APPENDIX 15: COMPARISON OF CRITERIA FOR FINAL DECISION – CT, MA, NH, RI, VT

There are generally statutory guidelines of what the siting body must consider in evaluating a project. Connecticut has extensive requirements that must be considered by the CSC in evaluating a Certificate.

Connecticut

The CSC cannot grant a Certificate, either proposed or modified by the CSC, unless it determines:

(A) "A public need for the facility and the basis of the need;

(B) The nature of the probable environmental impact of the facility alone and cumulatively with other existing facilities, including a specification of every significant adverse effect, including, but not limited to, (i) electromagnetic fields that, whether alone or cumulatively with other effects, impact on, and conflict with the policies of the state concerning the natural environment, (ii) ecological balance, (iii) public health and safety, (iv) scenic, historic and recreational values, (v) agriculture, (vi) forests and parks, (vii) air and water purity, and (viii) fish, aquaculture and wildlife;

(C) Why the adverse effects or conflicts referred to in subparagraph (B) of this subdivision are not sufficient reason to deny the application;

(D) (i) From October 1, 2024 to Sept. 30, 2025, inclusive, in the case of an electric transmission line, (I) what part, if any, of the facility shall be located overhead, (II) that the facility conforms to a long-range plan for expansion of the electric power grid of the electric systems serving the state and interconnected utility systems and will serve the interests of electric system economy and reliability, and (III) that the overhead portions, if any, of the facility are cost effective and the most appropriate alternative based on a life-cycle cost analysis of the facility and underground alternatives to such facility, are consistent with the purposes of this chapter, with such regulations or standards as the CSC may adopt pursuant to section 16-50t, including, but not limited to, the CSC's best management practices for electric and magnetic fields for electric transmission lines and with the Federal Power Commission "Guidelines for the Protection of Natural Historic Scenic and Recreational Values in the Design and Location of Rights-of-Way and Transmission Facilities" or any successor guidelines and any other applicable federal guidelines and are to be contained within an area that provides a buffer zone that protects the public health and safety, as determined by the CSC. In establishing such buffer zone, the CSC shall consider, among other things, residential areas, private or public schools, licensed childcare centers, licensed youth camps or public playgrounds adjacent to the proposed route of the overhead portions and the level of the voltage of the overhead portions and any existing overhead transmission lines on the proposed route. At a minimum, the existing right-of-way shall serve as the buffer zone;

(ii) On and after October 1, 2025, in the case of an electric transmission line, (I) what part, if any, of the facility shall be located overhead, (II) that the facility conforms to a long-range plan for expansion of the electric power grid of the electric systems serving the state and interconnected

utility systems and will serve the interests of electric system economy and reliability, (III) the estimated initial and life-cycle costs for the facility or modification, as applicable, and for any feasible and practical project alternatives, (IV) the estimated regionalized and localized costs for the facility or modification, as applicable, and for any feasible and practical alternative, (V) for any estimated localized costs for the facility or modification, as applicable, that such estimated localized costs are reasonable compared to the benefits; and (VI) that the overhead portions, if any, of the facility are cost effective and the most appropriate alternative based on a life-cycle cost analysis of the facility and underground alternatives to such facility, are consistent with the purposes of this chapter, with such regulations or standards as the CSC may adopt pursuant to section 16–50t, including, but not limited to, the CSC's best management practices for electric and magnetic fields for electric transmission lines and with the Federal Power Commission "Guidelines for the Protection of Natural Historic Scenic and Recreational Values in the Design and Location of Rights-of-Way and Transmission Facilities" or any successor guidelines and any other applicable federal guidelines and are to be contained within an area that provides a buffer zone that protects the public health and safety, as determined by the CSC. In establishing such buffer zone, the CSC shall consider, among other things, residential areas, private or public schools, licensed childcare centers, licensed youth camps or public playgrounds adjacent to the proposed route of the overhead portions and the level of the voltage of the overhead portions and any existing overhead transmission lines on the proposed route. At a minimum, the existing right-of-way shall serve as the buffer zone;

(E) In the case of an electric or fuel transmission line, that the location of the line will not pose an undue hazard to persons or property along the area traversed by the line;

