

CONSTRUCTION and Energy Law

Offers Of Compromise Could Facilitate Settlements

NEW CONSTRUCTION ARBITRATION TOOL MAY LEVEL PLAYING FIELD IN DISPUTES

By **STEVEN B. KAPLAN** and
MATTHEW HALLISEY

Parties to construction contracts and their attorneys now can utilize a powerful new tool for facilitating settlement of disputes. Public Act No. 11-149, which was passed unanimously by the General Assembly and signed into law by the governor effective Oct. 1, 2011, provides for offers of compromise to be made during arbitration proceedings to resolve construction contract disputes. The act sets forth significant consequences when such offers are unwisely rejected.

Pursuant to Section 1 of the act, at any time prior to issuance of the award in a construction contract arbitration, a party can submit a writ-

It is a fact of life that disputes arise in construction projects despite good-faith efforts by all parties involved. Many of these disputes go to mediation, and then proceed to arbitration if the case does not settle.

ten offer of compromise to settle all claims for a specified amount. The mechanism mirrors the offer of compromise that has long been available in civil litigation: If the offer of compromise is not accepted within 30 days, and the arbitration award equals or exceeds the offer, then the court entering judgment on the award must add 8 percent interest to the entire award (including any interest), commencing from the date

the arbitration demand was filed. Moreover, in such cases reasonable attorney's fees and costs for bringing the motion to confirm or modify the award also are mandated.

[Section 2 of the act prohibits certain commercial construction contract provisions that purport to be mediated or arbitrated in another state. Section 3 requires a hearing before the Office of State Ethics and a finding of a violation before a state agency can prohibit contractors, potential contractors and consultants from bidding on state contracts because of alleged past unethical bidding practices.]

It is a fact of life that disputes arise in construction projects despite good-faith efforts by all parties involved. Many of these disputes go to mediation (non-binding settlement conferences), and then proceed to arbitration if the case does not settle. The scope of Public Act 11-149 includes arbitration that is a creature of a construction contract or mutual agreement between the parties and supplants judicial proceedings as the binding dispute resolution mechanism. Proceedings for arbitrating state construction contracts, such as those initiated under Connecticut General Statutes §4-61, are *not* subject to the act.

The new law addresses two important aspects of consensual construction arbitration: It provides a practical, workable mechanism for an "offer of compromise" to be utilized in arbitration proceedings, thus facilitating settlement; and it awards reasonable attorneys' fees and costs for successful applicants who bring the action to confirm or modify an award where an offer of compromise had been submitted, thus facilitating prompt payment of awards.

For many years, C.G.S. §52-192a has permitted offers of compromise in civil litigation. The new law implements a comparable mechanism

for most construction arbitration proceedings. That is, at any time prior to the issuance of a final award by the arbitrator, a party can submit a confidential, written offer of compromise to the other party. If that offer is accepted within 30 days and then paid, the matter is resolved.

If not, and if the offering party eventually recovers an equal or greater amount than the offer of compromise, then a subsequent judgment on the award must include an *additur* of 8 percent interest on the entire award (including interest) commencing from the date the arbitration demand was filed. (Arbitration awards are subject to confirmation as judgments in the courts through longstanding statutory procedures. See C.G.S. §52-417 *et seq.*)

Under the new law, and unlike offers of compromise in civil litigation, if the offer of compromise equals or exceeds the arbitration award, then the court that enters judgment on the award also is required to award attorney's fees and costs (for the court action) to the party who made the offer and moved to confirm the award. This provides additional incentives for parties to pay arbitration awards promptly.

Opting Out

If parties to construction contracts want to opt out of these procedures, they can omit, or negate, contractual arbitration provisions. (They would, however, remain subject to the comparable offer of compromise provisions affecting civil litigation.) Moreover, pursuant to the terms of the act itself, these offer of compromise provisions do not abrogate or modify other contractual rights regarding recovery of attorney's fees.

For many years, construction contract disputes have been resolved through arbitration rather than litigation. The arbitration process is designed to be more streamlined, more efficient, and less costly



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than litigation. In arbitration, the parties choose their third party arbitrators by mutual agreement, and the arbitrators typically possess considerable expertise and specialized knowledge in resolving the construction dispute at hand.

