

PETITION 863
Staff Report
April 6, 2010

Siting Council Jurisdiction over Renewable Energy Facilities

Federal and state energy policies seek to promote the use of alternative energy sources and to encourage power production facilities that use renewable fuels.¹ The Siting Council (“Council”) is responsible for encouraging research to develop new and improved methods of generating, storing and transmitting electricity and fuel, which necessarily includes renewables.² This report explores the statutory basis for the Council’s jurisdiction over the siting of renewable energy projects.

A. Statutory Interpretation

The starting point for statutory interpretation is the statute’s plain meaning. C.G.S. §1-1(a) provides in relevant part, “In the construction of statutes, words and phrases shall be construed according to the commonly approved usage of the language.”³ To ascertain the usage, courts often look to the dictionary definition of the term. Statutes are also interpreted according to their overall structure and the legislative intent behind them.

1. C.G.S. §16-50i(a)(3)

Under C.G.S. §16-50i(a)(3), the Council has jurisdiction over “any electric generating or storage facility using any **fuel**, including nuclear materials, including associated equipment for furnishing electricity, but not including... a facility (i) owned and operated by a “private power producer”⁴ ... (ii) which is a qualifying small power production facility or a qualifying cogeneration facility⁵ ... or a facility determined by the Council to be primarily for a producer’s own use, and (iii) which has in the case of a facility utilizing **renewable energy sources**, a generating capacity of one megawatt of electricity or less...” (emphasis added). The statute is silent as to whether the Council has jurisdiction over facilities utilizing renewable energy sources with more than one megawatt of electricity. Therefore, the plain meaning of the terms “fuel” and “renewable energy sources” must be defined to clarify the question of jurisdiction.

2. The Definition of “Fuel”

In general, “fuel” is defined in Webster’s Dictionary as “combustible matter burned as a source of energy.”⁶ The American Heritage Dictionary defines “fuel” as “anything consumed to produce energy...”⁷ Based on these definitions, it would seem that fuel must be burned to produce energy. However, fuel cells convert fuel to energy through an electrochemical process rather than combustion. Therefore, it is possible for a facility to generate electricity without

¹ Federal Power Act, 16 U.S.C. §791 *et seq.* (2008); Public Utilities Regulatory Policies Act (“PURPA”), 16 U.S.C. §824 *et seq.* (2008) (Congress directs FERC to promulgate rules and regulations for state implementation).

² Public Utilities Environmental Standards Act, (“PUESA”), C.G.S. §16-50g *et seq.* (2008).

³ CONN. GEN. STAT. § 1-1(a) (2008).

⁴ A “private power producer” is one “... which generates electricity solely through ownership of ... a private power production facility,” C.G.S. §16-243b(3) (2008); A “private power production facility” is a facility which generates electricity solely through the use of cogeneration technology, solely through the use or renewable energy sources, or both. C.G.S. §16-243b(1) (2008).

⁵ Federal Power Act, 16 U.S.C. §796(17)(A) (2008) and §796(18)(B) (2008) (Facilities that FERC determines by rule meet applicable requirements).

⁶ THE NEW INTERNATIONAL WEBSTER’S POCKET DICTIONARY 203 (Trident Press International 1998).

⁷ THE AMERICAN HERITAGE DICTIONARY 531 (Houghton Mifflin Company 1976).

burning fuel. Connecticut defines “fuel” as including “electricity, natural gas, petroleum products, coal..., wood fuels, radioactive materials and **any other resource yielding energy.**”⁸ (emphasis added). Accordingly, fuel cells fit within this definition as “any other resource yielding energy.”

Congress defines “alternate fuel” as “electricity... or any fuel, other than natural gas or petroleum...”⁹ Other states differentiate between “fossil fuels” and “renewable fuels” in their statutory schemes. For example, “fossil fuel” is defined as coal, petroleum products and fuel gases, but “renewable fuel” is defined as ... solar, wind... and hydrogen.¹⁰ Two recent Connecticut cases held that electricity suppliers must necessarily purchase electricity generated from “renewable fuel” to meet state mandates for the use of renewable energy and that contracts for facilities using renewable fuels should receive more favorable terms than for facilities using fossil fuels.¹¹ It is therefore apparent that Connecticut also differentiates between “fossil fuels” and “renewable fuels.”

3. The Definition of “Renewable Energy Sources”

In general, “renewable energy” is energy generated from natural resources such as the sun, wind, rain, tides and geothermal heat that are naturally replenished.¹² Connecticut defines “renewable energy” as “solar energy, wind, ocean thermal energy, wave or tidal energy, fuel cells, landfill gas, ... hydrogen conversion technologies, ... biomass conversion technologies, ... and any other energy resources and emerging technologies which have significant potential for commercialization and which do not involve the combustion of coal, petroleum..., municipal solid waste or nuclear fission.”¹³ C.G.S. §16-50i(a)(3) references facilities that use “renewable energy sources,” but it does not define them.

The federal government defines “renewable energy source” as “wind, ocean waves, biomass, solar, landfill gas, incremental hydropower, livestock methane or geothermal energy.”¹⁴ Each of the enumerated sources is a natural resource that is naturally replenished. Other states define “renewable energy sources” in their statutory schemes as sources which generate electricity using resources which are capable of being continuously restored by natural means and include, but are not limited to, solar, wind, fuel cells, landfill gas, geothermal, tidal...¹⁵ The Council has a responsibility to drive incentives for production and commercialization of renewable energy source technologies under PUESA. It is therefore apparent that Connecticut must use renewable energy sources to meet energy policy goals.