(F) In the case of a facility described in subdivision (6) of subsection (a) of section 16-50i (telecommunication towers) that is (i) proposed to be installed on land under agricultural restriction, as provided in section 22-26cc, that the facility will not result in a material decrease of acreage and productivity of the arable land, (ii) proposed to be installed on land near a building containing a school, as defined in section 10-154a, or a commercial child care center, as described in subdivision (1) of subsection (a) of section 19a-77, that the facility will not be less than two hundred fifty feet from such school or commercial child care center unless the location is acceptable to the chief elected official of the municipality or the CSC finds that the facility will not have a substantial adverse effect on the aesthetics or scenic quality of the neighborhood in which such school or commercial child care center is located, or (iii) proposed to be installed on land owned by a water company, as defined in section 25-32a, and which involves a new ground-mounted telecommunications tower, that such land owned by a water company is preferred over any alternative telecommunications tower sites provided the CSC shall, pursuant to clause (iii) of this subparagraph, consult with the Department of Public Health to determine potential impacts to public drinking water supplies in considering all the environmental impacts identified pursuant to subparagraph (B) of this subdivision. The CSC shall not render any decision pursuant to this subparagraph that is inconsistent with federal law or regulations; and

(G) That, for a facility described in subdivision (5) or (6) of subsection (a) of section 16-50i (antenna television towers and telecommunication towers), the CSC has considered the manufacturer's recommended safety standards for any equipment, machinery or technology for the facility.

(H) For a facility described in subdivision (3) of section 16–50i (electric generating or storage facility) that is a solar photovoltaic facility, that the CSC has evaluated potential noise levels of the proposed facility in conformance with scientifically accepted methods for noise assessment." [135]

Prior to granting an applicant's Certificate for a facility described in subdivision (5) or (6) of subsection (a) of section 16–50i (antenna television towers and telecommunication towers) the CSC must also examine: "(A) The feasibility of requiring an applicant to share an existing facility, as defined in subsection (b) of section 16–50aa, within a technically derived search area of the site of the proposed facility, provided such shared use is technically, legally, environmentally and economically feasible and meets public safety concerns, (B) whether such facility, if constructed, may be shared with any public or private entity that provides telecommunications or community antenna television service to the public, provided such shared use is technically, legally, environmentally and economically feasible at fair market rates, meets public safety concerns, and the parties' interests have been considered, (C) whether the proposed facility would be located in an area of the state which the CSC, in consultation with the Department of Energy and Environmental Protection and any affected municipalities, finds to be a relatively undisturbed area that possesses scenic quality of local, regional or state-wide significance, and (D) the latest facility design options intended to minimize aesthetic and environmental impacts. The CSC may deny an application for a Certificate if it determines that (i) shared use under the provisions of subparagraph (A) of this subdivision is feasible, (ii) the applicant would not cooperate relative to the future shared use of the proposed facility, (iii) the proposed facility would substantially affect the scenic quality of its location or surrounding neighborhood and no public safety concerns require that the proposed facility be constructed in such a location, or (iv) no public safety concerns require that a proposed facility owned or operated by the state be constructed in that location. In evaluating the public need for a cellular facility described in subdivision (6) of subsection (a) of section 16–50i, there shall be a presumption of public need for personal wireless services and the CSC shall be limited to consideration of a specific need for any proposed facility to be used to provide such services to the public." [136]

There are additional requirements for electric generating or storage facilities. The CSC cannot grant a Certificate for a facility described in subdivision (3) of subsection (a) of section 16–50i (electric generating or storage facility), either as proposed or as modified by the CSC, "unless it finds and determines a public benefit for the facility and considers neighborhood concerns with respect to the factors set forth in subdivision (3) of subsection (a) of this section, including public safety."[137] Further, the CSC cannot grant a Certificate for a facility described in subdivision (3) of subsection (a) of section 16–50i (electric generating or storage facility) that is a solar photovoltaic

[135] Conn. Gen. Stat. Sec. 16-50p amended by P.A. 24-144.

[136] Conn. Gen. Stat. Sec. 16-50p(b) amended by P.A. 24-144.