In recent years, construction arbitration has been criticized for increasingly moving toward the excesses of litigation, especially in regard to costly and time-consuming discovery, pre-hearing procedures, and interminable evidentiary hearings. Hence the need for Public Act 11-149.

Like the offer of compromise provision for civil litigation, the new law incentivizes parties to construction contracts to settle disputes. Especially for the weaker economic party to a contract dispute, this mechanism can help deter lengthy and expensive arbitration proceedings. It also will compensate those parties who attempted to settle their case on a reasonable basis, but were rebuffed by an unreasonable counterpart. As such, the act should help level the playing field in construction arbitration proceedings, which frequently involve disputes between parties of disparate financial wherewithal.

Even more so than with civil litigation, offers of compromise in construction arbitration — which usually involves sophisticated commercial parties — should expedite the efficient resolution of these frequently complex disputes. ■

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Where Energy Efficiency And Customer Fairness Collide

SUBMETERING ALLOWS LANDLORDS TO APPORTION ENERGY BILLS AMONG TENANTS

BY **LEE D. HOFFMAN**

Before the recent storm knocked out power supplies throughout the state, one of the big energy issues being covered by the media was the recent spate of enforcement of the state's submetering laws.

Although submetering has a noble purpose — requiring those who consume utilities to pay for those utilities — concerns over fairness to customers limit the use of submetering in Connecticut. Commercial and residential landlords must use care to follow the appropriate regulatory steps when submetering their tenants.

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Failure to do so can result in stiff sanctions by regulatory officials.

What Is Submetering?

It is a basic tenant of utility regulation that for private companies in Connecticut, only "public service companies," such as the Connecticut Light & Power Co. or Southern Connecticut Gas, can meter and bill their clients. This is done in large part to ensure that billing is fair and accurate and that if customers have a complaint, they have redress at a state agency, namely the Public Utilities Regulatory Authority (PURA). Submetering, however, removes that option.

Submetering generally occurs when a landlord wishes to ensure that its tenants are paying their fair share of a particular utility bill, be it water, gas or electricity. In the case of electric-

ity, for example, the power company will install a meter at the building and bill the landlord for the amount of electricity consumed in any one particular month.

The landlord, in turn, will divide that utility bill amongst its tenants, either by actually installing and reading meters at each apartment or office, or by some other



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method of allocation, such as the number of square feet being rented, etc. In this example, the landlord, in effect, becomes a miniature power company, and issues electric bills to each of its tenants.

Challenges Of Submetering

Although the concept of submetering has taken a beating in the popular media, there are real public policy benefits associated with submetering. Chief among those benefits is that submetering encourages each tenant to be responsible for their energy use, thereby encouraging efficiency. If each tenant is actually charged for the energy they consume, they will be far more willing to close the window and turn down the thermostat during heating sea-

CONSTRUCTION and Energy Law

A Better Way To Insure Construction Projects

WRAP-UP PROGRAM OFFER CHEAPER PREMIUMS, BETTER COVERAGE TERMS

BY EDWIN L. DOERNBERGER and
ERNESTO A. CASTILLO

One of the disadvantages of insuring a construction project through traditional insurance programs (i.e., each party procuring individual insurance and providing additional insured coverage to all other parties) is the significant cost and hours expended in handling claims between project participants. By eliminating most claims between project participants, a wrap-up program decreases the hours spent on claims as well overall costs.

The traditional construction insurance approach is based upon a series of risk transfer mechanisms whereby the owner, general contractor, construction manager or project designer seek to avoid liability and protect their corporate insurance programs from project-related claims by requiring that subcontractors assume certain risks.

The complexity of the risk transfer mechanisms are exponentially multiplied with the addition of each subcontractor. In theory, a

contract and subcontract that require each downstream subcontractor to indemnify and provide additional insured status to each upstream party should relieve the upstream parties from tapping into their own corporate programs. The amount of cooperation and recovery of insurance proceeds by upstream parties from downstream insurers, however, has an inverse relationship with the monetary value of a catastrophic loss.