4. Explicit Statutory Exclusions and Legislative Intent

In addition to interpreting words in a statute according to their plain meaning, traditional canons of statutory construction dictate that an exclusion from a statute must be explicit. C.G.S. §16-50i(a)(3) specifically excludes a facility, “... which has in the case of facility utilizing

⁸ CONN. GEN. STAT. § 16a-17 (2008).

⁹ Power Plant and Industrial Fuel Use, 42 U.S.C. § 8302(a)(6) (2008).

¹⁰ N.Y. ENERGY LAW § 1-103 (7) (2008); N.H. REV. STAT. ANN. § 362-A:1-a (I) (2008); N.J. STAT. ANN. § 52:27F-3(d) (2008).

¹¹ *Id.*

¹² International Energy Agency, *Renewable Energy into the Mainstream*, Oct 2002, available at <http://www.iea.org>. (last visited November 26, 2008).

¹³ CONN. GEN. STAT. § 16-245n(a) (2008).

¹⁴ Rural Electrification, 7 U.S.C. § 918c(a)(4) (2008).

¹⁵ MASS. GEN. LAWS ch. 25A § 11F(b) (2008); R.I. GEN. LAWS § 39-26-5(a) (2008); N.H. REV. STAT. ANN. § 362-F:4 (I) (2008); N.Y. ENERGY LAW §1-103(12) (2008).

renewable energy sources, a generating capacity of **one megawatt of electricity or less...**” (emphasis added). However, there is no explicit exclusion for, or reference to, a facility utilizing renewable energy sources with a generating capacity of **more than one megawatt of electricity** (emphasis added). Interpreted under this canon, the Council has jurisdiction.

Canons of statutory construction also dictate that the courts and administrative agencies must follow the intent of Congress. Under C.G.S. §16-50k(a), there is a provision for expedited siting by declaratory ruling which gives the Council jurisdiction over renewable energy projects that reduce federally mandated congestion charges (“FMCCs”) pursuant to a federal directive.¹⁶ The Council has decided two petitions under this process: a 37.5 megawatt wood biomass generating facility in Plainfield and a 30 megawatt biomass gasification generating facility in Watertown.¹⁷ C.G.S. §16-50k(a) operates in conjunction with C.G.S. §16-243m(g), which mandates the DPUC to “encourage responses from a variety of resource types and to encourage diversity in the fuel mix used in generation.”¹⁸ The legislative intent here is to implement measures to reduce FMCCs; expedited siting accomplishes this goal. Interpreted under this canon, the Council has jurisdiction.

B. Renewable Energy Policy

It is the intent of the federal legislature to encourage the use of renewable energy sources. Congress has determined that the U.S. has a quantity of renewable energy resources that will provide abundant, reliable and affordable energy for all citizens.¹⁹ In addition, renewable energy production would promote important social and economic goals such as create employment opportunities, protect environmental values, foster economic growth, husband resources for future generations, protect health and welfare, maximize efficiency and increase competition in the marketplace.²⁰ Therefore, use of renewable energy sources will promote a sustainable energy system.

States have incorporated the renewable energy goals expressed by Congress into their own energy policies. Massachusetts established a governing board to support “the design, implementation, evaluation and assessment of renewable energy programs.”²¹ Rhode Island “shall give priority to energy generation projects based on... criteria including: i) using renewable fuels... as their primary fuel...”²² New York seeks “... to accelerate development and use within the state of renewable energy sources.”²³ New Jersey “declares that energy efficiency and conservation measures and increased use of renewable energy resources must be essential elements of the state’s energy future...”²⁴ Finally, New Hampshire declares it to be “... in the public interest to encourage and support diversified electrical production that uses... renewable

¹⁶ CONN. GEN. STAT. § 16-50k(a) (2008)(“...the council shall... approve by declaratory ruling (1) the construction of generating facilities that do not use nuclear materials or coal as fuel where a facility operated prior to July 1, 2004, (2) construction or location of a fuel cell ... with a capacity of less than sixty-five megawatts... and (3) siting of temporary generation solicited by the DPUC”).

¹⁷ Petition 784 (May 22, 2007) and Petition 834 (April 24, 2008).

¹⁸ CONN. GEN. STAT. §16-243m(g)(2008) (DPUC “shall give preference to proposals that 1) result in the greatest aggregate reduction of federally mandated congestion charges (“FMCCs”)... 2) make efficient use of existing sites and supply infrastructure, and 3) serve the long-term interests of ratepayers”).

¹⁹ Energy Independence and Security, 42 U.S.C. § 17285 (2008).

²⁰ International Energy Agency, *supra* note 12; N.Y. ENERGY LAW § 3-101 (2008); CONN. GEN. STAT. § 16a-1 (2008).

²¹ MASS. GEN. LAWS ch. 40J, § 4E (2008)

²² R.I. GEN. LAWS § 42-98-2 (2008).

²³ N.Y. ENERGY LAW §3-101(1) (2008).

²⁴ N.J. STAT. ANN. § 26:2C-45 (2008).

fuels...”²⁵ Each state declares that the use of renewable energy resources is essential to their energy future.

