



STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

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DATE: April 14, 2014

TO: Kirstin L. Breiner, Legislative Regulation Review Committee Administrator

FROM: Melanie A. Bachman, Esq. *MAB*
Staff Attorney/Acting Executive Director, Connecticut Siting Council

CC: Robert Stein, Chairman, Connecticut Siting Council

RE: Substitute Pages - Wind Regulations, Regulation No. 2012-54E

The Connecticut Siting Council (Council) is submitting the attached substitute pages for the above-referenced regulations in accordance with the rules of the Legislative Regulation Review Committee at its regular meeting on April 22, 2014.

The overall intent of the changes as provided and summarized below are to provide clarification and avoid unintentional ambiguity.

The changes are as follows:

1. On page 10, in section 16-50j-94(i)(6), the following statement was added at the end of the section (after subdivision (6)) to clarify what types of financial devices are sufficient to satisfy the financial assurance requirement: "For purposes of this section, financial assurance may include a performance bond, surety bond, letter of credit, corporate guarantee, escrow, deposit, insurance, certificate of deposit, domestic security, trust, any combination of the foregoing financial devices, or any other form of financial device that is acceptable to the Council to ensure sufficient funds are available for decommissioning the facility";
2. On page 11, in section 16-50j-95(a)(2), the phrase, "whichever is greater" was added to the end of the sentence prior to subparagraph (A) to indicate that the greater setback distance between the manufacturer's recommended setback distance and the 1.5 times the wind turbine height is the required setback distance;
3. On page 1 in the second line of section 16-50j-2a(1)(A), errant underlining was removed between "frequency" and "signals"; and
4. On pages 10 and 11 throughout section 16-50j-94(j), formatting changes were made to correct the phrases from "Subsections (a) and (c) of Section 16-50j-95" to "subsections (a) and (c) of section 16-50j-95."

Thank you for your consideration. If you have any questions, please feel free to contact me at (860) 827-2951.



R-39 Rev. 02/2010

IMPORTANT: Read instructions on bottom of last page (Certification Page) before completing this form. Failure to comply with instructions may cause disapproval of proposed regulations

State of Connecticut REGULATION of

 NAME OF AGENCY

 CONNECTICUT SITING COUNCIL

Concerning

 SUBJECT MATTER OF REGULATION

CSC WIND REGULATIONS – Adoption of Regulations pursuant to Public Act 11-245, An Act Requiring the Adoption of Regulations for the Siting of Wind Projects, Sections 16-50j-2a, 16-50j-18 and 16-50j-92 to 16-50j-96, inclusive, of the Regulations of Connecticut State Agencies.

Section 1. Section 16-50j-2a of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-50j-2a. Definitions.

As used in Sections 16-50j-1 to 16-50z-4, inclusive, of the Regulations of Connecticut State Agencies, except as otherwise required by the context:

- (1) “Associated equipment” includes, but is not limited to:
- (A) any building, structure, fuel tank, backup generator, antenna, satellite dish, or technological equipment, including equipment intended for sending or receiving radio frequency signals that is a necessary component for the operation of a community antenna television tower or telecommunications tower; or
 - (B) any building, structure, fuel tank, backup generator, transformer, circuit breaker, disconnect switch, control house, cooling tower, pole, line, cable, conductor or emissions equipment that is a necessary component for the operation of an electric transmission line facility, fuel transmission facility, electric generating or storage facility, or electric substation or switchyard.
- (2) “Attorney” means an attorney at law, duly admitted to practice before the Superior Court of the state of Connecticut. Any other person who appears before the Council in any contested case or petition for a declaratory ruling shall be deemed to appear as the agent or representative of a person, firm, corporation, or association upon filing with the Council a written notification of appearance and the written authorization of the person, firm, corporation, or association being represented.
- (3) “Blade length” means the distance between the blade tip and the center of the hub of a wind turbine.
- [(3)] (4) “Certificate” means a Certificate of Environmental Compatibility and Public Need as defined under Section 16-50k of the Connecticut General Statutes or a Certificate of Public Safety and Necessity as defined under Section 22a-117 of the Connecticut General Statutes to be issued, denied, conditioned, limited, modified, or amended, in accordance with the disposition of applications authorized by law to be submitted to the Council.
- [(4)] (5) “Chairperson” means the public member of the Council appointed pursuant to the provisions of Section 16-50j(d) of the Connecticut General Statutes.

- (I) total volume in cubic yards of cut required; and
- (J) total volume in cubic yards of fill required.

(3) A study area map for the proposed site and any alternative sites depicting the natural resource impact analysis study area radius, site boundaries and locations of, as applicable, important bird areas, bat hibernacula, terrestrial and marine wildlife habitat, as applicable, flood zones, wetlands and watercourses, forests, recreational areas, open space and conservation areas.

(4) Identification of potential mitigation measures to minimize natural resource impacts including, recommended protocols for protection of wetlands and wildlife, proposed open space or conservation areas, minimization of tree clearing, erosion and sedimentation controls, soil stabilization, re-vegetation and post-construction monitoring plans for avian, terrestrial and marine wildlife, as applicable.