Construction wrap-up programs are risk pooling vehicles that create economies of scale and a centralized risk management tool. Generally, a wrap-up program is a grouping of policies providing general liability and workers' compensation coverage for all persons and entities doing work on a single project job site. The wrap-up program can also be customized to include other types of coverage, including builder's risk coverage and professional liability coverage.

The construction wrap-up program seeks to minimize the inefficiencies of the traditional insurance approach including high insurance

premium costs, inadequate coverage terms and limits and patchwork claims handling. By and large, wrap-ups are used on larger scale projects because of those very same attributes, although those benefits can translate to smaller projects. Owners and risk managers searching for creative and new approaches to cost savings are among the greatest driving forces in the wrap-up market.

One cost-savings component of the wrap-up program is the ability of the program sponsor to lower the initial insurance premium costs for the project by purchasing insurance in bulk and then removing the insurance premium costs and any potential markup from the project bids. The program sponsor can, in a well-tailored wrap-up program, pool the risks associated with each contractor and lower overall insurance costs. Although an entire article can be written concerning the underwriting process surrounding the wrap-up, this article will focus on the oft-mentioned, but somewhat overlooked core benefit of centralized risk management.

Only A Certificate

In the traditional insurance program, upstream parties, especially owners and general contractors, only have a certificate of insurance as evidence that the contractually required insurance obligations are met. In virtually all cases, however, a certificate of insurance will not confer coverage on the certificate holder. Only after a loss will the downstream insurance policies be reviewed, and the implications of a downstream party's failure to procure adequate insurance are vast. In contrast, the insurance coverage under a wrap-up program is well defined — there is



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cannot purchase the coverage from the insurance market.

The potential cost savings of a wrap-up program are apparent once a loss occurs. Consider the scenario where an employee of a subcontractor suffers bodily injury on a job site. In the traditional construction insurance program, where there is contractual indemnification as well as additional insured requirements, the following is typical of the litigation the parties face:

- Employee makes a workers' compensation claim against subcontractor's policy.
- Employee sues owner and general contractor for negligence.
- Owner files cross-claim against general contractor for negligence and indemnification.
- Owner files third-party complaint against subcontractor for negligence and indemnification.
- General contractor files third-party complaint against subcontractor for negligence and indemnification.
- Workers' compensation carrier intervenes.

There are now three insurers and three defense counsel involved. In addition, if there is any question as to whether the owner or

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only one policy form and the wrap sponsor generally has greater leverage to negotiate favorable policy terms and conditions with the insurer.

Another advantage of a wrap-up program is that a downstream subcontractor can obtain better terms of coverage than the subcontractor could have obtained by itself. While a small subcontractor may have little bargaining power, for example, to extend the completed operations coverage, raise coverage limits or obtain lower deductibles, the subcontractor will benefit from the pooling of risks in wrap-up programs.

Similarly, in situations where a general contractor is required by the terms of the project to hire small or local subcontractors, the general contractor may have to assume many risks that it cannot pass on to those subcontractors because those subcontractors

general contractor are covered as additional insureds under the subcontractor's insurance policy, litigation may ensue. For example, a restrictive additional insured endorsement, requiring privity of contract with the named insured or actual negligence on the part of that insured can serve to bar an owner from obtaining additional insured status on a subcontractor's policy. In that scenario, the following actions may be undertaken:

- Declaratory judgment instituted by the owner against the general contractor's and subcontractor's insurer;
- Declaratory judgment instituted by the general contractor against the subcontractor's insurer.

By that point, the owner's or general contrac-

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son, or turn off the lights when they leave the room.

Indeed, making tenants responsible for, and conscious of, their energy consumption choices is an element of “green building” design and a laudable goal. However, that goal is balanced against the desire of the state to make sure that utility bills are fair to customers, that meters are tested properly, and that complaints are appropriately handled. Connecticut addresses such issues through the offices of the PURA; however, private landlords are not usually “public service companies” and therefore not subject to the PURA’s jurisdiction.

Because the potential difficulties with submetering outweigh the possible benefits, submetering is allowed, but only if the PURA gives prior approval. For energy-conscious landlords, however, it may be worth it to seek such approval.