Connecticut also declares that the use of renewable energy resources is essential to its energy future. It is the policy of Connecticut to “... (3) develop and utilize renewable energy resources, such as solar and wind energy, to the maximum practicable extent...”;²⁶ In addition, it is “declared that a shortage of energy supplies and resources exists in the state ... there is a necessity to implement the federal mandatory allocation order and other federal directives and federal statutes...”²⁷ For example, P.A. 08-168, “An Act Concerning Energy Scarcity and Security, Renewable and Clean Energy and a State Solar Strategy” calls for a study of how other states promote and increase the use and supply of renewable energy and clean energy. Also, the Connecticut Energy Advisory Board’s (“CEAB”) “Draft Report on Various Energy Issues for Connecticut” discusses Project 150²⁸ proposals to be reviewed and approved by the DPUC, then to obtain appropriate siting approval through the Council.²⁹

²⁵ N.H. RSA 362-A:1 (2008).

²⁶ CONN. GEN. STAT. § 16a-35k (2008).

²⁷ CONN. GEN. STAT. § 16a-1 (2008).

²⁸ CONN. GEN. STAT. § 16-244c(j)(2) (2008)(statutory requirement that Connecticut utilities enter into long term contracts for 150 megawatts of instate renewable power).

²⁹ La Capra Associates, “*A Report on Various Energy Issues for Connecticut: Phase I*,” May 30, 2008 at 29-30.

Connecticut Siting Council
DRAFT Application Guide for a
RENEWABLE ENERGY FACILITY

April 2010

This application guide is designed to assist applicants in filing for a Certificate of Environmental Compatibility and Public Need (Certificate) from the Connecticut Siting Council (Council) for the construction of a renewable energy facility under Connecticut General Statutes § 16-50i (a) (3).

A “renewable energy facility” is any electric generating or storage facility using renewable energy sources, including, but not limited to solar photovoltaic, solar thermal, wind, fuel cells, ocean thermal, wave or tidal, geothermal, landfill gas, hydropower, or biomass. (Conn. Gen. Stat. §16-50i(a)(3); Conn. Gen. Stat. §16-245n(a))

Potential applicants are urged to carefully review Connecticut General Statutes § 16-50k to determine whether the proposed project falls within the petition for declaratory ruling process that applies to fuel cells (unless the Council finds a substantial adverse environmental effect), customer-side distributed resource projects or grid-side distributed resource projects or facilities with a capacity of 65 megawatts or less (as long as such project meets air and water quality standards of the Department of Environmental Protection). Potential applicants are also urged to carefully review Connecticut General Statutes §22a-20a to determine whether the proposed project is defined as an “affecting facility” that is located within an “Environmental Justice Community.”

Applicants should consult Connecticut General Statutes §§ 16-50g through 16-50aa, and §16a-7c, and Sections 16-50j-1 through 16-50z-4 of the Regulations of Connecticut State Agencies to assure complete compliance with the requirements of those sections. Where appropriate, statutory and regulatory references are noted below.

I. Pre-Application Process

A. Municipal Consultation (Conn. Gen. Stat. § 16-50l (e))

“...at least 60 days prior to the filing of any application with the Council, the applicant shall consult with the municipality in which the facility may be located and with any other municipality required to be served with a copy of the application under subdivision (1) of subsection (b) of this section [any adjoining municipality having a boundary not more than 2500 feet from such facility] concerning the proposed and alternative sites of the facility.....Such consultation with the municipality shall include, but not be limited to, good faith efforts to meet with the chief elected official of the municipality. At the time of the consultation, the applicant shall provide the chief elected official with any technical reports concerning the public need, the site selection process and the environmental effects of the proposed facility. The municipality may conduct public hearings and meetings as it deems necessary for it to advise the applicant of its recommendations concerning the proposed facility. Within 60 days of the initial consultation, the municipality shall issue its recommendations to the applicant. No later than 15 days after submitting the application to the Council, the applicant shall provide to the Council all materials provided to the municipality and a

summary of the consultations with the municipality including all recommendations issued by the municipality.”

“...the applicant shall submit to the Connecticut Energy Advisory Board (CEAB) the same information that it provides to a municipality... on the same day of the consultation with the municipality.”

B. Application to Municipal Agencies (Conn. Gen. Stat. § 16-50x (d))

Municipal zoning and inland wetland agencies may regulate and restrict the location of an electric generating facility. Such action must be taken within 65 days of an application filed with the Council. Orders made by the municipal zoning and inland wetland agencies may be appealed within thirty days by any party or municipality required to be served with a copy of the application.

II. Form of Application (Regs. Conn. State Agencies §16-50l-2)

All applications shall include the following components:

- a. The purpose for which the application is being made;
- b. The statutory authority for such application;
- c. The exact legal name of each person seeking the authorization or relief and the address or principal place of business of each such person. If any applicant is a corporation, trust association, or other organized group, it shall also give the state under the laws of which it was created or organized;
- d. The name, title, address, and telephone number of the attorney or other person to whom correspondence or communications in regard to the application are to be addressed. Notice, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon the applicant;
- e. Such information as may be required under the applicable provisions of Section 16-50l of the Connecticut General Statutes;
- f. Such information as any department or agency of the state exercising environmental controls may, by regulation, require; and
- g. Such information as the applicant may consider relevant.