(5) For wind turbine facilities with a capacity of more than 65 megawatts, the applicant shall submit, as part of the Natural Resource Impact Evaluation Report, a Terrestrial Habitat Conservation plan for land-based wind turbine facilities or a Marine Habitat Conservation Plan for off-shore wind turbine facilities, for the proposed site and any alternative sites. The applicant shall consult with the United States Fish and Wildlife Service and the Department of Energy and Environmental Protection in the development of the Terrestrial or Marine Habitat Conservation Plan.

(i) Decommissioning Plan.

Any application for a certificate for a wind turbine facility or petition for a declaratory ruling for a wind turbine facility shall contain a decommissioning plan for the proposed site and any alternative sites that shall include:

- (1) the projected useful life of the wind turbines;
- (2) identification of any circumstances that would trigger decommissioning of the facility in advance of the projected useful life of the wind turbines;
- (3) a description of the method by which foundations, wind turbines, associated equipment and components will be dismantled and removed;
- (4) a description of the method by which the site will be restored as near as possible to its original condition, including, stabilization, re-grading and re-vegetation;
- (5) an estimate of the total cost of implementing the decommissioning plan calculated by a certified professional engineer based on the projected useful life and the projected salvage value of the facility; and
- (6) financial assurance to ensure that sufficient funds are available for decommissioning the facility.

For purposes of this section, financial assurance may include a performance bond, surety bond, letter of credit, corporate guarantee, escrow, deposit, insurance, certificate of deposit, domestic security, trust, any combination of such financial devices, or any other form of financial device that is acceptable to the Council to ensure sufficient funds are available for decommissioning the facility.

(j) Waivers.

(1) Agreements. Pursuant to Section 16-50o of the Connecticut General Statutes, the applicant or petitioner shall submit any agreements entered into with any abutting property owner of record to waive the requirements under subsections (a) and (c) of section 16-50j-95 of the Regulations of Connecticut State Agencies.

(2) Requests. The applicant or petitioner shall submit to the Council any request for a waiver of the requirements under subsections (a) and (c) of section 16-50j-95 of the Regulations of Connecticut State Agencies at the time an application or petition is filed with the Council. If the Council finds good cause for a waiver of the requirements under subsections (a) and (c) of section 16-50j-95 of the Regulations of Connecticut State Agencies during a public hearing, the applicant or petitioner shall provide notice by certified mail to the abutting property owner of record that includes, the following:

(A) notice of the requirements under subsections (a) and (c) of section 16-50j-95 of the Regulations of Connecticut State Agencies;

(B) notice of the criteria considered for a good cause determination to waive the requirements under subsections (a) and (c) of section 16-50j-95 of the Regulations of Connecticut State Agencies;

(C) notice of the wind turbine manufacturer's recommended setback distances; and

(D) notice that the abutting property owner of record is granted a 30-day period of time from the date notice by certified mail is sent to an abutting property owner of record to provide written comments on the proposed waiver of the requirements under subsections (a) and (c) of section 16-50j-95 of the Regulations of Connecticut State Agencies to the Council or to file a request for party or intervenor status with the Council pursuant to Sections 16-50j-13 to 16-50j-17, inclusive, of the Regulations of Connecticut State Agencies.

Sec. 6. The Regulations of Connecticut State Agencies are amended by adding **Section 16-50j-95** as follows:

(NEW) Sec. 16-50j-95. Considerations for Decision.

In making its decision to grant or deny an application for a certificate or to issue or not to issue a petition for a declaratory ruling, the Council shall, consistent with the Uniform Administrative Procedure Act, Chapter 54 of the Connecticut General Statutes, and the Public Utility Environmental Standards Act, Chapter 277a of the Connecticut General Statutes, consider, among other relevant facts and circumstances, the following factors:

(a) Setback Distances.

(1) Requirements.

(A) Any application for a certificate for a proposed wind turbine facility with a capacity of more than 65 megawatts shall include setback distances from each of the proposed wind turbine locations and any alternative wind turbine locations of not less than 2.5 times the wind turbine height from all property lines at the proposed site and any alternative sites or shall comply with the wind turbine manufacturer's recommended setback distances, whichever is greater. A copy of the wind turbine manufacturer's recommended setback distances shall be included in the application or petition. In its discretion, the Council may require greater setback distances based on the results of any evaluation report submitted under Section 16-50j-94 of the Regulations of Connecticut State Agencies.

(B) Any petition for a declaratory ruling for a proposed wind turbine facility with a capacity of less than 65 megawatts shall include setback distances from each of the proposed wind turbine locations and any alternative wind turbine locations of not less than 1.5 times the wind turbine height from all property lines at the proposed site and any alternative sites or shall comply with the wind turbine manufacturer's recommended setback distances, whichever is greater. A copy of the wind turbine manufacturer's recommended setback distances shall be included in the application or petition. In its discretion, the Council may require greater setback distances based on the results of any evaluation report submitted under Section 16-50j-94 of the Regulations of Connecticut State Agencies.

(2) Waiver of requirements. The minimum required setback distances for each of the proposed wind turbine locations and any alternative wind turbine locations at the proposed site and any alternative sites may be waived, but in no case shall the setback distance from the proposed wind turbines and any alternative wind turbines be less than the manufacturer's recommended setback distances from any occupied residential structure or less than 1.5 times the wind turbine height from any occupied residential structure, whichever is greater:

(A) by submission to the Council of a written agreement between the applicant or petitioner and abutting property owners of record stating that consent is granted to allow reduced setback distances; or