Getting Submetering Approved

One of the easiest ways that landlords can assure that their tenants pay their fair share of utility costs is to have each tenant metered directly by the water, gas or electric company that services the building. Because the utility company in question handles the metering and billing, there are no questions concerning submetering. While such an option may be possible for new construction, it is often cost-prohibitive to retrofit utility meters onto tenants’ space. In such a situation, submetering may still be possible.

Assuming a submetering plan makes financial sense to the landlord, it can be done in Connecticut, although not as easily as in some other jurisdictions. Contrary to the mainstream media’s portrayal of the issue, submetering is permitted under Connecticut law; however, regulations regard-

ing submetering must be closely followed. For example, Connecticut General Statutes §16-19ff specifically allows for the submetering of campgrounds and slips at marinas, provided that the use is residential in nature (e.g., restaurants and repair facilities are excluded) and that the rate being charged is the same as the residential rate charged by the area’s utilities.

Section 16-19ff also allows for submetering “in any other location as approved by the department,” and several landlords have taken advantage of this provision to have submetering of utilities take place at their properties. To get approval for submetering, landlords must file an application with the PURA and open a docket before the agency to discuss the terms of the submetering. Other parties, including tenants and the Office of Consumer

Counsel may also participate in the proceeding to ensure that the submetering proposal is fair to the tenants and to ratepayers.

Landlords who submeter must comply with submetering regulations including proper handling of customer information, form of utility bills, corrected bills, addressing complaints, identification of employees and meter testing requirements.

Failure to comply with submetering requirements, however, can pose serious consequences for property owners. Under Conn. Gen. Stat. § 16-41, the PURA is enabled to levy fines for submetering violations of up to \$10,000 for each offense and, in the case of a continued violation, *each day of the offense shall be deemed a separate offense*. For landlords that have improperly submetered for a period of months, or even years, such fines can accumulate quickly. It is therefore imperative that a landlord who wishes to submeter its property fully understand the consequences of the submetering and adhere to all regulations and PURA orders on the matter. ■

If each tenant is actually charged for the energy they consume, they will be far more willing to close the window and turn down the thermostat during heating season.

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tor’s corporate policy may be required to step in, thereby adversely affecting claims history and most importantly, business relationships may sour. Moreover, the owner or general contractor’s corporate program may be self-insured.

Shorter Litigation Trail

In contrast, under a wrap-up program, assuming that there are no issues as to policy limits and deductibles, the litigation trail consists of two claims; the employee’s workers’ compensation claim and the litigation against the owner and general contractor. There is no need for counterclaims, cross-claims or third party claims, since all parties are covered by the same insurer. The wrap-up program avoids the finger-pointing by multiple insurers and the inherent human and financial capital that is lost in ancillary litigation seeking to obtain what the owner and general contractor had already bargained for in the bidding process.

Although, a wrap-up program will not eliminate all coverage issues for program participants, the logistical headache involved in sorting out counter and cross claims is substantially curbed.

The advantages addressed above can be attributed to the overarching benefit of the wrap-up program; the creation of a centralized platform to house the terms of the coverage as well as the identity of wrap-up participants. The centralized platform allows the program sponsor to dictate and streamline the claims handling process; a significant cost that is often an afterthought.

In a traditional insurance program many owners and general contractors find it logistically impossible to gather all subcontracts and insurance policies to examine and analyze for adherence to bargained for insurance requirements. A well-tailored wrap-up program alleviates these issues. While there is no silver bullet that can put down the coverage beast, a customized wrap-up program can offer much needed peace of mind. ■

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Adding To The Value Of Health Care Construction

ATTORNEYS CAN OFFER ADVICE WITH FUNDING ISSUES, CODE COMPLIANCE

By **ELIEZER STRASSFIELD** and
VINCENZO CARANNANTE

Nationally, large and exciting health care construction initiatives seem to make news all the time. Connecticut, finally, is no exception. We, too, have some game-changing health care projects in the works. But these flashes sometimes obscure the fact that the long health care construction boom, which Connecticut more or less sat out anyway, ended years ago.

