210 Capitol Avenue
Hartford, CT 06106

Dear Governor Lamont –

I write you today on behalf of Connecticut commercial solar renewable energy employers asking that you veto Senate Bill 999, "AN ACT CONCERNING A JUST TRANSITION TO CLIMATE-PROTECTIVE ENERGY PRODUCTION AND COMMUNITY INVESTMENT."

SB 999 was rushed through the state Legislature without the proper fiscal review and ratepayer protection process as required by state law and will undoubtedly raise electric rates more than $100MM. In addition, this bill cannot create a single new clean energy job due to legislative restrictions on the growth of commercial solar in Connecticut.

Rather than sign SB 999, we respectfully ask you Governor to convene a Clean Energy Jobs Summit this summer or fall and bring solar officials and labor together to draft consequential clean energy jobs legislation in time for the next legislative session. It would also allow time for a complete fiscal analysis of this issue that ratepayers deserve.

All over America, commercial solar is booming. Not in Connecticut. There's been no increase in the pace of commercial solar construction or jobs in recent years. And none on the horizon. New and expensive solar-specific permitting rules, land use bottlenecks targeting solar, and capped solar program size have severely limited commercial solar projects and the jobs that would come with it. And now this bill, SB 999 that will just reduce demand for renewable power. Without increased program size, **SB 999 doesn't solve a problem, it just creates one – higher renewable energy costs paid by ratepayers.**

Altogether, the added costs from SB 999 applied to 125 megawatts of state-approved solar power construction work over the next several years will be more than $100MM. Utilities will purchase the power and pass the added cost to ratepayers.

A similar bill requiring prevailing wages on utility construction work in Maryland was recently vetoed by Governor Lawrence Hogan who argued that this is no time to force consumers to pay higher wages for energy construction projects.

> *"This legislation (HB 174/SB 95) threatens to put additional undue financial stress on Maryland ratepayers at a critical period where they continue to face the detrimental fiscal and social impacts of the COVID-19 pandemic. In addition, HB 174/SB 95 also puts unwanted financial burdens on Maryland utility contractors by requiring they shoulder the additional labor costs of establishing a prevailing wate for utility projects. During this fragile rebuilding period for our state I cannot risk putting additional strain on our ratepayers and small business contractors …" [Gov. Hogan]*

Connecticut ranks a miserable 18th among states for solar jobs per capita. Massachusetts has twice Connecticut's population but 4X the solar jobs. And lower electric rates. Something is very wrong with the way renewables are currently developed in Connecticut. We need your involvement Governor to help kick start Connecticut's stagnant solar jobs market and create careers for hundreds of non-union and union state workers. SB 999 is not the answer.

There are two central reasons we feel a veto is appropriate.

First, SB 999 violates the Fourteenth Amendment to the U.S. Constitution as the bill selectively expands prevailing wage laws to intrude on private contracts between Class I renewable energy project developers and Connecticut private property owners that do not take state subsidies, loans, grants or other state funding. Up until now, the state prevailing laws applied only to publicly funded construction projects, such as roads, bridges, or public buildings, when state dollars are involved. SB 999 deprives private developers and their private customers from negotiating the most-favorable terms for services.

The equal protection clause of the Fourteenth Amendment protects the right to equal treatment. Only Connecticut's renewable energy sector – no other industry – must comply with SB 999 if it becomes law.

Second, SB 999 was not subjected to the Legislature's required Ratepayer Impact Statement process as described in CT General Statues *Sec. 2-24a. Fiscal note and ratepayer impact statement required for action upon bill*. This law went into effect with the 2019 session.

Detailed position on due process follows:

I. Expansion of the Prevailing Wage to Private Contracts[1] Violates Due Process

A. SB 999 Deprives Newly-Defined "Covered Project" Developers of Property and Liberty Interests Protected Under the 14th Amendment of the U.S. Constitution SB 999 Deprives Potential Private Customers of Newly-Defined "Covered Project" Developers of Property Interests Protected Under the 14th Amendment of the U.S. Constitution.

