



Written Testimony of the Connecticut Siting Council

Submitted to the Energy and Technology Committee

**In Reference to Raised Bill No. 5504
An Act Concerning Notice and Public Information Sessions for Projects Considered and
Approved by the Siting Council
March 10, 2016**

Good afternoon Senator Doyle, 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. 5504, An Act Concerning Notice and Public Information Sessions for Projects Considered and Approved by the Siting Council (Council). Regrettably, a previously noticed public hearing for an electric substation application prevents us from providing oral testimony at the public hearing.

This bill proposes to amend the Public Utility Environmental Standards Act to require the Council to mandatorily hold a “public information session,” a term that is undefined, if construction of a facility has not commenced as of 3 years after the date a certificate is issued and to mandatorily give a new copy of the notice of application, a term that relates to a proposed project rather than an approved project, to be given if construction of a facility is not complete as of 3 years after the date a certificate is issued. Although well-intentioned, these are existing statutory requirements of the applicant when an application is pending and of the Certificate Holder when an application is approved.

For example, Conn. Gen. Stat. §16-50l(f)(2) references a “public information meeting,” a term that is also undefined, to be held during the municipal consultation process prior to submission of an application to the Council for which the applicant is responsible for making arrangements with the host municipality and sending notice. Similarly, Conn. Gen. Stat. §16-50l(b) references the notice of application to be given by the applicant prior to submission of an application to the Council. After a decision is rendered, there is no longer an application. However, the Certificate Holder is responsible for compliance with conditions of the decision, including, but not limited to, written request for an extension of the Certificate.

Under Conn. Gen. Stat. §16-50p, “In a certification proceeding, the Council shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility, as the Council may deem appropriate.” Consistent with Conn. Gen. Stat. §16-50p, the Council imposes the following standard condition on Certificates: “Unless otherwise approved by the Council, this Decision and Order shall be void if all construction authorized herein is not completed within four years of the effective date of this Decision and Order or within four years after all appeals to this Decision and Order have been resolved.” Typically, Certificate Holders request an extension of time in writing from the Council including the reasons therefor, some of which are more fully described below, with notice to the participants in the original application proceeding. The request is posted on the Council’s website, open for public comment, placed on a regular meeting agenda and granted or denied by a Council vote.

In the 2007 case of *Town of Middlebury v. Connecticut Siting Council*, the plaintiff, a party to the application proceeding, contended that the Council had no authority to extend the construction completion date for the certificated facility without formally amending or modifying the Certificate. The subject

Certificate contained the Council's standard condition on Certificates. The Court held that there is nothing in the statutes that negates the ability of the Council to make a flexible deadline a condition of a Certificate under Conn. Gen. Stat. §16-50p. The Court further held that a condition of a flexible deadline fits well within the parameters of the type of a condition that the Council "may deem appropriate" and noted that the absence of time limits may cause havoc with energy planning, but there is concomitant need for flexibility to evaluate and extend such deadlines. Certainly, time expended on court appeals and litigation of a Council decision to certificate a facility should not be counted in any time period of expiration for a Certificate as the courts may order a stay of construction pending resolution of the appeal during which time the Certificate Holder is legally barred from commencing or proceeding with construction. This is a factor beyond the control of the Council and the Certificate Holder.

Judicial review characteristically delays projects. From application to operation, the wind project in Colebrook took over 8 years. The court appeal delayed the project for over 3 years. From application to operation, a cell tower in Falls Village took over 7 years. The court appeal delayed the project for over 5 years. These projects could not have been constructed or even have commenced construction within a 3 year deadline without a mechanism for flexibility to extend the Certificate deadline. Moreover, other factors including, but not limited to, the standard Council Certificate condition to submit final site construction plans for Council review and approval prior to commencement of construction; acquisition of additional permits from other federal and state regulatory agencies, such as the United States Army Corps of Engineers and Federal Aviation Administration; energy market forces; project financing; technological advancements; lead time for manufacture of project components; and seasonal restrictions imposed on construction from state and federal environmental agencies to protect species of concern and their habitats, may delay construction progress of a certificated facility beyond the control of the Certificate Holder. These factors further support the need for flexibility to evaluate and extend Certificate deadlines.

Raised Bill No. 5504 does not take into account the possibility of extensions of time or the tolling of the certificate expiration date for judicial review. However, last year, **Committee Bill No. 566, An Act Concerning a Permissible Time Period of Validity for Certificates of Environmental Compatibility and Public Need for Electric Generating Facilities**, proposed a 3 year deadline for a certificate, the possibility of extensions of time not to exceed 10 years and the tolling of the certificate expiration date for judicial review. This bill was extremely well drafted and could seamlessly be applied to all types of facilities jurisdictional to the Council.

In summary, the Council opposes the passage of Raised Bill No. 5504 without a mechanism for flexibility to evaluate and extend Certificate deadlines consistent with the 2007 court decision in *Town of Middlebury v. Connecticut Siting Council*. In lieu of passage of Raised Bill No. 5504, the Council respectfully suggests resurrection of Committee Bill No. 566 from last year or codification of the Council's standard Certificate condition, "Unless otherwise approved by the Council, this Decision and Order shall be void if all construction authorized herein is not completed within four years of the effective date of this Decision and Order or within four years after all appeals to this Decision and Order have been resolved."

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 me at 860-827-2951 or Melanie.Bachman@ct.gov.

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