Health care institutions have reprioritized. Budgets matter again. Renovation and modernization, particularly those that reduce energy use and update IT infrastructure, are favored over new construction. Revenue-producers like imaging, surgery, and cancer care departments are growing, while others like trauma and neonatal intensive care are not. Room sizes are shrinking. Relatively cheap ambulatory care centers are spreading.

In this environment, lawyers, like the other members of the project team, must add value to health care projects. Lawyers can bring their unique expertise to construction projects by helping develop approaches to legal and contracting challenges early in the project. When these approaches are incorporated into procurement documents and contracts, it helps minimize back-tracking, cost-overruns, scope changes, and change orders.

Challenges described below are common on many types of projects. But they are amplified on health care projects — and amplify the value lawyers can add by helping plan for them.

Conditions Of Public Funding

Many health care projects are supported by state or federal funds. Of course, public funds come with strings. Conditions of public funds commonly include prevailing wage, specialized design requirements, environmental studies, real estate title matters, agency review and approval, and procurement procedures.

To minimize the budgetary and scheduling effect of these conditions, they should be brought to the table early in the project's

planning and incorporated into the project's budget, schedule, and processes. A project team that is aware of conditions early in the process is also in a good position to request waivers of some funding conditions, particularly on federally funded projects.

Mandated procurement procedures, in particular, trip up many projects. On the one hand, neglecting these procedures can have enormous consequences, including loss of public funds. On the other hand, implementing the procedures conservatively often adversely affects projects.

For example, many grant programs encourage or require that construction contracts be awarded to the low bidder through a design-bid-build process. But that doesn't mean a low-ball contractor is destined to win the project and that more integrated project delivery is out of the question. Analyzing applicable regulations and rules, reviewing past practices, and engaging with the granting agency can often facilitate more efficient and effective procurement solutions that comply with the funding conditions.

Stakeholder Participation

There are many stakeholders in health care construction projects. They include patient groups; medical, research, and facilities staff; hospital management; government agencies; and benefactors. Each stakeholder group has insights to contribute to the design process. Many stakeholder groups also should contribute to developing construction means, methods, staging, and scheduling.

Some health care projects have even used Building Information Modeling (BIM) to, in addition to its other benefits, help stakeholders (particularly medical staff) visualize the project and provide effective input.

Meetings with stakeholders should be included in the project schedule. To avoid disagreement within the project team, compensation for these meetings should be included in procurement documents and contracts.

Supplementary Codes, Standards

There are numerous codes and standards that can, on health care construction proj-



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ects, supplement generally applicable codes. These supplementary codes and standards should be specified in procurement documents and contracts to avoid misunderstandings, scope changes, and change orders.

Supplementary codes and standards are particularly important on renovation projects, when patients are on-premises. Patients with depressed immune systems are

sustainable options, as additional services for architects and alternates for contractors.

Equipment

Health care facilities contain complicated and specialized equipment, many with long lead times. When developing a construction schedule, it is important that the milestones for such long lead items be

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very susceptible to compromised air quality, particularly airborne fungal spores that originate on water-damaged building materials. Standards must also protect patient privacy.

But protecting patients doesn't end with putting standards into a contract. Clear lines of communication about such issues should be developed and followed throughout the project.

Green Construction

Health care operators have embraced some sustainable building strategies. The primary driver is, of course, energy savings. But other factors are also important. Health care facilities cater to people with compromised health, who can most benefit from health benefits associated with certain sustainable practices. And many acknowledge that grants and donations are drawn to the "green" label.

As with all construction projects, specificity about which sustainable practices will, or may, be implemented will help avoid misunderstandings, scope changes, and change orders. This is compounded on health care projects because some common green strategies cannot be implemented on health care

included and that each party be made responsible for storage costs resulting from their failure to meet the schedule. Optimally, equipment contracts should, instead of specifying a delivery date, require delivery within a certain amount of time from notice from the operator. But the larger the manufacturer and more complex and customized the equipment, the less practical such a provision becomes.

Health care equipment can change dramatically over the course of even months. Over the design period, clinicians often need to change equipment specifications to keep pace with new developments. But changing equipment can make it necessary to change a variety of specifications — for example, power, cooling, and ventilation. To avoid costly changes, design contracts should leave the design of rooms with particularly inconstant equipment for last.