[137] Conn. Gen. Stat. Sec. 16-50p amended by P.A. 24-144.

facility if it finds that "(A) such facility will not comply with any noise requirements established pursuant to chapter 442,1 or (B) the distance between any inverters or transformers of such facility and the property line is less than two hundred feet."[138]

There are also special requirements for transmission lines. The CSC shall not grant a Certificate for a facility described in subdivision (1) of subsection (a) of section 16–50i (transmission line), "that is substantially underground or underwater except where such facility interconnects with existing overhead facilities, either as proposed or as modified by the CSC, unless it finds and determines a public benefit for a facility substantially underground or a public need for a facility substantially underwater."[139] "A public benefit exists when a facility is necessary for the reliability of the electric power supply of the state or for the development of a competitive market for electricity and a public need exists when a facility is necessary for the reliability of the electric power supply of the state."[140]

"Any application for an electric transmission line with a capacity of three hundred forty-five kilovolts or more … and proposes the underground burial of such line in all residential areas and overhead installation of such line in industrial and open space areas shall have a rebuttable presumption of meeting a public benefit for such facility if the facility is substantially underground and meeting a public need for such facility if the facility is substantially above ground. Such presumption may be overcome by evidence submitted by a party or intervenor to the satisfaction of the … CSC."[141]

"For an application on a facility described in subdivision (1) of subsection (a) of section 16-50i, the CSC shall administratively notice completed and ongoing scientific and medical research on electromagnetic fields."[142]

Finally, "on and after October 1, 2025, the CSC cannot grant a Certificate for a facility described in subdivision (1) of subsection (a) of section 16–50i (transmission line), either as proposed or as modified by the CSC, unless the CSC finds and determines a public need for the facility and considers neighborhood concerns with respect to the factors set forth in subdivision (3) of subsection (a) of this section, including public safety and the impact that the proposed facility is anticipated to have on the tax base of any municipality where any part of such facility is proposed to be located." [143]

Additionally, the CSC "shall not grant a Certificate, either as proposed or as modified by the CSC, unless it (A) provides summaries and written responses to any comments that the Departments of Administrative Services, Agriculture, Economic and Community Development, Energy and

[138] Conn. Gen. Stat. Sec. 16-50p amended by P.A. 24-144.
[139] Conn. Gen. Stat. Sec. 16-50p(c) amended by P.A. 24-144.
[140] Conn. Gen. Stat. Sec. 16-50p (c) (3) amended by P.A. 24-144.
[141] Conn. Gen. Stat. Sec. 16-50p (c) (4) amended by P.A. 24-144.
[142] Conn. Gen. Stat. Sec. 16-50o(b) amended by P.A. 24-144.
[143] Conn. Gen. Stat. Sec. 16-50p amended by P.A. 24-144.

Environmental Protection, Emergency Services and Public Protection, Public Health and Transportation, the Labor Department, the Council on Environmental Quality, the Public Utilities Regulatory Authority, the Office of Policy and Management or the Office of Consumer Counsel submits pursuant to subsection (i) of section 16–50j, as amended by this act, and (B) provides written responses to the positions of each intervenor that participated in the certification proceeding concerning such Certificate. The CSC shall specifically address any environmental justice concerns raised in the comments of said departments, Council on Environmental Quality, authority and offices, or in the positions of any such intervenor, in such written responses." [144]

"From October 1, 2024, to September 30, 2025, inclusive, CSC may give appropriate consideration in all proceedings to (1) the amounts expended by a utility for research on generation and transmission of the form of energy furnished by it and the environmental effect thereof, (2) the amounts expended by such utility for promotion, including advertising, of the use of the form of energy furnished by it, and (3) the relationship between such expenditures." [145]

"On and after October 1, 2025, the CSC shall give appropriate consideration in all proceedings to (1) the amounts expended by a utility for research on generation and transmission of the form of energy furnished by it and the environmental effect of such form of energy, (2) the amounts expended by such utility for promotion, including advertising, of the use of the form of energy furnished by it, and (3) the relationship between such expenditures." [146]

Massachusetts

The Board can approve the application for a non-generating facility, it can be rejected or conditionally approved. Approval requires that:

"all information relating to current activities, environmental impacts, facilities agreements and energy policies as adopted by the commonwealth is substantially accurate and complete; projections of the demand for electric power, or gas requirements and of the capacities for existing and proposed facilities are based on substantially accurate historical information and reasonable statistical projection methods and include an adequate consideration of conservation and load management; provided, however, that the department or board shall not require in any gas forecast or hearing conducted thereon the presentation of information relative to the demand for gas; projections relating to service area, facility use and pooling or sharing arrangements are consistent with such forecasts of other companies subject to this chapter as may have already been approved and reasonable projections of activities of other companies in the New England area; plans for expansion and construction of the applicant's new facilities are consistent with current health, environmental protection, and resource use and development policies as adopted by the commonwealth; and are consistent with the policies stated in section sixty-nine H to provide a

[144] Conn. Gen. Stat. Sec. 16-50p amended by P.A. 24-144.
[145] Conn. Gen. Stat. Sec. 16-50s amended by P.A. 24-144.
[146] Conn. Gen. Stat. Sec. 16-50s amended by P.A. 24-144.

necessary energy supply for the commonwealth with a minimum impact on the environment at lowest possible cost; and in the case of a notice of intent to construct an oil facility, that all information regarding sources of supply for such facility and financial information regarding the applicant and its proposed facility are substantially accurate and complete; that it is satisfied as to the adequacy of the applicant's capital investment plans to complete its facility; the long term economic viability of the facility; the overall financial soundness of the applicant; in the case of an oil facility, the qualification and capability of the applicant in the transshipment, transportation, storage, refining and marketing of oil or refined oil products; that plans including buffer zones or alternatives thereto for the applicant's new facility are consistent with current health, environmental protection and resource use and development policies as adopted by the Commonwealth." [147]

The Board can also approve the application for a generating facility, it can be rejected or conditionally approved. Approval requires that:

"(i) the description of the proposed generating facility and its environmental impacts are substantially accurate and complete; (ii) the description of the site selection process used is accurate; and (iii) the plans for the construction of the proposed generating facility are consistent with current health and environmental protection policies of the commonwealth and with such energy policies as are adopted by the commonwealth for the specific purpose of guiding the decisions of the board; (iv) such plans minimize the environmental impacts consistent with the minimization of costs associated with the mitigation, control, and reduction of the environmental impacts of the proposed generating facility; and (v) if the petitioner was required to provide information on other fossil fuel generating technologies, the construction of the proposed generating facility on balance contributes to a reliable, low-cost, diverse, regional energy supply with minimal environmental impacts." [148]

For "generating facilities" the EFSB is not required to make findings regarding the need for, the cost of, or alternative sites for a generating facility; "provided, however, that the board may, at its discretion, evaluate a noticed alternative site for a generating facility if the applicant requests such an evaluation, or if such an evaluation is an efficient method of administering an alternative site review required by another state or local agency." [149]
"To streamline its review of petitions to construct "generating facilities" which have state of the art environmental performance characteristics, the board will also periodically create rules to establish a technology performance standard for generating facilities emissions, including, but not limited to, emissions of sulfur dioxide, nitrogen oxides, particulate matter, fine particulates, carbon monoxide, volatile organic compounds, and heavy metals. As to each such pollutant, the performance standard must reflect the best available control technology or the lowest achievable emissions rate, whichever would be applicable in the commonwealth for such pollutant that year. The performance standard also reflects the best available and most efficient technology to control

[147] M.G.L.A. 164 Sec. 69J (non-generating)
[148] M.G.L.A. 164 Sec. 69J1/4 (generating).
[149] M.G.L.A. 164 Sec. 69J1/4 (generating).

and reduce water withdrawals. Such standard needs to reflect emission rates that are achievable by state-of-the-art fossil fuel generating and control technologies, as demonstrated by air permits for construction that have been issued by the department of environmental protection. The technology performance standard is used solely to determine whether a petition to construct a generating facility must include information regarding other fossil fuel generation technologies. The promulgation or application of this standard shall not in any way supersede or impair the authority of the department of environmental protection with respect to these or other facilities."[150]

New Hampshire

To issue a certificate, in New Hampshire, the site evaluation committee needs to find that: "(a) the applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate; (b) the site and facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies; (c) the site and facility will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, fish and wildlife resources, public health and safety, and existing land and offshore uses; and, (e) issuance of a certificate will serve the public interest."[151]

The committee has to incorporate into the certificate any terms and conditions in their entirety and "without addition, deletion, or change, as may be specified to the committee by any of the state agencies having permitting or other regulatory authority, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility; provided, however, the committee shall not issue any certificate under this chapter if any of the state agencies denies authorization for the proposed activity over which it has permitting or other regulatory authority. The denial of any such authorization shall be based on the record and explained in reasonable detail by the denying agency."[152]