III. Filing Requirements (Regs., Conn. State Agencies § 16-50j-12)

- A. Except as may be otherwise required, at the time applications are filed with the Council, there shall be furnished to the Council an original and 20 copies. All filings from the applicant, parties, or intervenors must consist of an original and 20 copies, labeled with the docket number, properly collated and paginated, and bound. An electronic version of all filings, as appropriate, shall be provided.
- B. Bulk filing should be provided of not less than four (4) copies of the applicable town zoning and Inland wetlands regulations (including a map showing the location of

inland wetlands if relevant) and plan of development and any other publicly available material in support of the application. These documents shall include effective dates, revision dates, or dates of adoption. If no such dates are available, the document shall include the date the document was obtained.

- C. Applications filed for the purpose of any proceeding before the Council shall be printed or typewritten on paper cut or folded to letter size, 8 1/2 by 11 inches. Width of margins shall be not less than one inch. The impression shall be on only one side of the papers, unless printed, and shall be double spaced, except that quotations in excess of five typewritten lines shall be single spaced and indented. Mimeographed, multigraphed, photoduplicated, or the like copies will be accepted as typewritten, provided all copies are clear and permanently legible. In accordance with the State Solid Waste Management Plan, all filings should be submitted on recyclable paper, primarily regular weight white office paper. Applicants should avoid using heavy stock paper, colored paper, and metal or plastic binders and separators.
- D. Every original shall be signed by the applicant or by one or more attorneys in their individual names on behalf of the applicant. All applications shall be filed at the office of the Council, Ten Franklin Square, New Britain, Connecticut 06051. Service of all documents and other papers filed as applications, briefs, and exhibits, but not limited to those categories, shall be by personal delivery or by first class mail to the Council and all parties and intervenors to the proceeding, unless service has been waived.
- E. Any exhibits, sworn written testimony, data, models, illustrations, and all other materials that the applicant deems necessary or desirable to support the granting of the application shall be attached to the application. In addition, annexed materials shall include such exhibits, sworn written testimony, and other data that any statute or regulations may require. The applicant may request that administrative notice be taken of and refer in the application to portions of Council decisions and other government documents. Please note that all documents, including but not limited to maps, must be dated. If the document date is unavailable, the date the document was obtained shall be provided. Maps must include a key table(s) and a matching source list/table, appropriately organized.
- F. Applicants may present material in a sequence and format most appropriate for the particular proposal. To allow timely Council review, include with the application a copy of this form with page references for each item required in Section VI below.
- G. Potential applicants are urged to carefully review Connecticut General Statutes §§ 16-50/(e), 16-50i and 16a-7c to determine whether the proposed project falls within the Connecticut Energy Advisory Board (CEAB) “request-for-proposal” process.

IV. Application Filing Fees (Conn. Gen. Stat. §4-189j; Conn. Gen. Stat. §16-50/(a); Regs., Conn. State Agencies § 16-50v-la)

Conn. Gen. Stat. §16-50/(a) limits the initial filing fee to not more than twenty-five thousand dollars. This section also mandates an additional municipal participation fee of twenty-five thousand dollars to be deposited in the account established in accordance with Conn. Gen. Stat. §16-50bb.

The filing fee for an application is determined by the following schedule:

Estimated Construction Cost	Fee
Up to \$5,000,000	0.05% or \$1,250.00, whichever is greater;
Above \$5,000,000	0.1% or \$25,250.00, whichever is less.

All application fees shall be paid to the Council at the time an application is filed with the Council. Additional assessments may be made for expenses in excess of the filing fee. Fees in excess of the Council's actual costs will be refunded to the applicant.

V. Municipal Participation Account (Conn. Gen. Stat. §16-50bb; Conn. Gen. Stat. §16-50(a)(3))

Conn. Gen. Stat. §16-50bb requires that each application be accompanied by a payment in the amount of \$25,000 to be deposited in a Municipal Participation Account within the General Fund to defray expenses incurred by each municipality entitled to receive a copy the application under Conn. Gen. Stat. § 16-50/ that chooses to participate as a party to the certification proceeding. Any moneys remaining at the end of the proceeding shall be refunded to the applicant.

VI. Contents of Application (Conn. Gen. Stat. § 16-50(a)(1)(B))

An application for a Certificate for the construction of a renewable energy facility shall include the following, as applicable:

- A. An executive summary. A description and the location of the proposed facility, including an artist's rendering and/or narrative describing its appearance, including but not limited to:
 1. Technical Specifications:
 - a. Service life and capacity factor;
 - b. Fuel type and supply or renewable energy source;
 - c. Combustion or energy conversion technology;
 - d. Control systems, including pollution control technology;
 - e. Water use and effluent discharge;
 - f. Air emissions;
 - g. Waste disposal;
 - h. Noise abatement;
 - i. Provisions for emergency operations and shutdowns;
 - j. Fire suppression technology;
 - k. Safety warning system;
 - l. Proximity to municipal fire stations;
 - m. Protective gear and control systems;
 - n. Traffic flow and potential evacuation routes;
 - o. Traffic safety and fuel spill risk assessment for access routes to the site;
 - p. Provisions for leak detection of fuel and chemicals from storage areas; and
 - q. Hazardous materials management and fuel spill prevention and control.