There's no escaping that lawyers are a project expense. But, whether representing owners, contractors, architects, or consultants, lawyers can add value to a project by foreseeing legal and contracting challenges and working with the rest of the project team to develop and document solutions early in the process. ■

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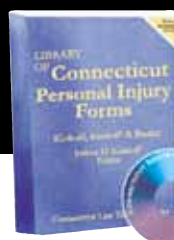
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CONSTRUCTION and *Energy* Law

Getting Smart About Grid Modernization

TECHNOLOGY CAN HELP MAKE ELECTRICITY DISTRIBUTION MORE EFFICIENT

By **DAVID T. DOOT** and
FLORENCE K.S. DAVIS

Smart grid officially hit the mainstream in 2009, with a General Electric ad during the Super Bowl featuring a scarecrow dancing around transmission lines singing, "If I Only Had a Brain." Although smart grid programs have been rolled out in some parts on the country, here in Connecticut the average customer may still be wondering what smart grid is. Based on recent experience, some may be wondering whether grid modernization could help shorten the types of outages we've been experiencing.

What Is Smart Grid?

The term "Smart Grid," also referred to as "Grid Modernization," is used generally to refer to an advanced electric or telecommunications grid that incorporates sensors and other "smart" devices. These devices can be used to link all aspects of the grid, from generator to consumer. At the end-user level, where much consumer attention has been focused, advanced, or "smart," metering can be used to provide consumers

Smart meters collect and retain more information about customers' energy use, raising concerns about how to protect that information.

with information on energy use and pricing, while other "smart" devices within the home, such as appliances or thermostats, can reduce load in response to that information.

At the transmission and distribution level, grid modernization technology can help improve grid efficiency, and allow for better integration of renewable energy and storage technology. Proponents note that grid modernization can enhance reliability by allowing for self- and remote repair, as well as protection from cyber and natural attacks.

Grid modernization was an expressed policy in the Energy Independence and Security Act of 2007, and the 2009 American Recovery and Reinvestment Act included more than \$4 billion in funding for smart grid technology investment. At the same time, many states have taken steps to incorporate smart grid technologies into their transmission and distribution systems and customer meters. During this period, as well, policymakers at both the state and federal level have grappled with the legal and policy issues raised by grid modernization.

Policy Issues

One issue that has received a great deal of attention at both the federal and state level is data privacy. Smart meters collect and retain more information about customers' energy use, raising concerns about how to protect that information.

After examining this issue last year, the Department of Energy concluded that state and local governments should still play leading roles

in deploying smart grid technologies and regulating consumer privacy, and proposed ways to avoid the duplicative or conflicting requirements that could delay the growth of responsible third-party energy management services. The Smart Grid Policy Framework issued by the White House this summer advises state and federal regulators to consider methods "to ensure that consumers' detailed energy usage data are protected in a manner consistent with Fair Information Practice Principles." In August of this year, California became the first state to adopt privacy and security requirements for customer smart grid data.

Policymakers have also focused a great deal on the issue of smart grid interoperability, or how smart grid technology and devices will work together to enable efficient and secure exchanges of information within and across smart grid domains. The National Institute of Standards and Technology (NIST) released standards in 2010, to be implemented by the Federal Energy Regulatory Commission (FERC), but the FERC earlier this year declined to institute a rulemaking proceeding to adopt those standards, citing lack of consensus. NIST continues to work on interoperability standards, recently issuing revised standards with a broader view of the smart grid and cybersecurity enhancements, among other improvements.

Smart Grid Deployment

As noted above, deployment of grid modernization technologies has been taking place at the state level. And, although many agree that smart grid offers potential benefits of grid modernization, there is much disagreement over how and when actual deployment makes sense. While smart grid proponents tout the efficiency benefits of grid modernization, consumer advocates are concerned about whether these benefits justify the significant costs customers are being asked to bear. Similarly, while some smart meter advocates point out that time-of-use pricing combined with advanced metering use information will allow customers to reduce their energy bills by shifting high-use activities to periods when prices are low, others are skeptical that average customers will alter their high-peak energy use, and fear that the result will be higher bills.

