



Written Testimony of the Connecticut Siting Council

Submitted to the Energy and Technology Committee

**In Reference to Raised Bill No. 566
An Act Concerning Electric Generation Facilities
February 19, 2015**

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. 566, An Act Concerning Electric Generation Facilities. The Connecticut Siting Council (Council) is the state agency with jurisdiction over the construction, operation and maintenance of electric generating facilities in the state and is charged with balancing the public benefit of a proposed electric generating facility with the need to protect the environment and ecology of the state. Regrettably, scheduling conflicts prevent us from providing oral testimony at the public hearing.

This bill proposes to amend the Public Utility Environmental Standards Act to establish a time period of usefulness and expiration of certificates of environmental compatibility and public need (Certificate) for electric generating facilities. 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 issued for electric generating facilities: “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.”

In the 2007 case of *Town of Middlebury v. Connecticut Siting Council*, a party to the 1999 certification proceeding on an electric generating facility 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 Certificate contained the following standard 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.”

The Court held that “there is nothing in the statutes that provides for amendments due to the need to extend the deadline to complete the project nor is there anything that negates the ability of the Council to make a flexible deadline a condition of a Certificate under Conn. Gen. Stat. §16-50p rather than a matter for amendment.” 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 an electric generating 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 proceeding with construction. This is a factor beyond the control of the Council and the Certificate Holder.

Moreover, other factors including, but not limited to, the standard Council Certificate condition to submit a Development and Management Plan, or final site construction plans, for a certificated facility for Council review and approval before commencement of construction, energy market forces, technological changes, acquisition of permits, such as air and water permits, from other federal and state regulatory agencies with concurrent jurisdiction such as the United States Army Corps of Engineers, or seasonal restrictions on construction imposed by the Council and other federal and state regulatory agencies with concurrent jurisdiction, may delay construction progress of a certificated electric generating facility beyond the control of the Certificate Holder. These factors further support the need for flexibility to evaluate and extend deadlines for construction of an electric generating facility.

In summary, the Council supports the passage of Raised Bill No. 566 with a mechanism for flexibility to evaluate and extend deadlines consistent with the 2007 court decision in *Town of Middlebury v. Connecticut Siting Council*.

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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