2. A demonstration of how the proposed facility would comply with Prevention of Significant Deterioration and Non-Attainment New Source Review requirements, identification of potential maximum emissions from proposed and alternative fuel combustion, and a summary of air pollution control technologies.
3. Alternative technologies, including:
 - a. Efficiency comparisons; and
 - b. Environmental comparisons.
4. An emergency management/evacuation plan.
5. Safety and reliability information, including:
 - a. Provisions for emergency operations and shutdowns; and
 - b. Fire suppression technology.
6. A Federal Aviation Administration determination for obstruction or hazard to air navigation
7. Itemized estimated costs, including:
 - a. Plant and fuel;
 - b. Generating cost per kilowatt hour, both at the plant and related transmission line interconnection;
 - c. Comparative costs of alternatives considered; and
 - d. Life-cycle costs.
8. Information regarding the forecast of available fuel and backup fuel supply proposed for the facility, the State of Connecticut, New England, and the United States.
9. The location of existing and proposed pipelines or other infrastructure necessary to provide fuel and water to the proposed project including any upgrades necessary for the delivery of fuel and water to the facility during operation.
10. The source of fuel, water, and interconnections necessary for facility operation, the location of all infrastructure and pipelines with a map, the service area of the proposed infrastructure, other large users that may compete for the supply of fuel and water to the proposed facility, and under what circumstances fuel and water could be curtailed to the facility.
11. Details of alternative fuel supply including fuel compatibility, schedule and mechanism necessary for fuel switching, equipment requirements, and analysis of alternatives with a comparison of facility reliability with and without alternative fuel supplies.
12. A comparison, with a narrative and tabular reporting, of wet and dry cooling technologies, non-contact cooling, and use of gray water if applicable, including the estimated capital and operating costs, effects on air emissions, water use, water discharge, water recycling, effects on water resources and water diversions, noise,

and spacial requirements of each technology under all operations scenarios.

13. An explanation of consistency with regional water supply and watershed protection plans and permit application or executed permit, if applicable, for the use of diverted water for cooling and other facility uses.
14. A storm water management plan with modeling to predict the quality and quantity of anticipated runoff and discharge.
15. The construction type of the transmission interconnection (overhead, underground, single circuit, double circuit) and the existing and expected transmission line loadings, substation interconnection plan, and the anticipated range of dispatch based on transmission grid constraints. Also, provide a final copy of, or a status report on, the independent system operator transmission grid interconnection study.
16. A statement and full explanation of why the proposed facility is needed and how the facility would conform to a long-range energy plan, including but not limited to the expansion of the electric power grid serving the state and interconnected utility systems that would serve the public need for adequate, reliable and economical service.
17. A justification for selection of the proposed site selected including a comparison with alternative sites which are environmentally, technically, and economically practicable. Include enough information for a complete comparison between the proposed site and any alternative site contemplated.
18. Justification that the location of the proposed facility would not pose an undue safety or health hazard to persons or property along the area traversed by the proposed facility including:
 - a. Measurements of existing electric and magnetic fields (EMF) at the boundaries of the facility site with extrapolated calculations of exposure levels during expected normal and peak line loading;
 - b. Calculations of expected EMF levels at the boundaries of the facility site that would occur during normal and peak operation of the facility; and
 - c. A statement describing consistency with the Council's "Best Management Practices for Electric and Magnetic Fields," as amended;
 - d. A description of siting security measures for the proposed facility, consistent with the Council's "White Paper on the Security of Siting Energy Facilities," as amended; and
 - e. A description of the effect that the proposed facility would have on the environment, ecology, and scenic, historic, and recreational values at and around the proposed site, and along new or expanded utility corridors, including effects on:
 - i. Public health and safety;
 - ii. Local, state, and federal land use, conservation, and development plans;
 - iii. Existing and future development;

- iv. Adjacent land use;
- v. Ecological integrity;
- vi. Noise with baseline testing and modeling consistent with State regulations;
- vii. Consistency with plans for development and protection of recreational areas and areas of natural history including areas of geologic, ecological, and archaeological interest;
- viii. Visibility based on photographic simulation, artist renditions, and sight line profiles;
- ix. Roads;
- x. Wetlands and watercourses;
- xi. Wildlife and vegetation, including rare and endangered species, critical habitats, and species of special concern, with documentation from the Department of Environmental Protection Natural Diversity Data Base;
- xii. Public water supply watershed and aquifer areas, consistent with state and local conservation and development plans;
- xiii. Archaeological and historic resources, with documentation by the State Historic Preservation Officer; and
- xiv. Other environmental concerns identified by the applicant, the Council, or any public agency, including but not limited to, where applicable:
 - Coastal Consistency Analysis (C.G.S. §22a-90)
 - Connecticut Heritage Areas (C.G.S. §16a-27)
 - Ridgeline Protection Zones (C.G.S. §8-1aa)
 - Aquifer Protection Zones (C.G.S. §22a-354b)
 - DOT Scenic Lands (C.G.S. §13a-85a)
 - State Parks and Forests (C.G.S. §23-5)
 - Agricultural Lands (C.G.S. §22-26aa)
 - Wild and Scenic Rivers (C.G.S. §25-199)
 - Protected Rivers (C.G.S. §25-200)
 - Endangered, Threatened or Special Concern Species (C.G.S. §26-303)