[1] The statutory prevailing wage scheme, § 31-53, et seq., "created by our legislature was intended to ensure that employees of public works projects are paid the wages to which they are entitled." *Connecticut Dep't of Lab. Com'r v. C.J.M. Servs., Inc.*, No. CV980580861, 2007 WL 2596758, at *2 (Conn. Super. Ct. Aug. 24, 2007) The federal Davis-Bacon Act ensures that all laborers and mechanics working on contracts for any kind of construction of a public building or work, including renovations, painting, updates, and decorating, were paid a rate that was to be determined by the Secretary of Labor. Jessica W. Tucker, We Still Don't Know What A "Public Building or Work" Is, and When Does the Government Join the Party?, 49 Pub. Cont. L.J. 501, 514–15 (2020).

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The Due Process Clause of the Fourteenth Amendment to the United States Constitution protects private property and liberty interests against government intrusion.

i. Deprivation of Property Interests

Connecticut's authority to set wage or hour restrictions on public works projects is not at issue. However, subjecting private developers to a statutory scheme intended and written to protect a broad class of taxpayers deprives the private developer and the private customer of protected property interests in negotiating the most-favorable terms for services.

In setting prevailing wages for public projects the state acts as the guardian and trustee for its people. The state's authority over government affairs allows it to prescribe the conditions upon which it will permit public work to be done on its behalf, or on behalf of its municipalities. The public is a participant in the contracts and the statutory scheme protects the public. The government is a market participant.

Where the state is not involved in a contract between private parties, in setting a prevailing wage (or benefits), the state must rely on its police power (regulatory function). The use of its police power under these circumstances is unconstitutional because it deprives the private parties of property interests without a sufficient countervailing governmental interest.[2]

ii. Deprivation of Liberty Interests

The civil and criminal penalties applicable to violations of the prevailing wage laws violate the liberty interests of the private developer because the state's use of its police power to regulate contracts among private parties is unconstitutional. *See* above.

Our position on Ratepayer Impact Statement follows:

PA-17-144 requires the state Legislature's Office of Fiscal Analysis (OFA) to prepare a ratepayer impact statement for any bill before the General Assembly that would, if passed, have a financial impact on electric ratepayers.

Sec. 2-24a. Fiscal note and ratepayer impact statement required for action upon bill. *(b) Beginning with the session of the General Assembly commencing on January 9, 2019, no bill without a ratepayer impact statement appended thereto which, if passed, would have a financial impact on electric ratepayers, shall be acted upon by either house of the General Assembly unless said requirement of a ratepayer impact statement is dispensed with by a vote of at least two-thirds of such house. Such statement shall (1) be prepared by the Office of Fiscal Analysis; and (2) provide an assessment as to whether such bill will have a significant direct financial impact on the cost of electricity to the majority of Connecticut electric ratepayers.*

This ratepayer protection law was passed in 2017 over concerns the state lawmakers were passing bills without full consideration of the negative impact on ratepayer bills which are the highest in America outside of Hawaii.

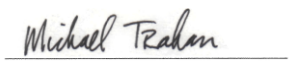
OFA has issued a Fiscal Note on SB 999 which says, in part, *"To the extent that the amendment increases the total cost of covered projects by requiring that workers be paid the prevailing wage, there is a cost equal to the differential in labor-related costs between such wages and those that would otherwise apply."*

Energy & Technology Committee Senate Co-chairman Sen. Norm Needleman stated during May 19, 2021 Senate debate on the bill that the Committee's analysis of SB 999 showed the bill will increase electric rates.

There's been no solar job creation in Connecticut recent years. Connecticut is falling behind. It's mainly because certain state lawmakers have refused to lift caps on commercial programs. Some cling to a long-debunked belief that solar in Connecticut is a net negative proposition for ratepayers when state July 2020 report on the Value of Distributed Energy Resources (VDER) shows the opposite is true.

For these reasons we urge you to veto SB 999 and immediately bring solar developers and labor officials together to start working on a solar jobs plan that will create solar careers in Connecticut.

Sincerely,



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