Backlash following smart meter installation in California and Texas has fueled the concerns of consumer advocates. Following smart meter roll-outs in those states, some customers were unpleasantly surprised by increased bills. Whether such increases were coincidental based on weather conditions, caused by a lack of customer education about time-of-use rates, or resulted from faulty meters, the resulting problems faced by utilities in those states highlighted the need for careful consideration of smart meter deployment issues at the state level.

Here in Connecticut, we have been taking a measured approach to grid modernization. Public Act 07-242, An Act Concerning Electricity and Energy Efficiency, required each of the two state electric utilities to submit a plan to de-

ploy an advanced metering system. The Public Utility Regulatory Authority (PURA, then the DPUC) approved the United Illuminating Co.'s plan, which proposed to use its existing metering system to support net metering, timeofuse rates and certain real-time rate structures, along with certain enhancements in communications, billing and metering. PURA initially rejected the proposal of Connecticut Light & Power Co., which would have required more significant upfront investment, opting instead to have CL&P study the technical capabilities of advanced metering and customer responses to alternatives to rate design through pilot programs.

The results of these pilot programs were examined by PURA recently in a re-opened proceeding, and PURA again rejected CL&P's plan in a draft decision. Before the final decision was issued, however, the newly formed Department of Energy and Environmental Protection (DEEP) requested that the proceeding be suspended while DEEP's Bureau of Energy and Technology Policy establishes the state's smart meter policy, as described in Public Act 11-80.



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The PURA granted that request on Aug 18. It also granted a similar request made in the UI smart metering docket, which had been closed in March 2008.

In coming years, grid modernization will likely be more prevalent throughout the country, including in Connecticut. Careful consideration of the important policy and legal issues raised by this new technology may allow consumers to experience the benefits that it can provide without the shock of greatly increased bills or decreased privacy. ■

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CONSTRUCTION and *Energy* Law

Getting Current: When Will You Buy An Electric Car?

COST, CONVENIENCE STILL FACTORS AS NEW TYPES OF VEHICLES HIT MARKET

By **ELIN SWANSON KATZ**

It's 8 a.m. on a typical weekday morning. Time for work. Head to the garage and unplug the car from the charging station you bought at Lowe's and had installed by your local electrician. Pull out of the garage and quietly roll up the street, the only sound that of the rubber tires and your radio.

No qualms about stopping for a cup of coffee in Blue Black Square in West Hartford. There's a special lower "car-charging" monthly rate from the electric company and no gas ex-

A few minutes later, coffee in hand, you're at the entrance to Interstate 84. A tractor-trailer is barreling along in the right hand lane, so you hit the "gas," shooting from 0 to 60 mph in 3.7 seconds. You cruise to work at a comfortable 60 mph, confident that you can drive the 10 miles to work, do some errands at lunch, and then make it back home without any charging worries. Of course, in a pinch, you can always pull into the charging station at Walgreens's.

Is this today's world, the near future, or pure fantasy cooked up by environmental dreamers? The answer it seems, may be, "all of the above."

The assumption is that as demand for electric cars rises and technology advances, the prices will go down. Just compare the cost of a television or a laptop 10 years ago to what it is today as evidence.

penses, so it feels like there's a little extra jingle in your pocket for a double latte. Plus, you can always top off your charge at the charging station in Blue Black Square. At 100 miles per charge, however, there's plenty of go left in your battery.

Electric vehicles (EVs) such as the Chevy Volt and the Nissan Leaf are indeed on the roads in Connecticut, and there is a charging station at Blue Black Square in West Hartford. Lowe's does sell electric vehicle charging stations in some states and online although whether you can buy

one at a Connecticut store yet is unclear. Walgreen's pharmacies indicate that they are planning to install charging stations at 10 percent of their stores nationwide.

So what does that mean for you, the consumer? We've been hearing about EVs for years, but now that they've arrived, will there be any benefits or advantages for the average Connecticut driver?



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of gas and high for the cost of electricity, but on a straight miles-to-miles comparison, at about 3.5 cents per mile electric to 12 cents a mile gas, the EV is an easier winner. There's also considerable savings available through government incentives, including an exemption from emissions testing, a reduced registration fee, and an exemption from sales and use taxes and other fees.