- B. A statement and full explanation of why the proposed facility:
 1. is consistent with the Integrated Resource Plan;
 2. is necessary for the reliability of the electric power supply of the state; or
 3. is necessary for a competitive market for electricity.
- C. A statement of loads and resources as described in Conn. Gen. Stat. § 16-50r;
 1. information on extent to which proposed facility is identified in and consistent with life cycle cost analysis and other advance planning; or
 2. an explanation for any failure of the facility to conform with such information.
- D. Safety and reliability information, including planned provisions for emergency operations and shutdowns;
 1. Historic and expected availability of all facility components;
 2. Availability of off-site resources such as water and fuel supply with resource

- plans documenting supply and capacity;
 - 3. All mechanisms for contingency in the event of fuel curtailment, water curtailment, facility flame-out, and electrical component failure; and
 - 4. The historic and expected availability of all necessary electric and fuel transmission infrastructure.
- E. Estimated cost information, including plant costs, fuel costs, plant service life and capacity factor and total generating cost per kilowatt hour, both at the plant and related transmission, and comparative costs of alternatives considered;
- F. A schedule showing the program for design, material acquisition, construction and testing, and operating dates;
- G. Available site information, including maps and description and present and proposed development, and geological, scenic, ecological, seismic, biological, water supply, population and load center data, including but not limited to a proposed site map(s) at a scale no smaller than 1 inch = 40 feet, a location map at a scale 1 inch = 2000 feet, and aerial photos of suitable scale showing the site, access, and abutting properties including proximity of the following:
- 1. Settled areas;
 - 2. Schools and daycare centers;
 - 3. Hospitals;
 - 4. Group homes;
 - 5. Forests and parks;
 - 6. Recreational areas;
 - 7. Seismic areas;
 - 8. Scenic areas;
 - 9. Historic areas;
 - 10. Areas of geologic, ecological, or archaeological interest;
 - 11. Areas regulated under the Inland Wetlands and Watercourses Act (to be delineated by a Connecticut Certified Soil Scientist on large scale 1 inch = 40 feet maps);
 - 12. Areas regulated under the Tidal Wetlands Act and Coastal Zone Management Act (to be delineated by a Connecticut Certified Soil Scientist on large scale 1 inch = 40 feet maps);
 - 13. Public water supply sources including wells, reservoirs, watersheds, and aquifers;
 - 14. Hunting or wildlife management areas; and
 - 15. Existing transmission lines within one mile of the site.
- H. Justification for adoption of the site selected, including comparison with alternative sites;
- I. Design information, including a description of facilities, plant efficiencies, electrical connections to the system, and control systems;
- J. A description of provisions, including devices and operations, for mitigation of the

effect of the operation of the facility on air and water quality, for waste disposal, for noise abatement, and information on other environmental aspects including but not limited to:

1. Construction techniques designed specifically to minimize adverse effects on natural areas and sensitive areas;
2. Special design features made specifically to avoid or minimize adverse effects on natural areas and sensitive areas, or to restore degraded areas;
3. Establishment of vegetation proposed near residential, recreational, and scenic areas;
4. Methods for preservation of vegetation for wildlife habitat and screening, and
5. Methods to replace any lost functions or reduced value of wetland areas affected by the proposed facility.

K. A listing of federal, state, regional, district and municipal agencies from which approvals either have been obtained or will be sought covering the proposed facility, copies of approvals received and the planned schedule for obtaining those approvals not yet received.

L. Bulk filing of municipal zoning, planning, conservation and inland wetland regulations and by-laws.

Please note that all documents, including but not limited to maps, must be dated. If the document date is unavailable, the date the document was obtained shall be provided. Maps must include a key table(s) and a matching source list/table, appropriately organized.

VII. Proof of Service (Conn. Gen. Stat. § 16-50/ (b))

Each application shall be accompanied by proof of service of such application on:

- A. The chief elected official, the zoning commission, planning commission, the planning and zoning commissions, and the conservation and wetlands commissions of the site municipality and any adjoining municipality having a boundary not more than 2500 feet from the facility;
- B. The regional planning agency that encompasses the site municipality;
- C. The State Attorney General;
- D. Each member of the Legislature whose district is in or is within 2500 feet from the municipality where the facility is proposed;
- E. Any federal agency, department, commission or instrumentality which has jurisdiction over the proposed facility; and
- F. The state Departments of Environmental Protection, Public Health, Public Utility Control, Economic and Community Development, Agriculture and Transportation; the Council on Environmental Quality; and the Office of Policy and Management.
- G. Any such other state and municipal bodies as the Council may by regulation designate, including but not limited to, the State Historic Preservation Officer of the Commission

on Culture and Tourism and the Department of Emergency Management and Homeland Security.

VIII. Notice to Community Organizations

In addition to the applicable notice requirements of Conn. Gen. Stat. §22a-20a under Section XII below, the applicant shall use reasonable efforts to provide notice of the application on the following:

- A. Affected community groups including Chambers of Commerce, land trusts, environmental groups, trail organizations, historic preservation groups, advocacy groups for the protection of Long Island Sound and river protection organizations within the watershed affected by the proposed facility that have been identified by the municipality where the facility is proposed to be located or that have registered with the Council to be provided notice; and
- B. Any affected water company that would provide water to, or be within the watershed affected by, the proposed facility.

