



**Written Testimony of the Connecticut Siting Council
Submitted to the Energy and Technology Committee**

**In Reference to Raised Bill No. 6309
An Act Concerning Connecticut Siting Council Public Hearings When Changes will be
made to Existing Structures
February 7, 2017**

Good afternoon Senator Formica and Senator Winfield, Representative Reed, ranking and distinguished members of the Energy and Technology Committee. Thank you for the opportunity to provide testimony in connection with Raised Bill No. 6309, An Act Concerning Connecticut Siting Council (Council) Public Hearings when changes will be made to existing structures.

The Council has jurisdiction over the construction, operation and maintenance of energy facilities in the state subject to Federal Energy Regulatory Commission (FERC) limitations on state authority under the provisions of the Federal Power Act. It also has jurisdiction over the construction, operation and maintenance of telecommunications towers in the state subject to Federal Communications Commission (FCC) limitations on state authority under the provisions of the federal Telecommunications Act of 1996. Federal preemption of state and local regulation is based on the interstate commerce aspect of these fields.

Existing Energy Structures: This bill proposes to require public hearings in municipalities when changes, a term that is undefined, will be made to existing energy structures. State and federal case law well establishes that the FERC preempts state and local review on matters within the exclusive jurisdiction of the FERC, including, but not limited to, interstate electric transmission lines, operation of the Bulk Power System, mandatory electric reliability standards and mandatory energy security standards. ISO-NE, a regional electric system reliability council, is responsible for operation of New England's electric power system and critical energy infrastructure to ensure it complies with mandatory reliability standards. This includes a plan to identify the region's electricity needs and to meet those needs through required electric transmission line and electric generator interconnection upgrades. ISO-NE publishes needs assessments and solutions studies for subareas of the New England power grid to address transmission system reliability. Failure to comply with mandatory electric reliability standards is subject to fines. Fines for failure to address violations of mandatory reliability standards and costs associated with holding public hearings for changes to existing energy structures would be passed on to all Connecticut ratepayers.

Existing Telecommunications Structures: This bill proposes to require a public hearing in municipalities when changes, a term that is undefined, will be made to existing telecommunications structures. State and federal case law well establishes that the FCC preempts state and local review on matters within the exclusive jurisdiction of the FCC, including, but not limited to, public need, health effects of radio frequency emissions and network operations. State and local review is limited to the environmental impacts of a particular site. Under FCC regulations, state and local agencies are required to approve proposed changes to existing facilities that meet FCC criteria for an "Eligible Facilities Request" within 60 days of receipt of the request. This includes, but is not limited to, non-discretionary approval of modifications of existing equipment, collocation of additional wireless carrier equipment and extension of the tower height by 10% or 20 feet, whichever is greater. A requirement for a public hearing for changes to existing tower facilities would be in direct conflict with federal law. The costs associated with holding public hearings for changes to existing telecommunications structures would be passed on to all Connecticut ratepayers.

A requirement for a public hearing in municipalities when changes will be made to existing telecommunications structures would also be in direct conflict with the State Tower Sharing Policy for collocations on existing towers.¹ The purpose of the State Tower Sharing Policy is to prevent the unnecessary proliferation of new telecommunications towers in the state when tower sharing is technically, environmentally and economically feasible, meets public safety concerns and is in the public interest. The tower sharing policy applies to towers owned or operated for a commercial or public purpose by a person, firm, corporation or public agency that uses such tower pursuant to a FCC license. The proposed bill would therefore apply to requests to share towers submitted by public entities. A requirement for a public hearing for requests to share existing towers would be in direct conflict with the State Tower Sharing Policy. The costs associated with holding public hearings for requests to share existing telecommunications structures would be passed on to all Connecticut ratepayers.

Petitions for Declaratory Rulings: Notwithstanding federal preemption in the fields of energy and telecommunications, provisions of the state Uniform Administrative Procedure Act apply to requests for changes to existing facilities.² Under those provisions, in the Council's discretion, a public hearing may be held on a request to make changes to an existing facility. Furthermore, pursuant to regulations adopted in 2012 to facilitate greater notice and public participation, the Council requires notice be provided to the host municipality and abutting property owners of requests to make changes to an existing facility.³ A publicly noticed site review is typically held by the Council on requests to make changes to existing facilities. Attendance is open to the public.

In summary, the Council opposes the passage of Raised Bill No. 6309 on the basis that the proposed bill is in direct conflict with federal laws and the State Tower Sharing Policy, does not define the term, "changes," does not take into account existing statutes and regulations that are applicable to modifications to existing structures that allow for notice and an opportunity to be heard, and does not take into account the costs associated with holding public hearings for changes to existing structures that would be passed on to all Connecticut ratepayers.

Thank you again for the opportunity to provide testimony on this proposal. Should you have any questions or seek additional information, please feel free to contact Melanie Bachman at 860-827-2951 or Melanie.Bachman@ct.gov.

Robin Stein
Chairman
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¹ Conn. Gen. Stat. §16-50aa (2016) ("the General Assembly finds that the sharing of towers for fair consideration whenever technically, legally, environmentally and economically feasible, and whenever such sharing meets public safety concerns, will avoid the unnecessary proliferation of towers and is in the public interest.")

² Conn. Gen. Stat. §4-176

³ Regulations of Connecticut State Agencies §16-50j-40 (2012) ("Prior to submitting a petition for a declaratory ruling to the Council, the petitioner shall, where applicable, provide notice to each person other than the petitioner appearing of record as an owner of property which abuts the proposed primary or alternative sites of the proposed facility, each person appearing of record as an owner of the property or properties on which the primary or alternative proposed facility is to be located and the appropriate municipal officials and government agencies.")