"The committee may consult with interested regional agencies and agencies of border states in the consideration of certificates."[153]

"Any certificate issued by the site evaluation committee must be based on the record. The decision to issue a certificate in its final form or to deny an application once it has been accepted is made by a majority of the full membership. A certificate is conclusive on all questions of siting, land use, air and water quality. The committee issues an order to either grant or deny the certificate. The order must summarize issues of concern expressed during public information sessions and hearings to ensure that the public's voice has been heard and recorded."[154]

---

[150] M.G.L.A. 164 Sec. 69J1/4 (generating).

[151] N.H. Rev. Stat. Sec. 162-H:16.

[152] N.H. Rev. Stat. Sec. 162-H:16.

[153] N.H. Rev. Stat. Sec. 162-H:16.

[154] N.H. Rev. Stat. Sec. 162-H:16.

Rhode Island

The RI – EFSB must consider, as issues in every proceeding, "the ability of the proposed facility to meet the requirements of the laws, rules, regulations, and ordinances under which, absent this chapter, the applicant would be required to obtain a permit, license, variance, or assent." [155]

The board "shall issue a decision granting a license only upon finding that the applicant has shown that: (1) Construction of the proposed facility is necessary to meet the needs of the state and/or region for energy of the type to be produced by the proposed facility; (2) The proposed facility is cost-justified, and can be expected to produce energy at the lowest reasonable cost to the consumer consistent with the objective of ensuring that the construction and operation of the proposed facility will be accomplished in compliance with all of the requirements of the laws, rules, regulations, and ordinances, under which, absent this chapter, a permit, license, variance, or assent would be required, or that consideration of the public health, safety, welfare, security and need for the proposed facility justifies a waiver of some part of the requirements when compliance cannot be assured; and, (3) The proposed facility will not cause unacceptable harm to the environment and will enhance the socio-economic fabric of the state."[156]

"Before approving the construction, operation and/or alteration of major energy facilities, the board determines whether cost effective efficiency and conservation opportunities provide an appropriate alternative to the proposed facility."[157]

Vermont

Before the Public Utility Commission issues a certificate of public good it needs to find, generally, and subject to additional statutory provisions, that the purchase, investment or construction:

(1) With respect to an in-state facility, will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality.

(2) Is required to meet the need for present and future demand for service that could not otherwise be provided in a more cost-effective manner through energy conservation programs and measures and energy-efficiency and load management measures....

(3) Will not adversely affect system stability and reliability.

---

[155] R.I. Gen. Stat. Sec. 42-98-9 (b).

[156] R.I. Gen. Laws Ann. Sec. 42-98-11 (b).

[157] R.I. Gen. Laws Ann. Sec. 42-98-2 (7).

(4) Will result in an economic benefit to the State and its residents.

(5) With respect to an in-state facility, will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, and the public health and safety.

(6) With respect to purchases, investments, or construction by a company, is consistent with the principles for resource selection expressed in that company's approved least-cost integrated plan.

(7) Is in compliance with the electric energy plan approved by the Department of Public Service or that there exists good cause to permit the proposed action.

(8) Does not involve a facility affecting or located on any segment of the waters of the State that has been designated as outstanding resource waters by the Secretary of Natural Resources, except that with respect to a natural gas or electric transmission facility, the facility does not have an undue adverse effect on those outstanding resource waters.

(9) With respect to a waste to energy facility that it is included in a solid waste Management Plan.

(10) Can be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers.

(11) With respect to an in-state generation facility that produces electric energy using woody biomass, will comply with the applicable air pollution control requirements, achieve the highest design system efficiency that is commercially available, feasible, and cost-effective for the type and design of the proposed facility; and comply with harvesting procedures and procurement standards that ensure long-term forest health and sustainability.[158]

Before a certificate of public good is issued for the construction of a nuclear energy generating plant within the State, the Public Utility Commission must obtain the approval of the General Assembly and the Assembly's determination that the construction of the proposed facility will promote the general welfare.[159]

[158] 30 V.S.A. Sec. 248 (b).

[159] 30 V.S.A. Sec. 248 (e)(1).