IX. Public Notice (Conn. Gen. Stat. § 16-50/ (b))

Notice shall be made in accordance with all relevant sections of Conn. Gen. Stat. §16-50/(b). The Council's regulations should also be consulted when determining appropriate notice. Notice of the application shall be published at least twice prior to the filing of the application in a newspaper having general circulation in the site municipality or municipalities. The notice shall state the name of the applicant, the date of filing, and a summary of the application. The notice must be published in not less than ten point type.

The Council also advises each applicant that at least ten business days prior to the public hearing such applicant should erect and maintain in a legible condition a sign not less than six feet by four feet upon the site at the entrance to the property from a public road where such facility is to be located. The sign shall set forth the name of the applicant, the type of facility, the public hearing date, and contact information for the Council (Web site and phone number).

Example:

PUBLIC NOTICE:

CL&P has filed an application with the Connecticut Siting Council (Council) for construction of renewable energy facility on this site. The Council will hold a public hearing on March 27, 2010 at the Newington Town Hall Auditorium at 3 and 7 p.m. A copy of the application can be reviewed at the town hall or at the Council offices in New Britain, CT. For more information, please contact the Council by telephone at 860-827-2935, electronically at www.ct.gov/csc, or by mail at 10 Franklin Square, New Britain, Connecticut 06051.

X. Notice to Abutting Landowners (Conn. Gen. Stat. § 16-50(b))

Notice of the application shall be sent by certified or registered mail to each person appearing of record as an owner of property which abuts the primary or alternative sites on which the proposed facility would be located. Notice shall be sent at the same time that notice of the application is given to the general public.

The application shall be accompanied by an affidavit of notice to all abutting landowners and an affidavit of publication each time notice of application is published.

XI. Procedures

- A. The Council will review and may reject the application within 30 days if it fails to comply with specific data or exhibit requirements or if the applicant fails to promptly correct deficiencies. (Regs., Conn. State Agencies §§ 16-501-4 through 16-501-5)
- B. The Council and any party or intervenor to the proceeding may file exhibits and interrogatories requesting supplemental or explanatory materials. All filings will be subject to cross-examination and the Council's discretion for admission into the record. (Conn. Gen. Stat. § 16-50o)
- C. A public hearing must be held in the site county, usually in the site municipality, with one session held after 6:30 p.m. for the convenience of the public. The Council's record must remain open for 30 days after the close of the hearing. (Conn. Gen. Stat. § 16-50m)
- D. The Council must render a decision within 180 days of receipt of the application, extendible by 180 days upon consent of the applicant. (Conn. Gen. Stat. § 16-50p)

XII. Environmental Justice Public Participation Plan

Pursuant to Conn. Gen. Stat. §22a-20a, applicants seeking to obtain any certificate under PUESA, a new or expanded permit or siting approval from the Siting Council or DEP involving an **“affecting facility”** (defined in part as an electric facility with a capacity of more than ten megawatts, but see exception contained in Section C below) that is proposed to be located in an **“environmental justice community”** (defined as a U.S. census block group for which 30% or more of the population consists of low income persons with income below 200% of the federal poverty level or a “distressed municipality” as defined under C.G.S. §32-9p), or the proposed expansion of an **“affecting facility”** located in such community shall file a “Meaningful Public Participation Plan.”

The definition of **“affecting facility”** does NOT include (i) the portion of an electric generating facility that uses nonemitting and nonpolluting renewable resources such as wind, solar and hydropower or that uses fuel cells; (ii) any facility for which a certificate of environmental compatibility and public need was obtained from Council on or before January 1, 2000; or (iii) a

facility of a constituent unit of the state system of higher education that has been the subject of an environmental impact evaluation in accordance with the provisions of sections 22a-1b to 22a-1h inclusive, of the General Statutes and such evaluation has been determined to be satisfactory in accordance with Section 22a-1e of the General Statutes.

PLEASE NOTE THAT THIS GUIDE IS NO SUBSTITUTION FOR OBTAINING ADVICE FROM LEGAL COUNSEL. IN THE EVENT OF ANY CONFLICT BETWEEN THIS GUIDE AND THE ACTUAL STATUTES AND REGULATIONS, THE STATUTES AND REGULATIONS SHALL GOVERN.

Connecticut Siting Council

DRAFT

Petition for Declaratory Ruling for Renewable Energy Facility

April 2010

A “renewable energy facility” is any electric generating or storage facility using renewable energy sources, including, but not limited to solar photovoltaic, solar thermal, wind, fuel cells, ocean thermal, wave or tidal, geothermal, landfill gas, hydropower, or biomass. (Conn. Gen. Stat. §16-50i(a)(3); Conn. Gen. Stat. § 16-245n(a))

Potential applicants are urged to carefully review Connecticut General Statutes § 16-50k(a) to determine whether the proposed project falls within the petition for declaratory ruling process that applies to fuel cells (unless the Council finds a substantial adverse environmental effect), customer-side distributed resource projects or grid-side distributed resource projects or facilities with a capacity of 65 megawatts or less (as long as such project meets air and water quality standards of the Department of Environmental Protection).

Applicants should consult Connecticut General Statutes §§ 16-50g through 16-50aa, and § 16a-7c, and Sections 16-50j-1 through 16-50z-4 of the Regulations of Connecticut State Agencies to assure complete compliance with the requirements of those sections. Where appropriate, statutory and regulatory references are noted below.