The analysis doesn't stop there, of course, as you generally spend more initially on an EV than a comparable gas car. According to Watson Collins of Northeast Utilities, the cost of the 2011 Nissan Leaf is about \$33,000, the Chevy Volt is \$42,000, and then there's the Tesla Roadster, which retails for about \$109,000.

Then add another \$1,200 to \$1,500, which is the typical cost for a resident to have a charging station installed, and it's not cheap.

The assumption, of course, is that as demand rises and technology advances, all of these prices will go down. Just compare the cost of a television or a laptop 10 years ago to what it is today as evidence. Of course, if the cost of gasoline continues to go up, as we fear, and the cost of electricity continues to go down, as we hope, then the economics will get even better for EVs and motivated early-adopters should help move the market.

Breathe A Little Easier

The potential benefits of reducing emissions from combustion engines like the one in your car are obvious. On an individual level, it would be nice to roll down the window on a summer day without getting a face full of fumes. On a broader scale, 43 percent of Connecticut's carbon dioxide emissions (i.e., greenhouse gases) come from the transportation sector, so widespread use of EVs could definitely have a positive impact on air quality, especially in congested inner city areas. There are also other less tangible impacts that are more difficult to quantify, such as a decrease in noise pollution and benefits from less idling. There are also national security benefits from reducing our dependence on foreign energy sources.

In 2010, Connecticut's Electric Vehicle Infrastructure Council (EVIC) proposed a goal of 25,000 electric cars statewide by 2020. This aligns with President Barack Obama's national goal of 1 million plug-in vehicles on the road by 2015. If 5 percent of Connecticut drivers changed over to an EV, we could reduce emissions equivalent to 4 percent of total power plant emissions.

According to the Department of Motor Vehicles, in September 2010, there were 24 EVs registered in Connecticut. A year later, that number is believed to be about 70. Whether Connecticut hits its 25,000-by-2020 target will probably depend on the commercial viability of the product for the individual consumer — in other words, will it save you money to go electric?

Lean And Green

You *can* save money with an EV. According to EVIC, if you have a car which gets 25 miles to the gallon, with gasoline costing \$3 per gallon, you are paying about \$0.12 per mile. If you switch to an EV with an efficiency of 5 miles per kWh, and an electricity cost of \$.01682/kWh, the cost per mile of an all-electric EV is \$.034 per mile.

Those estimates are probably low for the cost

Doing The Electric Slide?

With all of these positives, what's holding back the EV revolution? Nerves, in part. EVIC identifies "range anxiety" as a major obstacle to broad acceptance. Basically, we fear getting too far from home and having no place to charge up. We know who to call if we run out of gas; where do we turn if we run out of electricity?

We could address some of these concerns through some practical urban planning. For the restaurant or retail store owner that installs a charging station, the welcoming of new patrons is almost guaranteed. An incentive program could even be developed that would allow business owners to charge customers a fee for the use of their station. Quick-charge stations at rest stops would also help.

Our new "normal" may also include power outage concerns. While we are still reeling from the remnants of Hurricane Irene, as I write this a good part of the state is facing a weeklong (or more) power outage from Storm Alfred. If I were relying on an all-electric vehicle such as the Nissan Leaf rather than a hybrid gas-electric vehicle such as the Chevy Volt to travel to my office, I'd be stuck. On the other hand, I just spent a half hour driving from gas station to gas station, seeing "no gas" signs everywhere, so there are no easy answers in these situations.

So is an electric car in your near future? The answer is a definite maybe. If you are inclined to consider environmental impacts, energy security, or just being on the cutting edge of cool, new technology, the answer may be sooner. If you are focused solely on price, familiarity, and convenience, the answer may be later. ■

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As Connecticut Consumer Counsel, Elin Swanson Katz advocates for consumer interests with respect to utility and telecommunication matters. Prior to her appointment to the state post, she practiced environmental law and litigation in Hartford, Boston, and Washington, D.C. She was also the assistant counsel at the Connecticut Department of Environmental Protection.