A. Request for Petition

Any interested person may at any time request a declaratory ruling of the Council with respect to the applicability to such person of any statute, or the validity or applicability of any regulation, final decision, or order enforced, administered, or promulgated by the Council. Such request shall be addressed to the Council and sent to the principal office of the Council by mail or delivered in person during normal business hours. The request shall be signed by the person in whose behalf the inquiry is made. It shall give the address of the person inquiring and the name and address of such person’s attorney, if applicable. The request shall:

1. state clearly and concisely the substance and nature of the request;
2. identify the statute, regulation, final decision, or order concerning which the inquiry is made and shall identify the particular aspect to which the inquiry is directed;
3. be accompanied by a statement of any supporting data, facts and arguments that support the position of the person making the inquiry; and
4. be accompanied by exhibits detailing any supporting data including but not limited to, where applicable, maps, drawings, diagrams and technical specifications.

B. Request for Participation

Where applicable, Sections 16-50j-13 through 16-50j-17 of the Regulations of Connecticut State Agencies govern the request for participation in the proceeding. (Regs., Conn. State Agencies §16-50j-39)

C. Notice

Within thirty (30) days after receipt of a petition for a declaratory ruling, the Council shall give notice of the petition to all persons to whom notice is required by any provision of law and to all other persons who have requested notice of declaratory ruling petitions on the subject matter of the petition. The Council may receive and consider data, facts, arguments, and opinions from persons other than the persons requesting the ruling. (Regs., Conn. State Agencies § 16-50j-40 (a))

D. Hearing

If the Council deems a hearing necessary or helpful in determining any issues concerning the request for a declaratory ruling, the Council shall schedule such hearing and give notice thereof as shall be appropriate. (Regs., Conn. State Agencies § 16-50j-40 (b))

E. Decision

Within sixty (60) days after receipt of a petition for a declaratory ruling, the Council, in writing, shall:

1. Issue a ruling declaring the validity of a regulation or the applicability of the provision of the general statutes, the regulation, or the final decision in question to the specified proceedings;
2. Order the matter set for a specified proceeding;
3. Agree to issue a declaratory ruling by a specified date;
4. Decide not to issue a declaratory ruling and initiate regulation-making proceedings under Connecticut General Statutes § 4-168 on the subject; or
5. Decide not to issue a declaratory ruling, stating the reasons for its action. (Regs., Conn. State Agencies § 16-50j-40 (c))

F. Notice of Decision

A copy of all rulings issued and any actions taken shall be promptly delivered to the petitioner and other parties personally or by United States mail, certified or registered, postage pre-paid, return receipt requested. A declaratory ruling shall contain the names of all parties to the proceeding, the particular facts in which it is based, and the reasons for its conclusion. (Regs., Conn. State Agencies § 16-50j-40 (d))

G. Filing Fee

The petitioner must submit an original and 25 copies of its petition with a \$625 filing fee. The expenses incurred for a field inspection shall not exceed \$500 per review. Assessments shall be made to cover all other expenses incurred by the Council. Any fees which are in excess of the actual expenses of the Council will be refunded to the petitioner. (Conn. Gen. Stat. §4-189j; Regs., Conn. State Agencies §§ 16-50v-1a (a), 16-50v-1a (c), and 16-50v-1a (e))

H. Environmental Justice Public Participation Plan

For electric generation projects that qualify for expedited siting under C.G.S. §16-50k(a) or for electric generation projects that otherwise qualify for a declaratory ruling, the Council urges project proponents to comply with the spirit of the Environmental Justice Act despite its explicit reference to a "certificate under Chapter 277a." The Council is working closely with the DEP on meeting the requirements of the Act and project proponents should consult with DEP's Environmental Justice Program to verify compliance with all of the necessary terms and conditions.

Pursuant to Conn. Gen. Stat. §22a-20a, applicants seeking to obtain any certificate under PUESA, a new or expanded permit or siting approval from the Siting Council or DEP involving an "affecting facility" (defined in part as an electric facility with a capacity of more than ten megawatts, but see exception contained in section C below) that is proposed to be located in an "environmental justice community" (defined as a U.S. census block group for which 30% or more of the population consists of low income persons with income below 200% of the federal poverty level or a "distressed municipality" as defined under C.G.S. §32-9p), or the proposed expansion of an "affecting facility" located in such community shall file a "Meaningful Public Participation Plan."

The definition of "affecting facility" does NOT include (i) the portion of an electric generating facility that uses nonemitting and nonpolluting renewable resources such as wind, solar and hydropower or that uses fuel cells; (ii) any facility for which a certificate of environmental compatibility and public need was obtained from Council on or before January 1, 2000; or (iii) a facility of a constituent unit of the state system of higher education that has been the subject of an environmental impact evaluation in accordance with the provisions of sections 22a-1b to 22a-1h

inclusive, of the General Statutes and such evaluation has been determined to be satisfactory in accordance with Section 22a-1e of the General Statutes.

This overview is designed to answer general questions and provide basic information. Reference should be made to the appropriate statutes and regulations for specific regulatory language. Asserting a person's rights and privileges is his or her responsibility. A person has the prerogative, though not the obligation, to obtain legal counsel.

